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45th Legislature

LC 0104/01

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REFERRED TO: Labor
& Employment Relations

ORIGINAL

1 HB BILL NO. 122
2 INTRODUCED BY Assembly Robb Sen. H.
3 Harwitz Walsh Walsh Walsh
4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
5 REVISION OF LAWS RELATING TO COUNTY AND MUNICIPAL
6 GOVERNMENT; ENACTING A LOCAL GOVERNMENT CODE; AND PROVIDING
7 AN EFFECTIVE DATE."

8 WHEREAS, for units of local government with general
9 powers the legislature has the authority under Article XI,
10 section 4, of the Montana constitution of 1972 to provide by
11 law the "...legislative, administrative and other powers..."
12 of incorporated cities and towns and counties; and

13 WHEREAS, for units of local government with
14 self-government powers the legislature has the authority
15 under Article XI, section 6, of the Montana constitution of
16 1972 to prohibit by law any power to the self-government
17 unit of government; and

18 WHEREAS, existing laws do not grant legislative powers
19 to counties as now permitted by Article XI, section 4, of
20 the Montana constitution of 1972; and

21 WHEREAS, Article XI, section 4, of the Montana
22 constitution of 1972 provides that the powers of local
23 governments "...shall be liberally construed..."; and

24 WHEREAS, the creation of both "general government
25 power" local governments and "self-government power" local

1 governments by sections 4, 5, and 6 of the Montana
2 constitution of 1972 requires the creation of a dual system
3 of local government laws to authorize local governments with
4 either "general government powers" or "self-government
5 powers"; and

6 WHEREAS, it is the intention of the legislature under
7 provisions of the Montana constitution of 1972 to provide
8 local governments broad discretion in determining through
9 local ordinances their structure and services; and

10 WHEREAS, the existing state statutes governing local
11 government are confused, contradictory, scattered, and
12 repetitive, resulting in delay or inaction in response to
13 pressing local problems; and

14 WHEREAS, the existing state statutes require constant
15 amendment and piecemeal revision by the legislature; and

16 WHEREAS, bills for this constant amendment and revision
17 constitute a considerable portion of the number of bills
18 considered by the legislature; and

19 WHEREAS, a general revision of local government laws
20 and the granting of legislative powers to counties will
21 reduce the need for constant revision of local government
22 laws; and

23 WHEREAS, the general revision of local government laws
24 and their organization into a single title will assist those
25 responsible for administering local governments, citizens,

INTRODUCED BILL

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HB 122

1 and the legislature.

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 Section 1. Local government code. There is a new
5 series of R.C.M. sections and chapter, part, and subpart
6 headings in the local government code that read as follows:

7 CHAPTER 1

8 GENERAL PROVISIONS AND DEFINITIONS

9 Part 1

10 General Provisions

11 47A-1-101. Short title. This title shall be known and
12 may be cited as the "Local Government Code".

13 47A-1-102. General purpose of title. It is the purpose
14 of this title:

15 (1) to fully implement Article XI of the Montana
16 constitution of 1972;

17 (2) to provide the residents of this state with
18 responsive and responsible local governments the form,
19 structure, and activities of which are determined by the
20 citizens and officials of the local government.

21 47A-1-103. Liberal construction. (1) As provided in
22 Article XI, section 4, of the Montana constitution of 1972,
23 the provisions of this title shall be liberally construed to
24 effect its purpose.

25 (2) The rule of law that the powers of a local

1 government shall be strictly construed has no application to
2 the powers of local governments in Montana. Any reasonable
3 doubt as to the existence of a power or authority granted by
4 law to local government shall be resolved in favor of the
5 power or authority's existence.

6 47A-1-104. Powers vested in governing body. Unless
7 otherwise provided or the context otherwise requires, all
8 powers granted to local governments by this title shall be
9 vested in the governing body of the local government.

10 47A-1-105. Transition to this title. (1) This title
11 shall not affect the validity of any bond, debt, contract,
12 obligation, or cause of action accrued prior to the
13 effective date of this title. Notwithstanding any provision
14 of this title, the governing body may have the power and
15 duty to do all things required by prior law or by covenants
16 and agreements entered into pursuant to such laws for the
17 security of any such bond, debt, contract or obligation.

18 (2) All ordinances, resolutions, regulations, and
19 interlocal agreements in effect at the time this title
20 becomes effective shall continue in effect until repealed or
21 amended in the manner provided by law.

22 (3) Unless otherwise provided in this title, each
23 officer or employee affected by the reorganization of local
24 government under this title is entitled to all rights which
25 he possessed as a local government officer or employee

1 before the effective date of this title, including rights to
 2 tenure in position and of rank or grade, rights to vacation
 3 and sick pay and leave, rights under any retirement or
 4 personnel plan or labor union contract, rights to
 5 compensatory time earned, and any other rights under any
 6 law, ordinance, resolution or administrative policy. This
 7 section is not intended to create any new rights for any
 8 officer or employee but to continue only those rights in
 9 effect before the effective date of this title.

10 (4) All local government officers and employees
 11 holding offices or positions, whether elective or
 12 appointive, on the effective date of this title shall
 13 continue in the performance of the duties of their
 14 respective offices and positions until provision is made in
 15 accordance with this title for the continued performance of
 16 the duties; the discontinuance of such duties; the
 17 discontinuance or combination of such office or position;
 18 the transfer of the officer or employee to another position;
 19 or the termination of employment of the employee.

20 47A-1-106. Title controls. In the event that any
 21 provision of this title is found to be in conflict with the
 22 provisions of any other law, this title shall control.

23 47A-1-107. Title to be construed as a whole. This
 24 title and amendments hereto and other sections of the
 25 Revised Codes of Montana relating to local government are to

1 be construed as a whole.

2 47A-1-108. Severability. If any part of this title is
 3 invalid, all valid parts that are severable from the invalid
 4 part remain in effect. If a part of this title is invalid in
 5 one or more applications, the part remains in effect in all
 6 valid applications that are severable from the invalid
 7 applications.

8 47A-1-109. State technical advice and assistance. (1)
 9 All state agencies are authorized and encouraged to provide
 10 technical assistance to local governments.

11 (2) The technical assistance services shall not
 12 include those that can be as reasonably and expeditiously
 13 obtained through ordinary channels.

14 (3) State agencies are encouraged to develop the
 15 capacity to provide technical advice and assistance without
 16 charge to local governments, but they are also encouraged to
 17 establish service charges for special or extraordinary
 18 technical advice.

19 (4) The department of community affairs shall
 20 coordinate technical advice and assistance provided to local
 21 governments by state agencies.

22 (5) State agencies may lend personnel, equipment, and
 23 machinery to local governments.

24 47A-1-110. Penalty. (1) The failure of an officer or
 25 employee to perform a duty imposed by law or ordinance is

1 official misconduct as defined in 94-7-401 and may be
2 punished as such.

3 (2) Where a local government is required by state law
4 to provide information to a state agency and fails to
5 provide the required information, the department of
6 community affairs may issue an order stopping payment of any
7 state financial aid to the local government. Upon provision
8 of the information, all financial aid which was stopped
9 because of failure to provide the information shall be paid
10 to the local government.

11 47A-1-111. Public servants. All local government
12 officers and employees are public servants for the purpose
13 of determining the offense of obstructing a public servant
14 as provided in 94-7-302.

15 47A-1-112. Combine procedures. A local government may
16 combine any procedures required by this title in order to
17 facilitate the orderly and timely compliance with required
18 procedures.

19 47A-1-113. Local government legislation. All local
20 government legislation shall be consistent with the
21 organization and terminology of this title and retain the
22 constitutional distinction between general government
23 powers, self-government powers, and duties of all local
24 governments as agents of the state.

25 47A-1-114. Powers to be cumulative. Nothing contained

1 in this title shall be construed as a restriction or
2 limitation upon any power which a local government might
3 otherwise have under any law of this state but shall be
4 construed as cumulative.

5 47A-1-115. Joint procedures. If two or more local
6 governments act jointly under any provision of this title,
7 they may jointly perform any procedures required by this
8 title or the governing body of a local government may
9 delegate to another local government the responsibility for
10 complying with administrative procedures such as publication
11 or mailing of notices, but any public hearing shall be
12 conducted by the respective governing bodies in their own
13 jurisdiction or jointly and any final action shall be taken
14 by each local government individually.

15 Part 2

16 Definitions and Construction

17 47A-1-201. General construction. (1) Except when a
18 specific definition is given or a technical interpretation
19 is required, words and phrases used in this title shall be
20 construed according to their ordinary usage in the English
21 language.

22 (2) Words used in the present tense include the future
23 tense.

24 (3) The singular includes the plural.

25 47A-1-202. General definitions. In this title, unless

1 otherwise provided or the context requires a technical or
2 other interpretation, the following definitions apply:

3 (1) "Appointing authority" means the chief executive
4 or officer of the local government empowered by the plan of
5 government to appoint or remove specified officers,
6 employees, or board members of the local government.

7 (2) "Apportionment plan" means a certificate prepared
8 by a governing body or a study commission that contains the
9 districts for electing members of the governing body.

10 (3) "Authority" means any one of the independent
11 authorities or districts which a local government is
12 authorized to create by 47A-3-412.

13 (4) "Board member" means a person appointed to an
14 administrative or advisory board as provided in 47A-3-404.

15 (5) "Budget administrator" means the officer or
16 officers designated by the governing body to perform the
17 duties prescribed in chapter 9, part 2, of this title.

18 (6) "Business" includes all kinds of vocations,
19 occupations, professions, enterprises, establishments, and
20 all other kinds of activities any of which are conducted for
21 private profit or benefit, either directly or indirectly.

22 (7) "Charter" means a written document defining the
23 powers, structure, privileges, rights, and duties of the
24 government and limitations thereon.

25 (8) "Chief executive" means the elected executive in a

1 government adopting the commission-executive form, the
2 manager in a government adopting the commission-manager
3 form, the chairman in a government adopting the
4 commission-chairman form, the town chairman in a government
5 adopting the town meeting form, the commission acting as a
6 body in a government adopting the commission form, or the
7 officer or officers so designated in the charter in a
8 government adopting a charter.

9 (9) "Civil attorney" means the person designated by the
10 governing body as the legal counsel for the local government
11 as provided in 47A-3-411.

12 (10) "Clerk of the governing body" means the person
13 appointed by the governing body to perform clerical and
14 other assigned duties to assist the governing body.

15 (11) "Commission" means the governing body of a local
16 government established by the plan of government.

17 (12) "Commissioner" means a member of the local
18 government governing body.

19 (13) "Confederation" means a form of local government
20 that provides for the distribution of the governmental
21 authority between a county and one or more of the
22 municipalities which are located within the county.

23 (14) "Consolidation" means the joinder of one or more
24 municipalities with one or more counties to form a single
25 local government that is both a municipality and a county

1 for all purposes.

2 (15) "Consolidation plan" means a certificate prepared

3 by a study commission that contains the plan for

4 consolidation of existing local governments.

5 (16) "County" means an entity recognized as such by

6 Article XI, section 1, of the Montana constitution.

7 (17) "County boundary" means an imaginary line defining

8 the limits of a county as provided in 16-201 through 16-263.

9 (18) "County merger" means a form of local government

10 that provides for the joinder of the corporate existence and

11 government of two or more counties.

12 (19) "Elections administrator" means the person

13 designated as the registrar by the governing body as

14 provided in Title 23.

15 (20) "Elector" means a resident of the local government

16 qualified and registered to vote under state law.

17 (21) "Emergency" means an unexpected condition that

18 exists which imminently affects public health, welfare, and

19 safety.

20 (22) "Employee" means a person other than an officer

21 who is employed by a local government.

22 (23) "Executive branch" means that part of the local

23 government, including departments, offices, and boards,

24 charged with implementing actions approved and administering

25 policies adopted by the governing body of the local

1 government or performing the duties required in this title,

2 chapter 8.

3 (24) "Extraterritorial area" refers to the area beyond

4 the municipal limits of an incorporated municipality bounded

5 by those limits and an imaginary line paralleling the

6 municipal limits at a distance of 5 miles within which the

7 incorporated municipality may provide specified services and

8 facilities and exercise designated regulatory powers.

9 (25) "Facility" means a building, property, physical

10 improvement or system, or structural device that facilitates

11 the delivery of a service.

12 (26) "Finance administrator" means the person or

13 persons designated under 47A-9-301.

14 (27) "Folio" means 100 words, counting every two

15 figures necessarily used as a word, or any portion of a

16 folio, when in the whole paper there is not a complete

17 folio; and when there is an excess over the last folio

18 exceeding one-half, it may be computed as a folio.

19 (28) "Form" means a specific and formal governmental

20 organization authorized as an alternative form of government

21 by Title 47A, chapter 3, part 2.

22 (29) "Franchise" means an exclusive public privilege or

23 right granted by a local government to an individual,

24 corporation, or any other public or private entity in the

25 manner prescribed by 47A-3-312.

1 (30) "Governing body" means the commission or town
2 meeting legislative body established in the alternative form
3 of local government.

4 (31) "Guideline" means a suggested or recommended
5 standard or procedure to serve as an index of comparison and
6 is not enforceable as a regulation.

7 (32) "Jurisdictional area" refers, in the case of
8 municipalities, to the area within the municipal limits and
9 the extraterritorial area within which the municipality is
10 providing any service or facilities or exercising any
11 regulatory powers. In the case of counties, it refers to the
12 entire geographical area enclosed within the county
13 boundaries.

14 (33) "Law" means a statute enacted by the legislature
15 of Montana and approved and signed by the governor or a
16 statute adopted by the people of Montana through statutory
17 initiative procedures.

18 (34) "Local court" means a justice court, municipal
19 court, or small claims court.

20 (35) "Local government" means either a municipality, a
21 county, or a consolidated or confederated unit of
22 government.

23 (36) "Local improvement district" means an area within
24 a local government established as provided in 47A-3-427 with
25 specific boundaries in which property is specially assessed

1 to pay for a specific capital improvement benefiting the
2 property assessed.

3 (37) "Lot" includes the word "parcel" or portion of a
4 lot or parcel.

5 (38) "May" confers a power.

6 (39) "Merger" means the joinder into a single unit of
7 two or more like units of local government. If two counties
8 merge, the resultant entity is a single county. If two
9 municipalities merge, the resultant entity is a
10 municipality.

11 (40) "Metropolitan service area", which may be
12 established by agreement of municipal and county governing
13 bodies as provided in 47A-6-213, refers to the
14 jurisdictional area of a municipality and any area beyond
15 the extraterritorial area within which a municipality is
16 authorized to provide any service or exercise any regulatory
17 power.

18 (41) "Multicounty agency" means any organization
19 authorized by state law consisting of two or more counties
20 which is created or required to be created to provide and
21 coordinate services. Participating local governments may
22 provide funding or members to serve on a board, if there is
23 a board, or both.

24 (42) "Municipal limits" means the corporate boundary of
25 an incorporated municipality.

1 (43) "Municipality" or "municipal" means an entity
2 which incorporates as provided by chapter 2, part 1, of this
3 title or which was incorporated under the provisions of any
4 prior law as a city or town.

5 (44) "Office of the local government" means the
6 permanent location of the seat of government from which the
7 records administrator carries out his duties or the office
8 of the clerk of the governing body where one is appointed.

9 (45) "Officer" means a person holding a position with a
10 local government which is ordinarily filled by election and
11 in those local governments with a manager, the manager.

12 (46) "Ordinance" means an act adopted and approved by a
13 local government through the procedures in 47A-3-307 and
14 having effect only within the jurisdiction of the local
15 government.

16 (47) "Owner", "record owner", or "owner of record"
17 means owner of record or purchaser of record.

18 (48) "Per diem" means actual cost of or a fixed rate
19 for meals, lodging, and incidental expenses.

20 (49) "Person" means any individual, firm, partnership,
21 company, corporation, trust, trustee, assignee or other
22 representative, association, or other organized group.

23 (50) "Personal property" means tangible property other
24 than real property, such as merchandise and stock in trade,
25 machinery and equipment, furniture and fixtures, motor

1 vehicles and vehicles, boats, vessels, and aircraft.

2 (51) "Plan of government" means a certificate submitted
3 by a study commission, a governing body, or petition from
4 the provision of Title 47A, chapter 3, part 2, that
5 documents the basic form of government selected including
6 all applicable suboptions. The plan must establish the terms
7 of all officers and the number of commissioners, if any, to
8 be elected.

9 (52) "Plat" means a graphical representation of a tract
10 of annexed land, a townsite, or a subdivision showing the
11 division of land into lots, parcels, blocks, trafficways,
12 and other divisions and dedications.

13 (53) "Political subdivision" refers to a local
14 government, authority, school district, or multicounty
15 agency.

16 (54) "Population" means the number of inhabitants as
17 determined by an official federal, state, or local census or
18 official population estimate approved by the department of
19 community affairs.

20 (55) "Printed" means the act of reproducing a design on
21 a surface by any process as defined by 19-103.1.

22 (56) "Property" means real and personal property.

23 (57) "Prosecuting attorney" means the person designated
24 by each county governing body to perform the duties
25 described in 47A-8-403.

1 (58) "Public agency" means a political subdivision,
 2 Indian tribal council, state and federal department or
 3 office, and the Dominion of Canada or any provincial
 4 department or office or political subdivision thereof.

5 (59) "Public property" means any and all property owned
 6 by a local government or held in the name of a local
 7 government by any of the departments, boards, or authorities
 8 of the local government.

9 (60) "Real property" means lands, structures,
 10 buildings, and interests in land, including lands under
 11 water and riparian rights, and all things and rights usually
 12 included within the term real property, including not only
 13 fee simple absolute but also all lesser interests such as
 14 easements, rights-of-way, uses, leases, licenses, and all
 15 other incorporated hereditaments and every estate, interest,
 16 or right, legal or equitable, pertaining to real property.

17 (61) "Records administrator" means the person
 18 designated by the governing body as the individual
 19 responsible for keeping the records which chapter 8, part 2,
 20 of this title requires be kept.

21 (62) "Regular election" means any local election
 22 required as a result of the expiration of the term of any
 23 elected official.

24 (63) "Reproduced" means the act of reproducing a design
 25 on any surface by any process.

1 (64) "Resolution" means a statement of policy by the
 2 governing body or an order by the governing body that a
 3 specific action be taken.

4 (65) "School district" means any territory, regardless
 5 of county boundaries, organized under the provisions of
 6 Title 75 to provide public educational services under the
 7 jurisdiction of the trustees prescribed by that title.

8 (66) "Service" means an authorized function or activity
 9 performed by local government.

10 (67) "Shall" imposes a duty, is always mandatory, and
 11 is not merely directory.

12 (68) "Special election" means any local election not
 13 for the purpose of electing officers. It may be held either
 14 at the time of the regular election or at any other time
 15 established as provided by law.

16 (69) "Structure" means the entire governmental
 17 organization through which a local government carries out
 18 its duties, functions, and responsibilities.

19 (70) "Study commission" means a local government study
 20 commission established pursuant to Title 47A, chapter 3,
 21 part 1.

22 (71) "Study commissioner" means an elected or appointed
 23 member of a local government study commission.

24 (72) "Subordinate service district" means an area
 25 within a local government, established as provided in

1 47A-3-418, with specific boundaries in which certain
2 services are carried out and in which taxes may be levied to
3 finance the service.

4 (73) "Tribal council" means the governing body of an
5 Indian reservation.

6 Part 3

7 Provisions Common to All Forms of Local Government

8 47A-1-301. Administrative rules. The governing body
9 may by ordinance authorize the chief executive to adopt
10 administrative rules. All administrative rules shall be
11 entered in an administrative code that shall be available in
12 the office of the local government.

13 47A-1-302. Publish notice. (1) Unless otherwise
14 specifically provided, when a local government is required
15 to publish notice, publications shall be in a newspaper,
16 except that in a municipality with a population of 500 or
17 less or in which no newspaper is published, publication may
18 be made by posting in three public places in the
19 municipality which have been designated by ordinance.

20 (2) The newspaper shall be:

21 (a) of general paid circulation;

22 (b) published at least once a week;

23 (c) published in the county;

24 (d) published continuously in the county for the 12
25 months preceding the awarding of the contract.

1 (3) In a county where no newspaper meets these
2 qualifications, publication shall be made in a qualified
3 newspaper in an adjacent county.

4 (4) If a person is required by law or ordinance to pay
5 for publication, the payment must be received before the
6 publication shall be made.

7 47A-1-303. Notice. Unless otherwise specifically
8 provided, when notice of a hearing or other official act is
9 required by this title, the following shall apply:

10 (1) The notice shall be published two times with at
11 least 6 days separating each publication. The first
12 publication shall be no more than 21 days prior to the
13 action and the last no less than 3 days prior to the action.

14 (2) The published notice shall contain:

15 (a) the date, time, and place at which the hearing or
16 other action will occur;

17 (b) a brief statement of the action to be taken; and

18 (c) any other information required by the specific
19 section requiring notice.

20 (3) A published notice required by law may be
21 supplemented by a radio or television broadcast of the
22 notice in the manner prescribed in 19-201 through 19-203.

23 47A-1-304. Mail notice. (1) Unless otherwise
24 specifically provided, when a local government is required
25 to give notice of a hearing or other official act by mail,

1 the requirement may be met by:

2 (a) deposit of the notice properly addressed in the
3 United States mail with postage paid at the first-class
4 rate;

5 (b) sending the notice by registered or certified mail
6 rather than first class; or

7 (c) mailing the notice at the bulk rate instead of
8 first class when notice is to be given by mail to all
9 electors or residents of a local government.

10 (2) The notice shall contain:

11 (a) the date, time, and place at which the hearing or
12 other action will be taken;

13 (b) a brief statement of the action to be taken; and

14 (c) any other information required by the specific
15 section requiring mail notice.

16 (3) When notice by mail is required, the requirement
17 shall apply only to persons whose addresses are known.

18 47-1-305. Petition. (1) Whenever a petition is
19 authorized by this title, unless the section authorizing the
20 petition establishes different criteria, it shall be valid
21 if it is signed by 15% of the electors of the local
22 government and meets the following requirements:

23 (a) contains a statement of the purpose for which it
24 is circulated sufficient to meet the specific criteria set
25 out in the section authorizing the petition;

1 (b) each signature is followed by the printed name of
2 the signer, the address of the signer's place of residence,
3 and the date of the signing; and

4 (c) the petition contains the date it was first
5 circulated and a statement that all signatures must be
6 collected within 90 days of that date.

7 (2) Unless otherwise provided, all petitions shall be
8 filed with the county elections administrator who shall
9 determine the sufficiency of the signatures. No petition
10 filed after the deadline for filing the petition, if any,
11 shall be considered.

12 (3) Within 10 working days of the date the petition
13 was filed, the county elections administrator shall
14 determine the adequacy of the petition.

15 (4) Inadequate petitions shall be returned but may be
16 amended or supplementary signatures may be obtained and the
17 petition may be refiled prior to the deadline for filing the
18 petition.

19 (5) Within 10 days of its second filing, the elections
20 administrator shall again determine the adequacy of the
21 petition. If it is still determined inadequate, it shall be
22 rejected without prejudice to the filing of a new petition
23 to the same effect.

24 (6) If a petition is determined adequate, the
25 elections administrator shall certify its adequacy and

1 submit it to the governing body without delay.

2 (7) A person may in writing withdraw his signature
3 from a previously filed petition at any time prior to final
4 action of the governing body.

5 47A-1-306. Public hearing. (1) As required by this
6 title, the governing body shall conduct public hearings for
7 the purpose of providing reasonable opportunity for citizen
8 participation prior to final decisions.

9 (2) At a minimum, a public hearing shall provide for
10 submission of both oral and written testimony for and
11 against the action or matter at issue. If the hearing is
12 not held before the ultimate decision makers, provision
13 shall be made for the transmittal of a summary or transcript
14 of the testimony received to the ultimate decision makers
15 prior to their determination.

16 (3) Public hearings may be held at regular or special
17 meetings of the governing body.

18 (4) Petitions and letters received by the governing
19 body or executive prior to the hearing shall be entered by
20 reference into the minutes of the governing body and
21 considered as other testimony received at the hearing.

22 (5) Hearings may be adjourned from day to day or to a
23 date certain.

24 (6) Except for budget hearings, the governing body or
25 boards may designate a subcommittee or hearings examiner to

1 conduct public hearings.

2 (7) When this title authorizes a joint hearing between
3 the governing bodies of a county and a municipality, the
4 county shall be responsible for conducting the hearing.

5 47A-1-307. Protest. (1) Whenever a protest is
6 authorized by this title, it is sufficient if it is in
7 writing, signed, and contains the following:

8 (a) a description of the action protested sufficient
9 to identify the action against which the protest is lodged;

10 (b) a statement of the protester's qualifications to
11 protest the action against which the protest is lodged,
12 including ownership of property affected by the action; and

13 (c) the address of the person protesting.

14 (2) Protests shall be submitted as provided by law and
15 ordinance. The person receiving protests for a local
16 government shall note on each protest the date it was
17 received.

18 (3) A protest which contains the required information
19 may be signed by more than one person. A protest signed by
20 more than one person is a valid protest by each signer.

21 (4) A person may in writing withdraw a previously
22 filed protest at any time prior to final action by the
23 governing body.

24 (5) Signers are encouraged to print their names after
25 their signatures.

1 47A-1-308. Signatures. (1) The signatures and
2 addresses on petitions shall be the same as the signatures
3 and addresses on voter registration cards and, if not
4 registered or if not required by law to be an elector, their
5 common signature.

6 (2) The signatures on protests and waivers shall be
7 the accepted common signatures.

8 47A-1-309. Rights on behalf of government or
9 corporation. The chief executive of a local government or
10 political subdivision of the state, the responsible agent of
11 a federal or state agency, or the chief executive officer of
12 a corporation may exercise the right of petition, protest,
13 or voting on behalf of property owned by the government or
14 corporation.

15 47A-1-310. Posting. (1) The governing body shall
16 specify by resolution a public location for posting
17 information and shall order erected a suitable posting
18 board.

19 (2) When posting is required by this code, a copy of
20 the document shall be placed on the posting board, and a
21 copy shall be available at the local government office.

22 47A-1-311. Oaths and marriages. The chief executive,
23 chairman of the legislative body, municipal judges, justices
24 of the peace, and judges of small claims court may
25 administer oaths and solemnize marriages. The clerk of the

1 district court and all elected local government officers,
2 except members of the governing body, may administer oaths.

3 47A-1-312. Oath of office. Every elected local
4 government official shall take the oath of office prescribed
5 in Article III, section 4, of the Montana constitution. The
6 oath of office, certified by the official before whom the
7 same was taken, shall be filed with the election
8 administrator before the officer exercises any official
9 duties.

10 47A-1-313. Rules. Rules authorized by this title may
11 be varied according to the population of the local
12 government or according to any other criteria reasonably
13 related to the complexity of the activities involved.

14 47A-1-314. Waiver of mail notice or protest. (1) If
15 all persons entitled to mail notice under this title waive
16 in writing the mail notice requirement, the governing body
17 may proceed without the required mail notice.

18 (2) If all persons entitled to protest an action
19 authorized by this title waive in writing their right to
20 protest, the governing body may proceed without publishing
21 notice or meeting other requirements designed to permit
22 protests to be filed.

23 (3) A waiver is sufficient if it is in writing,
24 signed, and contains the following:

25 (a) a description of the mailed notice or protest

1 right waived;

2 (b) a statement of the protester's qualifications to

3 waive the mailed notice or protest right;

4 (c) the address of the person.

5 (4) Waivers shall be submitted as provided by law and

6 ordinance. The person receiving protests for a local

7 government shall note on each protest the date it was

8 received.

9 (5) A waiver which contains the required information

10 may be signed by more than one person. A waiver signed by

11 more than one person is a valid waiver by each signer.

12 (6) Signers are encouraged to print their names after

13 their signatures.

14 47A-1-315. Government in emergencies. (1) In the event

15 that no members of a county governing body are available

16 during or following an enemy attack or natural disaster, the

17 district judge or judges of the judicial district in which

18 the county is located shall appoint successors to act in

19 place of the unavailable members. If the judge or judges of

20 the judicial district in which the vacancy occurs are not

21 available to make the appointment, a district judge of any

22 other judicial district may make such appointment; however,

23 of the available judges in the state of Montana, that judge

24 who holds court in the county seat closest to the county

25 seat where the vacancy occurs shall be responsible for

1 making the appointment to fill the vacancy.

2 (2) In the event that no members of a municipal

3 governing body are available following an enemy attack or

4 natural disaster, the county governing body of the county in

5 which the municipality is located shall appoint successors

6 to act in place of the unavailable members.

7 (3) In the event that the chief executive of a local

8 government is unavailable to exercise the powers and

9 discharge the duties of his office following an enemy attack

10 or natural disaster, the members of that local government's

11 governing body available shall by majority vote choose a

12 successor to act as chief executive of the local government.

13 (4) Following an enemy attack or natural disaster in

14 which the seat of local government, in the opinion of the

15 governing body of that local government, is rendered

16 unsuitable for use in that capacity, the seat of government

17 may be moved by the governing body to another location which

18 it considers most suitable.

19 (5) If following an enemy attack or natural disaster

20 any local government governing body or board is unable to

21 assemble a quorum as defined by law or ordinance, those

22 members of the governing body available for duty shall

23 constitute a quorum. The quorum requirements shall be

24 suspended, and where the affirmative vote of a specified

25 proportion of members for the approval of any action would

1 otherwise be required, the same proportion of those voting
2 thereon shall be sufficient.

3 (6) The provisions of this section shall become
4 inoperative when the governing body, a district judge, or
5 the state legislature declares the emergency terminated.

6 47A-1-316. Facsimile signature. Any officer or
7 employee may use a facsimile signature or seal as provided
8 in Title 59, chapter 13.

9 47A-1-317. Pardons. The chief executive or the
10 chairman of the governing body, if there is no elected chief
11 executive, may grant pardons and remit fines and forfeitures
12 for offenses against local government ordinances when, in
13 the chief executive's or chairman's judgment, public justice
14 would be thereby served; but the chief executive or chairman
15 must report all pardons granted, with the reasons therefor,
16 to the next session of the governing body.

17 Part 4

18 Public Meetings, Records, and Reports

19 47A-1-401. Purpose. It is the purpose of this chapter
20 to assure the people of Montana of their constitutionally
21 guaranteed rights to participate in and to know of the
22 operation of their local government. Toward these ends, the
23 provisions of this chapter shall be liberally construed.

24 47A-1-402. Public meeting required. (1) All meetings
25 of local government governing bodies, boards, authorities,

1 committees, or other entities created by or subordinate to a
2 local government shall be open to the public except as
3 provided in 82-3402.

4 (2) Appropriate minutes shall be kept of all public
5 meetings and shall be made available upon request to the
6 public for inspection and copying.

7 47A-1-403. Public participation. Each local government
8 governing body, committee, board, authority, or entity, in
9 accordance with Article II, section 8 of the 1972 Montana
10 constitution and 82-4226 through 82-4229, shall develop
11 procedures for permitting and encouraging the public to
12 participate in decisions that are of significant interest to
13 the public.

14 47A-1-404. Participation. In any meeting required to
15 be open to the public, the governing body, committee, board,
16 authority, or entity shall adopt rules for conducting the
17 meeting affording citizens a reasonable opportunity to
18 participate prior to the final decision.

19 47A-1-405. Public records. (1) Except as provided in
20 subsection (2), all records and other written materials in
21 the possession of a local government shall be available for
22 inspection and reproduction by any person during normal
23 office hours. The governing body may impose reasonable fees
24 for providing copies of public records.

25 (2) Personal records, medical records, and other

1 records which relate to matters in which the right to
2 individual privacy exceeds the merits of public disclosure
3 shall not be available to the public, unless the person they
4 concern requests they be made public.

5 (3) Except as provided by law and as determined by the
6 chief law enforcement administrator, law enforcement records
7 which relate to matters in which the right to individual
8 privacy or law enforcement security exceeds the merits of
9 public disclosure shall not be available to the public.

10 (4) In case of attachment, the clerk of the court with
11 whom the complaint is filed must not make public the fact of
12 the filing of the complaint or the issue of such attachment
13 until after the filing or return of service of the
14 attachment.

15 (5) No files in the office of the clerk of the
16 district court relating to the adoption of children shall be
17 open to examination or inspection by any person unless the
18 person desiring to examine or inspect any such file shall
19 first obtain written permission from the district judge, and
20 no district judge shall grant any applicant permission to
21 examine or inspect any such file in the office of clerk of
22 district court unless such applicant shall set forth in his
23 application good and sufficient cause for such examination
24 or inspection.

25 47A-1-406. Destruction of old records. (1) The

1 governing body may by ordinance establish a procedure for
2 routine destruction of old worthless reports, papers, or
3 records that have served their purpose or are substantiated
4 by permanent records. The ordinance is subject to the
5 approval of the department of community affairs and the
6 historical society.

7 (2) Termination statements filed under the Uniform
8 Commercial Code—Secured Transactions shall be retained by
9 the records administrator for a period of 8 years after
10 receipt, after which they may be destroyed. Financing
11 statements, continuation statements, statements of
12 assignment, and statements of release, the filing of which
13 is authorized by the Uniform Commercial Code—Secured
14 Transactions and as to which no termination statement has
15 been filed, shall be retained by the filing officer for a
16 period of 8 years after lapse of the original financing
17 statement or of the latest continuation statement, whichever
18 is later. At the expiration of this period all such
19 statements may be destroyed.

20 (3) Court records may be destroyed by order of the
21 district court only when the records have been reproduced.
22 The reproduction, identification, admissibility, and use of
23 the reproductions shall be in accordance with Title 93,
24 chapter 801.

25 (4) Any claim, warrant, voucher, bond, or general

1 receipt may be destroyed after a period of 25 years.

2 (5) Records relating to the operation of any public
3 utility by a local government may be destroyed only after
4 the expiration of the period during which the public service
5 commission specifies that they must be kept.

6 47A-1-407. State reports. Local government governing
7 bodies, chief executives, officers, employees, departments,
8 boards, and authorities shall file with state agencies in a
9 timely fashion all reports and information required by state
10 law.

11 (2) The department of community affairs shall
12 coordinate to the greatest extent possible the collection of
13 data by state and federal agencies in order to minimize the
14 requests of local governments and to maximize access to
15 information collected on local governments.

16 (3) Prior to requesting reports from local
17 governments, all state agencies shall notify the department
18 of community affairs of the intended request.

19 47A-1-408. Reports of departments, boards,
20 authorities. (1) All departments, boards, and authorities
21 shall file an annual report with the chief executive who
22 shall compile the reports and present them to the governing
23 body.

24 (2) The chief executive may specify the form, content,
25 and deadline for filing reports.

1 CHAPTER 2

2 LOCAL GOVERNMENT FORMATION

3 Part 1

4 Incorporation and Disincorporation of Municipalities

5 47A-2-101. Areas which may incorporate. (1) Any
6 community which has a population of at least 1,000 and is at
7 least 5 miles from a municipality may incorporate by
8 following the procedures set out in this chapter.

9 (2) Any community which has a population of at least
10 1,000 and is within 5 miles of a currently incorporated
11 municipality may incorporate if it is shown that the
12 community could have been annexed but was refused annexation
13 by the municipal governing body.

14 47A-2-102. Petition for incorporation. (1) Proceedings
15 for incorporation shall be initiated by petition.

16 (2) A petition requesting incorporation shall:

17 (a) state the name of the proposed municipality and
18 the plan of government selected from chapter 3, part 2;

19 (b) describe the municipal limits of the proposed
20 municipality;

21 (c) be filed with the chief executive of the county
22 who shall submit it to the county governing body at its next
23 general meeting; and

24 (d) be signed by 25% of the electors residing in the
25 proposed municipality.

(3) The county governing body shall determine the adequacy of the petition and, if adequate, shall call for and give notice of an election on the proposed incorporation.

47A-2-103. Election of incorporation. (1) The election shall be conducted as provided in chapter 3, part 5, for questions submitted to the electors.

(2) Residents of the area included in the proposed municipality who are qualified electors under state law are eligible to vote in the election of incorporation.

(3) Incorporation shall be granted upon an affirmative vote of a majority of those voting on the question.

(4) A statement of incorporation including the date officers shall assume office and the plan of government shall be filed as provided in 47A-3-112(3).

47A-2-104. Election of officers following incorporation. (1) Upon incorporation, the governing body of the county shall give notice of an election to elect the officers specified in the plan of government adopted by the municipality.

(2) Electors are those qualifying under 47A-2-103(2).

(3) The election shall be conducted by the county in the manner prescribed by chapter 3, part 5, for election of local government officers and special elections.

(4) Officers elected shall take office 30 days

following their election.

(5) The county governing body may establish a special trust fund to pay the initial costs of the municipality until a budget is adopted and taxes levied.

(6) The municipal governing body shall appropriate sufficient funds to reimburse the trust fund.

47A-2-105. Methods of disincorporation. Any municipality may be disincorporated by either:

(1) automatic disincorporation; or

(2) election.

47A-2-106. Automatic disincorporation. If the governing body of a municipality ceases to exist or fails to function or meet for a period of 2 years, the governing body of the county in which the municipality is located shall adopt a resolution disincorporating the municipality. Copies of the resolution shall be filed with the chief executive of the county, the secretary of state, and the department of community affairs. The resolution shall state an effective date no sooner than 60 days after the resolution's adoption.

47A-2-107. Disincorporation by election.

(1) Residents of a municipality may petition the county governing body for an election on the question of disincorporation.

(2) The county governing body, upon finding the petition to be adequate, shall order, within 60 days, an

1 election to take place in the municipality on the question
2 of disincorporation. The election may be a special election
3 or held with any other election.

4 (3) The election shall be conducted as provided in
5 chapter 3, part 5, for questions submitted to the electors.

6 (4) If a majority of those voting on the question
7 favor disincorporation, the governing body of the county
8 shall adopt a resolution disincorporating the municipality.
9 Copies of the resolution shall be filed with the chief
10 executive of the county, the secretary of state, and the
11 department of community affairs. The resolution shall state
12 an effective date no sooner than 60 days after the
13 resolution's adoption.

14 (5) If less than a majority of those voting on the
15 question favor disincorporation, the governing body of the
16 county shall deny the petition to disincorporate, in which
17 case no election on the question of disincorporation may be
18 held until after 2 years from the date of the election.

19 47A-2-108. Financial condition of municipality. (1)
20 The director of the department of community affairs, upon
21 receiving a copy of the disincorporation resolution, shall
22 certify a current statement of the financial condition of
23 the disincorporating municipality to the county governing
24 body.

25 (2) The statement shall include, but not be limited

1 to:

2 (a) a statement of all assets of the municipality,
3 including any warrants, delinquent accounts, and taxes
4 receivable;

5 (b) a statement of all municipal liabilities,
6 including any revenue or general obligation bonds, local
7 improvement district obligations outstanding, contracts
8 payable, and all other obligations of the municipality; and

9 (c) a schedule for the payment of liabilities.

10 (3) Under supervision of the department of community
11 affairs, the county finance administrator shall create a
12 disincorporation fund.

13 (4) Under the supervision of the director of the
14 department of community affairs, the finance administrator
15 of the municipality shall draw a check for the amount of
16 unencumbered cash in the municipality's treasury; and the
17 check shall be made payable to the county and delivered to
18 the chief executive of the county in which the
19 disincorporating municipality is located. The money shall
20 be placed in the disincorporation fund, to be drawn upon as
21 provided in 47A-2-110.

22 47A-2-109. Transfer of public property and municipal
23 court records. Upon disincorporation of a municipality,
24 every officer of the municipality shall immediately turn
25 over to the chief executive of the county in which the

1 municipality is situated all public property in his
2 possession; however, all court records of the municipal
3 court, if any, shall be transferred to the nearest justice
4 of the peace. The justice of the peace has the authority to
5 execute and complete all unfinished business. All reports
6 and remittances of fines and forfeitures are made in the
7 same manner as prescribed for justices of the peace.

8 47A-2-110. Payment of debts and collections of
9 receivables of municipality. (1) The disincorporation of a
10 municipality does not invalidate or affect any right,
11 penalty, or forfeiture accruing to the municipality, nor
12 does it invalidate or affect any contract entered into or
13 imposed upon the municipality. All the contracted
14 indebtedness and obligations remain unimpaired by reason of
15 the disincorporation of the municipality.

16 (2) The county governing body in which the
17 disincorporating municipality is situated shall provide for
18 the payment and discharge of all liabilities and
19 obligations, for the collection of any indebtedness due the
20 municipality, and for the prosecution of any claims accruing
21 to the municipality.

22 (3) All instruments for the repayment of indebtedness
23 shall be drawn by order of the governing body of the county
24 on the disincorporation fund.

25 (4) All former municipal subordinate service districts

1 and local improvement districts shall have the status of
2 county districts for all purposes.

3 47A-2-111. Tax levy in the event of insolvency. (1)
4 If, at any time after the disincorporation of a
5 municipality, it is found that there is not sufficient money
6 in the treasury to credit the disincorporation fund with
7 which to pay any indebtedness of the municipality, the
8 county governing body shall levy and collect from the
9 territory formerly included within the municipality
10 sufficient taxes or special assessments to pay the
11 indebtedness of the municipality as it becomes due.

12 (2) The tax or taxes and special assessments shall be
13 made in the same manner and at the same time that other
14 taxes of the county are levied and collected, and are an
15 additional tax on the property included within the territory
16 of the former municipality, or portions thereof, for the
17 payment of its debts. All moneys shall be placed to the
18 credit of the disincorporation fund.

19 47A-2-112. Surplus assets. (1) If, after the payment
20 of debts of the municipality, any surplus that remains in
21 the disincorporation fund and any tangible assets shall be
22 transferred to any subordinate service district that
23 encompasses the area of the disincorporated municipality.

24 (2) If no such subordinate service district exists,
25 the surplus and tangible assets shall be transferred to the

1 county and may be allocated by the county governing body.

2 47A-2-113. Collection of amounts due to municipality.

3 (1) The county governing body shall provide for the
4 collection of the amounts due to the disincorporated
5 municipality and for the termination of its affairs. Any
6 act or acts necessary for that purpose and not otherwise
7 provided for shall, upon order of the governing body, be
8 performed by the officer or officers performing similar
9 duties for the county, as if it had been performed by the
10 proper officer of the municipality before disincorporation.

11 (2) The county shall succeed to and possess all rights
12 of the municipality to indebtedness and has the power to sue
13 for or otherwise collect any debts in the name of the
14 county.

15 (3) All costs and expenses of ascertaining information
16 and all other costs and expenses incurred by the governing
17 body in the execution of the powers and duties of managing
18 the affairs of the disincorporated municipality shall be
19 paid out of the disincorporation fund.

20 47A-2-114. State aid. (1) If a municipality
21 disincorporates, any state funds which the municipality was
22 entitled to receive shall be transferred to the
23 disincorporation fund as provided below.

24 (2) If state funds are available to a municipality
25 only after application, the governing body of the county may

1 apply for funds on behalf of the disincorporated
2 municipality.

3 (3) State funds shall be credited to the
4 disincorporation fund as long as liabilities of the
5 disincorporated municipality exist.

6 (4) After the liabilities of the disincorporated
7 municipality have been satisfied, the state funds shall be
8 available only if a subordinate service district exists
9 which encompasses the area of the disincorporated
10 municipality.

11 (5) The state funds shall be allocated to any such
12 subordinate service district that provides services
13 consistent with the purposes of the state grant.

14 (6) The amount of entitlement of state funds shall be
15 established by treating the area included within the former
16 municipality as a municipality until the funds are allocated
17 to a subordinate district at which time the amount of
18 entitlement shall depend upon the current population or area
19 of the subordinate service district.

20 (7) Any subordinate service district that is eligible
21 to receive funds under 47A-2-112(1) or 47A-2-114 shall
22 encompass the area of the disincorporated municipality and
23 may encompass additional area and population.

24 (8) It is the intent of the legislature to not
25 penalize through loss of state aid the population of any

1 municipality that disincorporates.

2 Part 2

3 Annexation and Detachment

4 47A-2-201. Policy and purpose. (1) The following is
5 declared policy of the state of Montana:

6 (a) Orderly urban development is essential to the
7 continued economic development of the state.

8 (b) A municipality is an appropriate unit of local
9 government to provide the governmental services essential
10 for orderly urban development and for the protection of
11 health, safety, and welfare in areas being used intensively
12 for residential, commercial, industrial, institutional, and
13 governmental purposes or in areas undergoing such
14 development.

15 (c) Annexation and detachment must be based on the
16 interests of those being annexed or detached and on the
17 interests of the community as a whole.

18 (2) It is the purpose of this part to effect these
19 policies by facilitating municipal annexation and allowing
20 municipal detachment.

21 47A-2-202. General definitions. In this title, unless
22 otherwise provided or the context requires a technical or
23 other interpretation, the following definitions apply:

24 (1) "Agricultural land" as used in this part shall
25 meet the qualifications established in 84-437.2.

1 (2) "Area" means the territory proposed to be annexed
2 or detached as described in a resolution of intent,
3 published notice, and a resolution of annexation or
4 detachment.

5 (3) "Annexation" means the alteration of the
6 boundaries of a municipality to add territory to the
7 municipality.

8 (4) (a) "Contiguous" means any area which, at the time
9 annexation procedures are initiated, either abuts directly
10 or converges at any point with the municipal limits of a
11 municipality or is separated from the municipal limits by a
12 trafficway or right-of-way, a strip of unplatted land too
13 narrow or too small to be platted, a creek or river, the
14 right-of-way of a railroad or other public service
15 corporation, lands owned by the municipality or other
16 political subdivision, lands owned by the state or federal
17 government, or lands exempted from annexation under
18 47A-2-214.

19 (b) An area that abuts directly on a municipal
20 property annexed under the procedures of 47A-2-211 but does
21 not abut on other municipal limits shall not be considered
22 contiguous.

23 (5) "Detachment" means the exclusion of an area
24 included within the municipal limits from the jurisdiction
25 of the municipality.

(6) "Finding of public interest" means the municipal governing body shall find by resolution that it will be in the best interests of the municipality and its inhabitants and of the inhabitants in the area to be annexed or detached to either annex or detach the area under consideration.

(7) "Mining" means the extraction of gas, oil, coal, or other minerals from the land.

(8) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed with the county records administrator.

(9) "Resolution of intent" means the municipal governing body shall find by resolution that it intends to annex or detach an area and will immediately proceed with the specified annexation or detachment procedure.

(10) "Wholly surrounded area" means an area of land which is completely encircled by land included within the municipal limits. For purposes of annexation under 47A-2-214, the encircling land must have a width of at least 200 feet, or the width of a platted lot.

47A-2-203. Methods of annexation. To effect the policies and purposes established in 47A-2-201, this part provides the following six separate and distinct procedures by which areas may be annexed to a municipality:

(1) annexation of municipal property as authorized by 47A-2-211;

(2) annexation of lot by request as authorized by 47A-2-212;

(3) annexation of subdivision by request as authorized by 47A-2-213;

(4) annexation of wholly surrounded area as authorized by 47A-2-214;

(5) annexation with protest as authorized by 47A-2-215; and

(6) annexation without protest as authorized by 47A-2-216.

47A-2-204. Common procedure for annexation. Except as provided specifically in 47A-2-212, all six separate and distinct procedures authorized by this part shall include the following minimum requirements and the additional requirements specified for each separate procedure:

(1) The governing body shall adopt a resolution of intent which includes a finding of public interest, a clear description of the boundaries of the area under consideration, the method for annexation, and a statement that the area proposed to be annexed meets the requirements of 47A-2-205.

(2) (a) The governing body shall provide for the publication of notice of:

1 (i) the resolution of intent; and
 2 (ii) of the public hearing to consider the proposed
 3 annexation.
 4 (b) The notice shall clearly describe the boundaries
 5 of the area under consideration for annexation, and set the
 6 date and place of the public hearing.
 7 (3) the governing body shall conduct a public hearing
 8 on the proposed annexation which shall be held not less than
 9 30 days or more than 60 days after the passage of the
 10 resolution of intent except for a hearing under 47A-2-215
 11 which shall be held not less than 30 days or more than 60
 12 days after the deadline for receiving written protests.
 13 (4) At the public hearing, a representative of the
 14 municipality shall explain the proposed annexation.
 15 Following the explanation, any person residing or owning
 16 property in the proposed area and any resident of the
 17 municipality or other interested person shall be given an
 18 opportunity to testify.
 19 (5) Before reaching a final decision, the governing
 20 body shall take into consideration all information received,
 21 opinions expressed, and protests received.
 22 (6) (a) the governing body may at any regular or
 23 special meeting, held no sooner than 6 days following the
 24 public hearing and no later than 60 days following the
 25 public hearing, either adopt a resolution terminating the

1 annexation proceeding or adopt an annexation resolution
 2 extending the municipal limits to include all or any part of
 3 the area described in the notice of the public hearing which
 4 meets the requirements of the annexation procedure used.
 5 (b) The annexation resolution shall:
 6 (i) contain a finding of public interest;
 7 (ii) contain a statement that the area to be annexed
 8 meets the requirements of 47A-2-205
 9 (iii) contain any other statement required by the
 10 procedure used;
 11 (iv) describe the external boundaries of the area to
 12 be annexed;
 13 (v) contain a statement of the intent of the
 14 municipality to provide services to the area being annexed
 15 and, if annexed under the procedures authorized in
 16 47A-2-216, contain a statement of intent of the municipality
 17 to provide services in the area being annexed as set forth
 18 in the report adopted by the governing body as required by
 19 47A-2-216 and 47A-2-217;
 20 (vi) establish the effective date of the annexation.
 21 The date may be any date within 12 months from the date of
 22 passage of the resolution.
 23 (c) As provided in 47A-3-423 and 47A-3-437, the
 24 annexation resolution may determine the status of any county
 25 subordinate service district or county local improvement

1 district that is included in the area to be annexed.

2 (7) The chief executive shall file with the county
3 records administrator:

4 (a) a certified copy of the annexation resolution; and

5 (b) an accurate map of the annexed territory.

6 (8) The filing shall complete all required annexation
7 procedures.

8 47A-2-205. Standards to be met before annexation can
9 occur. The total area to be annexed shall:

10 (1) be contiguous to the municipal limits at the time
11 the annexation proceeding is begun;

12 (2) not be included within the municipal limits of
13 another incorporated municipality; and

14 (3) meet any standard established by the separate
15 annexation procedures authorized by this part.

16 47A-2-206. Description of boundaries. (1) In
17 describing the area to be annexed and the new municipal
18 limits, a municipal governing body shall, wherever
19 practical, use natural topographic features such as ridge
20 lines, streams, and creeks as limits. A municipal governing
21 body shall include land on both sides of a trafficway
22 wherever practical.

23 (2) If appropriated, the external boundaries of the
24 municipality or the area to be annexed or detached shall be
25 described by metes and bounds.

1 47A-2-207. Provision of municipal services to annexed
2 areas. Except as provided in and after the effective date of
3 the annexation resolution, the newly annexed area and its
4 citizens and property shall be subject to all general
5 obligation debts, ordinances, and regulations in force in
6 the municipality and shall be entitled to the same
7 privileges and benefits as other parts of the municipality.
8 The newly annexed area shall be subject to the municipal
9 taxes levied for the fiscal year following the effective
10 date of annexation.

11 47A-2-208. Exemption from taxation for water or sewer
12 debt service. Annexed property which is part of a
13 subordinate service district or local improvement district
14 which has installed water, sewer, or other utilities or
15 improvements paid for by the residents of the subordinate
16 service district may be exempted in the annexation
17 resolution from that part of the municipal taxes levied for
18 sewer, water, or other utility debt service for an
19 appropriate period of time after the effective date of the
20 annexation resolution.

21 47A-2-209. Simultaneous proceedings. (1) If a
22 municipality is considering the annexation or detachment of
23 two or more areas which are all contiguous to the municipal
24 limits but are not adjacent to one another, it may undertake
25 simultaneous proceedings under authority of this part for

1 the annexation or detachment of the areas.

2 (2) When undertaking simultaneous proceedings, a
3 municipality may use more than one annexation procedure.

4 (3) Whenever two or more adjacent areas taken as a
5 whole are contiguous to a municipality, they may be annexed
6 although one or more of the areas taken alone is not
7 contiguous to the municipal limits when the annexation
8 procedures are initiated.

9 47A-2-210. Moratorium. If an annexation procedure is
10 terminated by protest or election, the governing body may
11 not institute any further proceedings to annex an area for a
12 period of one year beginning on the date of the final action
13 by the governing body on the annexation procedure.

14 47A-2-211. Annexation of municipal property. A
15 municipality may annex any municipal property through the
16 procedure prescribed by 47A-2-204 even though such property
17 is not contiguous to the municipality.

18 47A-2-212. Annexation of lot by request. (1) A single
19 lot may be annexed to a municipality through the procedures
20 prescribed by this section.

21 (2) The owner shall submit to the governing body a
22 description of the property as recorded or filed in the
23 county records administrator's office and a written request
24 that the property be annexed.

25 (3) The municipal governing body may either reject the

1 request or may annex the lot by resolution. The annexation
2 resolution shall contain the provisions required by
3 47A-2-204 (6) (b).

4 47A-2-213. Annexation of subdivision by request. (1)
5 Whenever an area is subdivided the subdivider may, after
6 approval of final plat, submit the final plat to the
7 municipal governing body with a written request that the
8 area be annexed.

9 (2) The municipal governing body may either reject the
10 request or may proceed as provided in 47A-2-204.

11 47A-2-214. Annexation of wholly surrounded area. (1) A
12 municipality may annex an area wholly surrounded by a
13 municipality through the procedures prescribed by 47A-2-204.

14 (2) A municipality proceeding under this section may
15 not annex an area used for mining or agricultural land
16 without the consent of the owner.

17 47A-2-215. Annexation with protest. (1) A municipality
18 may annex any area through the procedures prescribed by
19 47A-2-204 and this section.

20 (2) In addition to published notice, mailed notice
21 shall be given to all resident freeholders in the area. In
22 addition to other requirements, both the published and
23 mailed notice shall state that, for a period of 90 days
24 after the mailing date of the notice, written protests to
25 the proposed annexation will be received at the office of

1 the municipality.

2 (3) After the public hearing and before proceeding,
3 the governing body shall consider all written protests, and
4 if a majority of the resident freeholders in the area have
5 not protested in writing, the governing body may adopt an
6 ordinance to annex the area.

7 (4) If a majority of the resident freeholders in the
8 area have objected in writing, the annexation proceedings
9 are terminated and the area may not be annexed.

10 47A-2-216. Annexation without protest. (1) A
11 municipality may annex any area through the procedures
12 prescribed by 47A-2-204, 47A-2-216, and 47A-2-217.

13 (2) The governing body may initiate procedures under
14 this section, or the governing body may be requested to
15 begin proceedings under this section by a petition signed by
16 at least 50% of the resident freeholders in an area
17 requesting annexation.

18 (3) If a resolution of intent to annex is not adopted
19 as the result of a sufficient petition or if the governing
20 body fails to take any action for 60 days after the receipt
21 of the petition, the petitioners may appeal to the district
22 court under the procedures in 47A-2-220 to instigate action
23 by the governing body.

24 (4) In addition to other requirements, the published
25 notice shall state that the report required by 47A-2-217

1 will be available in the office of a designated official at
2 least 14 days prior to the date of the public hearing.

3 (5) At least 14 days before the date of the public
4 hearing, the governing body shall approve the report
5 required by 47A-2-217 and make it available to the public at
6 a designated office. In addition the municipality may
7 prepare a summary of the full report for public
8 distribution.

9 (6) the public hearing shall include an explanation of
10 the report provided for in 47A-2-217.

11 (7) The municipal governing body shall take into
12 consideration facts presented at the public hearing and
13 shall have authority to amend the service report required by
14 47A-2-217 and to make changes in the plans for serving the
15 area proposed to be annexed so long as such changes meet the
16 requirements of 47A-2-217.

17 47A-2-217. Plans to provide services. (1) A
18 municipality proceeding under 47A-2-216 shall develop plans
19 for the extension of services to the area proposed to be
20 annexed and shall, prior to the public hearing, prepare a
21 report adopting its plans to provide services to the annexed
22 area. This report shall include:

23 (a) a map or maps of the municipality and adjacent
24 areas to show the following information:

25 (i) the present and proposed municipal limits of the

1 municipality;

2 (ii) the present trafficways, major trunk watermains,
3 sewer interceptors and outfalls and other utility lines, and
4 the proposed extension of the trafficway and utility lines
5 as required in subsection (3) of this section; and

6 (iii) the general land use pattern in the areas to be
7 annexed;

8 (b) a statement showing that the area to be annexed
9 meets the requirements of 47A-2-205; and

10 (c) a statement setting forth the plans of the
11 municipality for extending to the area to be annexed each
12 major municipal service performed within the municipality at
13 the time of annexation.

14 (2) Specifically, the plans shall:

15 (a) provide a long-range plan for the extension of
16 services and the acquisition of public properties outside
17 the municipal limits. This plan must show anticipated
18 development a minimum of 5 years into the future showing on
19 a yearly basis how the municipality plans to extend services
20 and develop and add sections to the municipality.

21 (b) provide for the status of existing county
22 subordinate service districts and local improvement
23 districts;

24 (c) provide for extending police protection, fire
25 protection, garbage collection, trafficway construction and

1 maintenance, and utility services to the area to be annexed
2 on substantially the same basis and in the same manner as
3 these services are provided within the rest of the
4 municipality prior to the annexation. In this annexation
5 plan it must be clearly stated that the entire municipality
6 intends to share the tax burden for these services.

7 (d) provide for future extension of trafficways and of
8 major trunk watermains, sewer outfall lines, and other
9 utility services into the area to be annexed so that when
10 these trafficways and utility lines become necessary and are
11 constructed, property owners in the area to be annexed will
12 be able to secure these services according to the policies
13 in effect in the municipality for extending the services to
14 individual lots or subdivisions;

15 (e) set forth a proposed timetable for construction of
16 trafficways and utility lines if extension of trafficways
17 and water, sewer, or other utility lines into the area to be
18 annexed is necessary; and

19 (f) provide a method to be set forth by which the
20 municipality plans to finance extension of services into the
21 area to be annexed. Included within this plan must be a
22 methodology whereby the resident freeholders of the area to
23 be annexed may vote upon any proposed capital improvements
24 if general obligation bonds are to be issued. Should a
25 negative vote be cast by over 50% of those resident

1 freeholders in the area to be annexed in the election on the
 2 general obligation bonds, the area shall not be annexed. If
 3 the area is serviced currently by adequate water and sewage
 4 services, trafficways, and curbs and gutters, and no capital
 5 improvements are needed to provide adequate services, the
 6 plan shall so state. If no general obligation bond financing
 7 is anticipated within 5 years, the area may be annexed
 8 without a bond issue election. If any public works facility
 9 is to be financed by a local improvement district bond, an
 10 election is not necessary and the area may be annexed.

11 47A-2-218. Detachment. Any area of which any part
 12 borders on the municipal limits may be detached from that
 13 municipality in the following manner:

14 (1) A petition requesting detachment shall be
 15 submitted to the election administrator of the municipality.

16 (2) The petition shall:

17 (a) be signed by either a majority of the electors of
 18 the municipality or by the owners of at least three-fourths
 19 of the property sought to be detached;

20 (b) adequately set out and describe the area to be
 21 detached;

22 (c) adequately set out and describe the proposed new
 23 boundaries of the municipality;

24 (d) adequately set out and describe the trafficways
 25 and public plans, if any, in the area sought to be detached

1 and shall distinctly specify those which are to be retained
 2 for the use of the public after detachment.

3 (3) Upon receiving an adequate detachment petition and
 4 if it is found to be in the public interest, the governing
 5 body shall adopt a resolution of intent to detach the area.

6 (4) Notice shall be published stating the findings and
 7 resolution of the governing body and that a public hearing
 8 will be held on the question of detachment.

9 (5) The governing body shall hold a public hearing on
 10 the detachment proposal and receive testimony from residents
 11 and other interested persons.

12 (6) The governing body shall take into consideration
 13 all the information received and opinions expressed.

14 (7) The governing body may at any regular or special
 15 meeting held no sooner than 6 days following the public
 16 hearing and no later than 60 days following the public
 17 hearing either adopt a resolution terminating the detachment
 18 proceeding or adopt a detachment resolution modifying the
 19 municipal limits to exclude all or any part of the area
 20 described in the notice of the public hearing which met the
 21 requirements of this section.

22 (8) The detachment resolution shall:

23 (a) contain a finding of public interest;

24 (b) contain a statement that the area to be detached
 25 meets the requirements of this section;

1 (c) describe the external boundaries of the area to be
2 detached and the new boundaries of the municipality;

3 (d) describe the trafficways and other public places
4 which are to be vacated or remain dedicated for public use;

5 (e) establish the effective date of the detachment.
6 The date may be any date within 12 months from the date of
7 passage of the resolution but not sooner than 90 days after
8 passage.

9 (9) The area shall not be detached if written protests
10 are received, within 90 days of the passage of the
11 resolution to detach, from:

12 (a) owners of over 50% of the value of property within
13 the area; or

14 (b) owners of over 50% of the value of property within
15 the municipal limits immediately adjacent to and contiguous
16 to the area. For the purpose of this section, "contiguous"
17 and "adjacent" mean the property on the opposite side of a
18 trafficway from the property sought to be detached.

19 (10) Detachment shall not relieve any detached area
20 from its liability on any outstanding bonded indebtedness of
21 the municipality or any indebtedness of any improvement or
22 subordinate service district of which the detached area was
23 a part at the time of the passage of the resolution.

24 (11) For the purposes of levying any tax or assessment
25 necessary for the collection on any indebtedness specified

1 in 47A-2-218(10), the detached area is and shall remain
2 under the jurisdiction of the municipality.

3 (12) The chief executive shall file with the county
4 records administrator:

5 (a) a certified copy of the detachment resolution; and

6 (b) an accurate map of the detached area and an
7 accurate map of the new municipal limits.

8 (13) The filing shall complete all required detachment
9 procedures.

10 47A-2-219. Status of trafficways. (1) A county
11 trafficway within an annexed area shall become a municipal
12 trafficway on the effective date of an annexation
13 resolution.

14 (2) A municipal trafficway not vacated by a resolution
15 of detachment shall become a county trafficway on the
16 effective date of a detachment resolution.

17 47A-2-220. Judicial review. (1) Within 30 days
18 following the passage of an annexation or detachment
19 resolution under authority of this part or within 60 days of
20 receipt of the petition under 47A-2-216 if a governing body
21 fails to act, any person owning property in the annexed area
22 or area proposed to be annexed or detached who believes that
23 he will suffer material injury may file a petition in a
24 district court seeking review of the action of the municipal
25 governing body if:

1 (a) the municipal governing body failed to comply with
2 a procedure set forth in this part; or

3 (b) the municipal governing body failed to meet
4 requirements set forth as a part of that procedure and the
5 requirements apply to his property.

6 (2) The petition shall state what exceptions are taken
7 to the action of the municipal governing body and what
8 relief the petitioner seeks. The petition shall be served
9 upon the municipality in the manner provided for the service
10 of civil process.

11 (3) Within 30 days after receipt of the copy of the
12 petition for review or within such additional time as the
13 court may allow, the municipality shall transmit to the
14 reviewing court:

15 (a) a transcript of the portions of the municipal
16 journal or minute book in which the procedure for annexation
17 or detachment has been set forth; and

18 (b) a copy of any report or other document required by
19 the procedure used to annex or detach the area.

20 (4) If two or more petitions for review are submitted
21 to the court, the court may consolidate all the petitions
22 for review at a single hearing.

23 (5) At any time before or during the review
24 proceeding, any petitioner may apply to the reviewing court
25 for an order staying the operation of the annexation or

1 detachment resolution pending the outcome of the review. The
2 court may grant or deny the stay in its discretion upon such
3 terms as it considers proper, and it may permit annexation
4 or detachment of any part of the area described in the
5 ordinance concerning which no question for review has been
6 raised.

7 (6) The review shall be conducted by the court without
8 a jury. The court may hear oral arguments and receive
9 written briefs and may take evidence intended to show
10 either:

11 (a) that the statutory procedure was not followed; or

12 (b) that the requirements of the procedure used to
13 annex or detach the area have not been met.

14 (7) The court may affirm the action of the municipal
15 governing body without change, or it may:

16 (a) remand the resolution to the municipal governing
17 body for further proceedings if procedural irregularities
18 are found to have materially prejudiced the substantive
19 rights of any petitioner; or

20 (b) remand the resolution to the municipal governing
21 body for amendment of the boundaries of the area in question
22 to conform to the requirements of the procedure used if it
23 finds the requirements have not been met; but the court
24 cannot remand the resolution to the municipal governing body
25 with directions to add to the municipality an area which was

1 not included in the notice of public hearing.

2 (8) If the municipal governing body fails to take
3 action in accordance with the court's instructions upon
4 remand within 90 days from receipt of the instructions, the
5 annexation proceeding is considered void.

6 (9) Any party to the review proceedings, including the
7 municipality, may appeal to the supreme court from the final
8 judgment of the district court under rules of procedure
9 applicable in other civil cases. The appealing party may
10 apply to the lower court for a stay in its final
11 determination or a stay of the annexation resolution,
12 whichever shall be appropriate, pending the outcome of the
13 appeal; however, the district court may, with the agreement
14 of the municipality, permit annexation to be effective with
15 respect to any part of the area concerning which no appeal
16 is being made and which can be incorporated into the
17 municipality without regard to any part of the area
18 concerning which an appeal is being made.

19 (10) If part or all of the area annexed under the
20 terms of an annexation resolution is the subject of an
21 appeal to the district court or the supreme court on the
22 effective date of the resolution, then the resolution shall
23 be considered amended to make the effective date with
24 respect to the area the date of the final judgment of the
25 district or supreme court, whichever is appropriate, or the

1 date the municipal governing body completes action to make
2 the resolution conform to the court's instructions in the
3 event of remand.

4 Part 3

5 County Boundaries and County Seats

6 47A-2-301. County boundaries. (1) As provided by
7 Article XI, section 2, of the Montana constitution, the
8 counties of this state are those that existed on June 6,
9 1972.

10 (2) The boundaries of the counties of this state and
11 their county seats are those heretofore set out in 16-201
12 through 16-263. These sections shall be filed with the
13 secretary of state and department of community affairs, but
14 they shall not be printed as part of the Montana Code
15 Annotated.

16 (3) The department of community affairs shall certify
17 copies of the foregoing sections to the records
18 administrator of each county to be filed as official records
19 of the county.

20 (4) The department of community affairs shall maintain
21 a record of the boundaries and county seats, and whenever a
22 county boundary or the location of a county seat is changed
23 as provided in this chapter, the governing body shall file
24 with the secretary of state and the department of community
25 affairs a document showing the changes made.

47A-2-302. Initiation of boundary alteration or change in county seat. (1) Any alteration of county boundaries, including the merger of existing counties, or any change in the location of a county seat may be initiated by a study commission, a petition of the residents, or a resolution of the governing body or bodies of the affected county or counties.

(2) The petition or resolution shall contain the following:

(a) a statement of purpose;

(b) either a description of the present and proposed boundaries of the affected counties or the present and proposed location of the county seat or both;

(c) a request for an election on the proposal if a petition, or a date for the election if a resolution;

(d) if existing counties are to be merged, the plan of government for the merged county; and

(e) the signatures of 15% of the electors in each affected county or the concurrence of the governing body of each affected county.

(3) The petition shall be filed with the elections administrator of each affected county who shall determine the adequacy of the petition with regard to his respective county. If the petition is found to be adequate, the elections administrator shall certify it to the governing

body of his respective county.

(4) Upon receipt of the certified petition, the governing bodies of the affected counties shall call a joint session at which the date of the election on the proposal shall be set.

(5) A study commission may propose a merger as provided in chapter 3, part 1.

47A-2-303. Election. (1) The governing body of each affected county shall give notice of the date set for the election.

(2) The election shall be conducted and the results canvassed and returned as provided in 47A-3-513 for other questions submitted to a vote of the electors.

(3) No proposal shall become effective unless approved by a majority of those voting on the question in each county affected.

47A-2-304. Effect of approval -- public property. (1) When an alteration of county boundaries transfers territory from one county to another, the county or counties from which the territory is removed shall transfer to the receiving county a percentage of the total assets of the transferring county equal to the percentage of the county's total taxable value represented by the territory being transferred.

(2) The receiving county shall assume liability for a

percentage of the transferring county's total debts equal to the percentage of the total taxable value of the transferring county represented by the transferred territory.

(3) County trafficways and bridges shall not be considered county assets for the purposes of subsection (1). All of the transferring county's right, interest, or title to all trafficways and bridges in the transferred territory shall vest in the receiving county.

(4) Delinquent taxes and special assessments shall be considered assets of the county for the purposes of subsection (1). All delinquent taxes and special assessments attached to property being transferred shall be transferred to the receiving county which may collect them as provided by law.

47A-2-305. Effect of transfer — time. (1) All alterations of county boundaries shall become effective on the assessment day following approval of the alteration except as provided in this section.

(2) An alteration of county boundaries which results in the merger of existing counties shall not take effect until the assessment day following the election of officers for the merged county. The election of new officials shall proceed as provided in chapter 3, part 1, of this title for the election of officials when a new form of government is

adopted.

(3) A change in the location of the county seat shall be effective 60 days after approval.

Part 4

Consolidation, Confederation, and Merger

47A-2-401. Methods of consolidation, confederation, and merger. (1) A county and one or more municipalities may consolidate or confederate as provided in chapter 3, part 1, of this title.

(2) Two or more counties may merge to form a single county as provided in chapter 2, part 3.

47A-2-402. Effect of consolidation. (1) When a county and one or more municipalities consolidate, the consolidated local government replaces the participating county and municipality to form a single local government.

(2) Except as provided in the consolidation plan, the consolidated local government shall succeed to all rights, assets, and liabilities of the participating local governments.

(3) The consolidated local government shall have the powers and duties of both a county and a municipality.

(4) The consolidated local government shall have the form of government specified in the consolidation plan. The form may be amended as provided in chapter 3, part 1, of this title.

1 47A-2-403. Effect of confederation. (1) When a county
2 and one or more municipalities confederate, a coordinated
3 local government is created in which the county and the
4 participating municipality or municipalities retain their
5 separate identity and existence.

6 (2) The rights, assets, and liabilities of the
7 confederating local governments shall be apportioned between
8 the units as provided in the confederation charter.

9 (3) The confederated local governments shall have the
10 powers and duties of both a county and a municipality
11 apportioned as provided in the confederation charter.

12 (4) The confederated local governments shall be
13 governed as provided in the confederation charter, which may
14 be amended as provided in chapter 3, part 1, of this title.

15 47A-2-404. Effect of county merger. (1) When two or
16 more counties merge, a county is created as a single local
17 government.

18 (2) Except as provided in the consolidation plan, the
19 new county succeeds to all rights, assets, and liabilities
20 of the merging counties.

21 (3) The new county has the powers and duties of a
22 county.

23 (4) The new county shall have the form of government
24 specified in the petition, resolutions, or plan providing
25 for the merger. The form may be amended as provided in

1 chapter 3, part 1, of this title.

2 CHAPTER 3

3 LOCAL GOVERNMENT STRUCTURE AND ORGANIZATION

4 Part 1

5 Review, Amendment, and Adoption of Local Government Form

6 47A-3-101. Amendment of plan or charter. (1) A plan of
7 government, a consolidation or confederation plan, or a
8 charter or an amendment to a plan of government, a
9 consolidation or confederation plan, or a charter may be
10 proposed by:

11 (a) a study commission as provided in 47A-3-108;

12 (b) a resolution of the governing body; or

13 (c) petition of the electors.

14 (2) The resolution or petition shall set out fully the
15 plan of government, the consolidation or confederation plan,
16 or the charter or the section or sections sought to be
17 amended and the proposed amendment.

18 (3) An election on a plan of government, consolidation
19 or confederation plan, or charter or an amendment proposed
20 by resolution or petition shall be held at the next general
21 election of the local government, unless the petition or
22 resolution calls for a special election. If a special
23 election is called for, the governing body shall set a date
24 for the election to be held no sooner than 60 days or later
25 than 90 days after passage of the resolution or filing of

1 the petition.

2 (4) An election on a plan of government or a charter
3 or an amendment shall be conducted and votes returned and
4 canvassed in the manner provided by law for questions
5 submitted to the electorate as provided in chapter 3, part
6 5, of this title.

7 (5) A plan of government or charter or an amendment
8 requires the affirmative vote of a majority of those voting
9 on the question for passage. A consolidation or
10 confederation plan requires the affirmative vote as provided
11 in 47A-3-111(4).

12 (6) The plan of government, consolidation or
13 confederation plan, or charter takes effect in the manner
14 set out in 47A-3-112 through 47A-3-116.

15 (7) An amendment becomes effective at the beginning of
16 the local government's fiscal year after the election
17 results are officially declared.

18 (8) Following the adoption of a plan of government,
19 consolidation or confederation plan, or a charter or an
20 amendment, the chief executive shall file a copy of the plan
21 of government, consolidation or confederation plan, or
22 charter or amendment with the secretary of state, department
23 of community affairs, and county records administrator.

24 47A-3-102. Study commissions. (1) The purpose of a
25 study commission is to study the existing plan, powers, and

1 procedures for the delivery of services of a local
2 government and to compare them with other plans, powers, and
3 procedures available under the laws of the state of Montana.

4 (2) A study commission may be established only by an
5 affirmative vote of the people. An election on the question
6 of establishing a study commission shall be held whenever:

7 (a) the governing body of the local government calls
8 for an election by resolution;

9 (b) a petition calling for an election is submitted to
10 the commission; or

11 (c) 10 years have elapsed since the electors have
12 voted on the recommendations of a study commission or on the
13 question of establishing a study commission. The governing
14 body is responsible for calling for the election of a study
15 commission within 1 year after the 10-year period.

16 (3) The number of positions, not less than five, on
17 the study commission shall be set out in the resolution or
18 petition calling for the election on the question of
19 establishing a study commission. If the election is called
20 because 10 years have elapsed, the study commission shall
21 consist of five members unless the local government
22 commission by resolution declares that a larger number shall
23 be elected. Every study commission shall include as ex
24 officio voting members the chairman of the governing body
25 and one other elected official appointed by the governing

1 body.

2 (4) The question of establishing a study commission
3 shall be submitted to the electors in substantially the
4 following form:

5 Vote for one:

6 ☐ FOR the establishment of a local government study
7 commission consisting of (insert number of members)
8 members to examine the government of (insert name of
9 local government) and submit recommendations thereon.

10 ☐ AGAINST the establishment of a study commission.

11 (5) The question of establishing a study commission
12 requires an affirmative vote of a majority of those voting
13 on the question for passage.

14 47A-3-103. Election of members. If the question of
15 establishing a study commission is approved, study
16 commission members shall be elected in the following manner:

17 (1) There shall be placed on the ballot the names of
18 study commission candidates who have filed declarations of
19 nomination as provided in 23-3304. Candidates shall be
20 listed without party or other designation or slogan. The
21 secretary of state shall prescribe the ballot form for study
22 commissions.

23 (2) Candidates for study commission positions shall be
24 electors of the local government for which the study
25 commission has been established.

1 (3) Those candidates receiving the highest number of
2 votes shall be declared elected.

3 (4) The term of study commission members shall be for
4 the duration of the commission's existence.

5 (5) If the number of study commissioners elected is
6 not equal to the number required to be selected, the
7 chairman of the governing body, with the confirmation of the
8 governing body, shall appoint the additional study
9 commissioner or commissioners within 20 days of the
10 election. No elected official of the local government may be
11 appointed. Subsequent vacancies shall be filled in the same
12 manner.

13 (6) Within 20 days after the election, the governing
14 body shall appoint one elected official of the local
15 government to the study commission as a voting ex officio
16 member.

17 47A-3-104. Timetable for elections. Dates for the
18 required elections shall be set by the governing body within
19 the following limits:

20 (1) An election on the question of establishing a
21 study commission shall be held no sooner than 60 days and no
22 later than 90 days after the passage of the resolution or
23 the certification of the petition calling for an election on
24 the question.

25 (2) An election to fill the positions on a local

1 government study commission shall be held no sooner than 90
2 days or later than 120 days after the election establishing
3 the study commission.

4 (3) Votes cast on the question of establishing a study
5 commission and for electing study commission members shall
6 be counted, canvassed, and returned by the elections
7 administrator of the local government which the study
8 commission is to examine.

9 (4) Except as otherwise provided in this chapter, each
10 election conducted under this chapter shall be in the same
11 manner as the election of other local officials as provided
12 in chapter 3, part 5.

13 47A-3-105. Organization of the study commission. (1)
14 Not later than 10 days after all study commissioners have
15 been elected or appointed, the study commissioners shall
16 meet and organize at a time which shall be set by the
17 chairman of the governing body of the local government which
18 the study commission is to examine.

19 (2) At the first meeting of the study commission, the
20 study commission may elect a temporary chairperson who will
21 serve until a permanent chairperson is selected.

22 (3) Meetings of the study commission shall be held
23 upon the call of the chairperson, vice-chairperson in the
24 absence or inability of the chairperson, or a majority of
25 the study commissioners. The chairperson shall announce the

1 time and place of the meetings of the study commission.

2 (4) The study commission shall maintain a written
3 record of its proceedings and its finances which shall be
4 open to inspection by any person at the office of the study
5 commission during regular office hours.

6 (5) A majority of the study commissioners shall
7 constitute a quorum for the transaction of business, but no
8 recommendation of a study commission shall have any legal
9 effect unless adopted by a majority of the whole number of
10 study commissioners.

11 (6) The study commission shall have the power to adopt
12 rules for its own organization and procedure.

13 (7) Study commissioners shall receive no compensation
14 other than for actual and necessary expenses incurred in
15 their official capacity.

16 47A-3-106. Administrative powers. A study commission
17 shall have the following administrative powers:

18 (1) The study commission may employ and fix the
19 compensation and duties of necessary staff. State,
20 municipal, and county officers and employees, at the request
21 of the study commission and with the consent of the
22 employing agency, may be granted leave with or without pay
23 from their agency to serve as consultants to the study
24 commission. If leave with pay is granted, they shall receive
25 no other compensation, except mileage and per diem from the

1 study commission.

2 (2) The study commission may establish advisory boards
3 and committees, including on them persons who are not study
4 commissioners.

5 (3) The study commission may retain consultants.

6 (4) The study commission may contract and cooperate
7 with other agencies, public or private, as it considers
8 necessary for the rendition and affording of the services,
9 facilities, studies, and reports to the study commission as
10 will best assist it to carry out the purposes for which the
11 study commission was established. Upon request of the
12 chairperson of the study commission, state agencies,
13 counties, other local governments, and the officers and
14 employees thereof shall furnish the commission information
15 as may be necessary for carrying out its function which may
16 be available to or procurable by the agencies or units of
17 government.

18 (5) All meetings of the study commission shall be open
19 to the public. The study commission shall hold public
20 hearings and community forums and may use other suitable
21 means to disseminate information and stimulate public
22 discussion of its purpose, progress, conclusions, and
23 recommendations.

24 (6) The study commission may do any and all other
25 things as are consistent with and reasonably required to

1 perform its function under this chapter.

2 47A-3-107. Financial administration. (1) The study
3 commission shall prepare a budget for each fiscal year it is
4 in existence and submit it to the local governing body for
5 approval.

6 (2) For the support of the study commission, for each
7 fiscal year the study commission is in existence, the local
8 government shall appropriate the equivalent of at least 1
9 mill. The local government may, in its discretion, provide
10 additional funds, and other assistance.

11 (3) The study commission may apply for and accept
12 available private, state, and federal moneys and may accept
13 donations from any source.

14 (4) All moneys received by the study commission shall
15 be deposited with the county or municipal finance
16 administrator. The finance administrator is authorized to
17 disburse appropriated moneys of the study commission on its
18 order. Unexpended moneys of the study commission shall not
19 revert to the general fund of the local government at the
20 end of the fiscal year, but shall carry over to the study
21 commission's appropriation for the following fiscal year.
22 Upon termination of the study commission, unexpended moneys
23 shall revert to the general fund of the local government.

24 47A-3-108. Scope of study commission's
25 recommendations. (1) A study commission elected to examine

1 the government of a municipality may:

2 (a) recommend amendments to the existing plan of
3 government;

4 (b) recommend any plan of government authorized by
5 Title 47A, chapter 3, part 2;

6 (c) draft a charter;

7 (d) recommend disincorporation; or

8 (e) submit no recommendation.

9 (2) A study commission elected to examine the
10 government of a county may:

11 (a) recommend amendments to the existing plan of
12 government;

13 (b) recommend any plan of government authorized by
14 Title 47A, chapter 3, part 2;

15 (c) draft a charter;

16 (d) recommend municipal-county consolidation or
17 amendments to an existing consolidation;

18 (e) recommend municipal-county confederation or
19 amendments to an existing confederation;

20 (f) in cooperation with a study commission in an
21 adjoining county, recommend county merger; or

22 (g) submit no recommendation.

23 47A-3-109. Final report. (1) Every study commission
24 shall adopt a final report. The final report shall contain
25 the following materials and documents, each signed by a

1 majority of the study commission members:

2 (a) a certificate containing the "plan of government"
3 of the existing form of local government;

4 (b) a certificate containing the "plan of government"
5 of the proposed new form of local government or amendments
6 to the existing plan;

7 (c) a certificate containing the "plan of
8 apportionment" of commissioner districts if districts are
9 contained in the "plan of government";

10 (d) a certificate establishing the date of the special
11 primary or general election at which the alternative form of
12 government shall be presented to the electors and a
13 certificate establishing the form of the ballot question or
14 questions;

15 (e) a certificate establishing the dates of the first
16 primary and general elections if the proposal is approved
17 and establishing the effective date of the proposal if
18 approved; and

19 (f) a comparison of the existing plan and proposed
20 plan of local government. It may contain a statement on the
21 strengths and weaknesses of the existing and proposed plans
22 of local government, and it may contain information that
23 supports the adoption of the proposed plan and information
24 that supports retention of the present plan.

25 (2) The final report shall contain any minority report

1 signed by members of the commission who do not support the
2 majority proposal.

3 (3) If the study commission proposes disincorporation,
4 municipal-county consolidation, municipal-county
5 confederation, or county merger, the final report shall
6 contain the following additional material and documents:

7 (a) for disincorporation:

8 (i) a certificate of disincorporation instead of a
9 plan of government; and

10 (ii) a recommended plan of disincorporation including
11 suggested ordinances and service districts;

12 (b) for municipal-county consolidation, a
13 consolidation plan which shall:

14 (i) provide for adjustment of existing bonded
15 indebtedness and other obligations in a manner which will
16 provide for a fair and equitable burden of taxation for debt
17 service;

18 (ii) provide for establishment of subordinate service
19 districts;

20 (iii) provide for the transfer or other disposition of
21 property and other rights, claims, assets, and franchises of
22 local government consolidated under its proposal;

23 (iv) provide the official name of the consolidated
24 local government;

25 (v) provide for the transfer, reorganization,

1 abolition, adjustment of boundaries, or absorption of
2 all existing boards, subordinate service districts,
3 local improvement districts, agencies, and political
4 subdivisions of the consolidated governments. Or the plan
5 may grant the legislative body of the consolidated
6 government the authority to transfer, reorganize,
7 abolish, adjust boundaries, or absorb the entities with or
8 without referendum requirements. This section shall not
9 apply to school districts, authorities, and excluded
10 municipalities.

11 (vi) include other provisions which the study
12 commission elects to include and which are consistent with
13 state law;

14 (c) for municipal-county confederation, a charter
15 which shall:

16 (i) provide for a confederated system of county and
17 municipal government;

18 (ii) authorize the comprehensive and simultaneous
19 transfer of services to a system in which the county
20 provides countywide and areawide services and municipalities
21 provide local services;

22 (iii) permit future transfer of responsibility for
23 provision of services;

24 (iv) establish a separate legislative body and chief
25 administrative office for the county and each participating

1 municipality in the confederated local government or the
2 plan may provide a single executive for the confederated
3 government, the plan may also provide for a joint
4 legislative body;

5 (v) provide for adjustment of existing bonded
6 indebtedness and other obligations in a manner which will
7 provide for a fair and equitable burden of taxation for debt
8 service;

9 (vi) provide for establishment of subordinate service
10 areas;

11 (vii) provide for the transfer or other disposition of
12 property and other rights, claims, assets, and franchises of
13 local governments confederated under the charter;

14 (viii) provide the official name of the confederated
15 local government;

16 (ix) provide for the transfer, reorganization,
17 abolition, adjustment of boundaries, or absorption of all
18 existing boards, subordinate service districts, local
19 improvement districts, agencies, and political subdivisions
20 of the confederated governments. Or the plan may grant the
21 legislative bodies of the confederated government the
22 authority to transfer, reorganize, abolish, adjust
23 boundaries, or absorb the entities with or without
24 referendum requirements. This section shall not apply to
25 school districts, authorities, and excluded municipalities.

1 (x) include other provisions which the study
2 commission elects to include and which are consistent with
3 state law;

4 (d) for county merger, a consolidation plan which
5 shall:

6 (i) provide for adjustment of existing bonded
7 indebtedness and other obligations in a manner which will
8 provide for a fair and equitable burden of taxation for debt
9 service;

10 (ii) provide for establishment of subordinate service
11 districts;

12 (iii) provide for the transfer or other disposition of
13 property and other rights, claims, assets, and franchises of
14 local governments consolidated under the alternative plan;

15 (iv) provide the official name of the consolidated
16 local government;

17 (v) provide for the transfer, reorganization,
18 abolition, adjustment of boundaries, or absorption of all
19 existing boards, subordinate service districts, local
20 improvement districts, agencies, and political subdivisions
21 of the consolidated governments except incorporated
22 municipalities. Or the plan may grant the legislative body
23 of the consolidated government the authority to transfer,
24 reorganize, abolish, adjust boundaries, or absorb the
25 entities with or without referendum requirements. This

1 section shall not apply to authorities, school districts,
2 and excluded municipalities.

3 (vi) include other provisions which the study
4 commissions elect to include and which are consistent with
5 state law.

6 (4) If the study commission is recommending amendments
7 to a consolidation plan, the final report shall contain a
8 certificate containing amendments to the consolidation or
9 confederation plan.

10 (5) If the study commission is not recommending any
11 changes its final report shall so indicate.

12 (6) The study commission shall file four copies of the
13 final report with the department of community affairs.

14 47A-3-110. Study commission timetable. Each local
15 study commission or combination of local study commissions
16 shall:

17 (1) conduct one or more public hearings within 180
18 days of its organization for the purpose of gathering
19 information regarding the current form, functions, and
20 problems of the local government or governments;

21 (2) formulate, reproduce, and distribute within 365
22 days of its organization a tentative proposed report. No
23 sooner than 30 days after the report is distributed, each
24 study commission shall conduct one or more public hearings
25 on the tentative report. The tentative report shall contain

1 the same categories of information required to be included
2 in the final report of the commission.

3 (3) adopt within 455 days of its organization the
4 final report of the commission and set the date for a
5 special election on the question of adopting a new plan of
6 government, or if the study commission is not recommending
7 any changes, its final report shall be published and
8 distributed as provided in subsection (5) within 60 days
9 after the final report is adopted;

10 (4) prepare or cause to be prepared sufficient copies
11 of its final report. The final report must be available to
12 the electors not later than 30 days prior to the election on
13 the issue of adopting the alternative plan. Copies of the
14 final report may be distributed to electors or residents of
15 the local government or governments affected.

16 (5) publish once for 2 successive weeks in a newspaper
17 of general circulation throughout the local government
18 affected a summary of its findings and recommendations,
19 together with the address of a convenient public place where
20 the text of its proposal may be obtained. The summary shall
21 include a comparison of the existing and proposed plans of
22 government.

23 (6) prepare separate reports in addition to its final
24 report. These reports may recommend consolidation of
25 services and functions and potential areas for interlocal

1 agreements.

2 47A-3-111. Vote on alternative form. (1) The study

3 commission shall authorize the submission of the alternative

4 plan of government to the voters at a special election held

5 within 120 days of the adoption of the final report. The

6 special election may be held with a school, primary,

7 general, or other election.

8 (2) A copy of the final report shall be certified by

9 the study commission to the municipal or county records

10 administrator within 30 days after the adoption of the final

11 report. The records administrator shall prepare and print

12 notices of the special election.

13 (3) Elections on the issue of adoption of a proposed

14 plan of government by a local government shall be conducted,

15 returned, and canvassed and the result declared in the

16 manner provided in 47A-3-513 for questions submitted to the

17 electors. The cost of the election shall be paid for by the

18 local government. The affirmative vote of a simple majority

19 of those voting on the question shall be required for

20 adoption.

21 (4) In any election involving the question of

22 consolidation or confederation, each question shall be

23 submitted to the electors in the county and shall require an

24 affirmative vote of a simple majority of the votes cast in

25 the county on the question for adoption. There shall be no

1 requirement for separate majorities in local governments

2 voting on consolidation or confederation.

3 (5) In any election involving the question of county

4 merger, the questions shall be submitted to the electors in

5 the counties affected and shall require a majority of the

6 votes cast on the questions in each affected county for

7 adoption.

8 (6) (a) The question of adopting the form of

9 government proposed by the study commission shall be

10 submitted to the electors in substantially the following

11 form:

12 Vote for one:

13 ☐ FOR adoption of the (self-government charter or plan

14 of government) proposed in the report of the (insert

15 name of local government) local government study

16 commission.

17 ☐ FOR the existing form of government.

18 (b) The whole number of ballots shall be divided into

19 two equal sets. No more than one set shall be used in

20 printing the ballot for use in any one precinct and all

21 ballots furnished for use in one precinct shall be

22 identical. The existing plan of government shall be printed

23 as the first item and the proposed plan as the second item

24 on half of the ballots and the proposed form as the first

25 item and the existing form as the second item on the other

1 half of the ballots. If the local government consists of
2 only one precinct, the existing plan shall be listed first
3 on the ballot.

4 (7) A proposed plan shall be submitted to the voters
5 as a single question, except that the suboptions within the
6 alternative plan of local government authorized in Title
7 47A, chapter 3, part 2, and the suboptions authorized in a
8 charter may be submitted to the electors as separate
9 questions. No study commission may submit more than three
10 separate suboptions, and no suboption shall contain more
11 than two alternatives. If a suboption is submitted to the
12 voters, only the ballot alternatives within that suboption
13 receiving the highest number of affirmative votes shall be
14 considered approved and included in the alternative form of
15 government. The question of adopting a suboption shall be
16 submitted to the electors in substantially the following
17 form:

18 Vote for one:

19 A legal officer (who may be called the "county
20 attorney"):

21 ☐ Shall be elected for a term of 4 years.

22 ☐ Shall be appointed for a term of 4 years by the
23 chairperson of the local governing body.

24 47A-3-112. General transition. (1) If the electors
25 disapprove the proposed new form of local government,

1 amendments, or consolidation or confederation plan, the
2 local government shall retain its existing form.

3 (2) (a) An alternative plan of local government
4 approved by the electors shall take effect when the new
5 officers take office as provided in 47A-3-115, except as
6 otherwise provided in this title and any charter or
7 consolidation or confederation plan. A consolidation,
8 confederation, or merger plan similarly adopted by the
9 electors shall take effect in the same manner.

10 (b) Provisions creating offices and establishing
11 qualifications for office under any "apportionment plan"
12 shall become effective immediately for the purpose of
13 electing officials.

14 (3) (a) A copy of the existing or proposed plan of
15 government ratified by the voters and any apportionment plan
16 or consolidation, confederation, or merger plan shall be
17 certified by the chairperson of the study commission and
18 filed by the study commission with the secretary of state,
19 department of community affairs, and the county records
20 administrator.

21 (b) The approved plan filed with the department of
22 community affairs shall be the official plan and shall be a
23 public record open to inspection by the public and
24 judicially noticeable by all courts.

25 (4) (a) All ordinances in effect at the time the new

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1 form of government becomes effective shall continue in
2 effect until repealed or amended in the manner provided by
3 law.

4 (b) Within 2 years after ratification of the
5 consolidation plan, the governing body of the consolidated
6 local government shall revise, repeal, or reaffirm all
7 rules, ordinances, and resolutions in force within the
8 participating county and municipalities at the time of
9 consolidation. Each rule, ordinance, or resolution in force
10 at the time of consolidation shall remain in force within
11 the former geographic jurisdiction until superseded by
12 action of the new governing body. Ordinances and resolutions
13 relating to public improvements to be paid for in whole or
14 in part by special assessments may not be repealed.

15 (5) The adoption of a new plan of government shall not
16 affect the validity of any bond, debt, contract, obligation,
17 or cause of action accrued or established under the prior
18 form of government.

19 (6) The study commission shall prepare an advisory
20 plan for orderly transition to a new plan of local
21 government. The transition plan may propose necessary
22 ordinances, plans for consolidation of services and
23 functions, and a plan for reorganizing boards, departments,
24 and agencies.

25 (7) The governing body of a local government may enact

1 and enforce ordinances to bring about an orderly transition
2 to the new plan of government, including transfer of powers,
3 records, documents, properties, assets, funds, liabilities,
4 or personnel which are consistent with the approved plan and
5 necessary or convenient to place it into full effect. Where
6 any question arises concerning the transition which is not
7 provided for, the governing body may provide for the
8 transition by ordinance, rule, or resolution not
9 inconsistent with this title.

10 47A-3-113. Transition — officers and employees. (1)
11 The members of the governing body, holding office on the
12 date the new plan of government is adopted by the electors
13 of the local government, shall continue in office and in the
14 performance of their duties until the governing body
15 authorized by the plan has been elected and qualified,
16 whereupon the prior governing body is abolished.

17 (2) All other employees holding offices or positions,
18 whether elective or appointive, under the government of the
19 county or municipality shall continue in the performance of
20 the duties of their respective offices and positions until
21 provisions shall be made for the performance or
22 discontinuance of the duties, or the discontinuance of the
23 offices or positions.

24 (3) Any charter or final report of a study commission
25 may provide that existing elected officers shall continue in

1 office until the end of the term for which they were elected
 2 or may provide that existing elected officers shall be
 3 retained as local government employees until the end of the
 4 term for which they were elected and their salaries shall
 5 not be reduced.

6 47A-3-114. Election of new officials. (1) Within 20
 7 days of an election at which the new plan of government is
 8 approved by the electors, the governing body of the local
 9 government shall meet and order a special primary and
 10 general election for the purpose of electing the officials
 11 required by the new form of government.

12 (2) The order shall specify the next scheduled primary
 13 and general elections or a date for the primary election not
 14 more than 60 days or less than 20 days after the election
 15 approving the new form and a date for the general election
 16 60 days after the primary.

17 (3) The election shall be conducted, the vote
 18 canvassed, and the result declared in the manner provided
 19 for local government elections in chapter 3, part 5, of this
 20 title.

21 47A-3-115. Organization of the governing body. (1) The
 22 first meeting of a new governing body for the new plan of
 23 government shall be held at 10 a.m., 60 days after the
 24 election of the new officers. At that time, newly elected
 25 members shall take the oath of office prior to assuming the

1 duties of office.

2 (2) If the terms of the commissioners are to be
 3 overlapping, they shall draw lots to establish their
 4 respective terms of office.

5 47A-3-116. Judicial review. Judicial review to
 6 determine the validity of the procedures whereby any charter
 7 or alternative plan of government is adopted may be had by
 8 petition of 10 or more registered voters of the local
 9 government brought within 60 days after the election at
 10 which the charter or plan of government, revision, or
 11 amendment is approved. If no petition is filed within that
 12 period, compliance with all the procedures required by this
 13 chapter and the validity of the manner in which the charter
 14 or plan of government was approved shall be conclusively
 15 presumed. It shall be presumed that proper procedure was
 16 followed and all procedural requirements were met. The
 17 adoption of a charter or plan of government shall not be
 18 considered invalid on account of any procedural error or
 19 omission unless it is shown that the error or omission
 20 materially and substantially affected its adoption.

21 47A-3-117. Moratorium. The electors of any unit of
 22 local government which has adopted a new alternative form of
 23 local government, charter, or consolidation or confederation
 24 plan may not vote on the question of changing the form of
 25 local government until 3 years after the new local

1 government becomes effective, but the electors may vote on
2 amendments to the alternative form, charter, or
3 consolidation or confederation plan.

4 Part 3

5 Legislative Organization and Procedure

6 47A-3-301. General power. The legislative power of a
7 local government is vested in the governing body.

8 47A-3-302. Public participation. All governing bodies
9 and their committees shall comply with 47A-1-402 and
10 47A-1-403.

11 47A-3-303. Composition, qualification, and vacancies.

12 (1) The governing body shall be composed of the number of
13 members provided for in the plan of government adopted by
14 the electors.

15 (2) Any elector of the local government shall be
16 eligible for election or appointment to the governing body
17 if he meets the district residence requirements imposed by
18 the plan of government.

19 (3) In the event of a vacancy in the governing body,
20 except as otherwise provided by charter, the governing body
21 shall by majority vote of the remaining members appoint a
22 qualified person to fill the vacancy until the next local
23 government election, at which time the remaining term shall
24 be filled by election.

25 (4) Any member of a governing body who loses

1 eligibility for election to his seat on the governing body
2 shall immediately forfeit his office. Any member of a
3 governing body who, without excuse accepted by the governing
4 body, fails to attend two consecutive regularly scheduled
5 meetings of the governing body or who absents himself from
6 the jurisdictional area of the local government continuously
7 for 30 days without consent of the governing body may be
8 removed from office by a majority vote of the whole
9 governing body.

10 47A-3-304. Procedure. (1) The governing body shall
11 meet at least once a month at a time and place designated by
12 ordinance except that more frequent meetings may be required
13 by ordinance.

14 (2) An emergency meeting may be called by the chief
15 executive, the chairman of the governing body, or two
16 members of the governing body on 24-hour notice except that,
17 if a majority of the members of the governing body waive
18 notice in writing, an emergency meeting may be held without
19 notice.

20 (3) A majority of the governing body constitutes a
21 quorum and is necessary to conduct any business.

22 (4) Action by the governing body, including the
23 adoption of ordinances and resolutions, requires a majority
24 vote of those members present.

25 (5) All action by the governing body shall be by

1 ordinance, resolution, or motion and the following shall
2 apply:

3 (a) Ordinances may be amended and repealed only by
4 ordinance.

5 (b) Resolutions may be amended and repealed only by
6 resolution.

7 (c) All ordinances and resolutions are subject to
8 initiative and referendum as provided in 47A-3-313.

9 (6) Contracts except interlocal agreements shall be
10 entered into by resolution.

11 (7) Interlocal agreements shall be adopted by
12 resolution or ordinance.

13 (8) The governing body shall provide for the keeping
14 of written minutes which include the final vote on each
15 ordinance or resolution indicating the vote of each
16 individual member on the question.

17 (9) An agenda shall be posted and made available 24
18 hours prior to any regular meeting. The agenda may include
19 an item entitled "other business" under which any matter may
20 be considered by the governing body, except no matter
21 dealing with finance or taxation shall be considered under
22 "other business".

23 (10) The governing body may adopt by resolution
24 additional rules not in conflict with this part governing
25 its organization and procedure.

1 47A-3-305. Clerk and staff. (1) The governing body may
2 appoint a person to serve as clerk of the governing body.
3 The person appointed may be an employee of the executive
4 branch.

5 (2) The governing body may employ additional staff.

6 47A-3-306. Motions. Actions previously authorized by
7 ordinance or resolution may be approved by motion.

8 47A-3-307. Ordinance requirements. (1) All ordinances
9 shall be submitted in writing in the form prescribed by
10 resolution of the governing body.

11 (2) No ordinance passed shall contain more than one
12 comprehensive subject which shall be clearly expressed in
13 its title, except ordinances for codification and revision
14 of ordinances.

15 (3) An ordinance must be read and adopted by a
16 majority vote of members present at two meetings of the
17 governing body not less than 12 days apart. After the first
18 adoption and reading, it must be posted and copies made
19 available to the public.

20 (4) In the event of an emergency, the governing body
21 may waive the second reading. An ordinance passed in
22 response to an emergency shall recite the facts giving rise
23 to the emergency and requires a two-thirds vote of the whole
24 governing body for passage. An emergency ordinance shall be
25 effective on passage and approval and shall remain effective

1 for no more than 90 days.

2 (5) After passage and approval, all ordinances shall
3 be signed by the chairman of the governing body and filed
4 with the official or employee designated by ordinance to
5 keep the register of ordinances.

6 (6) No ordinance other than an emergency ordinance
7 shall be effective until 30 days after second and final
8 adoption. The ordinance may provide for a delayed effective
9 date or may provide for the ordinance to become effective
10 upon the fulfillment of an indicated contingency.

11 (7) If the plan of government allows the chief
12 executive to veto an ordinance, this power must be exercised
13 in writing prior to the next regularly scheduled meeting of
14 the governing body. Whenever the chief executive vetoes an
15 ordinance, the governing body must act at its next regularly
16 scheduled meeting to either override or confirm the veto.
17 Whenever the veto is overridden or the executive fails to
18 act, the ordinance shall take effect.

19 (8) There shall be maintained a register of ordinances
20 in which all ordinances are entered in full after passage
21 and approval, except when a code is adopted by reference.
22 When a code is adopted by reference, the date and source of
23 the code shall be entered.

24 (9) (a) No later than 1980 and at 5-year intervals
25 thereafter appropriate ordinances shall be compiled into a

1 uniform code and published.

2 (b) The recodification is not effective until approved
3 by the governing body.

4 47A-3-308. Adoption and amendment of codes by
5 reference. (1) Any local government may adopt or repeal an
6 ordinance which incorporates by reference the provisions of
7 any code or portions of any code, or any amendment thereof,
8 properly identified as to date and source, without setting
9 forth the provisions of the code in full. Notice of the
10 intent to adopt a code by reference shall be published after
11 first reading and prior to final adoption of the code. At
12 least one copy of the code, portion, or amendment which is
13 incorporated or adopted by reference shall be filed in the
14 office of the clerk of the governing body and there kept
15 available for public use, inspection, and examination. The
16 filing requirements herein prescribed shall not be considered
17 to be complied with unless the required copies of the codes,
18 portion, amendment, or public record are filed with the
19 clerk of the governing body for a period of 30 days prior to
20 final adoption of the ordinance which incorporates the code,
21 portion, or amendment by reference.

22 (2) The governing body may adopt or amend a code by
23 reference by an emergency ordinance and without notice. The
24 emergency ordinance is automatically repealed 90 days
25 following its adoption and cannot be reenacted as an

1 emergency ordinance.

2 (3) The process for repealing an ordinance which
3 adopted or amended a code by reference shall be the same as
4 for repealing any other ordinance.

5 (4) In a local government that has adopted codes by
6 reference pursuant to subsection (1), the chief executive
7 may adopt administrative regulations which incorporate by
8 reference subsequent changes and amendments thereof,
9 properly identified as to date and source, that have been
10 adopted by the agency or association which promulgated the
11 code if the chief executive finds that the changes and
12 amendments conform to nationally recognized standards,
13 accepted engineering practices, or state and national model
14 codes.

15 (5) Any administrative regulations which incorporate
16 code amendments by reference shall become effective upon the
17 expiration of 60 calendar days or after the fourth official
18 meeting of the governing body following the promulgation of
19 the regulation, whichever is later, unless within that
20 period of time a resolution disapproving the administrative
21 regulation shall have been adopted by the governing body.

22 (6) In addition to complying with all requirements for
23 the issuance of administrative regulations by the chief
24 executive, the filing requirement of subsection (1) of this
25 section shall be complied with in adopting amendments to

1 codes.

2 (7) Any ordinance adopting a code, portion, or
3 amendment by reference shall state the penalty for violating
4 the code, portion, or amendment, or any provision thereof
5 separately, and no part of any penalty shall be incorporated
6 by reference.

7 (8) For purposes of this section, "code" means any
8 published compilation of rules which has been prepared by
9 various technical trade associations, model code
10 organizations, federal agencies, or this state or any agency
11 thereof; and shall include specifically but shall not be
12 limited to: traffic codes, building codes, plumbing codes,
13 electrical wiring codes, health or sanitation codes, fire
14 prevention codes, inflammable liquids codes, together with
15 any other code which embraces rules pertinent to a subject
16 which is a proper local government legislative matter.

17 47A-3-309. Penalty for violation of ordinance. A local
18 government may fix penalties for the violation of an
19 ordinance which do not exceed a fine of \$500 or 6 months'
20 imprisonment or both the fine and imprisonment.

21 47A-3-310. Resolution requirements. (1) All
22 resolutions shall be submitted in the form prescribed by
23 resolution of the governing body.

24 (2) Resolutions may be submitted and adopted at a
25 single meeting of the governing body.

(3) If the plan of government allows the executive to veto resolutions, this power must be immediately exercised in writing at the same meeting. If the executive fails to act, the resolution shall be approved. If the executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

(4) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

(5) All resolutions shall be immediately effective unless a delayed effective date is specified.

47A-3-311. Interlocal agreements. (1) Any one or more local governments or public agencies may contract with any one or more other local governments or public agencies to perform any administrative service, activity, or undertaking which any of the public agencies entering into the contract are authorized by law to perform.

(2) In addition, and unless specifically prohibited by law or charter, a local government may contract with one or more political subdivisions of this or any other state or public agencies to:

(a) cooperate in the exercise of any function, power, or responsibility;

(b) share the services of any officer, department,

board, employee, or facility; and

(c) transfer or delegate any function, power, responsibility, or duty.

(3) An interlocal agreement shall be authorized, approved, and amended by the governing body of each party to the agreement, shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties, and shall specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of any separate legal entity created;

(c) the purpose or purposes of the interlocal agreement;

(d) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget;

(e) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination. The method or methods for termination shall include a requirement of 6 months' written notification of the intent to withdraw by the governing body of the public agency wishing to withdraw.

(f) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting

1 parties on the joint board;
 2 (g) the manner of acquiring, holding, and disposing of
 3 real and personal property used in the joint or cooperative
 4 undertaking; and
 5 (h) any other necessary and proper matters.
 6 (4) Every agreement and amendment made shall, prior to
 7 and as a condition precedent to its final adoption and
 8 performance, be submitted to the municipal or county civil
 9 attorney who shall determine whether the agreement is in
 10 proper form and compatible with the laws of the state of
 11 Montana. The civil attorney shall approve any agreement
 12 submitted to him unless he finds it does not meet the
 13 conditions set forth in this section and shall detail in
 14 writing addressed to the governing bodies of the public
 15 agencies concerned the specific respects in which the
 16 proposed agreement fails to meet the requirements of law.
 17 Failure to disapprove an agreement within 30 days of its
 18 submission shall constitute approval.
 19 (5) Every agreement and amendment including the state
 20 or a state agency shall, prior to and as a condition
 21 precedent to its final adoption and performance, be
 22 submitted to the chief legal counsel of the agency or to the
 23 attorney general who shall determine whether the agreement
 24 is in proper form and compatible with the laws of the state
 25 of Montana. The chief legal counsel of the agency or the

1 attorney general shall approve any agreement submitted to
 2 him unless he finds it does not meet the conditions set
 3 forth in this section and shall detail in writing addressed
 4 to the governing bodies of the public agencies concerned the
 5 specific respects in which the proposed agreement fails to
 6 meet the requirements of law. Failure to disapprove an
 7 agreement within 30 days of its submission shall constitute
 8 approval.
 9 (6) Within 10 days after final approval and prior to
 10 commencement of performance, the interlocal agreement shall
 11 be filed with the county records administrator of the county
 12 or counties where the public agencies are located and with
 13 the department of community affairs.
 14 47A-3-312. Franchises. (1) A local government may
 15 grant a franchise for a service the local government is
 16 authorized to provide for a term not to exceed 25 years. The
 17 franchise may be granted, amended, extended, or renewed only
 18 by ordinance.
 19 (2) An ordinance granting a franchise shall state:
 20 (a) the duration of the franchise;
 21 (b) the rights and responsibilities of the franchisee
 22 and conditions thereon including performance bonds; and
 23 (c) the amount of the fee to be paid for the franchise
 24 or the method by which the amount to be paid is to be
 25 calculated.

1 (3) An ordinance granting a franchise without election
2 may be adopted only after notice and a public hearing and
3 may not exceed 5 years.

4 (4) (a) No ordinance granting, amending, extending, or
5 renewing a franchise for electrical, gas, or telephone
6 utilities shall be effective until approved by the electors
7 of the local government granting the franchise.

8 (b) The question of granting, amending, extending, or
9 renewing a franchise shall be submitted to the electors in
10 the same manner as other questions are submitted to the
11 electors.

12 (c) The person seeking the franchise shall pay all
13 costs of the franchise election.

14 (5) As provided in 70-301, utilities regulated by the
15 public service commission have the right to use the
16 trafficways of a local government but a local government may
17 establish a reasonable permit fee with reasonable terms and
18 conditions with reasonable exceptions as determined by the
19 governing body of the local government. A dispute as to
20 whether the fees, terms, conditions, or exceptions are
21 reasonable shall be resolved by the public service
22 commission.

23 47A-3-313. Initiative and referendum. (1) The powers
24 of initiative and referendum are reserved to the electors of
25 each local government. Resolutions and ordinances within the

1 legislative jurisdiction and power of the governing body of
2 the local government, except those set out in subsection (2)
3 of this section, may be proposed or amended and prior
4 resolutions and ordinances may be repealed in the manner
5 provided in this section.

6 (2) The powers of initiative shall not extend to the
7 following:

8 (a) the annual budget;

9 (b) property tax levies;

10 (c) bond proceedings, except for bonds authorizing
11 ordinances;

12 (d) the establishment and collection of charges
13 pledged for the payment of principal and interest on bonds;
14 or

15 (e) the levy of special assessments pledged for the
16 payment of principal and interest on bonds.

17 (3) The electors may initiate and amend ordinances and
18 require submission of existing ordinances to a vote of the
19 people by petition. If submitted prior to the ordinance's
20 effective date, a petition requesting a referendum on the
21 ordinance shall delay the ordinance's effective date until
22 the ordinance is ratified by the electors. A petition
23 requesting a referendum on an emergency ordinance filed
24 within 30 days of its effective date shall suspend the
25 ordinance until ratified by the electors.

1 (4) The governing body may refer existing or proposed
2 ordinances to a vote of the people by resolution.

3 (5) A petition or resolution for initiative or
4 referendum shall:

5 (a) embrace only a single comprehensive subject; and

6 (b) set out fully the ordinance sought by petitioners,
7 or in the case of an amendment, set out fully the ordinance
8 sought to be amended and the proposed amendment, or in the
9 case of referendum, set out the ordinance sought to be
10 repealed.

11 (6) (a) The governing body may, within 60 days of
12 receiving the petition, take the action called for in the
13 petition. If the action is taken, the question need not be
14 submitted to the electors.

15 (b) If the governing body does not, within 60 days,
16 take the proposed action, then the question shall be
17 submitted to the electors at the next school, primary, or
18 general election or a special election called for that
19 purpose. Before submitting the question to the electors, the
20 governing body may direct that a suit be brought in district
21 court by the local government to determine whether the
22 petition is regular in form, has sufficient signatures, and
23 whether the proposed action would be valid and
24 constitutional.

25 (c) The complaint shall name as defendants not less

1 than 10 or more than 20 of the petitioners. In addition to
2 the names of the defendants, to the caption of the complaint
3 there shall be added the words: "and all petitioners whose
4 names appear on the petition for an ordinance filed on the
5 day of, in the year", stating the
6 date of filing. The summons shall be similarly directed and
7 shall be served on the defendants named therein, and in
8 addition shall be published.

9 (d) If an ordinance is repealed or enacted pursuant to
10 a proposal initiated by the electors of a local government,
11 the governing body may not for 2 years reenact or repeal the
12 ordinance. If during the 2-year period the governing body
13 enacts an ordinance similar to the one repealed pursuant to
14 a referendum of the electors, a suit may be brought to
15 determine whether the new ordinance is a reenactment without
16 material change of the repealed ordinance. This section
17 shall not prevent exercise of the initiative, at any time,
18 to procure a reenactment of an ordinance repealed pursuant
19 to referendum of the electors.

20 (7) (a) Any ordinance proposed by petition or any
21 amended ordinance proposed by petition or any referendum on
22 an ordinance which is entitled to be submitted to the
23 electors shall be voted on at the next regular election to
24 be held in the local government unless:

25 (i) the petition asks that the question be submitted

at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(ii) the governing body calls for a special election on the question.

(b) If the adequacy of the petition is determined by the elections administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election, unless a special election is called.

(c) Whenever a measure is ready for submission to the electors, the elections administrator shall, in writing, notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of referendum, the ordinance sought to be repealed shall be published.

(d) The question shall be placed on the ballot giving the electors a choice between accepting or rejecting the proposal.

(e) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal.

47A-3-314. Legislative organization and procedure for town meeting. Except for the sections in this part on public

participation (47A-3-302), interlocal agreements (47A-3-311), initiative and referendum (47A-3-313), and franchises (47A-3-312), the legislative body of a town meeting form of government is exempt from the provisions of this part, but the town meetings shall adopt rules of procedure governing its enactment of ordinances, resolutions, and taxes.

Part 4

Administrative Structure

47A-3-401. Office of the chief executive. (1) The chief executive may establish divisions in his office to carry out his assigned responsibilities.

(2) The chief executive may appoint temporary advisory committees. Confirmation by the governing body of temporary advisory committees is not required. Temporary advisory committees shall be abolished within 1 year of their creation.

47A-3-402. Creation of departments. (1) Unless the adopted plan of government specifies department structure, the governing body shall prescribe by ordinance the office, department, and board structure of the local government and may prescribe the functions of all offices, departments, and boards, except that no function required by this title may be discontinued.

(2) Two or more local governments may provide for

joint departments. The joint departments shall be established by interlocal agreements.

(3) The governing body shall by ordinance assign any function mandated by state law to an appropriate office, department, or board.

(4) The functions assigned to the following positions by this title shall be allocated by ordinance among the departments and officers and employees of the local government:

- (a) records administrator;
- (b) elections administrator;
- (c) civil attorney;
- (d) finance administrator; and
- (e) budget administrator.

(5) The following county functions mandated by chapter 8 of this title shall be allocated by ordinance among the departments, officers, and employees of the county:

- (a) chief law enforcement administrator;
- (b) clerk of the district court;
- (c) assessor;
- (d) public prosecutor;
- (e) public administrator; and
- (f) superintendent of schools.

47A-3-403. Direction of departments. (1) All departments shall be under the direction and supervision of

the chief executive specified in the plan of government in force in the local government.

(2) Department heads shall be selected in the manner provided by the plan of government in force in the local government.

(3) If the plan so provides, or with the consent of the governing body, the chief executive may act as head of one or more departments.

(4) The governing body may provide for departments headed by elected officials.

(5) The governing body shall prescribe by ordinance the duties and powers of department heads.

(6) The governing body may prescribe by ordinance the qualifications for department heads.

(7) The governing body may require reports from the chief executive and for purposes of investigation may require reports from department heads and employees.

47A-3-404. Boards. (1) The governing body may by ordinance establish advisory or administrative boards. The ordinance creating a board shall specify the number of board members; terms of board members; whether board members shall be entitled to mileage, per diem, expenses, and a salary; and any special qualifications for membership on the board in addition to those established by this title.

(2) An advisory board may be created to assist a

1 department or subordinate service district. An advisory
2 board may furnish advice, gather information, make
3 recommendations, and perform other activities as may be
4 necessary to comply with federal funding requirements. It
5 does not have the power to administer programs or set
6 policy.

7 (3) An administrative board may be assigned
8 responsibility for a department or a subordinate service
9 district.

10 (4) An administrative board may exercise
11 administrative powers as granted by ordinance, except that
12 it may not be authorized to pledge the credit of the local
13 government, impose a tax, or sue or be sued independently of
14 the local government. It may administer programs, set
15 policy, and adopt rules of procedure and administrative
16 rules.

17 (5) Administrative boards may be made elective.

18 (6) Board members shall be appointed in the manner
19 provided in the plan of government. The appointing authority
20 shall post prospective vacancies at least 1 month prior to
21 filling a vacancy on a board.

22 (7) The chief executive shall maintain a register of
23 appointments including:

24 (a) the name of the board;

25 (b) the date of appointment and confirmation, if any

1 is required;

2 (c) the length of term;

3 (d) the name and term of the chairman and other
4 officers of each board; and

5 (e) the date, time, and place of regular monthly or
6 other regularly scheduled meetings.

7 (8) Terms of all board members except elected board
8 members shall not exceed 4 years. Unless otherwise provided
9 by ordinance, board members shall serve terms beginning on
10 July 1 and shall serve at the pleasure of the appointing
11 authority.

12 (9) A board shall contain at least five members. All
13 boards shall consist of an odd number of members.

14 (10) The ordinance creating a board may provide for
15 voting or nonvoting ex officio members.

16 (11) Two or more local governments may provide for
17 joint boards. The joint boards shall be established by
18 interlocal agreements.

19 (12) A majority of the board members shall constitute a
20 quorum for the purpose of conducting business and exercising
21 powers and responsibilities. Board action may be taken by a
22 majority vote of those present and voting, unless the
23 ordinance creating the board or rules of procedure of the
24 board requires otherwise.

25 (13) All boards shall provide for the keeping of

1 written minutes which include the final vote on all board
2 actions indicating the vote of each individual member on the
3 question.

4 (14) All boards shall by rule provide for date, time,
5 and place of regular monthly or other regularly scheduled
6 meetings. This information shall be filed with the chief
7 executive.

8 (15) Unless otherwise provided by law, a person must be
9 a resident of the local government to be eligible for
10 appointment to a board. The governing body may prescribe by
11 ordinance additional qualifications for appointment to
12 boards.

13 (16) A person may be removed from a board for cause by
14 the appointing authority or as provided by ordinance.

15 47A-3-405. Appointment of youth to boards. (1)
16 Notwithstanding any provision of law relating to age, the
17 local government appointing authority may appoint
18 youth--persons 16 to 18 years old--who are local government
19 residents, to boards.

20 (2) Youth may be appointed to local government boards
21 requiring special qualifications for membership if the
22 proposed nominees, except for their age, meet the
23 qualifications set by law or ordinance.

24 (3) Youth appointed to local government boards under
25 this section are entitled to the rights, privileges, and

1 responsibilities of other members when acting as board
2 members, and their appointments are subject to confirmation
3 by the governing body when required by law, ordinance, or
4 charter.

5 47A-3-406. Officers of local government. (1) The
6 elected officers of a local government are those officers
7 specified:

8 (a) in the plan of government adopted by the local
9 government;

10 (b) by ordinance adopted by the governing body; or

11 (c) as required by state law.

12 (2) The term of each elected local government officer
13 shall be the term specified in the plan of government,
14 ordinance, or state law.

15 (3) Each officer must continue to discharge the duties
16 of his office until his successor is qualified even though
17 his term has expired.

18 (4) Each officer is entitled to the possession of all
19 books and papers pertaining to his office or in the custody
20 of a former officer by virtue of his office.

21 (5) When an officer discharges ex officio the duties
22 of another office than that to which he is elected or
23 appointed, his official signature and attestation, except as
24 otherwise provided by law, must be in the name of the
25 officer whose duties he discharges.

1 47A-3-407. Vacancy in office. (1) An office shall be
2 considered vacant if any one of the following conditions
3 exists:

4 (a) the incumbent fails to meet the qualifications for
5 office;

6 (b) the incumbent refuses or neglects to take and
7 subscribe to an official oath required by law;

8 (c) the incumbent refuses or neglects to secure an
9 official bond required by law or ordinance;

10 (d) the incumbent resigns;

11 (e) the incumbent is successfully recalled as provided
12 in 47A-3-517;

13 (f) the incumbent ceases to meet any residency
14 requirements for office;

15 (g) the incumbent is removed from office by judicial
16 proceedings as provided in 94-7-401 and 94-8-416;

17 (h) the election or appointment of the incumbent is
18 declared void by a judicial proceeding;

19 (i) the incumbent is convicted of a felony, an offense
20 involving moral turpitude, or a violation of his official
21 duties;

22 (j) the incumbent ceases to discharge the duties of
23 his office for a period of 3 months, except when prevented
24 by sickness or excused by the governing body of the local
25 government;

1 (k) the incumbent is declared of unsound mind;

2 (1) the governing body determines that the incumbent
3 has become disabled to the degree that he cannot perform the
4 duties of his office; or

5 (m) the incumbent dies.

6 (2) Whenever an office is declared or becomes vacant
7 as a result of judicial proceedings, the body or judge
8 before whom the proceedings were held must notify the
9 governing body of the local government in which the officer
10 served.

11 (3) (a) Unless otherwise provided by law or charter,
12 all vacancies in offices, except in the governing body,
13 shall be filled by appointment by the governing body.

14 (b) Vacancies in the governing body are filled as
15 provided in 47A-3-303.

16 (4) To be eligible for appointment to a vacancy in an
17 elected office, the person appointed must meet all of the
18 requirements for election to the office.

19 (5) A person appointed to fill a vacancy shall serve
20 until the next regularly scheduled local election, at which
21 time the remainder of the term shall be filled by election.

22 47A-3-408. Suspension. The governing body may suspend
23 an elected officer if indicted for a felony, an offense
24 involving moral turpitude, or a violation of his official
25 duties.

1 47A-3-409. Resignation. Resignation of officers must
2 be in writing to the governing body.

3 47A-3-410. Consolidation of offices. (1) The governing
4 body of a county may by ordinance combine any two or more
5 elected offices into a single office.

6 (2) A municipal governing body may by ordinance
7 eliminate the separate office of elected treasurer.

8 (3) The governing body may adopt an ordinance
9 consolidating elected offices only after notice and a public
10 hearing on the proposed ordinance.

11 (4) The ordinance consolidating elected offices shall
12 not be effective until the expiration of the existing
13 officeholders' terms or until a vacancy occurs in one of the
14 offices. The offices so consolidated shall remain
15 consolidated until the ordinance is amended or repealed.

16 47A-3-411. Civil attorney. (1) The governing body
17 shall provide by ordinance for a civil attorney who may be
18 the public prosecutor. The designation of an elected
19 prosecuting attorney as civil attorney or the reassignment
20 of the civil attorney function to a person other than the
21 elected public prosecutor shall be completed at least 90
22 days before the date of the primary election for the office
23 and may not be changed during the term of the prosecuting
24 attorney, except with the consent of that officer.

25 (2) The local government civil attorney shall be the

1 attorney for all officers, departments, boards, subordinate
2 service districts, and local improvement districts of the
3 local government, except that the governing body may require
4 that interested parties retain another attorney or pay
5 special fees to the civil attorney to prepare necessary
6 documents for the creation of subordinate service districts,
7 local improvement districts, and authorities.

8 (3) The civil attorney shall not be the attorney for
9 authorities except that, at the discretion of the governing
10 body, the civil attorney may serve as attorney for
11 authorities and be compensated by the authorities.

12 (4) The governing body may authorize the employment of
13 special legal counsel and shall authorize the employment of
14 special legal counsel in the event that a conflict of
15 interest would prohibit the civil attorney from serving as
16 attorney for the local government, officers, departments,
17 boards, subordinate service districts, or local improvement
18 districts.

19 (5) The municipal civil attorney shall be the
20 prosecutor in all actions for the violation of a municipal
21 ordinance.

22 47A-3-412. Authorities. (1) A local government may
23 establish authorities in the manner provided by law.

24 (2) Authorities include:

25 (a) municipal and regional airport authorities as

1 provided in Title 1, chapter 9;
 2 (b) conservancy districts as provided in Title 89,
 3 chapter 34;
 4 (c) conservation districts as provided in Title 76,
 5 chapter 1;
 6 (d) county water and sewer districts organized before
 7 the effective date of this title as provided in Title 16,
 8 chapter 45; however, no additional districts may be
 9 organized;
 10 (e) drainage districts as provided in Title 89,
 11 chapter 23;
 12 (f) hospital districts as provided in Title 16,
 13 chapter 43;
 14 (g) housing authorities as provided in 47A-6-4209; and
 15 (h) irrigation districts as provided in Title 89,
 16 chapter 12.
 17 (3) Authorities shall prepare budgets in the manner
 18 provided by law and rules promulgated by the department of
 19 community affairs.
 20 (4) Mill levies established by authorities shall be
 21 certified to the county finance administrator for
 22 collection.
 23 (5) All funds of the authorities shall be administered
 24 by a local government, and they are subject to the
 25 accounting and reporting procedures established by the

1 department. A local government administering funds for an
 2 authority shall be reimbursed by the authority for the costs
 3 of financial administration.
 4 (6) Each authority shall file its budget and annual
 5 financial report with the department of community affairs.
 6 (7) Employees of authorities are entitled to all the
 7 same benefits as other local government employees provided
 8 by Title 47, chapter 4.
 9 47A-3-413. Reorganization of departments and boards.
 10 (1) Each fiscal year the chief executive shall file a plan
 11 showing the organizational chart of the executive branch
 12 with the governing body and the department of community
 13 affairs. The plan shall indicate the number of employees and
 14 the lines of responsibility.
 15 (2) At any time the chief executive may submit
 16 proposed changes in department and board structure to the
 17 governing body.
 18 (3) Within 6 months of the submission of proposed
 19 changes in department and board structure, the governing
 20 body shall act on the proposals.
 21 47A-3-414. Transition to new plan of government. (1)
 22 Following a change in the plan of government, if the new
 23 plan does not specify a department and board structure, the
 24 department structure of the preceding plan of government
 25 shall continue to function and remain in existence until a

1 new department structure is adopted.

2 (2) Within 10 months of the change in the plan of
3 government, the chief executive shall submit a proposed
4 department structure to the governing body.

5 (3) Within 4 months of the submission of a proposed
6 department and board structure, the governing body shall
7 adopt a department and board structure.

8 47A-3-415. Reorganization of existing districts. (1)
9 (a) All districts created by previous law, except special
10 improvement districts, rural improvement districts, and
11 districts created for authorities, are reorganized by this
12 section into subordinate service districts on the effective
13 date of this title.

14 (b) Such districts shall continue to possess any
15 property tax authority they possessed under previous state
16 law and shall be limited by the maximum mill levy limit
17 established by previous state law.

18 (c) Within 1 year of the effective date of this title,
19 the governing body shall adopt ordinances identifying each
20 existing district and its tax authority under previous state
21 law.

22 (2) Special improvement maintenance districts and
23 rural improvement maintenance districts are reorganized by
24 this section into subordinate service districts.

25 (3) Existing special improvement districts and rural

1 improvement districts shall have the status of local
2 improvement districts on the effective date of this title.

3 (4) Districts created for authorities identified in
4 47A-3-412 shall continue as authority districts.

5 (5) The chief executive shall review the status and
6 boundaries of all previous districts and submit a report
7 proposing the continuation, combination, enlargement,
8 reduction, or abolition as a part of the service plan
9 required by 47A-6-207.

10 (6) After notice as required by 47A-3-418 and
11 47A-3-419, the governing body may by ordinance continue,
12 combine, enlarge, reduce, or abolish subordinate service
13 districts reorganized under this section.

14 (7) Boards established by previous state law to
15 administer districts may be reorganized under the provisions
16 of 47A-3-416.

17 47A-3-416. Transition of existing boards. (1) The
18 state laws providing for the organization and operation of
19 the following boards shall be given the status of local
20 ordinances for 1 year following the effective date of this
21 title, and such boards shall continue to function during
22 this period under the respective laws until the boards are
23 reorganized by local ordinance:

24 (a) air pollution board;

25 (b) airport board;

1 (c) buildings and improvement management commission;
 2 (d) board of trustees of public cemetery;
 3 (e) county disaster committee;
 4 (f) economic opportunity and poverty relief
 5 commissions;
 6 (g) county fair commission;
 7 (h) district fair board of directors;
 8 (i) fire district trustees;
 9 (j) board of health;
 10 (k) interlocal cooperation commission;
 11 (l) library board;
 12 (m) local improvement district committee of
 13 supervisors;
 14 (n) mosquito abatement district board;
 15 (o) museum board;
 16 (p) open-space land planning commission;
 17 (q) board of park commissioners;
 18 (r) board of recreation;
 19 (s) parking commission;
 20 (t) zoning board of adjustment;
 21 (u) planning board and planning and zoning commission;
 22 (v) zoning commission;
 23 (w) department of public safety supervisors;
 24 (x) refuse disposal district board;
 25 (y) rural improvement district board;

1 (z) television district trustees;
 2 (aa) board of urban renewal agencies;
 3 (bb) board of urban transportation district;
 4 (cc) sanitary and storm sewer district commissioners;
 5 (dd) weed control and extermination district board;
 6 (ee) winter works committee; and
 7 (ff) housing authority.
 8 47A-3-417. Subordinate service districts. (1)
 9 Subordinate service districts to provide one or more of the
 10 services authorized by this title may be established,
 11 operated, altered, combined, enlarged, reduced, or abolished
 12 by the governing body by ordinance.
 13 (2) A subordinate service district may include all or
 14 any part of the jurisdictional area of the local government.
 15 Two or more local governments may create a joint subordinate
 16 service district by interlocal agreement.
 17 (3) A subordinate service district may:
 18 (a) provide a higher level of service of any service
 19 available on a jurisdiction-wide basis; or
 20 (b) provide a service that is not available on a
 21 jurisdiction-wide basis.
 22 (4) A subordinate service district shall be
 23 established according to criteria of need and economic
 24 operating efficiency.
 25 (5) A subordinate service district may not be

1 established if the service or services proposed to be
 2 provided can be provided either by an existing subordinate
 3 service district or by annexation to an incorporated
 4 municipality. The subordinate service district may be
 5 created if the municipality refuses or is unable to annex
 6 the area.

7 (6) The governing body may levy subordinate service
 8 district taxes, impose charges, or establish service charges
 9 in service districts to finance the services and facilities
 10 provided, or it may finance the services out of any other
 11 funds available other than general taxes.

12 47A-3-418. Establishment of subordinate service
 13 district. A subordinate service district may be established
 14 in the following manner:

15 (1) (a) The governing body of a local government may
 16 establish a subordinate service district by ordinance
 17 adopted after notice and public hearing; or

18 (b) If a petition signed by not less than 10% of the
 19 electors of a proposed subordinate service district
 20 requesting the local government to provide a service is
 21 presented to the governing body, the governing body shall
 22 set a date for a public hearing within 30 days and give
 23 notice of the hearing. Following the public hearing, the
 24 governing body may either adopt an ordinance creating the
 25 subordinate service district or refuse to act further on the

1 matter.

2 (2) (a) After adopting the ordinance, the governing
 3 body shall, in addition to all other requirements, publish
 4 notice of the adoption of the ordinance creating the
 5 subordinate service district. The notice shall include a
 6 statement setting out the electors' right to protest. If
 7 within 30 days of the notice 50% or more of the electors
 8 residing in the proposed subordinate service district file a
 9 protest, then the ordinance creating the subordinate service
 10 district shall be void.

11 (b) If hearings on protests indicate that a geographic
 12 area desires exclusion from the proposed subordinate service
 13 district, the governing body may amend the ordinance to
 14 exclude the property in that area.

15 (3) The governing body may conduct preliminary studies
 16 to determine the feasibility, necessity, and advisability of
 17 creating a subordinate service district.

18 (4) The governing body may by resolution require the
 19 petitioners to pay the costs of public notice and
 20 preliminary studies to determine the feasibility of the
 21 subordinate service district.

22 (5) The ordinance or petition to establish a
 23 subordinate service district shall include:

24 (a) the name of the proposed district;

25 (b) the services to be provided by the proposed

1 district;

2 (c) the convenience or necessity of the proposed

3 district;

4 (d) a map containing the boundaries of the proposed

5 district;

6 (e) the estimated cost of services to be provided and

7 methods of financing the proposed services;

8 (f) the method for administering the proposed

9 district; and

10 (g) the maximum mill levy limit for subordinate

11 service district taxes.

12 (6) (a) An ordinance authorizing, modifying, or

13 terminating a subordinate service district may be proposed

14 by initiative of electors within the district or submitted

15 to referendum of the electors within the proposed or

16 existing district.

17 (b) The procedures provided in 47A-3-313 shall apply,

18 except only electors of the proposed subordinate service

19 district may vote or sign petitions. An initiative or

20 referendum petition for a subordinate service district

21 requires signatures of 15% of the electors residing within

22 the district.

23 47A-3-419. Modification of a district. (1) After

24 receiving petitions or after adoption of an ordinance with

25 notice and public hearing as required in 47A-3-418, the

1 governing body may:

2 (a) increase, decrease, or terminate the type of

3 services that the subordinate service district is authorized

4 to provide, unless 50% of the electors residing in the

5 district protest;

6 (b) enlarge the district to include adjacent land if

7 50% or more of the electors residing in the proposed

8 addition do not protest;

9 (c) combine the subordinate service district with

10 another subordinate service district, unless 50% of the

11 electors in either district protest;

12 (d) abolish the subordinate service district, unless

13 50% of the electors in the district protest;

14 (e) reduce the area of the district by removing

15 property from the district, unless 50% of the electors

16 residing in the territory to be removed from the district

17 protest; and

18 (f) change the method for administering the

19 subordinate service district, unless 50% of the electors in

20 the district protest.

21 (2) These changes in subordinate service districts may

22 be submitted to the electors of the existing or proposed

23 district, whichever is larger, by initiative or referendum.

24 47A-3-420. Abolition of a district. (1) As provided in

25 47A-3-419, a governing body may abolish or combine

1 subordinate service districts.

2 (2) The ordinance abolishing or combining the
3 subordinate service district shall provide for the transfer
4 or other disposition of property and other rights, claims,
5 and assets of the subordinate service district.

6 (3) All obligations of the abolished subordinate
7 service district shall be paid from resources of the
8 subordinate service district.

9 (4) All costs of abolishing or combining the
10 subordinate service district shall be paid out of resources
11 of the subordinate service district.

12 (5) The abolition or combination of the subordinate
13 service district shall not affect the validity of any bond,
14 debt, contract, obligation, or cause of action accrued or
15 established under the subordinate service district.

16 (6) An ordinance for combining or abolishing a
17 subordinate service district shall provide for the equitable
18 disposition of the assets of the district, for adequate
19 protection of legal rights of employees of the district, and
20 for adequate protection of legal rights of creditors.

21 (7) If a district is abolished, the governing body may
22 assume all rights, duties, personnel, property, assets, and
23 liabilities of the former district.

24 47A-3-421. District boundaries. (1) If possible and
25 practicable, subordinate service district boundaries shall

1 conform to boundaries of other political subdivisions such
2 as school district or conform to township and range lines.

3 (2) A legal description of the boundaries of all
4 subordinate service districts shall be filed with the county
5 records administrator.

6 47A-3-422. Phased implementation. While implementing a
7 subordinate service district, a governing body may implement
8 services by geographical area of the district. Service
9 charges and taxes may be levied only against that part of
10 the district that is receiving the service.

11 47A-3-423. Annexation by a municipality. (1) If a
12 portion of a county subordinate service district or an
13 entire subordinate service district is annexed to a
14 municipality or is incorporated, the municipal governing
15 body may in the resolution annexing the area or after
16 annexation or incorporation of the area adopt an ordinance
17 after notice and public hearing to:

18 (a) authorize the county to continue to administer the
19 subordinate service district within the municipal limits;

20 (b) transfer administration of the subordinate service
21 district within the municipal limits to the municipality;

22 (c) abolish the subordinate service district within
23 the municipal limits and assume responsibility for providing
24 the services.

25 (2) The municipal ordinance is subject to all of the

provisions of 47A-3-419 except the protest provision.

(3) After a municipality assumes administration of a former county subordinate service district, the district has the status of a subordinate service district created by the municipality and may be operated, altered, combined, enlarged, reduced, or abolished by the municipal governing body.

47A-3-424. Joint subordinate service districts. Two or more local governments may create joint subordinate service districts. Each governing body shall follow the procedures prescribed in 47A-3-418 and shall adopt an interlocal agreement to prescribe administration of the district.

47A-3-425. Administration of subordinate service districts. (1) A subordinate service district may be administered directly as a part of a department with or without an advisory board or by an administrative board.

(2) A subordinate service district administered by an administrative board shall be attached to a department for purposes of budget submission.

(3) The budget for each subordinate service district shall be submitted by the department to which it is attached as a separate item in the department budget.

(4) On request, the county assessor shall provide the governing body with the assessed or taxable value of all property in a proposed or established subordinate service

district and a list of property owners upon the last completed assessment roll.

(5) Service charges for subordinate service districts may be entered on tax notices to be collected with other taxes. If a property owner fails to pay the service charges, they shall become a lien on the property.

(6) Moneys raised for a subordinate service district may be used only for subordinate service district purposes.

47A-3-426. Joint service and local improvement district. (1) A joint subordinate service and local improvement district may be created to provide services and to finance the acquisition and construction of facilities through special assessments.

(2) A joint district may be created by giving notice to all persons entitled to notice by 47A-3-418(2) and to all persons entitled to notice by 47A-3-427(7) and by complying with all requirements for the creation of a subordinate service district and a local improvement district.

(3) If within 30 days of notice of intent to create a joint district, either 50% of the electors or the owners of property bearing one-half of the estimated first-year cost protest, the governing body may not proceed with the joint district except under provisions of 47A-3-428.

47A-3-427. Local improvement districts. (1) The governing body may establish a local improvement district

1 for the purpose of financing capital improvements through
 2 special assessments on property within the district. The
 3 costs of the improvements include any or all of the kinds of
 4 expenses and materials referred to in 47A-9-501(4).

5 (2) Procedures to establish a local improvement
 6 district may be initiated by either:

7 (a) a petition to the governing body by the owners of
 8 one-half in assessed value of the property to be benefited
 9 or by one-half of the number of property owners in the area
 10 to be benefited or owners of one-half of the area of the
 11 property in the area to be affected; or

12 (b) resolution of the governing body, if it determines
 13 that the improvement is necessary and should be made.

14 (3) The petition or resolution shall recommend a
 15 method of payment for the costs.

16 (4) When a petition proposing a local improvement
 17 district is presented to the governing body, the governing
 18 body shall determine by resolution if:

19 (a) the proposed improvement is necessary and should
 20 be made; and

21 (b) the proposal has sufficient and proper
 22 petitioners.

23 (5) The findings of the governing body on the
 24 necessity of the proposal and the sufficiency of the
 25 petition are conclusive.

1 (6) When directed by the governing body, the chief
 2 executive shall develop a plan for the proposed improvement.
 3 It may require property owners petitioning for the
 4 improvement to pay, agree to pay, or file a surety bond
 5 securing the payment of part or all of the cost of
 6 developing the plan if it is not implemented. If the
 7 improvement is completed, the cost of the plan is
 8 assessable. The plan shall include:

9 (a) a general description of the improvement;

10 (b) a map of the district showing the location of the
 11 improvement and the location and designation of the lots and
 12 parcels of land in the district;

13 (c) an estimate of the cost, including not only
 14 construction cost but all other items of cost enumerated in
 15 47A-9-501(4) that are then foreseen as necessary to complete
 16 and pay for the improvement;

17 (d) an estimate of the amount of the cost to be levied
 18 upon the property within the district and the method or
 19 methods by which it is proposed to be apportioned in levying
 20 the special assessments, pursuant to 47A-3-430;

21 (e) a file of proposed special assessments for each
 22 and all of the lots and parcels of land within the district,
 23 each showing:

24 (i) the description of the property as shown on the
 25 tax list, corresponding to its designation on the map, and

1 its street address, if any; and
 2 (ii) the name and address of the owner as shown on the
 3 last property tax roll; and
 4 (f) if the governing body desires to establish at the
 5 initial hearing the special assessments necessary to pay the
 6 cost of the improvement, including the principal of and
 7 interest on bonds required to be issued for that purpose, it
 8 shall cause to be entered in the assessment file for each
 9 lot and parcel of land:
 10 (i) the estimated principal amount of the special
 11 assessment on the property;
 12 (ii) the number of annual installments in which the
 13 special assessment must be paid, with interest at least
 14 sufficient to pay interest on bonds issued for the
 15 improvement;
 16 (iii) the method of computing principal and interest on
 17 the special assessment, pursuant to 47A-3-430; and
 18 (iv) if the special assessment is to be deferred
 19 pursuant to 47A-3-430, the time and method of deferment.
 20 (7) (a) The governing body shall by resolution give
 21 preliminary approval to the creation of the local
 22 improvement district and to the proposed plan for the
 23 improvement and shall give notice of a public hearing and
 24 mail notice of the public hearing to every recorded owner of
 25 property within the local improvement district. The notice

1 shall include all of the information contained in the plan
 2 as required in 47A-3-427(6).
 3 (b) In the event that the governing body desires to
 4 establish at this hearing the special assessments to be
 5 levied for the improvement, mail notice of the hearing shall
 6 be given to the owner of each lot and parcel of land within
 7 the district at his address as shown in the special
 8 assessment file and to the street address of the property,
 9 if different, or shall be personally served by leaving a
 10 copy with the owner or with a person of suitable age and
 11 discretion residing at each such address, not less than 15
 12 days before the hearing. This notice shall include, in
 13 addition to the information contained in the published
 14 notice, the information as to the special assessment on the
 15 property as required in 47A-3-427(6)(f).
 16 (8) If the name or address of the owner of any lot or
 17 parcel of land cannot be ascertained from the property tax
 18 roll or from other official records of the local government
 19 and no person resides on the property, service of notice of
 20 the special assessment shall be considered complete upon
 21 publication.
 22 (9) A municipal governing body may not create a local
 23 improvement district including property outside its
 24 corporate limits, and a county governing body may not create
 25 a local improvement district including property within a

1 municipality; but they may by resolution jointly create a
 2 local improvement district including property within both
 3 such areas, and either one may delegate to the other the
 4 power to contract for and construct a local improvement
 5 therein and to assess the cost subject to final approval by
 6 the body having jurisdiction over the property. A local
 7 improvement district may include a major part or all of the
 8 property under the taxing jurisdiction of a local
 9 government, if the improvement is determined to benefit all
 10 such property and the governing body determines that the
 11 cost thereof should be paid from special assessments rather
 12 than from revenues or from ad valorem taxes on all property
 13 within its taxing jurisdiction.

14 47A-3-428. Protest and revisions. (1) The governing
 15 body may by resolution create the local improvement
 16 district, approve the plan, and proceed with the improvement
 17 if protests are not filed with the clerk of the governing
 18 body at or before the time of the hearing, signed by the
 19 following number of owners of property within the district:

20 (a) if special assessments are included in the
 21 improvement plan and notice, by the owners of property upon
 22 which more than one-half of the cost is proposed to be
 23 assessed;

24 (b) otherwise, by the owners of more than one-half of
 25 the area of the district, excluding streets and alleys.

1 (2) Property of the federal government, the state, the
 2 local government, any other local government, or school
 3 district shall be included in determining the sufficiency of
 4 objections unless the improvement plan provides that special
 5 assessments shall not be levied on such property.

6 (3) (a) If the improvement is the construction of a
 7 sanitary sewer, the governing body may by an affirmative
 8 vote of a majority of its members overrule the protests
 9 unless they have been filed by the owners of property
 10 representing 75% of the special assessments or the area, as
 11 the case may be, and may be overruled regardless of number
 12 if the governing body by unanimous vote determines that
 13 failure to construct the sewer will pose a threat to the
 14 public health.

15 (b) If the improvement consists of the paving, with
 16 necessary incidentals, of not more than one cross block to
 17 connect with streets or avenues already paved for a
 18 continuous distance of three blocks or more running
 19 substantially at a right angle with the single cross block
 20 proposed to be paved, the governing body may proceed
 21 regardless of protests. Otherwise, if sufficient protests
 22 are filed as provided in subsection (1) of this section, the
 23 governing body shall not create the local improvement
 24 district or proceed with the plan; but nothing herein shall
 25 prevent the construction and financing of the improvement by

1 any other method than the levy of special assessments.

2 (4) The governing body may adjourn the hearing from
3 time to time. Property owners shall have the right to
4 withdraw or to file protest at any time before final action
5 is taken by the governing body. Final action shall be taken
6 within a period not exceeding 3 months after the date of the
7 hearing as set forth in the original published notice.

8 (5) The governing body may revise an improvement plan
9 to meet protests and may approve and adopt the revised plan
10 after notice and hearing in the same manner as required for
11 the original plan.

12 (6) When special assessments are included in the
13 original improvement plan, protests to individual special
14 assessments may be presented by any property owner, with or
15 without protest to other provisions of the improvement
16 plan. Action taken with reference to such objections shall
17 not constitute a revision of the improvement plan. Such
18 special assessments shall be subject to all of the
19 provisions of 47A-3-430 through 47A-3-437.

20 47A-3-429. Payment of costs. The governing body shall
21 provide for making payment for improvement in any local
22 improvement district by the following method: As authorized
23 in chapter 9 of this title, the governing body shall sell
24 bonds or issue warrants in an amount sufficient to pay that
25 part of the total cost and expense of making the improvement

1 which is to be assessed against the property within the
2 district. The proceeds of the sale shall be used to make
3 payment to the contractor or contractors. The payment may be
4 made either from time to time on estimates made by the
5 engineer in charge of the improvements for the governing
6 body or upon the completion of the improvements and
7 acceptance thereof by the governing body.

8 47A-3-430. Assessment roll. (1) At any time upon or
9 after the creation of a local improvement district and
10 approval of the improvement plan for it, the governing body
11 may levy special assessments against each parcel of land
12 within the district, according to the method specified in
13 the improvement plan, in an aggregate amount not exceeding
14 the cost of the improvement as estimated at the time of the
15 levy. Parcels owned by the federal government, the state,
16 the local government, another local government, or a school
17 district may be included in or omitted from the levy of
18 special assessments as provided in the improvement plan.
19 Public streets and alleys shall be omitted. Public land, the
20 improvement of which is the subject of the assessment, such
21 as land improved for park or parking purposes, shall be
22 omitted from the assessment of the cost of that improvement.
23 The amount of special assessments that would be levied
24 against such property if not omitted, according to the
25 method or methods provided in the improvement plan, may be

1 paid by the local government.

2 (2) The special assessment to be levied against each
3 parcel may be determined by any of the following or
4 combination of the following methods, any of which may be
5 used in allocating either the entire cost or a specified
6 amount or fraction thereof or the cost of a specified part
7 of the improvement:

8 (a) (i) Frontage basis. Each parcel of land within the
9 district abutting upon the improvement shall have a special
10 assessment levied for that part of the whole cost which its
11 abutting frontage bears to the frontage on the improvement
12 of the entire district.

13 (ii) The frontage of a corner lot in a platted block
14 shall be considered its shorter dimension.

15 (iii) The special assessments for improvements on side
16 streets may be limited to the half blocks upon which they
17 abut.

18 (b) Area basis. Each assessable parcel may be assessed
19 that portion of the total cost which its area bears to the
20 total area of all assessable parcels.

21 (c) Value basis. Each assessable parcel may have a
22 special assessment levied against it in that proportion of
23 the cost which its current assessed valuation bears to the
24 total assessed valuation of all assessed parcels.

25 (d) Parcel basis. Each assessable parcel may have a

1 special assessment levied against it in an equal share of
2 the cost.

3 (e) Relative benefit basis. Each assessable parcel may
4 have a special assessment levied against it in that
5 proportion of the cost which the benefit estimated to be
6 derived by it from the improvement bears to the total
7 benefit estimated to be derived therefrom by all assessable
8 parcels. The governing body may apply one or a combination
9 of formulae to determine approximate relative benefits,
10 giving consideration to any special factors which would make
11 a formula special assessment substantially disproportionate
12 to the benefit to any individual parcel. Such formulae may
13 be based on one or a combination of characteristics of
14 assessable lots such as the following:

15 (i) proximity to the improvement;

16 (ii) vacant or improved;

17 (iii) zoning;

18 (iv) size and use of building and floor space,
19 estimated to continue substantially for the useful life of
20 the improvement;

21 (v) number or size of utility connections, estimated
22 to continue substantially for the useful life of a utility
23 improvement.

24 (3) The governing body shall, in its discretion,
25 select the method of special assessment which most nearly

1 matches the special assessment on each parcel to the benefit
2 received by the parcel.

3 (4) If the total amount of the special assessment
4 exceeds by more than 10% the estimated cost as stated in the
5 notice of hearing on the improvement plan pursuant to
6 47A-3-427(6) or a revision thereof pursuant to 47A-3-428,
7 the owners of property within the district may protest the
8 improvement in the manner as provided in 47A-3-428. If the
9 cost assessed does not exceed the estimate by more than 10%
10 or if a contract for the improvement has been finally
11 awarded, protests shall be limited to errors in the method
12 of determining the relative amounts to be levied as provided
13 in this section. At or after the hearing the governing body
14 may correct any errors and for that purpose may raise or
15 lower the amount of any special assessment, provided that an
16 additional hearing shall be held after similar published and
17 mailed notice if any special assessment is raised more than
18 10%.

19 (5) The governing body may provide for the payment of
20 special assessments in not more than 20 consecutive annual
21 installments. Each installment shall include the interest
22 for 1 year on the prepaid balance of principal at a rate
23 fixed by the governing body, not exceeding the contract
24 usury rate provided by law. The installments shall be
25 computed as follows:

1 (a) each installment shall include an equal principal
2 amount to which shall be added interest for 1 year at the
3 rate fixed on the aggregate principal amount of that and all
4 subsequent installments; or

5 (b) each installment shall be equal and shall be fixed
6 at the amount required to be paid annually in arrears to
7 amortize the amount of the assessment over a term of years
8 equal to the number of installments with interest at the
9 rate fixed.

10 (6) The governing body may provide for receiving
11 payment of the installments of the special assessments
12 before they become due and using the proceeds thereof in
13 paying for the project, redeeming the bonds, or investing
14 the proceeds.

15 (7) The governing body may determine the value of
16 improvements previously installed or work done and credit
17 the value of the improvements or work against the special
18 assessments levied against the affected property.

19 (8) The amount of the special assessments shall be
20 entered on a special assessment roll containing property
21 descriptions, names of the record owners, and the amount of
22 the assessment on each parcel.

23 (9) The governing body shall fix a time and place to
24 hear objections to the assessment roll. Notice of the
25 hearing and assessment shall be published.

1 (10) After the public hearing, the governing body shall
2 correct errors and any inequalities in the roll adopted and
3 certify it corrected.

4 47A-3-431. Reassessment. (1) The governing body may
5 correct any deficiency or mistake in a special assessment or
6 at any time increase a special assessment to include damages
7 awarded by a court against the district.

8 (2) Notice and hearing must conform to the initial
9 special assessment procedures.

10 (3) Payments on the initial special assessment are
11 credited to the property upon reassessment.

12 (4) The reassessment becomes a charge upon the
13 property notwithstanding failure to comply with any
14 provision of the levying procedure.

15 47A-3-432. Appeal of the special assessment roll. (1)
16 The decision of the governing body upon a protest may be
17 appealed to the district court within 30 days of the date of
18 confirmation of the special assessment roll.

19 (2) No other action may be named, except for the
20 filing of the appeal as to questioning the validity of the
21 special assessment.

22 (3) The court shall determine whether such property
23 levied has been properly included in the district and such
24 property has been properly assessed for the improvement. If
25 the court finds fault with either the inclusion of the

1 property in the improvement district, or the special
2 assessment to be levied on the property, it shall remit the
3 assessment to the governing body for either exclusion from
4 the improvement district or reassessment as provided in
5 47A-3-431. Nothing herein may be construed as to invalidate
6 the remaining special assessments.

7 (4) If no protest is filed or an appeal taken within
8 the time provided in this section, the special assessment
9 procedure shall be considered regular and valid in all
10 respects.

11 47A-3-433. Payment. (1) The municipal and county
12 finance officers shall annually certify by the first Friday
13 of September to the county finance administrator all special
14 assessments due. The special assessments shall be collected
15 in the same manner as property taxes.

16 (2) All special assessments shall be payable on or
17 before 5 p.m. on November 30 of each year, and in the event
18 the special assessments are not paid on or before that date,
19 the special assessments shall be subject to the same
20 interest and penalties for nonpayment as are provided by the
21 laws of the state of Montana for other delinquent taxes.

22 (3) All statutes providing for the levy and collection
23 of state and county taxes, including the collection of
24 delinquent taxes and sale of property for nonpayment of
25 taxes, are applicable to the special assessments provided

1 for under this section.

2 (4) When the payment of any one installment of special
3 assessment becomes delinquent, the governing body may by
4 resolution declare all subsequent installments of the
5 special assessment delinquent. The delinquent special
6 assessments shall be certified to the county finance
7 administrator, who shall collect the delinquent special
8 assessments in the same manner and at the same time as the
9 taxes are collected by him, and if the special assessments
10 are not paid, the whole property shall be sold, the same as
11 other property is sold for taxes.

12 47A-3-434. Delinquent special assessments may be
13 reinstated. Upon payment of the delinquent special
14 assessment installments, the governing body may by
15 resolution repeal the resolution declaring all subsequent
16 installments delinquent. The repeal and reinstatement may be
17 had and made at any time before or after sale of the
18 property for delinquent taxes and before the tax deed has
19 been executed. The certified copy of the resolution of the
20 governing body with reference to the payment, withdrawal,
21 and reinstatement filed with the finance administrator shall
22 be authority for the finance administrator to cancel and
23 withdraw the delinquent special assessments or any
24 installments thereof.

25 47A-3-435. Payment of special assessments under

1 protest — action to recover. When any special assessment
2 levied and assessed under any of the provisions of this
3 title is considered unlawful by the person whose property is
4 thus taxed or from whom the special assessment is demanded,
5 the person may pay the special assessment or any part
6 considered unlawful under protest to the finance
7 administrator; and the person so paying, or his legal
8 representative, may bring an action in any court of
9 competent jurisdiction against the local government in whose
10 behalf the same was collected to recover the special
11 assessment or any portion of it paid under protest; however,
12 any action instituted to recover any special assessment paid
13 under protest must be commenced within 60 days after the
14 date of payment. The special assessment paid under protest
15 shall be held by the finance administrator until the
16 determination of any action brought for its recovery.

17 47A-3-436. Mistakes or misnomers not to invalidate
18 special assessment. When under any of the provisions of this
19 title special assessments are levied against any lot or
20 parcel of land or a part of a parcel as the property of a
21 particular person, no misnomer of the owner or supposed
22 owner or other mistake relating to the ownership thereof
23 shall affect the special assessment or render it void.

24 47A-3-437. Annexation by a municipality. If a portion
25 of a county local improvement district or an entire local

1 improvement district is annexed to a municipality or is
 2 incorporated, the municipal governing body may, after the
 3 consent of the county governing body, in the resolution
 4 annexing the area or after annexation or incorporation of
 5 the area adopt an ordinance after notice and a public
 6 hearing to:

7 (1) authorize the county to continue to administer the
 8 local improvement district within the municipal limits; or

9 (2) transfer administration of the local improvement
 10 district within the municipal limits to the municipality.

11 Part 5

12 Elections

13 47A-3-501. General definitions. In this title, unless
 14 otherwise provided or the context requires a technical or
 15 other interpretation, the following definitions apply:

16 (1) "Ballot issue" means a question as defined in
 17 47A-3-501(4) that is submitted to the electors.

18 (2) "General election" means an election held
 19 throughout the state at times specified by law for the
 20 purpose of electing individuals to an office; it includes
 21 municipal and county general elections.

22 (3) "Primary" or "primary election" means an election
 23 held for the purpose of nominating candidates to public
 24 office; it includes municipal and county primary elections.

25 (4) "Questions submitted to the electors" includes any

1 initiative, referendum, recall, bond, franchise, annexation,
 2 incorporation, disincorporation, consolidation,
 3 confederation, merger, boundary alteration, amendment and
 4 adoption of a local government form, or any other issue
 5 required or permitted by law to be submitted to the electors
 6 at any special or regularly scheduled election. This term
 7 does not include the nomination or election of candidates
 8 for office.

9 (5) "Regularly scheduled election" means a general,
 10 primary, school, or other election held at times specified
 11 by law.

12 (6) "Special election" means an election held on a
 13 date other than the date of a school, primary, general, or
 14 other election regularly scheduled by law; or an election on
 15 one or more particular issues held in conjunction with but
 16 not required by law to coincide with a regularly scheduled
 17 election.

18 47A-3-502. Officers of local governments. The elected
 19 officers of a local government and their terms of office are
 20 those specified in 47A-3-406.

21 47A-3-503. Apportionment. If the plan of government
 22 adopted by a local government requires the nomination or
 23 election of members of the governing body by districts, the
 24 governing body shall by ordinance after each official state,
 25 local or federal census and may at any time make adjustments

1 in the boundaries of the districts as are necessary to make
 2 the districts as nearly equal in population as possible. The
 3 ordinance may be adopted only after notice has been given
 4 and a public hearing held. Immediately after adoption, a
 5 copy of the ordinance shall be filed with the elections
 6 administrator.

7 47A-3-504. Elections required. (1) A county election,
 8 at which officers are elected to those offices for which the
 9 terms of one or more incumbents expire, shall be held in the
 10 year next preceding the year in which the incumbents' terms
 11 expire.

12 (2) A municipal election, at which officers are
 13 elected to those offices for which the terms of one or more
 14 incumbents expire, shall be held in the year in which the
 15 incumbents' terms expire.

16 (3) (a) A municipality shall hold its general election
 17 on the first Tuesday in April in any year in which an
 18 election is required.

19 (b) A municipality shall hold its primary election on
 20 the first Tuesday in February preceding its general
 21 election.

22 (4) (a) A county shall hold its general election on
 23 the first Tuesday after the first Monday in November in any
 24 year in which an election is required.

25 (b) A county shall hold its primary election on the

1 first Tuesday in June preceding the county general election.

2 (5) Municipal officers shall begin their duties the
 3 first Monday in May following their election. County
 4 officers shall begin their duties on the first Monday in
 5 January following their election.

6 (6) A county, after notice has been given and a public
 7 hearing held, may adopt an ordinance rescheduling county
 8 elections to coincide with municipal elections. If county
 9 elections are scheduled to coincide with municipal
 10 elections, elected county officers shall begin their duties
 11 the first Monday in May following their election.

12 47A-3-505. Qualification of local government electors.

13 (1) Any person who has registered as an elector as
 14 prescribed in Title 23 is an elector of the local government
 15 of which he is a resident.

16 (2) As provided in Title 23, the elections
 17 administrator of the county shall supply a municipality with
 18 precinct registers prior to any municipal election unless
 19 informed as provided in Title 23 that precinct registers are
 20 not needed.

21 (3) When it is necessary to determine the number of
 22 electors of a local government for any purpose, including
 23 petitions, the number of electors voting at the last
 24 preceding general election held by that local government
 25 shall be considered the number of electors.

1 47A-3-506. Qualifications of local government
2 officials. (1) Except as provided in this section, a person
3 is eligible to local government elective office if he is a
4 resident and an elector of the local government and if he
5 meets the district residence requirements for the office, if
6 any, imposed by the plan of government.

7 (2) In addition to the requirements established by
8 subsection (1), to be eligible for the offices of civil
9 attorney or prosecuting attorney a person must be admitted
10 to the practice of law in Montana.

11 (3) In addition to the requirements established by
12 subsection (1) to be eligible for the elective office of
13 county superintendent of schools, a person must:

14 (a) hold a valid teacher certificate issued by the
15 superintendent of public instruction; and

16 (b) have at least 3 years of successful teaching
17 experience.

18 47A-3-507. Precincts — districts — polling places.

19 (1) The county governing body, after consultation with the
20 governing bodies of all municipalities within the county and
21 in consideration of the recommendations of all applicable
22 elections administrators, shall establish precincts for both
23 municipal and county elections as provided in Title 23,
24 chapter 31.

25 (2) (a) At least 60 days before the election being

1 held, the county governing body shall designate one or more
2 polling places for each precinct for all state and county
3 elections.

4 (b) In cases of emergency, polling places may be
5 changed by the governing body after the date prescribed in
6 this section. Notice must be, if possible, published once,
7 and notice shall be posted at the old and new polling
8 places.

9 (3) (a) At least 30 days before any municipal
10 election, the municipal governing body shall designate
11 polling places for the election. In a municipal election two
12 or more precincts may have a single polling place.

13 (b) In cases of emergency, polling places may be
14 changed by the governing body after the date prescribed in
15 this section. Notice must be, if possible, published once,
16 and notice shall be posted at the old and new polling
17 places.

18 (4) When members of the governing body are to be
19 nominated or elected by districts, there shall be at least
20 one polling place for each district, except that in
21 municipalities with a population of less than 1,500 as
22 determined by the most recent official census, the governing
23 body may provide for a single polling place by ordinance.

24 (5) Polling places may be located outside of the
25 boundaries of a precinct.

1 47A-3-508. Partisan nomination. Nomination for a local
2 government office by an individual in primary partisan
3 elections shall be as provided in Title 23, chapter 33.

4 47A-3-509. Election procedures for partisan primary
5 and partisan general elections. (1) Except as otherwise
6 provided by this section, local government partisan primary
7 and general elections shall be conducted, canvassed, and the
8 results returned as provided in Title 23. In municipal
9 elections the governing body of a municipality shall perform
10 the functions assigned to the county governing body in Title
11 23. If a member of the municipal governing body cannot
12 attend the meeting required by 23-4009, the governing body
13 shall fill the number of vacancies by appointing other
14 elected or appointed municipal officials.

15 (2) The governing body of each local government shall
16 designate an officer or employee to perform the function of
17 registrar as provided in Title 23. The person designated
18 shall be the elections administrator. County elections
19 administrators shall be responsible for registration of
20 electors in the county, including all municipalities.

21 (3) If the number of candidates to be entered on the
22 primary ballot for each office does not exceed twice the
23 number of candidates to be elected for the respective
24 offices, a primary election shall not be held in that year
25 and all candidates entered on the primary ballot shall be

1 deemed nominated for their respective offices and shall have
2 their names placed on the general election ballot.

3 (4) Candidates for nomination, equal to twice the
4 number to be elected at the general election for that
5 office, who receive the highest number of votes cast at the
6 primary or nominees determined under subsection (3) of this
7 section are nominees for office and shall have their names
8 entered on the general election ballot.

9 (5) Certification of election shall be delivered by
10 each elections administrator to those persons elected.
11 Elections administrators shall file the results of local
12 government elections with the secretary of state, and the
13 elections administrator of each municipality shall also file
14 the results of municipal elections with their county
15 elections administrator.

16 47A-3-510. Nonpartisan nomination. (1) Each candidate
17 for a nonpartisan primary election shall send a declaration
18 of nomination, as prescribed in 23-3304, to the elections
19 administrator of the local government in which he seeks
20 office.

21 (2) A candidate successfully completing the
22 requirements of this section shall have his name entered on
23 the nonpartisan primary election ballot as provided in
24 47A-3-511.

25 47A-3-511. Nonpartisan primary ballot and election.

1 (1) Except as otherwise provided in this section, a
2 nonpartisan primary election shall be conducted, canvassed,
3 and its results returned in the same manner as a partisan
4 primary election.

5 (2) Ballots in a nonpartisan primary election shall
6 contain only the name of the candidate and the office to
7 which the candidate seeks election.

8 (3) Electors voting at a nonpartisan primary election
9 may vote for one candidate for each office.

10 (4) If the number of candidates to be entered on the
11 nonpartisan primary ballot for each office does not exceed
12 twice the number of candidates to be elected for the
13 respective offices, a nonpartisan primary election shall not
14 be held in that year and all candidates entered on the
15 nonpartisan primary ballot shall be deemed nominated for
16 their respective offices and shall have their names placed
17 on the nonpartisan general election ballot.

18 (5) Candidates for nomination, equal to twice the
19 number to be elected at the nonpartisan general election for
20 that office, who receive the highest number of votes cast at
21 the nonpartisan primary or nominees determined under
22 subsection (4) of this section are nominees for office and
23 shall have their names entered on the nonpartisan general
24 election ballot.

25 47A-3-512. Nonpartisan general elections. A

1 nonpartisan general election shall be conducted, canvassed,
2 and its results returned in the same manner as a partisan
3 general election except that party designation may not
4 appear on the ballot.

5 47A-3-513. Election procedures for questions submitted
6 to the electors. (1) An election on a question submitted to
7 the electors may be held at a special election called for
8 that purpose or may be held with any school, primary,
9 general, or other election.

10 (2) An election on a question submitted to the
11 electors shall be conducted, canvassed, and returned in the
12 manner provided in Title 23 and this chapter for general
13 elections; however, if the question is submitted to the
14 electors at any school, primary, general, or other election,
15 separate ballots may be used and separate tally books shall
16 be kept.

17 (3) Unless otherwise provided, the affirmative vote of
18 a majority of those voting on the question shall be required
19 for adoption.

20 (4) If the question is submitted at a general or
21 primary election, the polls shall be kept open during the
22 same hours as are fixed for the general or primary election
23 and the judges and clerks for the general or primary
24 election shall act as the judges and clerks for the
25 election.

(5) If the question is submitted at a special election called for that purpose, the governing body shall fix the hours through which the polls are to be kept open. The polls shall be open for at least 8 hours. The governing body may appoint a smaller number of election judges than is required for a general election, but in no case shall there be less than three judges in each precinct. Judges shall act as their own clerks.

(6) If the question is submitted at a special election called for that purpose, two or more precincts may have a single polling place.

(7) If the question is submitted at a special election called for that purpose, the governing body shall meet as soon as practicable but no later than 10 days after the date of holding the special election and canvass the returns.

47A-3-514. Bond election procedures. (1) As provided in 47A-9-510, a local government must submit to the electors at a regular or special election all proposed general obligation bond authorizations.

(2) General obligation bond elections shall be conducted, canvassed, and returned in the manner provided in 47A-3-513.

(3) Any elector of the local government may vote in the general obligation bond election.

(4) Before a general obligation bond issue election,

the governing body shall give notice, which shall include:

(a) the date of election;

(b) the hours of election;

(c) the amount and purpose of the proposed bond issue;

(d) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the local government;

(e) the estimated cost of debt service for the next year if the bond issue is not approved and the estimated cost if the bond issue is approved; and

(f) other information as the governing body may determine necessary.

(5) Upon the adoption of the resolution calling for a special election and the filing of the resolution with the elections administrator, the elections administrator must cause a notice to be published stating that registration for the bond election will close at 5 p.m. of the 30th day prior to the date for holding the election, and at that time the registration books shall be closed for the election. This notice shall supersede the notice required by 23-3016.

(6) The bond authorization ordinance ballot shall contain a question stating:

FOR (the purpose or purposes and the amount or amounts of the bond)

AGAINST (the purpose or purposes and the amount or

amounts of the bond).

47A-3-515. Elections for administrative boards and community councils. A governing body may provide procedures for the nomination and election of the members of administrative boards and community councils by ordinance.

47A-3-516. Elections on questions submitted to electors within a district. (1) Elections on questions submitted to electors within a proposed or existing subordinate service district through the process of initiative or referendum shall be held at the next county or municipal general or primary election unless the governing body of the county calls a special election or the petition requesting the election contains the signatures of at least 25% of the electors residing in the proposed or existing district and it requests a special election.

(2) If the proposed or existing subordinate service district is to be located in more than one county, after each county's petition has been certified by its elections administrator, petitions shall be submitted to the elections administrator of the county in which over one-half of the proposed or existing district is located, who shall be responsible for coordinating the election.

(3) Unless otherwise provided in this section, the election, if needed, shall be conducted, canvassed, and returned by the county as provided in 47A-3-513 for

questions submitted to the electors and in accordance with 47A-3-313 for initiative and referendum.

47A-3-517. Recall. (1) Except as provided in this section the holder of any elective office in a local government may be removed at any time by the electors of the local government in the manner provided by this section.

(2) An elected official shall not be subject to the provisions of this section for:

(a) a period of 180 days following the date of taking office after being elected; and

(b) a period of 180 days following an unsuccessful recall election.

(3) In order to remove any incumbent officer, a recall petition must be filed. The petition shall:

(a) demand an election for recall of the officer sought to be recalled, unless the officer resigns;

(b) contain a statement of general grounds for which the recall is being sought;

(c) be signed and dated by at least 25% of the electors of the local government; and

(d) contain a sworn statement by one petitioner who shall swear before an officer competent to administer oaths that he believes the contained statements to be true and the signatures on the petition to be genuine.

(4) Upon receipt of a certified petition, the

governing body shall order and fix a date for an election on the question and shall immediately notify the officer sought to be recalled. The date shall be not less than 70 or more than 80 days from the date the elections administrator certified the petition as adequate.

(5) The governing body shall publish notice of the purpose of the election, the reasons stated in the petition for recall, and the date of the election. Publications shall be at least 6 days apart, and the first publication shall be made within 20 days after setting the election date.

(6) Except as provided in this section, the recall election shall be conducted and the results canvassed and returned as provided in 47A-3-513.

(7) A recall ballot shall contain:

(a) the grounds stated in the recall petition;

(b) the officer's statement of 200 words or less, if the statement is filed by the officer with the elections administrator for publication and public inspection no later than 10 days after being notified as provided in 47A-3-517(4); and

(c) a question stating: Shall (name of person) be recalled from the office of (office)? Yes No .

(8) If a majority of those electors voting on the question favor the recall of the officer, the recall shall

take place immediately upon official declaration of the election results.

(9) Any vacancy created as a result of a recall election shall be filled in the same manner as any other vacancy in the same office, except the officer recalled may not be appointed to fill the vacancy.

47A-3-518. Campaign finance law. The provisions of 23-4776 et seq. shall be applied to any election allowed or required by this title when required by 23-4776 et seq.

CHAPTER 4

ADMINISTRATIVE PROVISIONS

Part 1

Personnel

47A-4-101. Employment. (1) All employees shall be hired and discharged as provided in the plan of government or charter. Unless otherwise provided by ordinance, elected officials may employ subordinates in the number and at the salary authorized by the governing body.

(2) Appointment, removal, and promotion of local government officers and employees shall be made without regard to race, color, sex, culture, social origin or condition, or political or religious ideas and otherwise comply with requirements of 64-317.

47A-4-102. Nepotism prohibited. (1) Nepotism is the bestowal of political patronage by reason of relationships

1 rather than merit.

2 (2) No local government officer, employee, board,
3 authority, or governing body may appoint to any position any
4 person related to him or connected of by consanguinity,
5 within the fourth degree or affinity within the second
6 degree. This section shall not apply to the chief law
7 enforcement administrator in the appointment of cooks or
8 matrons.

9 (3) Any person who knowingly or purposefully violates
10 this section is guilty of a misdemeanor.

11 47A-4-103. Political activity. (1) No person may
12 attempt to coerce, command, or require a local government
13 employee to influence or give money, service, or other
14 things of value to aid or promote any political committee or
15 to aid or promote the nomination or election of any person
16 to public office.

17 (2) No local government employee may solicit any
18 money, influence, service, or other things of value or
19 otherwise aid or promote any political committee or the
20 nomination or election of any person to public office while
21 on the job or at his place of employment. Nothing in this
22 section is intended to restrict the right of a local
23 government employee to express his personal political views.

24 (3) Any person who violates subsection (1) of this
25 section shall be fined not to exceed \$1,000 or be imprisoned

1 for a term not to exceed 6 months, or both, for each
2 separate offense. Any person who violates subsection (2) of
3 this section shall be guilty of a misdemeanor. Any violation
4 of this section shall also be punishable by removal from
5 office or discharge from employment.

6 47A-4-104. Collective bargaining. (1) In accordance
7 with the provisions of and subject to the restrictions of
8 Title 59, chapter 16, all employees of a local government
9 shall have the right of self-organization, to form, join, or
10 assist any labor organization, to bargain collectively, and
11 to exercise all other rights granted therein.

12 (2) A local government as a public employer shall have
13 all rights and obligations of a public employer as
14 established by Title 59, chapter 16.

15 (3) Any general law or charter provision providing for
16 local employment terms and conditions may be modified
17 pursuant to any contract entered into under provisions of
18 Title 59, chapter 16, in regard to public-labor management
19 relations.

20 47A-4-105. Hours of labor. (1) Except as provided in
21 this section, a period of 8 hours shall constitute a day's
22 work in all works or undertakings carried on or aided by a
23 local government.

24 (2) The governing body may by ordinance, with the
25 approval of the employees or their duly constituted

1 representative, establish a 40-hour work week consisting of
2 four consecutive 10-hour days. No employee shall be required
3 to work in excess of 8 hours in any one work day if he
4 prefers not to.

5 (3) In a local government with paid firefighters, a
6 work week for paid firefighters shall be a period of not
7 more than 40 hours during a 5-day week.

8 (4) In case of emergency when life or property are in
9 imminent danger or when the peace and safety of the local
10 government require, the working day may be extended.

11 47A-4-106. Office hours. The governing body shall by
12 ordinance establish office hours for all departments.

13 47A-4-107. Civil service board. (1) A local government
14 may establish a civil service board by ordinance as provided
15 in this chapter.

16 (2) Local governments may establish joint civil
17 service boards.

18 (3) The civil service board shall be organized and
19 operated under 47A-4-108 through 47A-4-110.

20 (4) The ordinance establishing a civil service board
21 shall designate which classes of employees will be subject
22 to supervision by the board. The classes of employees so
23 designated shall be considered as classified service.

24 47A-4-108. Composition of civil service board -- term
25 of office -- qualifications. (1) The civil service board

1 shall consist of five members appointed as provided in the
2 form of government or charter for the appointment of board
3 members. If the civil service board is a joint board, each
4 member shall be appointed by each of the cooperating local
5 governments before assuming his position on the civil
6 service board.

7 (2) At the time the civil service board is
8 established, one member shall be appointed for a term of 2
9 years, one member shall be appointed for a term of 3 years,
10 one member shall be appointed for a term of 4 years, one
11 member shall be appointed for a term of 5 years, and one
12 member shall be appointed for a term of 6 years. Thereafter,
13 each member shall be appointed for a term of 6 years.

14 (3) The governing body may remove any member of the
15 civil service board for cause upon stating in writing the
16 reasons for removal and giving the member an opportunity to
17 be heard. Removal shall require a two-thirds vote of the
18 whole governing body except when the governing body has only
19 three members in which case the affirmative vote of all
20 three members of the governing body is required for removal.
21 If the civil service board is a joint board, no member may
22 be removed until after a vote to remove him by each of the
23 cooperating local governments.

24 (4) A member of the civil service board shall be an
25 elector of the local government. In the case of a joint

1 board, a member shall be an elector of at least one of the
2 participating local governments.

3 (5) Immediately after appointment, the board shall
4 organize by electing one of its members chairman. The board
5 may appoint employees as may be authorized by appropriation.

6 47A-4-109. Duties of civil service board. (1) The
7 civil service board shall examine all applicants for any
8 classified service position except law enforcement. The
9 examination shall determine whether or not the applicant
10 meets the standards established by the local government and
11 is otherwise qualified to be an employee of the local
12 government.

13 (2) The civil service board shall provide each
14 applicant who passes the examination with a certificate of
15 eligibility for employment with the local government. No
16 person may be employed in a classified service position with
17 the local government who has not been certified as qualified
18 by the civil service board.

19 (3) The civil service board shall hear appeals of all
20 employees who are discharged, suspended, or demoted as
21 provided in 47A-4-110.

22 47A-4-110. Demotion, suspension, or discharge. (1) An
23 employee in the classified service who is demoted,
24 suspended, or discharged shall be given, in writing, the
25 specific reasons for the demotion, suspension, or discharge

1 and an opportunity to be heard in his own defense.

2 (2) Any employee in the classified service aggrieved
3 by his demotion, suspension, or discharge may, within 30
4 days after being heard in his own defense or after the
5 refusal of his right to be heard, appeal to the civil
6 service board. The appeal shall be in the form prescribed by
7 the civil service board.

8 (3) Any employee may be summarily suspended, with or
9 without pay, for a period not to exceed 10 regular working
10 days in any one month. Rather than accept the summary
11 suspension, the suspended employee may appeal the suspension
12 to the civil service board, which may order a hearing before
13 it. In this event, the summary suspension shall be changed
14 to a suspension pending a hearing before the civil service
15 board.

16 (4) Upon receipt of an appeal, the civil service board
17 shall set a time and place for a hearing on the issue. The
18 civil service board shall give to the parties reasonable
19 notice of the time and place set for the hearing.

20 (5) At the hearing the civil service board shall:

21 (a) have the power to subpoena persons and records;

22 (b) keep a record including:

23 (i) all pleadings, motions, and intermediate rulings;

24 (ii) all evidence received or considered, including a
25 stenographic or mechanical record of oral proceedings when

1 demanded by a party;

2 (iii) a statement of matters officially noticed;

3 (iv) questions and offers of proof, objections, and
4 rulings thereon; and

5 (v) proposed findings and exceptions;

6 (c) accept evidence in substantial compliance with
7 statutory and common-law rules of evidence.

8 (6) Following the hearing, the civil service board
9 shall decide whether the charge was proven or not proven.

10 The civil service board shall give a written decision on
11 issues before it setting out in detail the facts relied on.

12 One copy of its decision shall be filed with the records
13 administrator, and one copy shall be given to the accused
14 employee.

15 (7) The civil service board shall have the power, by
16 decision of a majority of the board, to discipline, demote,
17 suspend, remove, or discharge any employee who shall have
18 been found guilty of the charge filed against him.

19 47A-4-111. Probationary period. The governing body may
20 by ordinance provide for a probationary period of not more
21 than 1 year following appointment or promotion during which
22 a new employee may be discharged or a promoted employee
23 demoted to his old rank without a civil service board
24 hearing.

25 Part 2

1 Wages, Expenses, and Benefits

2 47A-4-201. Salaries. (1) After giving notice and
3 conducting a public hearing, the governing body shall set
4 the minimum salary of each elected officer by ordinance at
5 least 90 days before the date of the primary election for
6 the office. The salary of an elected officer may not be
7 reduced during the term of the officer.

8 (2) All salaries, except those set by law, may be set
9 by resolution, or the governing body may by ordinance
10 authorize the chief executive, department heads, or
11 administrative boards to set salaries.

12 (3) A local government shall provide its share of any
13 salary set by law or its share of any salary increase
14 authorized by law.

15 (4) The county surveyor or coroner, public
16 administrator, justice of the peace, and constable may
17 collect and receive for their own use, respectively, for
18 official services, fees established by law or ordinance. No
19 other officer or employee may receive or retain fees for his
20 own use, and he must deposit all fees as provided by law or
21 ordinance and 47A-9-305.

22 (5) When the title of the incumbent of any office is
23 contested by judicial proceedings, no warrant may thereafter
24 be drawn or paid for any part of his salary until the
25 proceedings have been finally determined. As soon as such

1 proceedings are instituted, the clerk of the court of which
2 they are pending must certify the facts to the person whose
3 duty it is to draw the warrants to pay the salary.

4 (6) It is the duty of all officers to complete the
5 business of their respective offices to the time of the
6 expiration of their respective terms; and in case any
7 officer, at the close of his term, leaves to his successor
8 official labor to be performed for which he has received
9 compensation or which it was his duty to perform, he is
10 liable to pay to his successor the full value of such
11 services, which may be recovered in any court of competent
12 jurisdiction upon action brought against him on his official
13 bond.

14 47A-4-202. Per diem, mileage, actual transportation
15 expenses. The governing body by ordinance shall provide for
16 payment of per diem and either mileage or actual
17 transportation expenses for local government officers and
18 employees on official and authorized business of the local
19 government. Per diem may include actual expenses for meals,
20 lodging, and incidental expenses or a fixed rate established
21 by ordinance for meals, lodging, and incidental expenses.

22 47A-4-203. Annual vacation, sick, and other leaves of
23 absence. A local government employee is entitled to leaves
24 of absence as provided in Title 59, chapter 10.

25 47A-4-204. Holidays. (1) Local government holidays are

1 those days defined as legal holidays in 19-107 and other
2 days which are declared holidays by the local government's
3 chief executive.

4 (2) A local government employee shall have a day off
5 on legal holidays. Except for Sundays, he shall be paid for
6 holidays the same as if he had worked.

7 47A-4-205. Social security. A local government shall
8 proceed as provided in Title 59, chapter 11, to extend
9 coverage of the federal Social Security Act to its
10 employees.

11 47A-4-206. Workers' compensation. (1) A local
12 government shall provide workers' compensation coverage for
13 its employees.

14 (2) A local government may elect to provide coverage
15 under any of the plans authorized by Title 92 (workers'
16 compensation) and shall be subject to the same requirements
17 and rules as any other employer.

18 (3) Any sums required to be paid to provide the
19 coverage shall be considered ordinary and necessary expenses
20 of the local government. The amounts required shall be
21 appropriated and paid by the governing body.

22 (4) Whenever any local government neglects or refuses
23 to file with the industrial accident board a quarterly
24 payroll report of its employees, the board is hereby
25 authorized and empowered to levy a penalty upon the local

1 government in an amount of \$25 for each penalty, to be
2 collected in the manner provided in Title 92 for the
3 collection of penalties.

4 47A-4-207. Unemployment compensation. (1) A local
5 government is subject to all the obligations of a public
6 employer established by Title 87 (unemployment
7 compensation).

8 (2) Any payments required for compliance with Title 87
9 shall be considered ordinary and necessary expenses of the
10 local government and shall be appropriated and paid by the
11 governing body of the local government.

12 47A-4-208. Public pensions. (1) Any local government
13 may contract with the public employees' retirement system as
14 provided in Title 68, chapter 17, for all employees not
15 covered by another pension system. All existing contracts
16 between the public employees' retirement system and a local
17 government shall continue in force until modified or
18 rescinded as provided in Title 68, chapter 17.

19 (2) All municipal law enforcement officers shall be
20 entitled to participate in the police retirement systems
21 established by Title 11, chapter 46.

22 (3) All county law enforcement officers shall be
23 entitled to participate in the sheriffs' retirement system
24 established by Title 68, chapter 26.

25 (4) Municipal firefighters shall be entitled to

1 participate in the firefighters' retirement system
2 established by Title 11, chapter 48.

3 (5) Volunteer firefighters shall be entitled to
4 participate in the volunteer firefighters' retirement system
5 established by Title 11, chapter 49.

6 47A-4-209. Group insurance. (1) A local government
7 shall, upon approval by two-thirds vote of the officers and
8 employees of the local government, department, board, or
9 authority, enter into group hospitalization, medical, health
10 (including long-term disability), accident, dental, life, or
11 other insurance contracts or plans for the benefit of the
12 officers, employees, and their dependents.

13 (2) The local government shall pay not less than \$10
14 per month or \$120 per year for the insurance for each
15 officer and employee if a group plan has been established.

16 (3) If a group plan has been established, the
17 governing body may provide a method to exempt employees and
18 pay the same contribution to other insurance plans of
19 individual employees.

20 47A-4-210. Deferred compensation program. In
21 accordance with the provisions and procedures of Title 68,
22 chapter 27, any local government may establish, after
23 reaching agreement with any employee or the employee's
24 representative if one has been designated or certified, a
25 program for the employee to defer any portion of his

1 compensation, up to the maximum allowed by the internal
2 revenue code in a plan qualified for exemption under
3 applicable sections of the internal revenue code.

4 47A-4-211. Membership in organizations. (1) The
5 governing body of a local government may join, pay
6 membership fees and service charges, and cooperate with
7 organizations and associations of local governments of this
8 state and other states for the advancement of good
9 government and the protection of local government interests.

10 (2) Elected officials of a local government shall be
11 allowed per diem and either mileage or actual transportation
12 expenses for attendance at meetings of the appropriate
13 association of local government officials; reasonable
14 expenses or charges against each local government, as a
15 member of the association, shall be paid by the local
16 government.

17 (3) Employees of a local government may be allowed per
18 diem and either mileage or actual transportation expenses
19 for attendance at meetings of professional organizations or
20 associations, and a local government may pay membership fees
21 and service charges to the organizations. Membership fees
22 and service charges exclude union dues.

23 Part 3

24 Surety Bonds

25 47A-4-301. Purchase of surety bonds by local

1 government governing body. The governing body of a local
2 government shall purchase all surety bonds for local
3 government officers and employees. A bond may cover an
4 individual officer or employee, or a blanket bond may cover
5 all officers and employees or any group or combination of
6 officers and employees.

7 47A-4-302. Bonding of elected or appointed local
8 government officers and employees — amount of bond —
9 soliciting of offers. Elected or appointed local government
10 officers and employees shall be bonded in sums as ordinance
11 may require. The amount for which a local government officer
12 or employee shall be bonded shall be based on the amount of
13 money or property handled and the opportunity for
14 defalcation. The local government governing body shall
15 actively solicit offers on a competitive basis from
16 available qualified insurance or surety companies before
17 purchasing the bonds.

18 47A-4-303. Premiums — charge against appropriation.
19 The governing body by appropriation shall provide for the
20 payment of premiums for surety bonds of the local government
21 officers and employees.

22 47A-4-304. Approval of bond by local government legal
23 office — filing. The form of bonds for local government
24 officers and employees must be approved by the local
25 government legal advisor and filed and recorded in the

1 office of the local government records administrator.

2 47A-4-305. Companies permitted to execute bonds. Bonds
3 purchased by the local government governing body shall be
4 executed by responsible insurance or surety companies
5 authorized and admitted to execute surety bonds in this
6 state.

7 47A-4-306. Conditions — signatures and sureties. (1)
8 The condition of every official bond must be that the
9 covered officers and employees shall perform all official
10 duties required of them by law or ordinance, and also such
11 additional duties as may be imposed on them by any law or
12 ordinance subsequently enacted and that they will account
13 for and pay over and deliver to the person or officer
14 entitled to receive the same all moneys or other property
15 that may come into their hands as such officers or
16 employees. The sureties upon any official bond are also in
17 all cases liable for the neglect, default, or misconduct in
18 office of any deputy, clerk, or employee appointed or
19 employed by a covered officer or employee.

20 (2) All official bonds must be signed and executed by
21 the chief executive of the local government and one or more
22 surety companies organized under the laws of this state or
23 licensed to do business herein.

24 (3) Surety bonds shall comply with Title 6, chapter 3.

25 47A-4-307. Determination of adequacy of bond by

1 department of community affairs. The amount for which any
2 local government officer or employee or group of officers or
3 employees shall be bonded shall be subject to the
4 supervision of the department of community affairs. If the
5 department of community affairs determines that the amount
6 of the bond is inadequate, it may require the local
7 government governing body to purchase an adequate bond.

8 Part 4

9 Ethics

10 47A-4-401. Public trust. (1) The holding of public
11 office or employment is a public trust created by the
12 confidence which the electorate reposes in the integrity of
13 officers and employees. An officer or employee shall carry
14 out his duties for the benefit of the people of the local
15 government. The officer or employee may not use his office,
16 the influence created by his official position, or the
17 inside information gained by virtue of that position to
18 advance any of his own, his relatives', or his associates'
19 personal economic interests, other than advancing strictly
20 incidental benefits as may accrue to any of them from the
21 enactment or administration of laws affecting the public
22 generally.

23 (2) An officer or employee whose conduct departs from
24 his fiduciary duty under this section is liable to the
25 people of the local government as a trustee of property is

1 liable to the beneficiary under 86-310, and shall suffer
 2 other liabilities as a private fiduciary would suffer for
 3 abuse of his trust. The legal officer of the local
 4 government where the trust is violated may bring any
 5 appropriate judicial proceedings on behalf of the local
 6 government. Any moneys collected in the actions shall be
 7 paid to the general fund of the local government.

8 47A-4-402. Rules of conduct. (1) An officer or
 9 employee may not:

10 (a) be interested in any contract made by him in his
 11 official capacity as officer or employee, or by any board of
 12 which he is a member as provided in 59-501;

13 (b) be a purchaser at any sale or a vendor of any
 14 purchase made by him in his official capacity as officer or
 15 employee as provided in 59-502; or

16 (c) deal in warrants, scrip, or other local government
 17 evidences of indebtedness as provided in 59-504.

18 (2) An officer or employee commits an offense if:

19 (a) he purposely or knowingly offers, confers, or
 20 agrees to confer upon another, or solicits, accepts, or
 21 agrees to accept any pecuniary benefit or benefit as
 22 provided in 94-7-102;

23 (b) he knowingly solicits, accepts, or agrees to
 24 accept any pecuniary benefit as compensation as provided in
 25 94-7-104;

1 (c) he solicits, accepts, or agrees to accept any
 2 pecuniary benefit from any person subject to his
 3 jurisdiction, from any person known to be interested in or
 4 likely to become interested in any contract, purchase,
 5 payment, claim, or other pecuniary transaction over which he
 6 has any discretionary function as provided in 94-7-105; or

7 (d) he knowingly makes a false statement, oath, or
 8 equivalent affirmation or swears or affirms the truth of a
 9 false statement previously made, when the subject is
 10 material as provided in 94-7-202, 94-7-203, and 94-7-209.

11 47A-4-403. Ethical principles for all public officers
 12 and employees. (1) The principles in this section are
 13 intended as guides to conduct and do not constitute
 14 violations as such of the public trust of office or
 15 employment in local government.

16 (2) An officer or employee should not acquire an
 17 interest in any business or undertaking which he has reason
 18 to believe may be directly affected to its economic benefit
 19 by official action to be taken by the local government.

20 (3) An officer or employee should not, within the 12
 21 months following the termination of his office or
 22 employment, assist or represent any person for a fee or
 23 other consideration in connection with certain matters with
 24 which he was directly involved during his term or
 25 employment. These matters include legislation or rules which

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1 he actively helped to formulate, and applications, claims,
2 or contested cases in the consideration of which he was an
3 active participant.

4 (4) An officer or employee should not perform an
5 official act directly affecting a business or other
6 undertaking to its economic detriment when he has a
7 substantial financial interest in a competing firm or
8 undertaking.

9 47A-4-404. Suspension and removal from office. (1) The
10 prosecuting attorney in the county in which the local
11 government is located may bring an action in district court
12 to remove from office any officer or employee who has
13 violated the rules of conduct set out in 47A-4-402, in
14 addition to penalties prescribed by law. A special
15 prosecutor appointed by the county governing body may file
16 an action in district court to remove from office a public
17 prosecutor who has violated the rules of conduct set out in
18 47A-4-402, in addition to penalties prescribed by law.

19 (2) An officer or employee who has been charged as
20 provided in subsection (1) may be suspended by the governing
21 body from his office or position of employment without pay
22 pending final judgment. Upon final judgment of conviction he
23 shall permanently forfeit his office or position of
24 employment. Upon acquittal he shall receive all backpay.

25 (3) If the action is brought by a citizen, the court

1 may award reasonable attorney's fees.

2 CHAPTER 5

3 POWERS OF GENERAL POWER LOCAL GOVERNMENTS

4 Part 1

5 General Government Powers

6 47A-5-101. Local government a corporate body. A local
7 government with general government powers is a body politic
8 and corporate and as such shall have corporate and
9 governmental powers, a corporate name, and perpetual
10 succession.

11 47A-5-102. Distribution of powers. (1) A local
12 government has legislative, executive, and judicial powers.

13 (2) All legislative powers are vested in the governing
14 body of the local government.

15 (3) Executive powers are vested as provided in the
16 form of government adopted by the local government.

17 (4) The judicial powers of a county are vested in the
18 justice court, and the judicial powers of a municipality are
19 vested in the municipal court.

20 47A-5-103. Legislative powers. A local government with
21 general powers has the legislative power subject to the
22 provisions of this title to adopt, amend, and repeal
23 ordinances and resolutions required to:

24 (1) preserve peace and order and secure freedom from
25 dangerous or noxious activities;

1 (2) secure and promote the general public health and
 2 welfare;
 3 (3) provide any service or perform any function
 4 authorized or required by this title;
 5 (4) exercise any power granted by this title;
 6 (5) levy any tax authorized by this title;
 7 (6) appropriate public funds;
 8 (7) impose a special assessment reasonably related to
 9 the cost of any special service or special benefit provided
 10 by the local government or impose a fee for the provision of
 11 a service;
 12 (8) grant franchises; and
 13 (9) provide for its own organization and the
 14 management of its affairs.
 15 47A-5-104. Powers. A local government with general
 16 powers has the power subject to provisions of this title to:
 17 (1) enact ordinances and resolutions;
 18 (2) sue and be sued;
 19 (3) buy, sell, mortgage, rent, lease, hold, manage,
 20 and dispose of any interest in real and personal property;
 21 (4) contract with persons, corporations, or any other
 22 governmental entity;
 23 (5) pay debts and expenses;
 24 (6) borrow money;
 25 (7) solicit and accept bequests, donations, or grants

1 of money, property, services, or other advantages, and
 2 comply with any condition that is not contrary to the public
 3 interest;
 4 (8) execute documents necessary to receive money,
 5 property, services, or other advantages from the state
 6 government, the federal government, or any other source;
 7 (9) make grants and loans of money, property, and
 8 services;
 9 (10) require the attendance of witnesses and production
 10 of documents relevant to matters being considered by the
 11 local government governing body;
 12 (11) punish contempt and disorder in the governing
 13 body's chambers;
 14 (12) hire, direct, and discharge employees and appoint
 15 and remove members of boards;
 16 (13) ratify any action of the local government or its
 17 officers or employees which could have been approved in
 18 advance;
 19 (14) have a corporate seal and flag;
 20 (15) acquire by eminent domain as provided in Title 93,
 21 chapter 99, any interest in property to provide any service
 22 or facility authorized by this title. The ordinance
 23 authorizing the taking of private property is conclusive as
 24 to the necessity of the taking.
 25 (16) initiate a civil action to restrain or enjoin

violation of an ordinance;

(17) to enter private property for the purpose of enforcing ordinances that affect the general welfare and public safety;

(18) conduct a census;

(19) conduct inventories and preparatory studies;

(20) condemn and demolish hazardous structures;

(21) purchase insurance and establish self-insurance plans;

(22) impound animals and other private property creating a nuisance or obstructing a trafficway;

(23) establish quarantines; and

(24) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions.

47A-5-105. Concurrent powers. (1) If a local government is authorized to regulate an area which the state by statute or administrative regulation also regulates, the local government may regulate the area only by enacting ordinances which are consistent with state law or administrative regulation.

(2) If state statute or administrative regulation prescribes a single standard of conduct, an ordinance is consistent if it is identical to the state statute or administrative regulation.

(3) If state statute or administrative regulation prescribes a minimal standard of conduct, an ordinance is consistent if it establishes a standard which is the same as or higher or more stringent than the state standard.

(4) A local government may adopt ordinances and regulations which incorporate by reference state statutes and administrative regulations in areas in which a local government is authorized to act.

47A-5-106. Limit on liability. (1) As provided in Article II, section 18, of the 1972 Montana constitution, a local government shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a two-thirds vote of each house of the legislature.

(2) As provided in 83-706.1, a local government has the right but not the duty to purchase insurance to protect against claims for injury to a person or property.

(3) Local governments are subject to the provisions of Title 82, chapter 43, in regard to insurance and tort claims.

CHAPTER 6

SERVICES OF GENERAL POWER LOCAL GOVERNMENTS

Part 1

General Service Authorization

47A-6-101. Purpose. It is a policy of the state of

1 Montana to grant maximum authority to general powers local
2 governments to provide services desired by their citizens,
3 and it is further a policy of the state to permit general
4 powers local governments to determine locally the
5 appropriate methods for administering and financing local
6 services.

7 47A-6-102. Methods for providing services and
8 facilities. Authorized local government services and
9 facilities may be provided:

10 (1) directly by a local government through an office
11 or a department with or without an administrative or
12 advisory board;

13 (2) by interlocal agreement;

14 (3) by purchasing the services from a private or
15 public vendor;

16 (4) through the establishment of subordinate service
17 districts and local improvement districts;

18 (5) through the creation of public nonprofit
19 corporations;

20 (6) through the establishment of authorities;

21 (7) through a franchise; or

22 (8) through any combination of these methods.

23 47A-6-103. Authorized local government services and
24 facilities. A local government may exercise the powers
25 necessary to provide the following services and facilities:

1 (1) agricultural services, subject to the provisions
2 of chapter 6, part 3, including:

3 (a) extension services including agriculture, home
4 economics and community development;

5 (b) fairs and livestock shows and sales services;

6 (c) livestock inspection and protection services;

7 (d) agricultural market and marketing services;

8 (e) public scales and loading and unloading services;

9 (f) rodent, predator, and vertebrate control services;

10 (g) noxious plant control services; and

11 (h) insect control services;

12 (2) community and rural development services, subject
13 to the provisions of chapter 6, part 4, including:

14 (a) economic development services;

15 (b) housing services;

16 (c) open spaces as provided in Title 62, chapter 6;

17 (d) planning, zoning, and subdivision control
18 services;

19 (e) urban and rural development, rehabilitation, and
20 redevelopment services;

21 (f) watercourse, drainage, irrigation, and flood
22 control services;

23 (g) lake protection as provided in Title 89, chapter
24 37; and

25 (h) underground conversion of utilities;

1 (3) community services, subject to the provisions of
 2 chapter 6, part 5, including:
 3 (a) animal control services;
 4 (b) cemetery, burial, and memorial services;
 5 (c) consumer education and protection services;
 6 (d) exhibition and show services;
 7 (e) libraries, museums, civic centers, auditoriums,
 8 theaters, art galleries, and other arts and educational or
 9 cultural services;
 10 (f) preservation of antiquities and natural sites and
 11 other historic services;
 12 (g) park, forest, recreational, and athletic services;
 13 (h) public camping services;
 14 (i) zoo, aviary, aquarium, and botanical services;
 15 (j) trees, shrubs, and other landscaping services on
 16 public easements or property;
 17 (k) nuisance weed control services; and
 18 (l) devices to protect the public from open ditches
 19 carrying irrigation or other water;
 20 (4) emergency services, subject to the provisions of
 21 chapter 6, part 6, including:
 22 (a) ambulance services subject to regulation as
 23 provided in Title 96, chapter 36, and emergency medical
 24 services subject to regulation as provided in Title 69,
 25 chapter 70;

1 (b) civil defense services subject to the provisions
 2 of Title 72, chapters 23 and 24;
 3 (c) fire prevention and protection services;
 4 (d) law enforcement protection, jails, and juvenile
 5 detention services; and
 6 (e) armories and other military facilities;
 7 (5) human services, subject to the provisions of
 8 chapter 6, part 7, including:
 9 (a) environmental protection services including air
 10 and water pollution control services subject to regulations
 11 as provided in 69-3919;
 12 (b) child care, youth, and senior citizen services;
 13 (c) public health and hospital services;
 14 (d) nursing homes and other extended care services;
 15 (e) social and rehabilitative services;
 16 (f) mental health services subject to the provisions
 17 of Title 80, chapter 28; and
 18 (g) alcohol and drug dependence prevention and
 19 treatment services;
 20 (6) water and waste and utility services, subject to
 21 the provisions of chapter 6, part 8, including:
 22 (a) recycling and resource recovery services;
 23 (b) solid waste collection treatment and disposal
 24 services;
 25 (c) natural or manufactured gas services;

1 (d) sanitary and storm sewers and sewage treatment
 2 services; and
 3 (e) water supply and distribution services;
 4 (7) transportation services, subject to the provisions
 5 of chapter 6, part 9, including:
 6 (a) airports, passenger terminals, accommodations of
 7 air travelers, air navigation, aircraft servicing, and other
 8 aviation services;
 9 (b) ferries, wharves, docks, and other marine
 10 services;
 11 (c) vehicle parking services;
 12 (d) bus and other public transportation services;
 13 (e) trafficways as defined in 47A-6-9203;
 14 (f) lighting of trafficways; and
 15 (8) other services of a local nature.
 16 47A-6-104. Regulatory powers. A local government may
 17 exercise the powers necessary to regulate in all or part of
 18 its jurisdictional area:
 19 (1) the operation and use of its public property,
 20 services, and facilities;
 21 (2) the operation and use of its public rights-of-way
 22 and railroad crossings;
 23 (3) subdivision and platting of lands as provided in
 24 chapter 6, part 4;
 25 (4) land uses and zoning as provided in chapter 6,

1 part 4;
 2 (5) lakes and lakeshores as provided in chapter 6,
 3 part 4;
 4 (6) building, housing, electrical, plumbing, and
 5 related construction activities subject to the provisions of
 6 Title 69, chapter 21;
 7 (7) naming and numbering of trafficways and numbering
 8 of houses and lots;
 9 (8) demolition and removal of dangerous or damaged
 10 structures;
 11 (9) floodplain construction, watercourses, waterways,
 12 lakes, and drainage;
 13 (10) public accommodations;
 14 (11) fire prevention and safety, including the storage,
 15 possession, and transportation of dangerous or inflammable
 16 substances;
 17 (12) air and water pollution within the standards
 18 established by the state;
 19 (13) planting, care, and trimming of trees abutting
 20 public ways;
 21 (14) open ditches and other nuisances;
 22 (15) the licensing, impoundment, treatment, and
 23 disposition of animals;
 24 (16) selling of goods;
 25 (17) selling of food;

1 (18) selling of alcoholic beverages as provided in
 2 Title 4;
 3 (19) vehicles, parking, and traffic;
 4 (20) taxis, buses, street railroads, and other public
 5 transportation systems;
 6 (21) pawnshops and secondhand shops;
 7 (22) junkyards, solid waste collection and disposal,
 8 and dumps as provided in Title 69, chapter 40;
 9 (23) circuses, prizefights, dances, shows, and other
 10 places of amusement;
 11 (24) cemeteries, mausoleums, and columbariums;
 12 (25) gambling as provided in Title 62, chapter 7;
 13 (26) public auctions as provided in Title 66, chapter
 14 2;
 15 (27) occupations, businesses, and industries only to
 16 the extent that they affect the general health, safety,
 17 well-being, or welfare of its inhabitants and each
 18 regulation may not affect the standards of professional or
 19 occupational competence established pursuant to Title 66 as
 20 prerequisites for the practice of a profession or
 21 occupation;
 22 (28) water supply and sewage disposal;
 23 (29) obscenity and display of offensive sexual material
 24 as provided in 94-8-110 through 94-8-110.1; and
 25 (30) all other activities affecting the general health,

1 safety, well-being, or welfare of its inhabitants.
 2 47A-6-105. Property and facilities. (1) The power of a
 3 local government to provide services includes the power to
 4 provide necessary and convenient real and personal property,
 5 equipment, materials, facilities, and appurtenances.
 6 (2) A property or facility may be located outside of
 7 the boundaries of the local government.
 8 (3) The power to provide a facility includes the power
 9 to plan, establish, acquire, develop, construct, purchase,
 10 enlarge, improve, maintain, operate, regulate, and protect
 11 the facility.
 12 (4) A local government may exercise its jurisdiction
 13 and control over its facilities and property located outside
 14 the boundaries of the local government or the boundaries of
 15 the state. No other local government may charge a license
 16 fee or tax for operations on such a facility.
 17 (5) Any public property acquired under this title is
 18 hereby declared to be acquired, owned, controlled, and
 19 occupied for a public use and as a matter of public
 20 necessity.
 21 (6) (a) Any public property acquired under this title
 22 is exempt from property taxation, and any income derived
 23 from the property is exempt from taxation.
 24 (b) These exemptions shall not apply to private
 25 facilities or personal property located on public property

or the incomes of persons employed on public property.

(c) The department of revenue may exempt from property taxation any property acquired with the state of Montana by a public agency of another state for governmental purposes and any income derived from the property, to the extent that such other state authorizes similar exemptions from taxation to public agencies of this state.

47A-6-106. Regulatory powers inferred. The power of a local government to provide services includes the power to exercise regulatory powers in conjunction with those services.

47A-6-107. Services for public purpose. (1) The rule of law that distinguishes between governmental and corporate functions of a local government shall not apply to the functions, services, and duties of local government in Montana.

(2) All services, functions, and duties authorized for local governments are hereby declared to be public and governmental functions and exercised for a public purpose.

47A-6-108. Prohibition of discriminatory practices. All local governments shall comply with the provisions of Title 64, chapter 3, in regard to the prohibition of discriminatory practices in the delivery of any service.

47A-6-109. Prohibition on competition with private enterprise. In providing services authorized by this title,

local governments shall not compete with, as far as is practical, private enterprise.

Part 2

Establishment and Allocation of Services

47A-6-201. Policy and purpose. (1) It is a policy of the state of Montana to minimize duplication of services and to encourage cooperation in the delivery of services.

(2) It is the purpose of this part to provide common procedures for:

(a) establishing services by general powers and self-government powers local governments;

(b) determining the authority of general powers and self-government powers counties to provide services within municipal limits; and

(c) determining the authority of general powers and self-government powers municipalities to exercise extraterritorial powers beyond municipal limits.

(3) Nothing in this chapter shall be interpreted to prevent the utilization of interlocal agreements to share and allocate the authority for delivering services.

47A-6-202. Existing services. Until otherwise provided by ordinance or authorized by an appropriation, local governments shall continue to provide in the same manner those services provided by the local government on the effective date of this title.

1 47A-6-203. Establishment of jurisdictionwide services.
2 Services that will be available to or benefit the entire
3 local government jurisdiction may be established in the
4 following manner:

5 (1) The governing body of a local government may
6 establish the service or facility by ordinance.

7 (2) If a petition signed by not less than 10% of the
8 electors of a local government requesting the local
9 government to provide the service is presented to the
10 governing body, the governing body shall set a date for a
11 public hearing and give notice. Following the public
12 hearing, the governing body may either adopt an ordinance
13 authorizing the service or refuse to act further on the
14 matter.

15 (3) An ordinance authorizing a service may be proposed
16 by initiative or submitted to referendum as provided in
17 chapter 3, part 5, of this title.

18 47A-6-204. Financing jurisdictionwide services. (1)
19 The governing body may finance services available on a
20 jurisdictionwide basis by levying taxes, imposing service
21 charges or special assessments, or out of any other funds at
22 its disposal.

23 (2) The governing body may finance the construction of
24 any facility benefiting the jurisdiction as a whole with
25 general revenue of the local government or by issuing

1 general obligation bonds, revenue bonds, or local
2 improvement district bonds. Bonds shall be issued as
3 provided in chapter 9 of this title.

4 (3) Any facility may be financed in part by general
5 obligation bonds or local improvement district bonds and in
6 part by revenue bonds.

7 47A-6-205. Establishment of services less than
8 jurisdictionwide. (1) Services that will be available to or
9 benefit only a portion of the local government jurisdiction
10 must be provided through a subordinate service district or
11 local improvement district which is created as provided in
12 chapter 3, part 4, of this title.

13 (2) A subordinate service district may also be used to
14 provide a higher level of service than that provided on a
15 jurisdictionwide basis.

16 47A-6-206. Financing services less than
17 jurisdictionwide. (1) The governing body may finance
18 services available only on a less than jurisdictionwide
19 basis by levying subordinate service district taxes,
20 imposing service charges or special assessments, or out of
21 any other funds at its disposal.

22 (2) The governing body may finance the construction of
23 any facility benefiting less than the total jurisdiction
24 with district general revenue or out of any other funds at
25 its disposal or by issuing revenue bonds or creating a local

1 improvement district and issuing local improvement bonds.
2 Bonds shall be issued as provided in chapter 9 of this
3 title.

4 (3) Any facility may be financed in part by local
5 improvement district bonds and in part by revenue bonds.

6 47A-6-207. Service plan. (1) Within 2 years of the
7 effective date of this title, each county governing body
8 shall develop a service plan identifying those services that
9 are available to or benefit the entire county jurisdiction;
10 those services that are available to or that benefit only a
11 portion of the county jurisdiction; and those areas of the
12 county that receive a higher level of services than that
13 provided on a jurisdictionwide basis.

14 (2) Three years after the effective date of this
15 title, services available less than jurisdictionwide or a
16 higher level of services than are provided jurisdictionwide
17 may be financed only through a subordinate service district
18 or a local improvement district or service charges levied
19 solely upon residents or property in the area receiving the
20 services. A service made available but not actually provided
21 jurisdictionwide may be financed through general county tax
22 revenues only if the service plan contains a deadline for
23 the actual provision of the service on a jurisdictionwide
24 basis.

25 (3) Two years after the effective date of this title,

1 the governing body of a municipality or municipalities, by
2 resolution, or the electors of a municipality or county, by
3 petition, may identify a service rendered for the benefit of
4 only the property or residents in unincorporated areas and
5 financed from countywide revenues. The resolution or
6 petition may request the county governing body to develop an
7 appropriate mechanism to finance the activity which may be
8 by subordinate service district taxes, special assessments,
9 or service charges levied solely upon residents or property
10 in the unincorporated area.

11 (4) The county governing body within 90 days shall
12 hold a public hearing after notice and file a response to
13 the resolution or petition which shall either initiate the
14 development of appropriate mechanisms to finance the service
15 or reject the petition or resolution if the petition or
16 resolution states findings of fact demonstrating that the
17 service does not specifically benefit the property or
18 residents of the unincorporated areas.

19 (5) The county governing body shall annually review
20 the service plan. The plan is subject to challenge by
21 municipalities or petition at any time.

22 47A-6-208. County services. (1) A county shall perform
23 countywide those services required by chapter 8 of this
24 title and may provide countywide the services permitted by
25 subsections (1), (2) (f), (4) (a), (4) (b), and (5) of

1 47A-6-103. It may perform all other services and exercise
2 regulatory authority only in the territory outside of the
3 municipal limits unless the provisions of 47A-6-210 are
4 complied with.

5 (2) A municipality may continue to provide until July
6 1, 1982, any service permitted by subsections (1), (2) (f),
7 (4) (a), (4) (b), and (5) of 47A-6-103 which it was providing
8 on the effective date of this title.

9 (3) A municipality may provide these services after
10 July 1, 1982, only by complying with 47A-6-212, and may
11 begin new services subject to this section after the
12 effective date of this title, only by complying with
13 47A-6-212.

14 47A-6-209. Concurrent services. (1) Except for law
15 enforcement, public health, and noxious plant control, if a
16 service is assigned to a county by chapter 8 of this title,
17 a municipality may not perform the service.

18 (2) A municipality may provide additional law
19 enforcement, public health, and noxious plant control
20 services within its jurisdictional area without prior
21 consent of the county governing body.

22 47A-6-210. County services in municipal limits. (1)
23 Except for services required by chapter 8 and services
24 authorized by subsections (1), (2) (f), (4) (a), (4) (b), and
25 (5) of 47A-6-103, a county may not perform any other service

1 or regulate any activity within municipal limits without
2 prior approval by resolution of the municipal governing
3 body.

4 (2) The municipal resolution may permit concurrent
5 authority for both the county and the municipality to
6 provide the service or regulate the activity, or the
7 municipality may surrender its authority to provide the
8 service and regulate the activity to the county.

9 (3) The concurrent jurisdiction or surrender of
10 authority shall be considered permanent until repealed or
11 amended and shall not be considered an interlocal agreement.
12 (4) The repeal or amendment of concurrent jurisdiction
13 requires the approval of both the county and municipal
14 governing bodies.

15 (5) If the municipal authority to provide a service
16 has been surrendered to the county, it may be repealed only
17 with the consent of both the county and municipal governing
18 bodies.

19 47A-6-211. Total transfer of a service to a county.

20 (1) A municipal governing body may by resolution request the
21 county to assume complete responsibility for a service or
22 regulatory activity being provided by the municipality. The
23 county governing body shall consider the municipal request
24 and respond by resolution within 6 months.

25 (2) If the county accepts responsibility for a

1 municipal service, after the county begins delivery of the
 2 service, the municipality may not provide the service or
 3 regulate the activity unless the county repeals its
 4 acceptance. The total transfer of a service to a county
 5 under this section shall be considered permanent until
 6 repealed or amended and shall not be considered an
 7 interlocal agreement.

8 47A-6-212. Municipal performance of county services.

9 (1) A municipality choosing to provide services authorized
 10 by subsections (1), (2) (f), (4) (a), (4) (b), and (5) of
 11 47A-6-103 may provide those services only after adopting a
 12 resolution providing for the assumption of the service by
 13 the municipality on the first day of the following fiscal
 14 year. Prior to adopting the resolution, the municipal
 15 governing body shall give notice and conduct a joint public
 16 hearing with the county governing body. A copy of the
 17 resolution shall be delivered to the county governing body
 18 at least 90 days prior to the beginning of the fiscal year.

19 (2) The requirement for commencement at the beginning
 20 of the fiscal year and the requirement for a resolution
 21 delivered to the county governing body at least 90 days
 22 prior to the beginning of the fiscal year may be waived by
 23 agreement of the governing bodies.

24 (3) After a municipality assumes any service listed in
 25 47A-6-212(1), the service provided in the area of the county

1 excluding the exempted municipality may be financed only
 2 through a subordinate service district excluding the
 3 exempted municipality and may not be financed by the county
 4 all-purpose mill levy.

5 (4) Under this section, a municipality may not assume
 6 any service required by chapter 8 of this title.

7 47A-6-213. Municipal extraterritorial powers. (1) A
 8 municipality may exercise the powers granted by this title
 9 only within its municipal limits, except that it may within
 10 5 miles of its limits:

11 (a) provide the services authorized by subsections
 12 (2) (d), (2) (f), (3) (a), (3) (b), (4) (a), (5) (a), (6), and (7)
 13 of 47A-6-103; and

14 (b) exercise its regulatory powers authorized by
 15 subsections (1), (3), (4), (5), (6), (7), (11), (12), (20),
 16 (22), (23), (24), and (28) of 47A-6-104.

17 (2) (a) Within a metropolitan service area established
 18 by an ordinance of both the municipal and county governing
 19 bodies after notice and public hearing, a municipality may
 20 provide any service or exercise any regulatory power that it
 21 is authorized to carry out in the extraterritorial area.

22 (b) The metropolitan service area may include
 23 territory beyond the 5-mile extraterritorial limit.

24 (3) This section shall not be construed to restrict
 25 the authority of a local government to enter into interlocal

1 agreements for any purpose.

2 (4) A municipality may continue any extraterritorial
3 service or regulation it was providing on the effective date
4 of this title. The municipality shall provide the county
5 governing body with a list of all existing extraterritorial
6 services and regulations within 1 year of the effective date
7 of this title.

8 (5) (a) A municipality may exercise any additional
9 extraterritorial authority only after notice and public
10 hearing and adopting an ordinance indicating its intent to
11 do so. A copy of the ordinance shall be delivered to the
12 county governing body after first reading and prior to its
13 final adoption.

14 (b) The county may prevent the final adoption of the
15 ordinance establishing additional municipal extraterritorial
16 authority by adopting a resolution notifying the municipal
17 governing body of its intent to proceed under subsection
18 (5) (c) of 47A-6-213.

19 (c) The county governing body by ordinance may preempt
20 existing or proposed extraterritorial authority of the
21 municipality only if the county agrees to provide the same
22 or increased level of regulation or service provided or
23 proposed to be provided by the municipality.

24 (d) A county ordinance preempting additional municipal
25 extraterritorial authority shall become effective in the

1 same manner as all other ordinances, but ordinances
2 preempting the existing extraterritorial authority of a
3 municipality shall not be effective until the first day of
4 the next fiscal year unless municipal consent for an earlier
5 effective date is granted by ordinance.

6 (6) Except for law enforcement and regulatory
7 services, extraterritorial municipal services shall be
8 financed by service charges and other nontax revenue.

9 (7) If the municipal limits of two or more
10 municipalities are located within 10 miles of each other,
11 their extraterritorial jurisdiction shall be determined by
12 dividing equally the distances between the municipalities,
13 or the municipalities may by interlocal agreement establish
14 their respective extraterritorial jurisdictions.

15 47A-6-214. Effective date of service changes. The
16 effective date for a change in responsibility for delivering
17 a service shall be the first day of the next fiscal year
18 unless the ordinance or interlocal agreement provides
19 otherwise.

20 47A-6-215. Allocation of assets and liabilities. If
21 the responsibility for the delivery of a service is
22 reallocated between units of local government, the governing
23 bodies may provide for the reallocation between units of
24 local government of property rights, assets, and liabilities
25 related to the service.

47A-6-216. Effect of annexation general plan, official map, and subdivision regulations and permits. The delivery of services by local governments shall conform to annexation plans to provide services as provided in 47A-2-217; general plan as provided in 47A-6-4307; and subdivision regulations and permits as provided in chapter 6, part 4, subpart 5.

Part 3

Agricultural Services

Subpart 1

Fairs, Exhibitions, Livestock Shows and Sales

47A-6-3101. Policy and purpose. (1) It shall be a policy of this state to:

(a) promote the interests of horticulture, agriculture, and stock raising and to advertise the products and resources of each county through county agricultural fairs, junior fairs, exhibitions, and special purebred livestock shows and sales; and

(b) provide for other recreational and educational activities and services in the county which may utilize county and junior fairgrounds, buildings, and facilities.

(2) It shall be a purpose of this subpart to provide for the implementation of this policy.

47A-6-3102. General provisions apply. A county providing services for fairs, exhibitions, livestock shows and sales, and other recreational and educational activities

and services shall proceed under the provisions of this title, except that the specific powers, procedures, and instructions contained in this subpart shall be considered to be additional powers and additional requirements or to supersede other provisions of this title.

47A-6-3103. Special powers. A county may do all things necessary and appropriate to:

(1) hold a county agriculture fair or a junior fair, or both;

(2) use and permit the use of the fairgrounds, buildings, and facilities for other recreational and educational activities and services;

(3) supervise and manage the fairgrounds, buildings, and facilities;

(4) hold special purebred livestock shows and sales; and

(5) prepare, transport, and care for any exhibition related to the products and resources of the county.

47A-6-3104. Finances. (1) The county governing body may budget, appropriate, and expend each year out of moneys available to the county such moneys as it considers advisable for the purpose of:

(a) securing, equipping, maintaining, and operating a county fair or a junior fair, or both, including the acquisition of land for the fair, the construction of such

1 buildings and facilities as may be necessary, and the
2 maintenance of those properties;

3 (b) providing other recreational and educational
4 activities and services;

5 (c) conducting special purebred livestock shows and
6 sales in the county;

7 (d) defraying the expenses of collecting,
8 transporting, and taking care of any exhibit from the county
9 at any state fair, county agricultural fair, 4-H club or
10 future farmers fair, seed show, or other agricultural
11 exhibit held within the state or county; and

12 (e) advertising the agricultural resources of the
13 county, as directed by the governing body or through the
14 department of agriculture, or assisting the department of
15 agriculture in presenting exhibits of Montana products at
16 fairs or expositions outside the state.

17 (2) The county governing body may permit the use,
18 rent, and lease for limited periods of time of the county
19 and junior fairgrounds and buildings and facilities on the
20 fairgrounds, provided that:

21 (a) any such rental contract or lease shall not
22 conflict with the operation of the county fair;

23 (b) the county shall establish policies necessary to
24 regulate the use of those properties by public and private
25 groups during the fair season and during the balance of the

1 year;

2 (c) these policies shall specify schedules for rents
3 and charges, liability responsibilities, insurance and
4 police protection requirements, and such other matters as
5 the governing body may consider advisable; and may allow for
6 the use of the fairgrounds and buildings without charge;

7 (d) the renter or lessee shall give a bond such as the
8 governing body shall consider sufficient;

9 (e) any rental contract or lease may be immediately
10 canceled if the renter or lessee fails to adhere to any term
11 of the lease; and

12 (f) nothing herein shall be construed so as to prevent
13 the county governing body from permitting schools to use the
14 fairgrounds, buildings, and facilities for athletic and
15 other public school purposes.

16 (3) Unless otherwise provided by ordinance, all
17 revenue generated by the county fair and by the rental and
18 leasing of the county fairgrounds, buildings, and facilities
19 shall be deposited to the fair account and may be used in
20 any manner authorized by 47A-6-3104.

21 (4) Unless otherwise provided by ordinance, if a
22 junior fair is held separately from the county fair, all
23 revenue generated by the junior fair and by the rental and
24 leasing of the fairgrounds, buildings, and facilities shall
25 be deposited to the junior fair account and may be used in

1 any manner authorized by 47A-6-3104.

2 (5) The county governing body upon the recommendation
3 of the county finance administrator shall determine the
4 procedure to be utilized in the county for making payments
5 required during fair time to fair employees, performers,
6 exhibitors, and others. The procedure shall provide for
7 adequate internal controls and record keeping.

8 (6) No county tax levy shall be expended for horse
9 racing.

10 Subpart 2

11 Agricultural and Other Pests

12 47A-6-3201. Policy and purpose. (1) It is policy of
13 this state that:

14 (a) the management of agricultural and other pests is
15 primarily the responsibility of the owner or occupier of the
16 land. However, pest infestations of unusual nature,
17 proportion, or density may require resources and cooperative
18 efforts beyond the capabilities of individuals;

19 (b) to prevent and reduce injury and economic loss to
20 agriculture, related industries, and the public health, a
21 county may provide pest management programs;

22 (c) precautions shall be taken to protect and preserve
23 human health and the environment.

24 (2) It is a purpose of this subpart to effect these
25 policies by providing for pest management programs and by

1 facilitating coordinated and cooperative efforts within and
2 among counties and with appropriate public agencies.

3 47A-6-3202. General provisions apply. (1) A local
4 government providing pest management services shall proceed
5 under the provisions of this title, except that the specific
6 powers, procedures, and instructions contained in this
7 subpart shall be considered to be additional powers and
8 additional requirements or to supersede other provisions of
9 this title.

10 (2) Sections 47A-6-3201 through 47A-6-3210 contain
11 general provisions and requirements for all county pest
12 management programs. The provisions of 47A-6-3221 through
13 47A-6-3285 are additional powers and requirements, except as
14 otherwise specified.

15 47A-6-3203. General definitions. In this title, unless
16 otherwise provided or the context requires a technical or
17 other interpretation, the following definitions apply:

18 (1) "Agreement" means a written understanding and
19 expression of intention between the county and a person or a
20 public agency with respect to certain facts, performances,
21 and mutual obligations concerning their rights and duties
22 within a specified county pest management program.

23 (2) "Agricultural insect pest" means those insects
24 which reduce the quantity or quality of food, feed, forage,
25 or fiber during production; damage commodities during

1 harvesting or storage; or transmit disease organisms to
2 valuable plants.

3 (3) "Infestation" means that a pest exists in such
4 numbers, under such conditions, or at such times as to
5 threaten human health or to destroy, damage, or threaten to
6 destroy livestock, agricultural crops, or natural resources.

7 (4) "Land" means all land and water area, including
8 but not limited to structures, buildings, contrivances, and
9 machinery appurtenant thereto or situated thereon, fixed or
10 mobile, including any used for harvest or transportation
11 which are owned, controlled, leased, or occupied by any
12 person or public agency.

13 (5) "Management" means those short- or long-term
14 programs and procedures which may be employed to reduce,
15 eliminate, or prevent the adverse economic or public health
16 effect of designated pests or pest populations within the
17 county.

18 (6) "Management plan" means the ongoing policies and
19 processes of an active management program.

20 (7) "Nontarget organism" means any plant or animal
21 which has not been designated a pest and which is not the
22 intended target of the specific management measure.

23 (8) "Noxious plant" means any weed plant which is
24 capable of becoming established in a suitable habitat by
25 seed, root part, or modified stem; which is extremely

1 resistant to mechanical, biological, and chemical control
2 techniques; and which may render land unfit for use, damage
3 livestock or wildlife, or be injurious to humans. The
4 following plants, plant parts, and their seed are declared
5 to be noxious and subject to county noxious plant management
6 programs: Cardaria draba (whitetop); Carduus nutans (musk
7 thistle); Centaurea repens (Russian knapweed); Cirsium
8 arvense (Canada thistle); Convolvulus arvensis (field
9 bindweed); Euphorbia esula (leafy spurge); Halogeton
10 glomeratus (halogeton); Hypericum perforatum
11 (St.-John's-wort); Linaria dalmatica (dalmation toadflax);
12 Linaria vulgaris (common toadflax); Sonchus arvensis
13 (perennial sowthistle); Tanacetum vulgare L. (common tansy).

14 (9) "Owner or occupier" means any person or public
15 agency which owns, leases, occupies, controls, or manages
16 any land within the county and within the boundaries of the
17 specified pest management program.

18 (10) "Pest" means an organism or a species of organism,
19 plant or animal, which by its presence or by its action
20 causes economic loss to agriculture and related industries,
21 damages natural resources, or threatens human health.
22 Agricultural and other pests as defined by this section
23 include agricultural insect pests, mosquitoes and other
24 vectors, noxious plants, and vertebrate pests.

25 (11) "Pest management program" means any or all county

1 programs for the management of any agricultural or other
2 pests, defined and designated as provided by this part.

3 (12) "Pest management supervisor" means the person or
4 persons authorized by the county to supervise or administer
5 any or all county pest management programs.

6 (13) "Serious infestation" means an infestation which
7 cannot be managed in an economically or environmentally
8 sound way on an individual basis, pest management plan
9 basis, or single county basis.

10 (14) "Vector" means a living organism which may
11 adversely affect the public health and well-being by
12 directly or indirectly transporting or transmitting a
13 disease-causing agent or which may cause other health
14 trauma. Vector includes but is not limited to mosquitoes.

15 (15) "Vertebrate pest" means, individually or as a
16 species, a four-legged, carnivorous mammal predatory in
17 nature, a rodent, or a designated bird when that animal by
18 its presence or by its actions causes a significant
19 economic, environmental, or human health problem. Each of
20 the following animals, individually or as a species, is
21 designated as a potential vertebrate pest which may be
22 included in a county vertebrate pest management program when
23 that animal becomes a pest: Columba livia (rock dove);
24 Sturnus vulgaris (starling); Passer domesticus (house
25 sparrow); Euphagus cyanocephalus (brewer's blackbird);

1 Corvus brachyrhynchos (crows); Pica pica (magpies);
2 Spermophilus columbianus (columbian ground squirrel);
3 Spermophilus richardsonii (richardson ground squirrel);
4 Thomomys talpoides (northern pocket gopher); Mus musculus
5 (house mouse); Rattus norvegicus (Norway rat); Neotoma
6 corpus (nutria); Mustela frenata (long-tailed weasel);
7 Mephitis mephitis (striped skunk); Canis latrans (coyote).

8 (16) "Weed" means any living plant which by its
9 presence reduces land use for man's benefit.

10 47A-6-3204. Creation of pest management program. (1) A
11 county may provide immediate and long-range pest management
12 services. The county shall take precautions to protect and
13 preserve human health and the environment, particularly
14 beneficial and nontarget organisms and their habitat. A
15 program may provide for varying levels of financing and
16 services through such mechanisms as subordinate service
17 districts. Fifteen percent of the electors or 15% of the
18 owners or occupiers of property within the boundaries of a
19 proposed pest management program may petition for the
20 creation of that program, as provided by 47A-3-418.

21 (2) Before implementing a pest management program, the
22 county shall prepare a management plan as a basis for that
23 program. The management plan shall include:

24 (a) a statement of objectives of the proposed pest
25 management program;

1 (b) the specific pest species to be managed;

2 (c) the apparent density and boundaries of the pest

3 population or populations;

4 (d) the actual hazard, damage, and economic loss

5 caused by the pest or pest population;

6 (e) the proposed boundaries of the pest management

7 program;

8 (f) the proposed pest management methods including

9 alternatives;

10 (g) the probable effect of management measures on the

11 pests and on nontarget organisms in the area;

12 (h) the estimated costs of the proposed program and

13 how they may be apportioned. The plan shall specify any

14 subordinate service district to be created by the

15 implementation of the plan.

16 (i) a statement of the specific priorities of the

17 program elements in the management plan;

18 (j) any other relevant information.

19 (3) In preparing its management plan, the county shall

20 invite input and assistance from the public and from

21 resource persons.

22 (4) Before adopting a management plan and except as

23 otherwise provided, the county shall:

24 (a) provide notice within the county of the intent to

25 create the pest management program. In addition to other

1 requirements for the notice, the notice shall specify the

2 proposed boundaries of the program.

3 (b) hold a public hearing on the proposed plan and

4 program as provided by this title.

5 (5) Not less than 6 days after the public hearing on

6 the management plan, the county may by ordinance adopt the

7 management plan.

8 (6) In addition to any pest designated by 47A-6-3203,

9 a county governing body may include in a pest management

10 plan and program any other weed species, vector species, or

11 vertebrate pest species when that organism has become a pest

12 and when the county has requested and received approval from

13 the appropriate state agencies. A county shall request

14 approval from the following agencies for the designation of

15 an additional pest in its management plan: for weed species,

16 the cooperative extension service and the agricultural

17 experiment station; for vectors, the departments of health

18 and environmental sciences, livestock, and fish and game;

19 for vertebrate pests, the departments of health and

20 environmental sciences, livestock, and fish and game. A

21 majority of the agencies must approve or disapprove the

22 request in writing within 21 days, except if additional

23 information is requested and a specified extension of time

24 is agreed upon. If the agencies approve or if no action is

25 taken by the agencies within the established time, the

1 county governing body may by ordinance include that pest in
2 its management plan and program.

3 (7) The provisions of 47A-6-3243(3), 47A-6-3263(4),
4 and 47A-6-3283(5) for dealing with emergency or precipitous
5 pest situations supersede the requirements of subsections
6 (4), (5), and (6) of this section.

7 (8) Any county which is at present providing a pest
8 management service under current law may continue to do so
9 until two years after the effective date of this title. By
10 that date, the county by ordinance shall adopt a management
11 plan for each pest management program the county continues
12 to provide. Only pests as defined by 47A-6-3203 may be
13 included in any continuing program and its plan, except as
14 provided by 47A-6-3204(6). Before adopting a management plan
15 for a current pest management service, the county shall
16 publish notice and hold a public hearing on the management
17 plan, as provided by 47A-6-3204.

18 (9) A county may by ordinance terminate any pest
19 management program it is authorized to create, except that
20 each county shall provide a noxious plant management
21 program.

22 47A-6-3205. Administrative appeal. (1) A person
23 substantially or adversely affected by a pest management
24 program or any part of that program may protest or appeal
25 any decision or action of the county regarding that program.

1 (2) The appeal or protest shall be:

2 (a) (i) submitted to the governing body or other
3 entity prescribed by the governing body in a manner provided
4 by ordinance;

5 (ii) submitted before or within 30 days of the
6 passage, adoption, or implementation of the ordinance or
7 resolution constituting the decision being protested or
8 appealed;

9 (iii) submitted before or within 30 days of an action
10 protested; and

11 (b) heard within 30 days of the filing of the appeal
12 or protest, if a hearing is granted.

13 (3) The decision on the appeal or protest shall be
14 made within 30 days of the hearing and shall be in writing
15 setting out in detail the contested issues and the facts
16 relied upon in rendering the decision.

17 (4) If the initial appeal was to an entity other than
18 the governing body, the decision may be appealed to the
19 governing body in the same manner as the initial appeal.

20 (5) A person granted a hearing may be represented by
21 counsel.

22 47A-6-3206. Judicial review. (1) Judicial review in
23 district court may be commenced:

24 (a) by any person substantially or adversely affected
25 by a pest management program or any part of a program and

1 who seeks injunctive relief; or

2 (b) a party wishing to appeal the decision of the
3 administrative hearing provided for in 47A-6-3205.

4 (2) Judicial review shall be commenced by notice of
5 appeal or petition within 30 days of the:

6 (a) administrative hearing decision; or

7 (b) adoption, passage, or implementation of the
8 ordinance, resolution, or action constituting the decision
9 of the county to be enjoined and reviewed.

10 (3) In a judicial review of the county action
11 concerning a pest management program or any part of a
12 program or administrative appeal, the court shall sustain
13 the findings of the county with respect to questions of fact
14 if supported by substantial evidence when considered on the
15 record as a whole.

16 47A-6-3207. Special powers. (1) A county may enter
17 any land in the county for purposes of a pest management
18 program, provided that the county makes a reasonable effort
19 to inform the owner or occupier of the land.

20 (2) A county may provide survey and detection services
21 for any designated or potential pest and may enter any land
22 in the county for that purpose.

23 (3) Prior to entering land for the implementation or
24 enforcement of a program, other than survey and detection,
25 the county shall obtain the written permission of the owner

1 or occupier or shall notify the owner or occupier by
2 certified or registered mail no less than 5 days before
3 entering the land or shall obtain a warrant.

4 (4) In case of a serious infestation constituting a
5 public health hazard and requiring prompt attention, the
6 county governing body with the concurrence of the local,
7 state, or federal health officer may authorize entry on the
8 land for the purpose of abating the health hazard.

9 (5) A county may enter into a pest management
10 agreement with any person or public agency for purposes of
11 carrying out a pest management program.

12 (6) A county may use quarantine procedures consistent
13 with the purposes of this part.

14 (7) A county may submit any pest management plan to
15 any appropriate state agency for review and comment and may
16 request technical, planning, consulting, and other
17 assistance from any public agency.

18 47A-6-3208. Role of state agencies. (1) A county
19 having developed a management plan shall notify each of the
20 following public agencies and, upon request by an agency,
21 shall submit a copy of that plan and of any substantial
22 modifications to that plan to the agency for review and
23 comment: departments of agriculture, fish and game, health
24 and environmental sciences, livestock, natural resources and
25 conservation, the Montana agricultural experiment station,

1 and the Montana cooperative extension service.

2 (2) A state agency may provide the county with
3 technical, planning, consulting, and other services.

4 (3) The department of agriculture for noxious plants
5 and agricultural insect pests, the department of health and
6 environmental sciences for mosquitoes and other vectors, and
7 the department of livestock for vertebrate pests, in
8 cooperation with the counties and other public agencies,
9 may:

10 (a) collect data pertinent to the management of pests
11 in the specified category;

12 (b) analyze the economic and environmental impact of
13 the pests in the counties;

14 (c) prepare and periodically revise a report based on
15 that analysis. The report may include both prevailing and
16 minority interpretations, if any.

17 (d) promptly inform the county of any potential or
18 existing infestation observed on lands within and adjacent
19 to the county; and

20 (e) prepare and distribute to all counties on which
21 the agencies have information and in which such a pest
22 population is known to exist a periodic and reasonably
23 current report on the situation in those counties with
24 regard to those pests, their impact, and the results of
25 state and local pest management programs.

1 47A-6-3209. Services. (1) A county may sell materials,
2 rent or lease equipment, and provide assistance to conduct a
3 pest management program authorized by this chapter and a
4 management plan adopted under this chapter. The materials,
5 equipment, and assistance are to be available, distributed,
6 and used only in compliance with the priorities of the pest
7 management plan and applicable county, state, and federal
8 laws and regulations. The charge for materials and equipment
9 shall be not less than actual costs including depreciation
10 and administration. Operational assistance for noxious plant
11 management must also comply with 47A-6-3210(2) or
12 47A-6-3226(1). Charges for materials and equipment for
13 noxious plant management must be at a rate equivalent to the
14 local or prevalent commercial rate for similar services.

15 (2) Nothing in 47A-6-3201 through 47A-6-3285 shall be
16 construed to authorize a county to manage or assist in the
17 management on private or public lands of any pests other
18 than those specifically designated by the pest management
19 plan.

20 47A-6-3210. Finances. (1) A county may finance a pest
21 management program in any manner authorized by this title,
22 including but not limited to any manner authorized by this
23 part.

24 (2) A county may enter into financial or operational
25 agreements to assist owners or occupiers of land within a

1 pest management program with a portion of the cost of
 2 managing pests designated by that program. The county
 3 governing body may budget and appropriate from the general
 4 fund and from the appropriate pest management account such
 5 moneys as it considers advisable for the purpose of sharing
 6 the costs of pest management with the owners and occupiers
 7 of land within the program. If the county agrees to assist
 8 the owners or occupiers financially or operationally, any
 9 assistance shall be equitably available to all owners or
 10 occupiers in the boundaries of the program and shall be in
 11 accord with the priorities established by the pest
 12 management plan.

13 (3) Any moneys generated and costs recovered by a pest
 14 management program shall be deposited to the account of that
 15 program. Unless otherwise provided by ordinance, the moneys
 16 may be used during the current year or a subsequent year for
 17 purposes of the program as provided by appropriation.

18 (4) All fines and penalties collected under the pest
 19 management provisions of this part shall be paid to the
 20 county finance administrator and deposited to the county
 21 general fund, unless otherwise provided by ordinance.

22 47A-6-3221. Policy and purpose. (1) Noxious plants are
 23 an economic problem requiring intensive, long-term
 24 management.

25 (2) The management of noxious plants is primarily the

1 responsibility of landowners and occupiers. Each owner or
 2 occupier of land is encouraged to learn to identify noxious
 3 plants, to survey his land and denote the presence or
 4 absence of noxious plants, to manage any noxious plants on
 5 his land with the goal of lasting reductions or elimination
 6 of those noxious plants, to enter into a long-term agreement
 7 with the county that he will manage the noxious plants on
 8 his land, and to assist the noxious plant management
 9 supervisor as much as is practical in carrying out the
 10 provisions and intent of this act.

11 (3) When infestations of noxious plants are of an
 12 unusual nature, proportion, or density, the cooperation and
 13 resources of individuals, communities, and governmental
 14 entities may be desirable to manage infestations. Therefore,
 15 every county is to develop and implement an immediate and
 16 long-range noxious plant management program throughout the
 17 county. Management methods should include the use of grazing
 18 systems which encourage vigorous native ranges; the
 19 reseeding of disturbed areas; and the replacement of noxious
 20 plant infestations with beneficial plants, especially native
 21 plants where desirable and practical.

22 (4) It is a purpose of this part to effect these
 23 policies and the policies stated in 47A-6-3201 by providing
 24 for the development and implementation of county noxious
 25 plant management programs and by facilitating coordinated

1 and cooperative pest management efforts within and among
2 counties and with appropriate public agencies.

3 47A-6-3222. General provisions apply. (1) A local
4 government providing pest management services for noxious
5 plants shall proceed under the provisions of this title,
6 except that the specific powers, procedures, and
7 instructions contained in this part shall be considered to
8 be additional powers and additional requirements or to
9 supersede other provisions of this title.

10 (2) Sections 47A-6-3201 through 47A-6-3210 contain
11 general provisions and requirements for all county pest
12 management programs. The provisions of 47A-6-3221 through
13 47A-6-3228 are additional powers and requirements, except as
14 otherwise specified.

15 47A-6-3223. Creation. (1) Each county, as provided by
16 47A-6-3204 and in cooperation with the owners and occupiers
17 of land in the county, shall provide a program for the
18 immediate and long-term management of noxious plants on all
19 land within the county. Long-term programs shall be not
20 less than 3 years in duration and shall be updated
21 periodically to apply new management priorities and
22 techniques and to reflect changes in ownership and control
23 of the lands involved.

24 (2) The county governing body may modify the list of
25 noxious plants subject to the county noxious plant

1 management plan and program. Additions to the list shall be
2 made as provided by 47A-6-3204(4).

3 47A-6-3224. Prohibitive statement. Management of
4 noxious plants is primarily the responsibility of the owner
5 or occupier of the infested land. After due notice and
6 opportunity to enter into a noxious plant management
7 agreement as provided by 47A-6-3207 and 47A-6-3226, it is
8 unlawful for an owner or occupier of land in the county to
9 willfully allow any noxious plant designated by the county
10 noxious plant management plan to go to seed or to
11 self-propagate by root part or modified stem on that land.
12 An owner or occupier who enters into and adheres to a
13 noxious plant management agreement with the county meets the
14 requirements of this provision.

15 47A-6-3225. Administration. (1) The county shall:

16 (a) designate a noxious plant management supervisor,
17 as provided by 47A-4-101 or by interlocal agreement between
18 two or more counties;

19 (b) submit its noxious plant management plan and
20 substantial modifications of that plan to the cooperative
21 extension service and the departments of agriculture, fish
22 and game, health and environmental sciences, highways, and
23 state lands;

24 (c) conduct periodic comprehensive surveys and
25 analyses of all noxious plant populations within the county;

(d) investigate alternative methods of managing noxious plants with the goal of achieving lasting reductions in noxious plant densities and consult and advise upon matters pertaining to the best and most practical methods of noxious plant management;

(e) engage in educational activities designed to assist owners and occupiers of land in the county to identify, survey, and manage noxious plants on their land;

(f) cooperate with and assist noxious plant management supervisors of other counties;

(g) prepare an annual written report and evaluation of the noxious plant management program and such other reports as may be required by the county governing body. The county shall submit a copy of any report, upon request, to the cooperative extension service and the department of agriculture.

(2) The county and the department of highways shall enter into an interlocal agreement, to be reviewed and revised periodically, specifying their mutual responsibilities with respect to the management of noxious plants by the county on state highway rights-of-way.

(3) The county governing body and the governing body of each included municipality shall cooperatively plan for the management of noxious plants within the boundaries of the municipality. The county shall implement management

procedures for noxious plants only as described within the plan for within the boundaries of the municipality. The county shall plan, implement, and enforce its noxious plant management program equitably within and without the boundaries of the municipality. Control of nuisance weeds within the municipality remains the responsibility of the municipality.

47A-6-3226. Special powers. (1) The county may implement noxious plant management measures on land within the county in accord with its noxious plant management plan when:

(a) the land is county owned or controlled or involves the rights-of-way of municipal, county, state, or federal trafficways;

(b) the land is determined by the county to have an infestation of a size, nature, or density that is beyond the reasonable capacity of the owner or occupier to manage, that is in the best interests of the county to manage, or both; and

(c) an owner or occupier of land in the county is in violation of 47A-6-3224 and, after being served the appropriate notice, refuses to enter into an agreement and to implement management measures. Nothing in this chapter shall be construed to permit or require a county to enter any state or federally owned lands for other than survey and

1 investigatory purposes except by agreement with the agency
2 responsible for managing those lands. For purposes of this
3 section, lands leased by the state as provided by
4 47A-6-3228(2) shall be considered as private lands.

5 (2) Where complaint has been made or the noxious plant
6 management supervisor has reason to believe that noxious
7 plants are present upon lands in the county, the supervisor
8 or his representative shall inspect those lands, as provided
9 by 47A-6-3207. If noxious plants are found, the county be
10 certified mail shall inform the owner or occupier of the
11 infested land, directing him to comply within a reasonable,
12 specified period of time with the county noxious plant
13 management plan as required by 47A-6-3224. If the
14 notification is not observed within the specified period of
15 time, the county by certified mail shall inform the owner or
16 occupier and shall institute management measures on the
17 infested land. The supervisor shall provide the county
18 finance administrator and the owner or occupier of the
19 infested land with an itemized account of services and
20 expenses, a legal description of the infested land, and such
21 other information as the finance administrator may require.
22 Expenses, including penalty, if any, shall be paid as
23 provided by 47A-6-3228.

24 (3) Tax-exempt lands as defined in 84-202 are subject
25 to 47A-6-3221 through 47A-6-3228 and may be assessed or

1 charged a fee as other land under 47A-6-3226(2) and
2 47A-6-3228(1).

3 (4) (a) Whenever the natural sod cover or growth of
4 beneficial plants on right-of-way areas is seriously
5 disturbed by construction or maintenance of municipal and
6 county trafficways, irrigation ditches, drain ditches,
7 subdivisions, or otherwise, the governing body shall require
8 that the disturbed areas be seeded to beneficial native
9 plants, an adaptable perennial grass, or a combination of
10 perennial grasses and legumes. Every effort shall be made to
11 establish a sod cover or a growth of beneficial plants on
12 the disturbed area.

13 (b) All seed used shall meet certified standards.

14 (c) Time and method of seeding, fertilizing practices,
15 and grass species may be those recommended by the Montana
16 cooperative extension service.

17 (d) Nothing in this section shall be construed to
18 prevent or discourage the use of seeds or parts of native
19 species where desirable and practicable.

20 (5) The county may adopt and enforce regulations for
21 implementing a quarantine for farm products, machinery, and
22 equipment containing noxious plants, their parts and seed,
23 to be transported within the county. County regulations
24 shall be at least as stringent as the minimum standards
25 established for the counties by the department of

1 agriculture.

2 (6) The county shall cooperate with and assist the
3 department of agriculture in enforcing any inspection and
4 certification program and any embargo in order to prevent
5 the introduction from other states of designated or new
6 noxious plants, their parts or seeds.

7 (7) The county governing body, because of particular
8 economic, environmental, or human health considerations, may
9 exempt one or more specific areas of the county from the
10 noxious plant management program or from the use of specific
11 management techniques. The governing body may modify or
12 terminate an exemption.

13 47A-6-3227. Roles of state agencies. (1) In
14 cooperation with the counties, the cooperative extension
15 service and the department of agriculture shall perform and
16 coordinate the following duties and responsibilities:

17 (a) provide technical assistance to the county noxious
18 plant management programs, which shall include at least:

19 (i) determining suitable methods for managing noxious
20 plants;

21 (ii) providing training sessions to help supervisors
22 improve their noxious plant management programs; and

23 (iii) providing and distributing such information,
24 materials, personnel, and funds as are available to assist
25 county personnel in the management of their programs;

1 (b) develop, compile, and maintain records of noxious
2 plant infestations in the counties, which shall at least
3 denote the presence or absence in each county of each
4 noxious plant species designated by 47A-6-3203(6); determine
5 the number of acres infested with each noxious plant species
6 in each county; and define the noxious plant infestations
7 per county, watershed, or other appropriate geographical
8 region of the state;

9 (c) assist in the development of noxious plant
10 management programs appropriate to the size, nature, and
11 density of each infestation and including all or parts of
12 one or more counties;

13 (d) provide funds and personnel, if available, to
14 manage or assist in managing serious infestation of a
15 potentially noxious plant newly introduced into the state.

16 (e) assist in the development of watershed, regional,
17 and statewide noxious plant management programs, including
18 the acquisition of state and federal funds for noxious plant
19 management; and

20 (f) acquire state and federal funds for noxious plant
21 management on state and federal lands.

22 (2) The department of agriculture shall establish
23 minimum standards for county noxious plant quarantine.

24 (3) A public agency which reviews and comments on a
25 county noxious plant management plan may recommend to the

1 county specific areas which for economic, environmental, or
 2 human health reasons might be exempted from the county
 3 noxious plant management program or from one or more
 4 management techniques of the program.

5 47A-6-3228. Finances. (1) (a) The cost of noxious
 6 plant management on his lands remains the responsibility of
 7 the owner or occupier when the county implements management
 8 measures as provided by 47A-6-3226(2). The county shall levy
 9 a special assessment against the land on which the
 10 infestation occurs or shall impose a charge as provided by
 11 47A-6-3226(3). The special assessment or charge shall
 12 include the total actual costs of services rendered and
 13 expenses incurred, including administration, depreciation,
 14 and penalty, if any.

15 (b) The county governing body may establish a uniform
 16 schedule of penalties to be paid by an owner or occupier who
 17 fails to comply with 47A-6-3226(2).

18 (2) The state board of land commissioners shall
 19 provide in the lease of any state lands that the lessee of
 20 the lands shall assume and pay all service charges, special
 21 assessments, and taxes levied by the county for the county
 22 noxious plant management program and shall be responsible
 23 for noxious plant management on those lands as provided by
 24 this part. The charges, special assessments, and taxes shall
 25 be levied and collected as are other property taxes in the

1 county or as provided by ordinance.

2 (3) The actual costs of conducting a noxious plant
 3 management program on the rights-of-way for state highways
 4 shall be levied against the state department of highways and
 5 shall be paid by the state department of highways in
 6 compliance with an interlocal agreement between the county
 7 and the department. A county shall include all state
 8 highways in the county in its noxious plant management plan
 9 and shall submit a copy of that plan to the department of
 10 highways for review and approval of that portion of the plan
 11 affecting the department.

12 (4) Moneys for the reseeding of right-of-way areas off
 13 county trafficways, as provided by 47A-6-3226(3), may be
 14 allocated from the moneys available for county trafficways.

15 47A-6-3201. Policy and purpose. (1) It is a matter of
 16 state policy that management of agricultural insect pests is
 17 desirable and requires planning, technical knowledge, and
 18 cooperative efforts which may be facilitated by state and
 19 county assistance to the owners or occupiers of the land on
 20 which the infestation occurs.

21 (2) It is a purpose of this part to effect these
 22 policies and those of 47A-6-3201 by providing for county
 23 agricultural insect pest management programs and by
 24 facilitating coordinated and cooperative pest management
 25 efforts within and among counties and with appropriate

1 public agencies.

2 47A-6-3242. General provisions apply. (1) A local
3 government providing pest management services for
4 agricultural insect pests shall proceed under the provisions
5 of this title, except that the specific powers, procedures,
6 and instructions contained in this part shall be considered
7 to be additional powers and additional requirements or to
8 supersede other provisions of this title.

9 (2) Sections 47A-6-3201 through 47A-6-3210 contain
10 general provisions and requirements for all county pest
11 management programs. The provisions of 47A-6-3241 through
12 47A-6-3246 are additional powers and requirements, except as
13 otherwise specified.

14 47A-6-3243. Creation. (1) A county may plan and
15 implement a program for the timely surveillance and
16 management of agricultural insect pest infestations in the
17 county as provided by 47A-6-3204.

18 (2) A county shall submit its management plan to the
19 department of agriculture for review and comment. When the
20 plan involves financial assistance from the state, it shall
21 be submitted to the department of agriculture for review and
22 approval.

23 (3) When the county governing body has cause to
24 believe that a serious agricultural pest infestation exists
25 which may require prompt management measures in the county:

1 (a) the county shall develop a management plan for
2 managing the infestation;

3 (b) the county shall make a reasonable attempt to
4 inform the owners and occupiers of all lands in the infested
5 area and of adjacent lands which might be affected by the
6 management program. Notification may be by mail, telephone,
7 radio, or other means. Notification shall include:

8 (i) the nature and estimated degree of infestation;

9 (ii) the apparent boundaries of the infested areas;
10 and

11 (iii) the time, place, and purpose of a public hearing
12 in the vicinity at which the owners or occupiers of land in
13 the affected area may express their approval or opposition
14 to the proposed management program;

15 (c) the county shall hold a public hearing to discuss
16 the proposed management program not less than 24 hours after
17 notification has been given. If the county governing body
18 considers such action necessary and advisable, it may create
19 the proposed agricultural insect pest management program by
20 enacting an emergency ordinance as provided by 47A-3-304(2)
21 and 47A-3-307(4).

22 (4) The owner or occupier of land in an infested area
23 may protest implementation of the proposed program on his
24 lands, in which case the program may not be implemented on
25 those lands, provided that:

1 (a) the owner or occupier remains liable for his share
2 of the costs of any management program which encompasses or
3 is contiguous to his infested lands; or

4 (b) the owner or occupier may provide for his lands an
5 alternative management method approved by the county and by
6 the department of agriculture.

7 47A-6-3244. Special powers. (1) Through its
8 agricultural insect pest management program, a county may
9 provide for survey, surveillance, planning, and technical
10 assistance to the owners or occupiers of lands in the
11 county.

12 (2) In case of a serious agricultural insect pest
13 infestation, the county may aid in the implementation of and
14 may share the costs of the program.

15 (3) A county may cooperate with the department of
16 agriculture as provided by 3-3501 through 3-3506.

17 47A-6-3245. Role of state agencies. The department of
18 agriculture:

19 (1) shall review and comment on all agricultural
20 insect pest management programs proposed by the county. The
21 department shall review and approve all proposed
22 agricultural insect pest management programs in which the
23 state assists the county financially.

24 (2) may assist the county as provided in 3-3501
25 through 3-3506.

1 47A-6-3246. Finance. (1) The county governing body may
2 budget, appropriate, and expend such moneys as are necessary
3 to an agricultural insect pest management program and such
4 moneys as may reasonably be expected to be needed for
5 managing and sharing the anticipated costs of a potentially
6 serious agricultural insect pest infestation. In determining
7 the amount to be budgeted for a potentially serious
8 infestation, the county governing body shall take into
9 consideration the results and recommendations of recent
10 agricultural insect pest surveys conducted by county, state,
11 or federal agencies.

12 (2) A county may finance the management program for a
13 previously unforeseen serious agricultural insect pest
14 infestation as provided by 47A-9-214 and 47A-9-215. The
15 county shall be reimbursed for the program by the owners and
16 occupiers of land within the program area in any manner
17 authorized by this title. The amount to be appropriated, the
18 amount of county cost-sharing, if any, and the method and
19 timing of reimbursement shall be as specified at the time
20 the program is adopted, except that subsequent modifications
21 may be adopted following a public hearing.

22 47A-6-3261. Policy and purpose. (1) It is a matter of
23 state policy that because mosquitoes and other vectors may
24 distress man and his domestic animals and may transmit
25 diseases of man and his domestic animals, programs for the

1 management of these vectors are sometimes desirable.

2 (2) It is a purpose of this part to effect this policy
3 and the policies stated in 47A-6-3201(1) by providing for
4 county programs for the management of mosquitoes and other
5 vectors and by facilitating coordinated and cooperative pest
6 management efforts within and among counties and with
7 appropriate public agencies.

8 47A-6-3262. General provisions apply. (1) A local
9 government providing pest management services for mosquitoes
10 and other vectors shall proceed under the provisions of this
11 title, except that the specific powers, procedures, and
12 instructions contained in this chapter shall be considered
13 additional powers, additional requirements, or to supersede
14 other provisions of this title.

15 (2) Sections 47A-6-3201 through 47A-6-3210 contain
16 general provisions and requirements for all county pest
17 management programs. The provisions of 47A-6-3261 through
18 47A-6-3267 are additional powers and requirements, except as
19 otherwise specified.

20 47A-6-3263. Creation. (1) A county may provide a
21 program for the management of mosquitoes and other vectors
22 as provided by 47A-6-3204.

23 (2) In preparing its management plan, the county
24 shall:

25 (a) request the advice of the department of health and

1 environmental sciences on the creation of the vector
2 management program, on the designation of a vector other
3 than mosquitoes, and on establishment of appropriate
4 boundaries for the program. The county shall establish such
5 boundaries for the program as are advisable.

6 (b) submit a copy of its management plan to the
7 department of health and environmental sciences.

8 (3) If the management program is to be for or to
9 include a vector other than mosquitoes, the county governing
10 body, upon the recommendation of the county or district
11 health officer, shall designate the specific vector as a
12 pest subject to county pest management procedures as
13 provided by 47A-6-3204(6).

14 (4) When, in the judgment of the county governing body
15 and the county or district health officer, there exists in
16 the county an emergency- or disaster-related infestation of
17 mosquitoes or other vectors which requires prompt management
18 measures to protect the public health:

19 (a) the county shall forthwith transmit its findings
20 to the department of health and environmental sciences. The
21 department of health and environmental sciences shall
22 document or assist the county to document the existence and
23 severity of a serious infestation. The department shall
24 declare whether in its opinion a public health hazard
25 exists. If in the opinion of the department an emergency

1 public health hazard does exist or is threatened, the
2 department shall transmit its findings to the appropriate
3 public agency for documentation and disaster relief funding.

4 (b) the county shall develop a management plan for
5 managing the infestation;

6 (c) the county shall make a reasonable attempt to
7 inform the owners and occupiers of all lands in the infested
8 area and of adjacent lands which might be affected by the
9 management program. Notification may be by mail, telephone,
10 radio, or other means. Notification shall include:

- 11 (i) the nature and estimated degree of infestation;
 - 12 (ii) the apparent boundaries of the infested area; and
 - 13 (iii) the time, place, and purpose of a public hearing
- 14 in the vicinity at which the owners and occupiers of land in
15 the affected area may express their approval of or
16 opposition to the proposed management program.

17 (d) the county shall hold a public hearing to discuss
18 the proposed management program not less than 24 hours after
19 notification has been given. The county governing body may
20 create the proposed vector management program by enacting an
21 emergency ordinance as provided by 47A-3-304(2) and
22 47A-3-307(4) if it considers emergency action necessary and
23 advisable.

24 (e) the owner or occupier of land in an affected area
25 may protest the implementation of the proposed program on

1 his land in which case the proposed program may not be
2 implemented on that land, except if necessary to prevent or
3 reduce a serious health hazard. The owner or occupier may
4 provide for his land an alternative management method
5 approved by the county and the department of health and
6 environmental sciences.

7 47A-6-3264. Structure. A county shall cooperate with
8 the county or district health officer or his representative
9 and the agricultural extension agent or his representative
10 in planning and implementing a vector management program.

11 47A-6-3265. Administration. Annually on or before
12 February 1, each county having a vector management program
13 shall submit to the department of health and environmental
14 sciences for review and comment a written report of its
15 operations for the preceding year and of its plan for the
16 succeeding year.

17 47A-6-3266. Special powers. (1) The county governing
18 body may survey, manage, modify, and abate any condition
19 which may or does contribute to the existence of any
20 designated vector, as provided by this part.

21 (2) Whenever there exists or appears to exist in the
22 program area any condition which unnecessarily contributes
23 to the vector problem and which is not in compliance with
24 the requirements of the program, the county shall in writing
25 inform the owner or occupier of the land on which the

1 condition appears to exist:

2 (a) that the condition appears to exist in conflict
3 with specified requirements of the program;

4 (b) that it is the responsibility of the owner or
5 occupier to remove, correct, or destroy the condition within
6 a reasonable specified time and to prevent the recurrence of
7 the condition;

8 (c) that, if requested by the owner or occupier, the
9 county shall hold a hearing at which the governing body or
10 an appointed hearing board shall determine from the evidence
11 presented at the hearing:

12 (i) whether the apparent condition does exist; and

13 (ii) whether it is reasonably feasible for the owner or
14 occupier to remove, correct, or destroy the condition and to
15 prevent its recurrence; and

16 (d) that the requirements of this section are met if
17 the owner or occupier of the land and the county enter into
18 a written agreement to bring the condition into compliance
19 with the vector management program.

20 47A-6-3267. Role of state agencies. The department of
21 health and environmental sciences shall:

22 (1) advise the county governing body concerning the
23 creation of any vector management program within the county;

24 (2) review and comment on all vector management
25 programs proposed or operated by the county. The department

1 shall review and approve or disapprove any proposed program
2 in which the state assists the county financially, or in
3 which the federal government assists the county financially
4 if such approval is required by the federal government; and
5 (3) assist the county as provided by 47A-6-3208.

6 47A-6-3268. Finance. (1) The county governing body may
7 budget, appropriate, and expend such moneys as are necessary
8 to a vector management program and such moneys as may
9 reasonably be expected to be needed for managing and sharing
10 the costs of a potentially serious vector infestation. In
11 determining the amount to be budgeted for a potentially
12 serious infestation, the county governing body shall take
13 into consideration the results and recommendations of recent
14 vector surveys conducted by county, state, or federal
15 agencies.

16 (2) A county may finance the management program for a
17 previously unforeseen serious vector infestation as provided
18 by 47A-9-214 and 47A-9-215. The county may be reimbursed for
19 the program by the residents of the program area or by the
20 owners and occupiers of land within the area, in any manner
21 authorized by this title. The amount to be appropriated, the
22 amount of county cost-sharing, if any, and the method and
23 timing of reimbursement shall be as specified at the time
24 the program is adopted, except that subsequent modifications
25 may be adopted following a public hearing.

1 47A-6-3281. Policy and purpose. (1) It is policy of
 2 this state that, because certain vertebrate animals at
 3 specific times and places constitute a health hazard or are
 4 unduly destructive of livestock, food, fiber, or natural
 5 resources, it becomes advisable to authorize programs for
 6 the management of these pests through the cooperative
 7 efforts of individuals, counties, and public agencies.

8 (2) It is a purpose of this part to effect these
 9 policies and the policies stated in 47A-6-3201 by providing
 10 for county vertebrate pest management programs and by
 11 facilitating coordinated and cooperative pest management
 12 efforts within and among counties and with appropriate
 13 public agencies.

14 47A-6-3282. General provisions apply. (1) A local
 15 government providing pest management services for vertebrate
 16 pests shall proceed under the provisions of this title,
 17 except that the specific powers, procedures, and
 18 instructions contained in this part shall be considered to
 19 be additional powers and additional requirements or to
 20 supersede other provisions of this title.

21 (2) Sections 47A-6-3201 through 47A-6-3210 contain
 22 general provisions and requirements for all county pest
 23 management programs. The provisions of 47A-6-3281 through
 24 47A-6-3285 are additional powers and requirements, except as
 25 otherwise specified.

1 47A-6-3283. Creation. (1) Any county may plan and
 2 create a program as provided by 47A-6-3204 for the
 3 management of any designated vertebrate pest or pest
 4 population causing significant damage to food, fiber, or
 5 natural resources within the county or constituting a public
 6 health hazard.

7 (2) The county shall submit a copy of its preliminary
 8 plan to the departments of livestock, fish and game, and
 9 health and environmental sciences for their review and
 10 comment prior to the adoption of the plan by ordinance.

11 (3) If vertebrate pest damage is being done by a
 12 predator or predators to cattle, sheep, or other livestock,
 13 the owners or the agents of the owners of 51% of the
 14 affected species of livestock within the boundaries of the
 15 proposed program in a petition to the county governing body
 16 may request that a predator management program be
 17 established and may specify the maximum amount of the
 18 service charge which may be levied annually against the
 19 sheep, cattle, and other livestock within and coming into
 20 the boundaries of the proposed predator management program
 21 while that program is in effect.

22 (4) If a vertebrate pest management program is to
 23 include a vertebrate pest other than those designated by
 24 47A-6-3203(16), the governing body may include that pest in
 25 its management plan and program as provided by

1 47A-6-3204(6).

2 (5) When, in the opinion of the county governing body
3 and the pest supervisor, if there is one, prompt action is
4 required to deal with an urgent and critical situation in
5 the county caused by a vertebrate pest which is not
6 specifically designated by 47A-6-3203(16), the county shall:

7 (a) when practicable, prepare a management plan
8 identifying the problem and indicating the county's proposed
9 actions; and

10 (b) inform the public and those agencies specified by
11 47A-6-3283(1) of the problem and of the county's proposed
12 actions. If, within 24 hours of being informed, one or more
13 of the public agencies disapproves the proposed action, the
14 county may not proceed further under this subsection. The
15 agency shall specify the reasons for its disapproval and
16 shall make a prompt and reasonable effort to assist the
17 county to resolve the problem being caused by the pest. If,
18 within 24 hours of being informed, no public agency has
19 protested, the county, by resolution of the governing body,
20 may include that vertebrate pest on a short-term basis in
21 its vertebrate pest management plan and program in order to
22 deal with the particular situation.

23 47A-6-3284. Role of state agencies. The departments of
24 livestock, fish and game, agriculture, and health and
25 environmental sciences may:

1 (1) review and comment on all vertebrate pest
2 management plans and programs proposed by a county. A
3 department shall review and approve all such plans and
4 programs in which it assists a county financially.

5 (2) recommend organized and systematic procedures to
6 be followed in the management of designated vertebrate
7 pests;

8 (3) assist in damage assessments, training of
9 personnel, monitoring management practices, and recommending
10 improved pest management practices; and

11 (4) assist the county, upon request, in developing
12 coordinated and cooperative efforts with other public
13 agencies.

14 47A-6-3285. Finance. (1) The county governing body may
15 budget and appropriate annually such moneys as it considers
16 advisable for a vertebrate pest management program and may:

17 (a) levy a tax not to exceed 2 mills on all
18 agricultural, horticultural, grazing, and timber lands and
19 their improvements within the boundaries of a rodent
20 management program, for use in that program; and

21 (b) collect a service charge not to exceed the amount
22 established in the petition of the owners of sheep, cattle,
23 and other livestock within the boundaries of a predator
24 management program for use by that program.

25 (2) A county may pay bounty for the skins and furs of

predatory animals subject to the county vertebrate pest management program, provided that in its vertebrate pest management plan the county establishes regulations which include but are not limited to the time of year the bounty program is in effect; the method of verifying that the predator was taken within the boundaries of the program; and the method of marking the skin or fur so that it cannot be resubmitted for bounty. A county having a bounty program shall establish a bounty fee schedule and a predatory animal bounty account.

Subpart 3

Cooperative Extension Service

47A-6-3301. Policy and purpose. (1) It is a matter of state policy that any county may benefit from services provided by and in cooperation with Montana state university and the U.S. department of agriculture through the cooperative extension service. These services include but are not limited to agriculture, home economics, youth and community development, and such other services as may be authorized or implied by this title.

(2) It is the purpose of this subpart to authorize and encourage these cooperative efforts and to facilitate the provision of these services.

47A-6-3302. General provisions apply. A local government providing cooperative extension services shall

proceed under the provisions of this title, except that the specific powers, procedures, and instructions contained in this subpart shall be considered to be additional powers and additional requirements or to supersede other provisions of this title.

47A-6-3303. Definition. In this subpart, unless otherwise provided or the context requires a technical or other interpretation, "agent" means that person designated and employed as a county cooperative extension agent as a result of an interlocal agreement between the governing body of a county and Montana state university.

47A-6-3304. Creation. The governing body of any county may cooperate with Montana state university and the U.S. department of agriculture for the purpose of carrying on extension work in agriculture, home economics, youth and community development, and such other services as may be authorized or implied by this title. The governing body may enter into an interlocal agreement with Montana state university which shall specify:

- (1) the minimum amount of the appropriation in the county for extension services;
- (2) the method of its expenditure;
- (3) the responsibility for the direction of the work;
- (4) the procedure for appointing the extension agents;
- (5) the compensation and conditions of service of the

1 agents; and

2 (6) such other stipulations as the governing body and
3 the university shall include.

4 Part 4

5 Community and Rural Development Services

6 Subpart 1

7 Economic Development

8 47A-6-4101. Policy and purpose. The general welfare of
9 Montana residents is profoundly influenced by the economic
10 conditions which exist within the state. It is the purpose
11 of this subpart to provide local governments with the
12 additional powers necessary to carry out activities
13 promoting economic development and to establish conditions
14 under which local governments may conduct the activities.

15 47A-6-4102. General provisions apply. A local
16 government providing economic development services shall
17 proceed under the provisions of this title, except that the
18 specific powers, procedures, and instructions contained in
19 this subpart shall be considered to be additional powers and
20 additional requirements or to supersede other provisions of
21 this title.

22 47A-6-4103. General definitions. In this title, unless
23 otherwise provided or the context requires a technical or
24 other interpretation, the following definitions apply:

25 (1) "Agricultural enterprises" means any agricultural

1 enterprise including but not limited to producing,
2 warehousing, storing, fattening, treating, handling,
3 distributing, or selling farm products or livestock.

4 (2) "Economic development project" means any land, any
5 building or other improvement, and all real and personal
6 properties considered necessary in connection therewith,
7 whether or not now in existence, which shall be suitable for
8 use for commercial, manufacturing, agricultural or
9 industrial enterprises, recreation or tourist facilities,
10 state and federal governmental facilities, and retirement
11 housing, hospitals, or long-term care or medical facilities.

12 47A-6-4104. Economic development powers. (1) In
13 providing economic development services, a local government
14 may exercise the powers to:

15 (a) conduct studies, promote economic development
16 opportunities, and carry on any other activities generally
17 associated with economic development; and

18 (b) finance economic development projects with
19 industrial development bonds as provided in 47A-6-4105
20 through 47A-6-4112.

21 (2) After notice and public hearing, the governing
22 body may appropriate the equivalent of 1 mill to conduct
23 preliminary feasibility studies, purchase land for
24 industrial parks, and construct buildings to house
25 manufacturing and processing operations. These funds may not

1 be used to directly assist an industry's operations by loan
2 or grant.

3 47A-6-4105. Special economic development project
4 powers. In carrying out economic development projects, a
5 local government may:

6 (1) acquire by construction, purchase, devise, gift,
7 lease, or any combination of these methods one or more
8 economic development projects. A project must be located
9 within this state; however, a project may be located outside
10 the jurisdictional area of the local government.

11 (2) lease a project upon terms and conditions as the
12 governing body may consider advisable and which do not
13 conflict with the provisions of this part; and

14 (3) sell and convey any real or personal property
15 acquired pursuant to this part, subject to the terms of any
16 lease but free of any other encumbrance.

17 47A-6-4106. Authorization of project. (1) Prior to the
18 undertaking of an economic development project, the
19 governing body shall adopt a resolution authorizing the
20 project.

21 (2) Prior to the adoption of the resolution, the
22 governing body shall give notice and conduct a public
23 hearing on the proposed economic development project.

24 (3) The governing body shall not approve an economic
25 development project unless it appears after the public

1 hearing that approval is in the public interest.

2 47A-6-4107. Restrictions on local governments. (1) No
3 local government may operate an economic development project
4 for a profit or in any manner other than as a lessor.

5 (2) A local government may not acquire any project by
6 condemnation.

7 (3) A local government may not in any mortgage
8 agreement for an economic development project obligate
9 itself except with respect to the project and the
10 application of the revenues from the project. A local
11 government may not incur a pecuniary liability or a charge
12 upon its general credit or against its taxing powers.

13 47A-6-4108. Obligations. Obligations issued by a local
14 government for the purpose of financing an economic
15 development project shall be limited to revenue bonds. The
16 principal and interests of revenue bonds may be secured by:

17 (1) a pledge of the revenues from the project financed
18 with the proceeds of the bonds;

19 (2) a mortgage covering all or any part of the
20 economic development project;

21 (3) a pledge of the lease of the project; or

22 (4) any other security considered advantageous by the
23 governing body.

24 47A-6-4109. Mortgages. (1) A mortgage made to secure
25 bonds issued under the authority of 47A-6-4108 may contain

1 any of the agreements and provisions authorized for bonds in
2 47A-9-513(5).

3 (2) In the event of default in the payment of
4 principal of or the interest on the bonds or in the
5 performance of any agreement contained in the mortgage, the
6 payment and performance may be enforced in the manner
7 provided in 47A-9-513(5).

8 (3) A mortgage may also provide that the mortgage may
9 be foreclosed in the event of default or violation of any
10 agreement contained in the mortgage.

11 (4) No breach of a mortgage agreement shall impose any
12 pecuniary liability upon a local government or any charge
13 upon their general credit or against their taxing powers.

14 47A-6-4110. Determination of rentals. (1) Prior to the
15 leasing of any economic development project, the governing
16 body shall determine the amount of revenue necessary to:

17 (a) pay the principal and interest on bonds proposed
18 to finance the project;

19 (b) establish any reserve funds which it considers
20 advisable; and

21 (c) pay the operation and maintenance costs of the
22 project unless a subsequent lease agreement assigns the
23 maintenance responsibility to the lessee.

24 (2) (a) Prior to the issuance of bonds, the local
25 government shall lease a project to a lessee or lessees.

1 (b) The terms of the lease agreement or agreements
2 shall provide sufficient revenue to pay the costs to the
3 local government as determined pursuant to subsection (1) of
4 this section.

5 (c) The lease or extensions or modifications of the
6 lease agreement may contain other terms and conditions as
7 are mutually acceptable to the parties.

8 (d) The lease agreement may contain an option for the
9 lessee to purchase a project on terms and conditions as are
10 mutually acceptable to the parties.

11 47A-6-4111. Use or proceeds of bond sales. Proceeds of
12 bond sales issued under authority of this part shall only be
13 used for the purpose for which bonds were issued. Any
14 accrued interest and premiums or proceeds in excess of the
15 funds necessary for the purpose shall be applied to the
16 payment of principal and interest on the bonds.

17 47A-6-4112. Taxation of projects. (1) Projects leased
18 or held by private interests on both the assessment date and
19 the date the levy is made in any year shall be taxed in the
20 same manner as privately owned property. The projects shall
21 not be subject to taxation if they are not leased or held on
22 both the assessment and levy dates in any year.

23 (2) A local government may make payments in lieu of
24 taxes and special assessments on economic development
25 projects.

1 (3) Where personal property is owned by a local
2 government and where payment of taxes on the personal
3 property is delinquent, only the personal property on which
4 such taxes were levied may be attached by a lien.

5 47A-6-4113. Advice of department of community affairs.
6 The department of community affairs shall furnish advice and
7 information in connection with an economic development
8 project when requested to do so by a local government.

9 Subpart 2

10 Housing

11 47A-6-4201. Policy and purpose. The welfare of many
12 persons of lower income is inhibited by their inability to
13 afford decent, safe, and sanitary housing. The deterioration
14 of housing contributes to housing shortages and to the
15 degeneration of communities. It is the purpose of this
16 subpart to provide local governments with the requirements
17 and procedures to exercise the authority necessary to assist
18 persons of lower income in obtaining adequate housing and to
19 assist in the rehabilitation of deteriorating housing.

20 47A-6-4202. General provisions apply. A local
21 government providing housing services shall proceed under
22 the provisions of this title, except that the specific
23 powers, procedures, and instructions contained in this
24 subpart and other state laws shall be considered to be
25 additional powers and requirements or to supersede other

1 provisions of this title.

2 47A-6-4203. Definitions. In this title, unless
3 otherwise provided or the context requires a technical or
4 other interpretation, the following definitions apply:

5 (1) "Housing development" means any work or
6 undertaking financed, in whole or in part, under this part
7 for the primary purpose of acquiring, constructing, or
8 rehabilitating dwellings for persons of lower income in need
9 of housing.

10 (2) "Undertaking" includes any buildings, land,
11 equipment, facilities, or other real or personal properties
12 including but not limited to streets, sewers, utilities,
13 parks, site preparation, landscaping, and other nonhousing
14 facilities as are determined by the housing agency to be
15 necessary, convenient, or desirable.

16 47A-6-4204. Special housing services authorized. In
17 addition to its own programs, a local government may
18 administer and participate in the financing of any federal,
19 state, or other program which is intended to:

20 (1) provide for the establishment, maintenance, and
21 operation of housing developments for persons of lower
22 income;

23 (2) assist persons of lower income in affording the
24 cost of satisfactory housing; or

25 (3) provide for the rehabilitation of deteriorating

1 housing.

2 47A-6-4205. Finding and declaration of necessity. A
3 local government may provide the housing services authorized
4 in 47A-6-4204 only after the governing body gives notice,
5 conducts a public hearing, and adopts a resolution finding
6 that within its jurisdictional area:

7 (1) dwellings are being occupied which are unsafe or
8 unsanitary; or

9 (2) there is a shortage of safe sanitary dwellings at
10 prices affordable to persons of lower income.

11 47A-6-4206. Establishment of housing agency. (1) In
12 order to provide the housing services authorized in
13 47A-6-4204, a governing body must adopt an ordinance
14 establishing a housing agency.

15 (2) A housing agency may be established by any of the
16 methods authorized in 47A-6-102.

17 (3) A housing agency may be combined with any other
18 agency of a local government, but the additional powers
19 authorized by this part may be exercised only in the
20 provision of housing services.

21 (4) Prior to the adoption of an ordinance establishing
22 a housing agency, a governing body shall give notice and
23 conduct a public hearing.

24 47A-6-4207. Additional housing powers. In providing
25 the housing services authorized by this part, a local

1 government may:

2 (1) investigate housing conditions and needs within
3 its jurisdictional area;

4 (2) determine means and methods of improving
5 inadequate housing and alleviating housing shortages;

6 (3) demolish unsafe or unsanitary structures;

7 (4) plan, acquire, construct, rehabilitate, maintain,
8 and operate any housing development; and

9 (5) arrange or contract for the furnishing of public
10 or private services, privileges, works, or facilities for or
11 in connection with a housing development.

12 47A-6-4208. Restrictions. Under no circumstances may a
13 governing body delegate the power to:

14 (1) make the findings and declaration of necessity as
15 provided for in 47A-6-4205;

16 (2) authorize a housing development as provided for in
17 47A-6-4210; and

18 (3) enter into interlocal agreement with other local
19 governments or public agencies.

20 47A-6-4209. Housing authority. (1) To effect the
21 purposes of this chapter, a local government may by
22 ordinance establish a housing authority. Upon establishment,
23 a housing authority may exercise any power contained in
24 47A-6-4207 and any power granted to local governments by
25 47A-5-104, except that it may not:

(a) enact ordinances; or

(b) issue general obligation bonds.

(2) A governing body which dissolves a housing authority created under this section shall be responsible for all obligations of the housing authority.

47A-6-4210. Authorization of housing development. (1) Before any housing development is undertaken, the governing body shall adopt a resolution authorizing the housing development.

(2) Prior to the passage of the resolution, the governing body shall give notice and conduct a public hearing on the proposed development.

47A-6-4211. Consolidation of housing developments. (1) For purposes related to the administration and financing of housing developments, a governing body may by resolution consolidate two or more housing developments.

(2) The governing body shall give notice and conduct a public hearing prior to the approval of the consolidation.

47A-6-4212. State and federal projects. (1) A local government may purchase, lease, or manage in whole or in part any housing development or related activity constructed, owned, or managed by the state or federal governments.

(2) Prior to entering into an agreement pursuant to this section, a local government shall give notice and

conduct a public hearing on the proposed agreement.

(3) In connection with the assumption of any interest in a state or federal housing development, a local government may enter into any mortgage, trust indenture, lease, or agreement as it considers necessary or desirable.

47A-6-4213. Cooperation of public agencies. (1) For the purpose of aiding and cooperating in the establishment, maintenance, or operation of housing services upon the terms it determines to be appropriate, a public agency may:

(a) dedicate, convey, or lease any of its interests in any property or grant easements or any other rights to a local, the state, or the federal government;

(b) establish or improve any public trafficways, services, or facilities in order that they may be made available to a housing development or residents occupying a development;

(c) plan or replan, zone or rezone, and make exceptions from building regulations and ordinances for property included within or having a reasonable relationship to a housing development;

(d) enter into agreements relating to the repair, closing, or demolition of unsafe, unsanitary, or unfit dwellings or structures;

(e) enter into agreements with a local government or the state or federal government to assist in the provision

1 of housing; and

2 (f) do any and all things necessary and convenient to

3 assist in the provision of housing services.

4 (2) In aiding or cooperating in the provision of

5 housing services, a public agency may incur all or any part

6 of the expenses.

7 (3) A public agency may conclude any sale, conveyance,

8 lease, or agreement authorized by this section without

9 appraisal, notice, public hearing, or public bidding.

10 47A-6-4214. Developments subject to general plan and

11 health laws. (1) All housing developments shall conform to:

12 (a) adopted elements of a general plan;

13 (b) local zoning subdivision ordinances; and

14 (c) health and building laws, regulations, and

15 ordinances.

16 (2) Local government planning and zoning may not be

17 used to discriminate against the construction of housing

18 developments.

19 (3) Where an urban redevelopment program has been

20 undertaken by a local government, housing developments shall

21 be coordinated where appropriate with the redevelopment

22 program.

23 47A-6-4215. Tenant eligibility. (1) In operating a

24 housing development, a local government shall rent or lease

25 dwelling units exclusively to persons of lower income unless

1 there is an insufficient number of eligible applicants to

2 fill the development.

3 (2) The local government shall fix maximum income

4 limits for the admission and for the continued occupancy of

5 persons in housing developments. Housing developments

6 financed in any part by state or federal moneys shall be

7 subject to income limits established by the funding entity.

8 (3) A local government may provide for the exclusion

9 of all or part of a person's income which in the judgment of

10 the local government is not available to meet the living

11 costs of the person.

12 (4) A person who knowingly falsifies a statement

13 regarding the income of a person seeking admission to or

14 continued occupancy in a housing development shall be guilty

15 of a misdemeanor.

16 (5) In the event of a default of payment of a debt or

17 obligation of a housing development, nothing in this section

18 shall be construed to limit the power of the local

19 government to vest in an obligee the right to take

20 possession of a housing development or to cause the

21 appointment of a receiver who may operate a development free

22 from restrictions imposed by this section.

23 47A-6-4216. Rentals. (1) A local government shall

24 manage and operate its housing development in a manner that

25 facilitates the fixing of rentals for dwelling

1 accommodations at the lowest possible rates consistent with
2 the provision of decent, safe, and sanitary dwellings.

3 (2) A local government shall fix rentals for dwellings
4 at rates no higher than are necessary to produce revenues
5 which, when combined with other revenues received in
6 connection with the development, are sufficient to:

7 (a) pay principal and interest on bonds issued in
8 connection with the housing development as they become due;

9 (b) create and maintain such reserves as may be
10 desirable to assure the payment of principal and interest on
11 the bonds;

12 (c) meet the cost of and provide for the maintenance
13 and operation of a housing development, including the costs
14 of any administrative expenses attributable to the housing
15 development; and

16 (d) make payments in lieu of taxes for the provision
17 of public services received by a housing development or
18 residents of a housing development as are consistent with
19 the maintenance of the low rent character of the
20 development.

21 (3) A local government may not establish or operate a
22 housing development as a source of revenue for the local
23 government.

24 47A-6-4217. Relocation. (1) A local government
25 undertaking a housing project shall be responsible for the

1 relocation of persons displaced as a result of the
2 establishment of the housing development.

3 (2) The location of displaced persons shall comply
4 with 93-9927 through 93-9944.

5 (3) Where federal moneys have been utilized to fund
6 any part of the housing development, relocation shall comply
7 with applicable federal laws and requirements.

8 47A-6-4218. Exemption from taxation. (1) Real and
9 personal property of a local government held as part of
10 housing development is public property used for essential
11 public and governmental purposes.

12 (2) Housing development property shall be exempt from
13 all taxes of any public agency.

14 (3) In lieu of taxes on property exempted by this
15 section, a local government may agree to make payments to
16 any public agency for services provided to a housing project
17 or to residents of a housing project. Payments in lieu of
18 taxes shall not exceed the costs incurred by the public
19 agency in providing the services.

20 47A-6-4219. Obligations. (1) Obligations issued by a
21 local government for the purpose of financing a housing
22 development shall be limited to revenue bonds upon which
23 principal and interest are payable:

24 (a) exclusively from income and revenues of the
25 development financed with the proceeds of such bonds; or

1 (b) exclusively from the income and revenues of
2 certain designated housing developments whether or not they
3 were financed in whole or in part with the proceeds of the
4 bonds.

5 (2) Revenue bonds issued for the purpose of financing
6 a housing development may be additionally secured by trust
7 indenture with a trustee, pledge of any loan, grant, or
8 contribution from the state or federal government or from
9 any other source, or pledge of income or revenue in
10 connection with a housing development.

11 (3) For the purpose of securing or improving the
12 marketability of bonds issued for the purpose of financing a
13 housing development, a local government may enter into such
14 trust indentures with the bondholder which are considered to
15 be in the public interest and are not inconsistent with
16 other provisions of this part.

17 (4) Bonds shall not be issued for a period greater
18 than 50 years.

19 47A-6-4220. Exemption from foreclosure. (1) All
20 property owned or held by a local government in connection
21 with a housing development shall be exempt from levy and
22 sale by an execution.

23 (2) No execution or other judicial process shall be
24 issued against the property, but the provisions of this
25 section shall not prohibit the right of obligees to pursue

1 any remedies for the enforcement of any pledge or lien given
2 by the local government on its rents, fees, or revenues or
3 the right of federal or state governments to pursue any
4 remedies provided them by law or agreement.

5 (3) A local government may waive exemption of claims
6 against any profitmaking enterprise occupying any portion of
7 a development, provided this waiver does not affect or
8 impair the rights of any obligee of the local government.

9 47A-6-4221. Provision of housing for victims of major
10 disasters. (1) Notwithstanding the provisions of this or any
11 other chapter, when the governing body of a local government
12 determines that there is a need to assure the availability
13 of housing for victims of a war or major disaster, it may
14 undertake the establishment and administration of housing
15 developments.

16 (2) Dwellings in any housing development under its
17 jurisdiction may be made available to victims of a war or
18 major disaster.

19 47A-6-4222. Provision of dwellings for servicemen,
20 veterans, and persons engaged in war industries or
21 activities and their families. (1) Notwithstanding the
22 provision of this or any other chapter, the governing body
23 of a local government may participate in any federal program
24 to provide adequate housing for servicemen, veterans, and
25 persons engaged in war industries or activities and their

families. A local government may exercise the power granted by this section to establish and administer housing developments only in response to specific federal statutes authorizing such housing programs.

(2) The provision of housing under this section shall not be subject to any of the provisions of this chapter relating to rentals and tenant eligibility.

(3) Upon termination of such federal programs, all housing developments acquired or administered under this section shall be administered for the purposes and in accordance with 47A-6-4201 through 47A-6-4220.

Subpart 3

Planning and Zoning

47A-6-4301. Policy and purpose. It is the policy of this state to encourage local governments to maintain and enhance the public health, safety, and welfare by planning for the changes which will take place within their jurisdictions. It is the purpose of this subpart to provide local governments with the additional powers necessary to establish and implement planning within their jurisdictions.

47A-6-4302. General provisions apply. A local government providing planning and land use regulation services shall proceed under the provisions of this title, except that the specific powers, procedures, and instructions contained in this subpart shall be considered

additional powers and requirements or to supersede other provisions of this title.

47A-6-4303. General definitions. In this title, unless otherwise provided or context requires a technical or other interpretation, the following definitions apply:

(1) "Capital improvements program" means an itemized program setting forth the schedule and details of specific and contemplated public improvements as provided for in 47A-9-503.

(2) "Community facilities element" means a compilation of policy statements, goals, objectives, principles, standards, maps, and action programs for guiding future development of public or semipublic facilities of a local government.

(3) "Conditional use" means a major deviation from the zoning regulations of a zoning district which is permitted by a zoning ordinance only upon showing that such use in a specified location will comply with the conditions and standards for the location or operation of the conditional use as contained in the zoning ordinance. Approval of a conditional use may only be granted by a governing body after it has received the recommendations of its zoning board.

(4) "Dimensional variance" means a departure from the terms of the zoning ordinance pertaining to height or width

1 of structures and size of yards and open spaces where such
 2 departure will not be contrary to the public interest and
 3 where, owing to conditions peculiar to the property and not
 4 as a result of actions of the applicant, the literal
 5 enforcement of the zoning regulation would result in
 6 unnecessary and undue hardship.

7 (5) "General plan" means a compilation of policy
 8 statements, goals, objectives, standards, maps, pertinent
 9 data, and action programs for guiding the physical, social,
 10 and economic evolution of a local government's
 11 jurisdiction. A general plan may include but is not limited
 12 to the following:

13 (a) statements of policies, goals, objectives,
 14 principles, and standards;

15 (b) a land use element;

16 (c) a community facilities element;

17 (d) a public utilities element;

18 (e) a transportation element; and

19 (f) recommendations for plan execution.

20 (6) "Land use element" means a compilation of policy
 21 statements, goals, objectives, principles, standards, maps,
 22 pertinent data, and action programs for guiding the future
 23 use of public and private property. A land use element shall
 24 take into consideration other general plan elements and the
 25 physical capabilities of the land and shall generally seek

1 to develop a plan which designates the nature and extent of
 2 the uses of the property for the area included within the
 3 element. Such a plan may include but is not limited to
 4 including designations of property for agricultural, open
 5 space, housing, commercial, industrial, recreational,
 6 educational, and public uses.

7 (7) "Land use variance" means a departure from the
 8 terms of zoning ordinance pertaining to use of land where
 9 such departure will not be contrary to the public interest
 10 and where, as a result of conditions peculiar to the
 11 property and not as a result of actions of the applicant,
 12 the literal enforcement of the zoning regulation would
 13 result in undue hardship.

14 (8) "Public element" means a compilation of policy
 15 statements, goals, objectives, principles, standards, maps,
 16 action programs for guiding the future development of public
 17 or semipublic utilities of a local government.

18 (9) "Special use permit" means a permit which may be
 19 granted by an administrative officer or on appeal by a board
 20 of adjustment. A special use permit allows a use to take
 21 place in a location which would otherwise be disallowed by a
 22 zoning ordinance, provided that the proposed use complies
 23 with conditions and standards for the use in the particular
 24 location as are provided for in the zoning ordinance.

25 (10) "Transportation element" means a compilation of

1 policy statements, goals, objectives, principles, standards,
2 maps, and action programs for future development of various
3 modes of transportation within the jurisdiction of a local
4 government.

5 47A-6-4304. Authorization to adopt and implement a
6 general plan. In order to manage the change which will take
7 place within its jurisdiction; to coordinate such change
8 with the efficient and economical provision of public
9 services; and to promote the maintenance and enhancement of
10 the public health, safety, and welfare, a local government
11 may adopt and implement a general plan or elements thereof.

12 47A-6-4305. Establishment of a planning agency. In
13 order to exercise the planning powers conferred by this
14 part, a governing body shall establish a planning agency. A
15 planning agency may be a planning board, a planning
16 department, or both.

17 47A-6-4306. Powers and duties of a planning agency. A
18 planning agency may exercise any administrative or advisory
19 power granted to it by ordinance and may:

20 (1) compile and maintain information and materials as
21 are necessary to understand past trends, current conditions,
22 and forces which cause changes in these conditions;

23 (2) make studies pertaining to the location,
24 condition, and adequacy of public and private services and
25 facilities;

1 (3) prepare the various elements of a general plan and
2 present them to the governing body for consideration;

3 (4) make recommendations to the governing body for the
4 implementation of the general plan;

5 (5) assist the governing body in the implementation of
6 the general plan;

7 (6) provide for the periodic review and, when
8 necessary, the revision of the elements of the general plan;

9 (7) conduct hearings necessary to carry out its
10 duties;

11 (8) consult with and coordinate its planning
12 activities with other local governments and other public
13 agencies; and

14 (9) perform any other related duties assigned to it by
15 the governing body.

16 47A-6-4307. General plan — purpose — process. (1)
17 The elements of a general plan shall seek to guide community
18 involvement in a manner consistent with the goals and
19 objectives of the general plan.

20 (2) The process of developing a general plan shall
21 generally seek to:

22 (a) establish a base of information considered
23 sufficient by the planning agency to provide a reasonable
24 familiarity with the area being planned;

25 (b) analyze present and future needs;

1 (c) develop goals, objectives, policies, and
2 principles that will guide economic, social, environmental,
3 physical, or human resource development;

4 (d) consider alternatives;

5 (e) indicate the proposed location of private and
6 public land uses, transportation networks, utilities, and
7 other facilities considered necessary by the planning
8 agency;

9 (f) provide additional procedures to the formal
10 adoption of the general plan if additional procedures are
11 considered to be appropriate;

12 (g) provide for the implementation of the elements of
13 the general plan; and

14 (h) provide for the continuous review and revision of
15 the elements of the general plan as considered necessary by
16 the governing body.

17 47A-6-4308. Adoption and amendment of a general plan.

18 (1) The planning agency shall give notice and hold a public
19 hearing on a proposed general plan prior to submitting its
20 recommendations to the governing body for the adoption or
21 amendment of the general plan.

22 (2) The general plan may be prepared, adopted, or
23 amended in sections. Each section may concern a major
24 element of the plan or may apply to a general geographic
25 area within the jurisdictional area of the local government.

1 (3) The governing body shall consider the
2 recommendations of the planning agency but shall not be
3 bound by the recommendations.

4 (4) After giving notice and holding a public hearing,
5 the governing body may adopt, revise, or reject by ordinance
6 all or any part of a proposed general plan or any amendment
7 to an adopted general plan.

8 47A-6-4309. Recommendations for implementation of
9 general plan. (1) A planning agency may study and propose to
10 the governing body reasonable and practical methods for
11 implementing the general plan.

12 (2) Methods of implementation may include but are not
13 limited to:

14 (a) zoning regulations and districts;

15 (b) building and housing codes;

16 (c) subdivision regulations;

17 (d) a program for the coordination of public services;

18 (e) a capital improvements program;

19 (f) an urban redevelopment program; and

20 (g) an official map.

21 47A-6-4310. Compliance by public agencies. (1) After a
22 general plan has been adopted, a governing body may require
23 that no publicly owned interest in real property except an
24 option to purchase or sell may be acquired or disposed of or
25 any capital improvement authorized until the planning agency

has reviewed and made written comments to the governing body regarding the potential effects of the proposed action on the general plan.

(2) The governing body shall establish a reasonable time period in which the planning agency must submit its comments. If the planning agency does not submit its comments within the time period specified, the requirement created pursuant to this section shall lapse.

(3) Except in instances where real property is affected, a governing body may by resolution waive the review and comment requirement where in its judgment a proposed action has no relationship to the general plan. The resolution shall specify the reason for the waiver.

47A-6-4311. Extraterritorial powers. (1) Prior to the exercise of extraterritorial power by a municipality, memberships of the municipal planning board (if a planning board exists), zoning board, official map appeals board, and board of adjustment shall be increased or modified to provide for at least one representative living within the extraterritorial area.

(2) Representatives of the extraterritorial area shall be appointed by the governing body of the county where the extraterritorial area is located.

47A-6-4331. Zoning authorization. After a governing body has adopted a land use element of a general plan, it

may adopt a zoning ordinance. The zoning ordinance shall be designed to implement the land use element.

47A-6-4332. Zoning board. (1) In order to exercise zoning powers, a governing body shall establish a zoning board. Where a planning board exists, it may be designated as the zoning board.

(2) The zoning board shall develop recommendations and submit them to the governing body for the establishment of the boundaries of zoning districts and the regulations to be enforced within those districts.

(3) The zoning board shall prepare a report, give notice, and hold a public hearing on the proposed zoning district boundaries or zoning regulations prior to submitting its recommendations to the governing body.

(4) After the initial adoption of a zoning ordinance, the zoning board may make recommendations to the governing body regarding amendments to the zoning ordinance.

(5) In recommending amendments, the zoning board shall follow the same procedures as are required when submitting its recommendations to the governing body for the initial adoption of the zoning ordinance.

(6) The governing body may not take action on the initial adoption of a zoning ordinance or amendment to a zoning ordinance until it has received the recommendations of the zoning board.

(7) The governing body may establish a reasonable time period in which the zoning board shall submit its recommendations regarding proposed amendments to a zoning ordinance which were not initiated by the zoning board.

47A-6-4333. Contents of a zoning ordinance. (1) A zoning ordinance may regulate:

(a) uses of land, air, and watercourses;

(b) size, bulk, height, location, erection, construction, maintenance, alteration, removal, and use of structures;

(c) areas and dimensions of land bodies, air spaces, or watercourses to be occupied by uses and structures, as well as open spaces and distances to be left unoccupied by uses and structures; and

(d) density of population and intensity of use.

(2) A zoning ordinance may divide all or any part of the local government jurisdiction into zoning districts.

(3) Zoning regulations may differ from one district to another.

(4) Regulations shall be uniform throughout each district except that additional classifications may be made within any district for making transitional provisions at or near the boundaries of other districts and for regulating, restricting, and prohibiting uses of land and structures at or near:

(a) major trafficways, their intersections and interchanges, and transportation arteries;

(b) natural and artificial bodies of water;

(c) places of relatively steep slope or grade;

(d) public buildings and grounds;

(e) places having unique historical interest and value;

(f) aircraft landing facilities;

(g) floodplain areas; and

(h) other places of a natural significance.

(5) A zoning ordinance may contain:

(a) provisions whereby conditional uses may be granted by the governing body. The provisions shall:

(i) contain standards and criteria which must exist or be complied with in order for a conditional use to be granted;

(ii) require that recommendations of the zoning board be received by the governing body prior to its approval or denial of a request for a conditional use.

(b) provisions whereby an administrative officer of the local government may administer special use permits and dimensional variances. The provisions shall establish conditions and procedures whereby special exceptions and dimensional variances may be granted.

(6) A zoning ordinance shall contain procedures for:

1 (a) administering and enforcing the zoning ordinance;
2 and

3 (b) protesting changes in the zoning ordinance.

4 47A-6-4334. Adoption of a zoning ordinance. After
5 receiving the recommendations of the zoning board and after
6 giving notice and holding a public hearing on a proposed
7 zoning ordinance, a governing body may approve, revise, or
8 reject all or any part of the proposed zoning ordinance.

9 47A-6-4335. Amendment of a zoning ordinance. (1) An
10 amendment to a zoning ordinance may be initiated by:

11 (a) the governing body;

12 (b) the planning agency;

13 (c) the zoning board; or

14 (d) petition of affected property owners.

15 (2) After receiving the recommendations of the zoning
16 board, giving notice, and holding a public hearing, the
17 governing body may adopt an amendment to a zoning ordinance
18 if it finds the proposed amendment is not incompatible with
19 the land use element of the general plan.

20 (3) In deciding an amendment to a zoning ordinance
21 which would change the zoning district classification for
22 property to a classification which is less restrictive, a
23 governing body may prescribe certain terms under which the
24 amendment would be granted.

25 (4) To enforce the terms, a governing body may require

1 a land owner receiving benefit from the amendment to:

2 (a) enter into a covenant with the local government
3 which places restrictions on the use of the property which
4 are greater than those generally imposed on the new district
5 in which the property has been placed; or

6 (b) enter into an agreement with the local government
7 which places restrictions on the property which are greater
8 than the restrictions generally attached to the new district
9 in which the property has been placed.

10 (5) Violation of the covenants or agreements shall be
11 considered to be a violation of the zoning ordinance.

12 47A-6-4336. Board of adjustment. (1) Upon adoption of
13 a zoning ordinance, the governing body shall establish a
14 board of adjustment. Where a planning board exists, it may
15 be designated as the board of adjustment, provided the
16 planning board does not also serve as the zoning board.

17 (2) Appeals to the board of adjustment may be taken by
18 any person aggrieved by or any officer, board, or department
19 of the local government affected by any decision of an
20 administrative official in enforcing the zoning ordinance.

21 (3) The board of adjustment shall establish procedures
22 whereby it shall receive and process appeals.

23 (4) Upon appeal to the board of adjustment, all
24 proceedings shall be stayed. If the officer from whom the
25 appeal is taken certifies to the board of adjustment that

1 the stay would cause imminent peril to life or property,
2 proceedings shall not be stayed unless the board issues a
3 restraining order.

4 47A-6-4337. Powers of board of adjustment. (1) A board
5 of adjustment shall:

6 (a) hear and decide appeals when it is alleged that
7 there is an error in any order, requirement, decision, or
8 determination made by an administrative officer in the
9 administration of the zoning ordinance;

10 (b) hear and decide questions regarding the provisions
11 of a zoning ordinance and make interpretations of zoning
12 district boundaries and regulations as the board is
13 specifically authorized to consider by the zoning ordinance;

14 (c) hear and decide requests for special use permits
15 as the board of adjustment is specifically authorized to
16 consider by the zoning ordinance. The board shall:

17 (i) confer with and receive written comments from the
18 zoning board in all cases involving requests for special use
19 permits;

20 (ii) in granting any special use permit, determine that
21 the grant will not adversely affect the public interest.

22 (d) hear and decide requests for dimensional variances
23 or land use variances as the board is specifically
24 authorized to hear and decide by the zoning ordinance. In
25 granting a dimensional variance or a land use variance, the

1 board of adjustment shall find that:

2 (i) special conditions exist which are peculiar to
3 the land or structure involved which are not applicable to
4 other lands or structures in the same zoning district;

5 (ii) special conditions and circumstances do not
6 result from actions of the applicant;

7 (iii) a literal interpretation of the provisions of the
8 ordinance would deprive the applicant of rights enjoyed by
9 other properties in the same zoning district under the terms
10 of the ordinance and would work unnecessary hardship on the
11 applicant; and

12 (iv) the dimensional variance would not award a person
13 any special privileges that would be denied another person
14 under similar circumstances.

15 (2) In granting a special use permit or a variance,
16 the board may prescribe appropriate conditions and
17 safeguards. Violation of the conditions and safeguards when
18 made part of the terms under which a special use permit or
19 variance is granted shall be considered a violation of the
20 ordinance.

21 (3) The findings of the board of adjustment shall be
22 based upon evidence introduced at the hearing or upon
23 official government records available to the public. The
24 board shall prepare a written report summarizing its
25 findings and conclusions on each request for a special

1 exception or a dimensional zoning variance. Each report
2 shall be filed with the records administrator of the local
3 government where the board exists.

4 47A-6-4338. Appeal of board of adjustment or governing
5 body decision to district court. (1) Within 30 days after a
6 decision by the board of adjustment or a decision on an
7 appeal to the governing body, a person may petition the
8 appropriate district court challenging the legality of the
9 decision by the board or governing body.

10 (2) Costs may not be awarded against the board or
11 governing body unless it appears to the court that the board
12 or governing body acted with gross negligence, in bad faith,
13 or with malice in making the decisions.

14 47A-6-4339. Petition for the establishment of zoning.
15 (1) (a) Residents of an area of at least 40 acres may
16 petition the governing body to develop a land use element
17 and zoning ordinance for the area. The petition must contain
18 the signatures of a majority of the freeholders residing in
19 the area.

20 (b) Upon receipt of the petition, the governing body
21 shall give notice and set a date for a public hearing.

22 (c) Following the public hearing, the governing body
23 may either adopt a resolution stating its intention to
24 develop a land use element and zoning ordinance for the area
25 or refuse to act further on the matter.

1 (2) In developing and adopting the land use element
2 and zoning ordinance, a local government shall follow the
3 procedures for development and adoption of the element and
4 ordinance as are provided for in other sections of this
5 part.

6 (3) A governing body may establish a separate zoning
7 board or board of adjustment or may designate an existing
8 zoning board or board of adjustment to serve the area for
9 which the petition was submitted.

10 47A-6-4340. Interim zoning. (1) A governing body may
11 adopt an interim zoning ordinance as an urgency measure. An
12 interim ordinance may prohibit any uses which may be in
13 conflict with a contemplated land use element which the
14 governing body is considering or intends to consider in a
15 reasonable period of time.

16 (2) A governing body may adopt an interim zoning
17 ordinance without following the preliminary procedures which
18 are otherwise required preliminary to adoption of zoning
19 ordinance.

20 (3) A governing body must give notice and hold a
21 public hearing prior to adopting an interim zoning
22 ordinance.

23 (4) Upon adoption, an interim zoning ordinance may be
24 in effect for a period of 6 months. The ordinance may be
25 extended:

1 (a) for 1 year by a two-thirds vote of the governing
2 body; and

3 (b) no more than twice.

4 47A-6-4341. Validation of previous zoning. (1) Where
5 under previous state law a zoning ordinance has been adopted
6 for an area for which a land use plan has not been adopted,
7 the zoning regulations and zoning district boundaries
8 contained in the ordinance shall remain in effect until such
9 time as a land use element is adopted for the area or the
10 zoning ordinance is repealed.

11 (2) Amendments to a zoning ordinance validated by this
12 section shall be subject to the same authorizations,
13 procedures, and requirements as is zoning adopted under the
14 provisions of this part, except that the governing body
15 shall make written findings explaining that:

16 (a) the original zoning regulations or district
17 boundaries were inappropriate or improper or major changes
18 in economic, physical, or social conditions have occurred
19 which were not anticipated or applicable when existing
20 classifications were adopted; and

21 (b) the proposed amendment is in the public interest.

22 47A-6-4342. Natural resources protected. No zoning
23 ordinance shall prevent the development of forest,
24 agricultural, or mineral resources.

25 47A-6-4343. Nonconforming uses and structures. (1) Any

1 nonconforming use or structure existing at the time of
2 passage of a zoning ordinance may be continued upon the lot
3 or structure.

4 (2) A governing body may include in a zoning ordinance
5 provisions for the regulation of nonconforming uses,
6 including conditions under which nonconforming uses may
7 continue.

8 Subpart 5

9 Subdivision Regulation

10 47A-6-4519. Validation of townsite titles. (1) All
11 titles to public lands acquired under the provisions of
12 sections 5060 through 5080 and sections 5100 through 5124 of
13 the Political Code of 1895 are validated.

14 (2) All trafficways, parks, and other public places
15 dedicated to the public use under the provisions of section
16 5065 of the Political Code of 1895 are under the
17 jurisdiction of the municipality for incorporated towns, and
18 the dedicated property may be vacated or disposed of as
19 other dedicated property.

20 (3) (a) All trafficways, parks, and other public
21 places dedicated to public use in unincorporated towns under
22 the provisions of section 5105 of the Political Code of 1895
23 are the property of the county so long as the town remains
24 unincorporated, and the dedicated property may be vacated or
25 disposed of as other dedicated property.

(b) If the unincorporated town incorporates, the dedicated land shall be under the jurisdiction of the municipality and may be vacated or disposed of as other dedicated property.

(4) All titles to public lands acquired under section 1, chapter 9, Laws of Montana, 1919 are validated.

(5) If a townsite has been established through the procedures described in subsection (1) of this section and land within that townsite, other than trafficways, parks, and other public places dedicated to public use, appears to be not deeded or a deed has been issued but has not been recorded and has been lost or cannot be found, the land may be disposed of in the following manner:

(a) A petition shall be filed with the clerk of the district court in the county in which the land is situated. The petition shall:

(i) state that either no deed has been issued for the land described in the petition or that a deed has been issued but has not been recorded and has been lost or cannot be found;

(ii) be signed by the claimant or claimants;

(iii) contain a statement of their proof of claim; and

(iv) request the senior district court judge to issue a deed for the land to the claimant or claimants.

(b) Upon verification by the county in which the land

is located that either no deed has been issued or that a deed has been issued but not recorded, the senior district court judge shall set a day for a hearing on the matter.

(c) The county shall publish notice of the hearing four times for 4 successive weeks.

(d) At the hearing the judge shall examine the petition and the claim and hear any proof the claimant may submit to support the claim. If the judge finds that the claimant is in possession of the land or, by reference to abstracts of title or other evidence in support of the claim, finds that the title to the land has been derived or deraigned from the person who originally entered the land or held title to the land and that no conflicting claims have been filed, he shall, upon payment of the proper fees, issue a deed for the land to the claimant.

Subpart 6

Regulation of Lakes and Lakeshores

47A-6-4601. Policy and purpose. It is the policy of this state to encourage local governments to conserve and protect the lakes and lakeshores within Montana. It is the purpose of this subpart to confer to local governments the powers necessary to prevent activities which would negatively affect lakes or lakeshores.

47A-6-4602. General provisions apply. A local government regulating lakes or lakeshores shall proceed

1 under the provisions of this title, except that the specific
2 powers, procedures, and instructions contained in this part
3 shall be considered additional powers and requirements or to
4 supersede other provisions of this title.

5 47A-6-4603. General definitions. In this title, unless
6 otherwise provided or context requires a technical or other
7 interpretation, the following definitions apply:

8 (1) "Lake" means a body of standing water and the area
9 within its lakeshore, occurring naturally rather than by
10 virtue of constructed impoundments (although a natural lake
11 whose level is raised and whose area is increased by the
12 construction of impoundments includes the additional level
13 and area), having a water surface area of at least 160 acres
14 for at least 6 months in a year of average precipitation as
15 the averages are determined by the United States geological
16 survey, not used exclusively for agricultural purposes, and
17 navigable by canoes and small boats. A local governing body
18 may by resolution change the minimum size in the definition
19 of a lake so that this part may apply to natural lakes in
20 the county no smaller than 20 acres in water surface area.

21 (2) "Lakeshore" is the perimeter of a lake when the
22 lake is at mean annual high water elevation, including the
23 land within 20 horizontal feet from that high water
24 elevation.

25 (3) "Mean annual high water elevation" is the mean

1 average of the highest elevation of a lake in each of at
2 least 5 consecutive years, excluding any high levels caused
3 by erratic or unusual weather or hydrological conditions. A
4 highest elevation caused by operation of a dam or other
5 impoundment counts toward the establishment of the mean
6 annual high water elevation.

7 47A-6-4604. Permit required. A person proposing an
8 activity which will alter or diminish the course, current,
9 or cross-sectional area of a lake or lakeshore must first
10 secure a permit for the activity from the local government
11 having jurisdiction over the lake or lakeshore. Without
12 limitation, the following activities are, when conducted
13 below mean annual high water elevation, examples of work for
14 which a permit is required:

- 15 (1) construction of channels and ditches;
- 16 (2) dredging of lake bottom areas to remove muck,
17 silt, or weeds;
- 18 (3) lagooning;
- 19 (4) construction of breakwaters of pilings; and
- 20 (5) construction of wharves and docks.

21 47A-6-4605. Criteria for issuance of permits. (1) (a)
22 A governing body having jurisdiction over a lake shall adopt
23 an ordinance establishing regulations in the form of
24 criteria for the issuance or denial of permits for
25 activities in lakes and on lakeshores.

(b) Where a planning agency has been established under 47A-6-4305, the governing body shall seek the advice of the planning agency as to the regulations to be adopted.

(c) Prior to adoption of the ordinance, the governing body shall give notice and hold a public hearing on the proposed ordinance.

(2) The department of natural resources may upon petition of five owners or 30% of the owners of land abutting the lake, whichever is smaller, adopt regulations for a particular lake. The department may then exercise the powers conferred to a local government until the local governing body adopts the necessary regulations.

47A-6-4606. Contents of regulations. (1) The regulations adopted by the governing body shall not allow the issuance of a permit if the proposed activity will during its construction or utilization:

(a) materially diminish water quality;

(b) materially diminish habitat for fish or wildlife;

(c) interfere with navigation or lawful recreation;

(d) create a public nuisance; or

(e) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

(2) The requirements of subsection (1) of this section are minimum requirements and do not restrict a governing

body from adopting stricter or additional regulations as may be authorized by other statutes.

(3) A governing body whose jurisdictional area contains more than one lake or lakeshore may adopt regulations which differ for the various lakes or lakeshores, recognizing the physical and social differences between the lakes and lakeshores.

47A-6-4607. Application for permit. (1) A person seeking a permit to allow an activity in a lake or on a lakeshore shall apply to the governing body for the issuance of the permit.

(2) (a) Where a planning agency has been established for the area containing the lake in question, the governing body shall seek the recommendation of the planning agency as to compliance of the proposed activity with the regulations adopted pursuant to this part.

(b) The planning agency shall report its recommendations to the governing body as to whether the proposed activity conforms to the criteria for issuance of a permit.

(c) The planning agency may require the applicant to submit additional information before the agency reports its recommendations to the governing body.

(d) In areas where a planning agency has not been established, the functions of the agency under this section

1 shall be exercised by the governing body.

2 (3) (a) Unless the applicant agrees to an extension of
3 time, the governing body shall grant or deny permission for
4 the activity within 90 days of receiving application for a
5 permit.

6 (b) If the governing body finds that the proposed
7 activity conforms to the criteria for issuing a permit, it
8 shall issue a permit or conditional permit.

9 (c) If the governing body finds that the activity does
10 not conform to the criteria, it shall deny the application.

11 47A-6-4608. Variance procedure. A governing body which
12 proposes to grant a variance from its regulations shall:

13 (1) cause an environmental impact statement to be
14 prepared, at the expense of the applicant;

15 (2) establish informational requirements to be
16 included in the statement;

17 (3) distribute the statement to interested residents;
18 and

19 (4) conduct a public hearing on the proposed action.

20 47A-6-4609. Restoration—property rights. (1) A person
21 who performs an activity in a lake without first obtaining a
22 permit as required by 47A-6-4604 shall, if required by the
23 governing body or district court having jurisdiction,
24 restore the lake or lakeshore to its previous condition.

25 (2) A permit issued for an activity shall not create a

1 vested property right except in a physical structure for
2 which a permit was issued.

3 47A-6-4610. Judicial enforcement and review. The
4 district court may hear and decide the following cases
5 arising under this part:

6 (1) a complaint and petition of a governing body or an
7 interested person for an order to restore a lake to its
8 previous condition or to enjoin the continuance of an
9 activity in a lake;

10 (2) a petition of an interested person for review of a
11 final action of a governing body upon an application for a
12 permit;

13 (3) a petition of an interested person for review of
14 an action of a governing body in adopting or amending
15 regulations.

16 Subpart 7

17 Underground Conversion of Utilities

18 47A-6-4701. Underground conversion of utilities. (1)
19 The governing body may create a local improvement district
20 as provided in chapter 3, part 4, of this title, except
21 where otherwise provided in this subpart, for the conversion
22 of existing overhead electrical and communication facilities
23 to underground locations.

24 (2) The local improvement district shall include an
25 area having a frontage of not less than 1,000 feet upon a

1 public trafficway or utilities easement along which overhead
2 electric or communications facilities are located.

3 47A-6-4702. Definitions. In this title, unless
4 otherwise provided or the context requires a technical or
5 other interpretation, the following definitions apply:

6 (1) "Communication service" means the transmission of
7 intelligence by electrical means, including but not limited
8 to telephone, telegraph, messenger-call, clock, police, fire
9 alarm, and traffic control circuits or the transmission of
10 standard television or radio signals.

11 (2) "Electrical service" means the distribution of
12 electricity for heat, light, or power.

13 (3) "Convert" or "conversion" means the removal of all
14 or any part of any existing overhead electric or
15 communications facilities and the replacement thereof with
16 underground electric or communication facilities constructed
17 at the same or different locations.

18 (4) "Electric or communication facilities" means any
19 works or improvements used or useful in providing electric
20 or communication service, including but not limited to
21 poles, supports, tunnels, manholes, vaults, conduits, pipes,
22 wires, conductors, guys, stubs, platforms, crossarms,
23 braces, transformers, insulators, cutouts, switches,
24 capacitors, meters, communication circuits, appliances,
25 attachments, and appurtenances. "Electric facilities" shall

1 not include any facilities used or intended to be used for
2 the transmission of electric energy at nominal voltages in
3 excess of 25,000 volts.

4 (5) "Overhead electric or communication facilities"
5 means electric or communication facilities located, in whole
6 or in part, above the surface of the ground.

7 (6) "Underground electric or communication facilities"
8 means electric or communication facilities located, in whole
9 or in part, beneath the surface of the ground.

10 (7) "Public utility" means any public or private
11 person, corporation, or cooperative that provides electric
12 or communication service to the public by means of electric
13 or communication facilities and shall include any special
14 improvement district that provides electric or communication
15 service to the public by means of electric or communication
16 facilities.

17 47A-6-4703. Maintenance, construction, and title to
18 converted facilities. The public utility shall have the duty
19 to maintain, repair, and replace all underground facilities
20 installed pursuant to this part. There shall be no
21 competitive bidding for the construction of the converted
22 facilities since existing facilities are owned, maintained,
23 and operated by the public utility and the continuity of
24 service of the utility is essential, both of which make
25 construction work by third persons impracticable. Therefore,

the public utility concerned shall be responsible for the accomplishment of all construction work and may contract out the construction work as it considers desirable. Title to the converted facilities shall be at all times solely and exclusively in the public utility involved, as the public is only purchasing the intangible benefits which come from the converted facilities, i.e., the removal of the overhead facilities and replacement by underground facilities.

47A-6-4704. Conversion costs. In determining the conversion costs, the public utility is entitled to amounts sufficient to repay it for the following costs, as computed and reflected by the uniform system of accounts approved by the public service commission, federal communications commission, or federal power commission, or if the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of the public utility. The costs to be repaid are:

(1) the original costs less depreciation taken of the existing overhead electric and communication facilities to be removed;

(2) the estimated costs of removing the overhead electric and communication facilities, less the salvage value of the facilities removed;

value of the facilities removed;

(3) if the estimated cost of constructing new underground facilities exceeds the estimated cost of constructing new aerial facilities, then the cost difference between the two;

(4) the cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for aboveground facilities or where the preexisting easements are insufficient for the underground facilities.

47A-6-4705. Statement of conversion costs, notice to landowners, and removal of overhead facilities. Upon completion of the conversion of the overhead electric or communication facilities on public lands and right-of-way to underground, the public utility shall file a verified statement of the costs of the conversion with the governing body. The governing body shall mail to each landowner a notice stating that:

(1) service from the underground facilities is available;

(2) the landowner has 60 days after the date of the mailing of the notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on his lot or parcel to underground

1 (3) after the 60-day period following the date of the
2 mailing of the notice, the governing body will order the
3 public utility to disconnect and remove all overhead
4 electric and communication facilities providing service to
5 any structure or improvement within the area.

6 47A-6-4706. Conversion of facilities on private
7 property. (1) Any conversion of electric or communication
8 service facilities, including service connections, located
9 on a privately owned lot or parcel shall be made at the
10 expense of the landowner by the public utility owning the
11 facility. The conversion shall be made in accordance with
12 applicable safety rules, codes, regulations, tariffs, or
13 ordinances. The public utility shall not be required to
14 convert service lines on property, other than public lands
15 and right-of-way, until the landowner furnishes to the
16 public utility a permit or easement authorizing the public
17 utility and its employees, agents, and contractors to enter
18 upon real property of the landowner for the purpose of
19 performing conversion work thereon.

20 (2) Upon completion of the conversion of overhead
21 electric or communication service facilities on privately
22 owned lots and parcels within a district, the public utility
23 shall file with the governing body a verified statement of
24 the costs of the conversion of the service facilities of
25 each landowner in the district. Promptly thereafter, the

1 governing body shall mail to each landowner a copy of the
2 verified statement, which shall be due and payable within 30
3 days or as otherwise provided by the public utility.

4 47A-6-4707. Private property conversion upon default
5 of owner. If the owner of any structure or improvement
6 served from the overhead electric or communication service
7 facilities within the local improvement district does not
8 grant the utility a permit or easement referred to in
9 47A-6-4706 or if such an owner fails to convert to
10 underground service facilities within 60 days after the
11 mailing to him of the notice provided by 47A-6-4705, the
12 governing body shall order the public utility to complete
13 the conversion and to disconnect and remove all overhead
14 facilities, including service facilities, providing service
15 to the structure or improvement.

16 47A-6-4708. Payment of public utility. Upon completion
17 of the conversion provided by this part, the public utility
18 shall present the governing body with its verified bill for
19 conversion costs as computed in 47A-6-4704 but based upon
20 the actual cost of constructing the underground facility
21 rather than the estimated cost of the facility. In the
22 event the conversion costs are less than the estimated
23 conversion costs, each assessed owner within the local
24 improvement district shall receive the benefit, prorated in
25 such form and at such time or times as the governing body

1 may determine. The bill of the public utility shall be paid
 2 within 30 days by the governing body from the local
 3 improvement district revenues or such other source as is
 4 properly designated by the governing body. In determining
 5 the actual cost of constructing the underground facility,
 6 the public utility shall use its standard accounting
 7 procedures, such as the uniform system of accounts as
 8 defined by the federal communications commission, federal
 9 power commission, or Montana public service commission and
 10 as is in use at the time of the conversion by the public
 11 utility involved.

12 47A-6-4709. Reinstallation of overhead facilities not
 13 permitted. Once removed, no overhead electric or
 14 communication facilities shall be installed in a local
 15 improvement district for conversion of overhead electric and
 16 communication facilities, except as authorized by this
 17 chapter.

18 47A-6-4710. No limitation of public service
 19 commission's jurisdiction. Nothing contained in this chapter
 20 shall vest any jurisdiction over a public utility in the
 21 governing body. The public service commission of Montana
 22 shall retain all jurisdiction now or hereafter conferred
 23 upon it by law.

24 47A-6-4711. Invalidity of one provision not to affect
 25 others--exception. If any section or provision of this

1 chapter be adjudged unconstitutional or invalid for any
 2 reason, such adjudication shall not affect the validity of
 3 this chapter as a whole or of any section or provision
 4 hereof which is not specifically so adjudicated
 5 unconstitutional or invalid; however, if any section or
 6 provision of this chapter concerning the payment to the
 7 public utility shall be adjudged unconstitutional or invalid
 8 for any reason in such a way that the payment to the public
 9 utility or the creation of the funds for that purpose is
 10 adjudged to be invalid or unconstitutional, then such
 11 invalidity or unconstitutionality shall invalidate this
 12 chapter in its entirety and to this end and in this event
 13 the provisions of this chapter are declared to be
 14 nonseverable.

15 47A-6-4712. Abatement of construction. If a local
 16 improvement district is established pursuant to this
 17 chapter, the public utility involved shall not be required
 18 to commence conversion until the ordinance, the assessment
 19 roll, and issuance of bonds have become final and no civil
 20 action has been filed or, if civil action has been filed,
 21 until the decision of the court upon the action has become
 22 final and is not subject to further appeal.

23 Subpart 8

24 Redevelopment

25 47A-6-4801. Policy and purpose. The existence of

deteriorated areas is conducive to the economic stagnation and physical degeneration of Montana communities. It is the purpose of this subpart to provide local governments with the additional powers necessary to carry out redevelopment projects in areas experiencing deterioration or symptoms of deterioration.

47A-6-4802. General provisions apply. A local government providing redevelopment services shall proceed under the provisions of this title, except that the specific powers, procedures, and instructions contained in this part shall be considered to be additional powers and additional requirements or to supersede other provisions of this title.

47A-6-4803. Definitions. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Deteriorated area" means an area where:

(a) a significant number of structures exist, which by reason of dilapidation, deterioration, age, or obsolescence create conditions which endanger life and property; or

(b) due to inadequate street or lot layout, incompatible land uses or land-use relationships, unsafe or unsanitary conditions, deteriorated public improvements, tax or special assessment delinquency, overcrowding or excessive building density, or diversity of ownership, conditions exist which retard sound development of the area and

represent a menace to the public health, safety, and welfare.

(2) "Redevelopment area" means the deteriorated area or the area possessing symptoms of deterioration which the governing body designates as appropriate for a redevelopment project.

(3) "Redevelopment plan" means a plan as it exists from time to time for a community redevelopment project or projects.

(4) "Redevelopment project" means undertakings and activities in a redevelopment area for the elimination and prevention of the spread of deteriorated conditions. A redevelopment project may involve slum clearance, restoring and rebuilding in a redevelopment area, rehabilitation or conservation, or any combination or part thereof in accordance with a redevelopment plan.

47A-6-4804. Findings and declaration of necessity. A local government may not provide the redevelopment services authorized by this part until its governing body after notice and public hearing has adopted a resolution finding:

(1) within its jurisdiction a deteriorated area exists or an area exists possessing the symptoms of deterioration; and

(2) the redevelopment of the area is necessary in the interest of the public health, safety, or welfare.

47A-6-4805. Establishment of a redevelopment agency.

(1) In order to provide the services authorized by this part, a governing body must establish by ordinance a redevelopment agency.

(2) A redevelopment agency may be:

(a) the governing body itself;

(b) an office or department of the local government, with or without a board; or

(c) a board.

(3) Two or more local governments may establish a joint redevelopment agency through an interlocal agreement.

(4) A redevelopment agency may be combined with any other agency of a local government, however, the additional powers authorized by this part may only be exercised pursuant to the purposes of this part.

(5) Prior to the passage of an ordinance establishing a redevelopment agency, a governing body shall give notice and hold a public hearing.

47A-6-4806. Special redevelopment project powers. A local government may exercise the following special powers in connection with the establishment, operation, and maintenance of a redevelopment project:

(1) acquire, hold, improve, or otherwise prepare real and personal property for redevelopment;

(2) demolish and remove buildings and improvements;

(3) arrange or contract for the furnishing of public and private services and facilities;

(4) rent, lease, sell, transfer, or otherwise dispose of real or personal property; and

(5) enforce or arrange for the enforcement of codes and programs for the voluntary or compulsory repair or rehabilitation of buildings or other improvements.

47A-6-4807. Redevelopment plan. After a governing body has made the findings required by 47A-6-4804, it may cause a redevelopment plan to be prepared for the area for which the findings were made. A redevelopment plan shall:

(1) be sufficiently complete to indicate, on a yearly basis or otherwise:

(a) land acquisition;

(b) any demolition and removal of structures;

(c) any redevelopment, rehabilitation, or improvements;

(d) any zoning or planning changes;

(e) land uses, maximum densities, and building requirements;

(2) indicate its relationship to local objectives respecting:

(a) appropriate land uses;

(b) transportation systems;

(c) public utilities;

1 (d) recreational and community facilities; and
 2 (e) any other public improvements;
 3 (3) propose methods for financing redevelopment
 4 projects; and
 5 (4) propose a plan for the relocation of persons
 6 displaced as a result of a redevelopment project.
 7 47A-6-4808. Adoption of a redevelopment plan. (1) A
 8 governing body shall use the following procedure in adopting
 9 a redevelopment plan:
 10 (a) If a planning agency exists, the governing body
 11 shall submit the proposed redevelopment plan to the planning
 12 agency for review and comment. The governing body shall
 13 establish a reasonable period of time in which the planning
 14 agency must submit its comments to the governing body.
 15 (b) The governing body shall give notice and conduct a
 16 public hearing on the proposed redevelopment plan. In
 17 addition to notice, the governing body shall give notice by
 18 certified mail to the persons whose names appear on the
 19 latest completed tax roll as owners or reputed owners of the
 20 property within the redevelopment area. Where the
 21 redevelopment plan has been submitted to a planning agency,
 22 the hearing may not be held until the planning agency's
 23 comments have been received or the time period specified by
 24 the governing body has elapsed.
 25 (c) After the public hearing, the governing body may

1 adopt a redevelopment plan if it finds that:
 2 (i) where a general plan has been adopted, the
 3 redevelopment plan is compatible with the adopted objectives
 4 and elements of the general plan;
 5 (ii) a feasible program exists to relocate persons
 6 displaced by redevelopment projects;
 7 (iii) the redevelopment plan provides opportunity for
 8 private enterprise to participate in redevelopment projects;
 9 and
 10 (iv) a sound financial program exists for the
 11 financing of the projects included within the redevelopment
 12 plan.
 13 (2) Approval of a redevelopment plan shall constitute
 14 approval of each redevelopment project included within the
 15 plan.
 16 47A-6-4809. Amendment of a redevelopment plan. (1) In
 17 amending a redevelopment plan, the governing body shall
 18 follow the same procedures it is required to follow in the
 19 initial adoption of a redevelopment plan, except that notice
 20 by certified mail need only be given to persons whose
 21 interest in property or bonds would be substantially
 22 affected by the amendment.
 23 (2) If amendment of a redevelopment plan occurs after
 24 the disposal of real property located within the
 25 redevelopment project, the amendment shall be subject to the

1 rights at law or equity as have occurred to the lessee or
2 purchaser or their successors.

3 (3) If amendment of a redevelopment plan occurs after
4 the sale of bonds in connection with a redevelopment
5 project, and if the amendment substantially affects the
6 security of the bonds, the amendment shall be subject to the
7 rights at law or equity as have occurred to the bondholders.

8 47A-6-4810. Effect of redevelopment plan. (1) Upon the
9 effective date of a redevelopment plan, the plan shall
10 control all future use and building requirements of all
11 property in the project area.

12 (2) Each portion of a redevelopment plan shall be
13 considered to be essential to the overall purposes of the
14 plan. Any portion of the plan may be changed or modified
15 only through the amendment of the redevelopment plan.

16 47A-6-4811. Consolidation of redevelopment projects.

17 (1) Two or more redevelopment projects may be consolidated
18 by the amendment of the respective redevelopment plans.

19 (2) Each former project area shall continue under its
20 own redevelopment plan. Taxes attributed to each project
21 area which are allocated under 47A-6-4818 shall be devoted
22 to the entire merged project area as provided.

23 (3) If any indebtedness has been incurred prior to the
24 consolidation under this section, taxes allocated under
25 47A-6-4818 shall be first used to pay the principal and

1 interest on prior obligations.

2 47A-6-4812. Cooperation by public agencies. (1) For
3 the purpose of aiding and cooperating in the establishment,
4 maintenance, and operation of a redevelopment project, a
5 public agency may, upon such terms as it determines:

6 (a) dedicate, convey, or lease any of its interests in
7 any property or grant easements or any other rights therein
8 to a local government, state, or to the federal government;

9 (b) cause any public trafficways, services, or
10 facilities that it may provide to be established or improved
11 in order to be made available to a redevelopment project;

12 (c) plan or replan, zone or rezone, and make
13 exceptions from building regulations and ordinances for
14 property included within a redevelopment project;

15 (d) enter into agreements relating to the repair,
16 closing, or demolition of structures which are identified
17 for repair, closing, or demolition by the redevelopment
18 plan;

19 (e) enter into agreements with a local government or
20 the state or federal government to assist in the provision
21 of redevelopment services; and

22 (f) do any and all things necessary and convenient to
23 assist in the establishment, maintenance, and operation of a
24 redevelopment project.

25 (2) A public agency may incur all or part of any

1 expenses it makes while aiding or cooperating in a
2 redevelopment project.

3 (3) Any sale, conveyance, lease, or agreement provided
4 for in this section may be made by a public agency without
5 appraisal, notice, public hearing, or public bidding.

6 47A-6-4813. Compensation for real property.
7 Compensation for real property acquired for a redevelopment
8 project by the exercise of eminent domain shall not be
9 increased in value because of any increase in the value of
10 the real property caused by the redevelopment project.

11 47A-6-4814. Disposal of property. (1) A local
12 government may dispose of any property or interest in
13 property acquired by it for a redevelopment project in any
14 manner authorized by this title.

15 (2) A local government may retain such property or
16 interest in the property only for parks and recreation,
17 education, public transportation, public safety, health,
18 trafficways, public buildings, and facilities, parking lots,
19 public housing, and other public improvements in accordance
20 with the redevelopment plan.

21 (3) Purchasers or lessees and their successors and
22 assignees shall devote real property only to the uses
23 specified in the redevelopment plan. The local government
24 may require them to comply with other requirements
25 considered to be in the public interest.

1 (4) A local government may maintain real property
2 acquired in accordance with this chapter, pending the
3 disposition of the property for redevelopment, without
4 regard to 47A-6-4814(2) for uses and purposes as may be in
5 the public interest even though not in conformity with the
6 redevelopment plan.

7 47A-6-4815. Tax exemption. (1) Real and personal
8 property of a local government held as a part of a
9 redevelopment project is public property for essential
10 public and governmental purposes. The redevelopment project
11 property shall be exempt from all taxes and assessments of
12 any public agency. In the first fiscal year of acquisition
13 by the local government from a nonexempt body the local
14 government may pay that portion of taxes corresponding to
15 the portion of the taxable year in which the local
16 government held the property.

17 (2) A local government may make payments in lieu of
18 taxes and special assessments on property exempted from the
19 taxes or assessments by the provisions of this section.

20 (3) The tax exemption shall terminate when the local
21 government disposes of the property to a purchaser or lessee
22 which is not a public agency entitled to a property tax
23 exemption.

24 47A-6-4816. Relocation. (1) A local government
25 undertaking a redevelopment project shall provide for the

1 relocation of persons displaced as a result of the
2 redevelopment project. Relocation of displaced persons shall
3 comply with 93-9927 through 93-9944.

4 (2) Where federal moneys have been utilized to fund
5 any part of a redevelopment project, relocation shall comply
6 with the applicable federal laws and requirements.

7 47A-6-4817. Exemption from foreclosure. (1) All
8 property owned or held by a local government in connection
9 with a redevelopment project shall be exempt from levy and
10 sale by an execution.

11 (2) No execution or other judicial process may be
12 issued against the property, but the provisions of this
13 section shall not prohibit the right of obligees to pursue
14 any remedies for the enforcement of any pledge or lien given
15 by the local government on its rents, fees, or revenues or
16 the right of the federal or state government to pursue any
17 remedies provided by law or agreement.

18 47A-6-4818. Tax allocation redevelopment financing.
19 (1) A redevelopment plan may contain a provision or be
20 amended to contain a provision providing that taxes levied
21 on taxable property in redevelopment area each year by or
22 for the benefit of the state, any local government, or other
23 public agency for which the taxes are levied (hereafter
24 referred to as taxing bodies) shall be allocated, after the
25 effective date of the provision as provided in subsections

1 (3) and (4) of this section.

2 (2) For the purposes of this section "prior assessed
3 value" means the assessed value of the taxable property in
4 the redevelopment area as shown on the assessment roll last
5 equalized prior to the effective date of the redevelopment
6 plan; notwithstanding the provisions of this section, any
7 increase resulting from a comprehensive revaluation of all
8 property within the county may be applied to the property
9 for the purpose of determining the prior assessed value.

10 (3) The portion of taxes produced by levies for a
11 taxing body upon the total sum of the prior assessed value
12 of the taxable property in the redevelopment area shall be
13 allocated and paid into the funds of the taxing body in the
14 same manner as taxes paid by or for the taxing body on all
15 other property. For the purpose of allocating taxes levied
16 by a taxing body that did not include the redevelopment area
17 of the effective date of the provision allocating the taxes
18 but to which the urban renewal area has since been annexed
19 or otherwise included, the assessment roll of the county
20 last equalized prior to the effective date of the provision
21 shall be used in determining the prior assessed value.

22 (4) (a) The portion of taxes levied by the taxing body
23 each year in excess of the amount levied under subsection
24 (3) shall be paid into a special fund of the local
25 government.

(b) The tax allocation plan shall stipulate how the moneys contained in the special fund are to be expended. The plan shall authorize that the funds be expended to pay:

(i) principal and interest on the bonds for redevelopment purposes as provided in the tax allocation plan;

(ii) any costs incurred by the local government in the carrying out of a redevelopment project; or

(iii) a combination of (i) or (ii).

(c) Taxes for the payment of principal and interest on all other bonds of each taxing body must be levied against all taxable property within the taxing body's jurisdiction without limitation by the provisions of this subsection.

(d) Until the actual assessed valuation of all property in the redevelopment area exceeds the prior assessed value of all property within the area, the actual assessed value shall be used for taxation purposes.

(5) The governing body shall indicate in the tax allocation plan the manner in which moneys not needed for immediate disbursement shall be managed. The plan shall provide that excess moneys be:

(a) principal and interest on redevelopment bonds;

(b) placed in a reserve fund;

(c) allocated to the various taxing bodies in proportion to the tax revenues they did not receive as a

result of implementation of the tax allocation plan during the year the excess occurred; or

(d) any combination of (a), (b), or (c).

(6) A local government may not implement a tax allocation plan if a majority of the freeholders or electors of the redevelopment area submit written protest to the governing body opposing the tax allocation plan. The petition must be submitted to the governing body within 30 days of the governing body's approval of the redevelopment plan or the amendment to the plan which contained the tax allocation plan.

(7) Any tax allocation plan for other than principal and interest on bonds is limited to 10 years.

(8) After all principal and interest on bonds have been paid or the 10-year time limit on other tax allocation plans has expired, the tax allocation plan shall be terminated and all revenue received from taxes upon property in the redevelopment area shall be allocated as taxes on other property.

(9) All money remaining in the special fund when a tax allocation plan is terminated shall be paid as provided in the tax allocation plan or as provided by resolution of the governing body.

Part 5

Community Services

Subpart 1

Cemetery

47A-6-5101. Policy and purpose. It is a policy of this state that the provision of local public cemeteries meets human needs and protects the public health. It is the purpose of this subpart to provide local governments additional powers to provide this service.

47A-6-5102. General provisions apply. A local government providing cemetery services shall proceed under the provisions of this title, except that the specific powers, procedures, and instructions contained in this part shall be considered to be additional powers and additional requirements or to supersede other provisions of this title.

47A-6-5103. General definitions. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Cemetery" means a tract of land with specific boundaries established, dedicated, and maintained as a place for interment of human bodies.

(2) "Decedent" means a dead person.

(3) "Lot" means a specific, small parcel of land set aside for the interment of a human body within the boundaries of a cemetery.

47A-6-5104. Administration. (1) Lands acquired for a cemetery shall be formally dedicated as a cemetery.

(2) An existing tract of land not formally dedicated as a cemetery but having specific boundaries within which six or more human bodies are interred shall be dedicated as a cemetery.

(3) A cemetery may be laid out in lots and the lots may be disposed of at the discretion of the agency charged with the administration of the cemetery.

(4) Lands dedicated as a cemetery may be used for no other purpose unless the public health or welfare is substantially endangered by continued cemetery use. Interred bodies may be removed from a cemetery where the public health and welfare is substantially endangered and interred elsewhere in land dedicated as a cemetery.

(5) A local government may administer a cemetery in any authorized manner or it may recognize one or more cemetery associations as provided in Title 9, chapter 1.

(6) A local government shall survey the boundaries of each cemetery over which it has regulatory discretion and, based on the survey, shall record the exact location of each cemetery. Each cemetery shall be enclosed by fencing or other suitable material which shall clearly define its boundaries.

(7) A local government shall record the following information about each decedent interred in a cemetery over which it has regulatory discretion:

- (a) name;
- (b) date of birth;
- (c) date of death;
- (d) birthplace; and
- (e) exact location of interment.

47A-6-5105. Finances. Revenue received from the sale, care, and maintenance of cemetery lots shall be used only for the care, maintenance, and improvement of cemetery properties. Revenues in excess of the amount needed to properly keep and maintain cemetery grounds may be used for such other purposes as the local government may designate.

Subpart 2

Parks and Recreation

47A-6-5201. Policy and purpose. It is a policy of the state of Montana to encourage local governments to provide park and recreational services to give the people of Montana the fullest opportunity for recreational and athletic activities.

47A-6-5202. General provisions apply. A local government providing park and recreational services shall proceed under the provisions of this title, except that the specific powers, procedures, and instructions contained in this subpart shall be considered to be additional powers and additional requirements or to supersede other provisions of this title.

47A-6-5203. Use, lease, or sale of park lands. (1) Lands acquired for public recreation, parks, or parklands may be used only for those purposes.

(2) Lands originally acquired under the provisions of 47A-6-4510, including land dedicated for public recreation, parks, or parklands, but which are not suited to that use may be sold or leased or traded by two-thirds vote of the entire membership of the governing body after notice, public hearing, and determination that it is not advisable to retain, use, or improve the land as a park.

(3) Any real or personal property or money realized through the disposition of lands acquired under the provisions of 47A-6-4501 through 47A-6-4519 may be used only to acquire park land or for initial development of park land.

Subpart 3

Animal Control

47A-6-5301. Policy and purpose. It is a policy of the state of Montana that domestic animals kept in an uncontrolled state may become a public nuisance and should be controlled by local governments for the protection of the public health and welfare.

47A-6-5302. General provisions apply. A local government providing animal control services shall proceed under the provisions of this title, except that the specific

1 powers, procedures, and instructions contained in this
2 subpart shall be considered to be additional powers and
3 additional requirements or to supersede other provisions of
4 this title.

5 47A-6-5303. General definitions. In this title, unless
6 otherwise provided or the context requires a technical or
7 other interpretation, the following definitions apply:

8 (1) "Animal" means an animate being not human.

9 (2) "Domestic animal" means an animal owned or kept
10 for any human purpose.

11 (3) "Kennel" means any establishment where five or
12 more pets are kept for the purpose of boarding, breeding,
13 sale, sporting, or commerce.

14 (4) "Humane destruction" means a method of killing an
15 animal which minimizes the pain and suffering of the animal.

16 (5) "Humane treatment" means the provision of adequate
17 food, water, shelter, and necessary veterinary attention for
18 impounded animals.

19 (6) "Impound" means the holding of an animal in a
20 specific place pending claim by its owner or other
21 disposition.

22 (7) "Owner" means a person who keeps or holds an
23 animal as personal property.

24 (8) "Pet" means an animal owned or kept for other than
25 agricultural purposes.

1 47A-6-5304. Animal control program. A local government
2 may provide animal control services which may contain any of
3 the following provisions:

4 (1) provisions for licensing of animals kept as pets
5 and for setting or collecting fees for licenses, including
6 differential license fees for pets in an altered state and
7 animals in kennels;

8 (2) provisions for keeping records of applications for
9 licenses and licenses issued;

10 (3) provisions for mandatory vaccination of pets for
11 immunity from diseases which may be transmitted to humans or
12 which may pose a threat to public health;

13 (4) provisions for seizing and impounding animals
14 running at large or posing a public nuisance or a threat to
15 the public within the jurisdictional area of the local
16 government;

17 (5) provisions for the sale and humane treatment of
18 animals impounded;

19 (6) (a) provisions for the sale, humane destruction,
20 or other humane means of disposal of an impounded animal not
21 claimed by its owner after a reasonable time period, not
22 less than 72 hours, and after a reasonable attempt has been
23 made to identify and inform the owner of the animal's
24 impoundment; and

25 (b) notice to owners of livestock conforming with

1 46-2001 through 46-2008;

2 (7) definition of the responsibility of an owner of an
3 animal for damages to persons or property caused by the
4 animal and provision for payment of restitution by the owner
5 for such damages;

6 (8) definition of acts committed by an animal for
7 which its owner may be held liable;

8 (9) provisions for setting and collecting fines
9 incurred by an owner because of liability for acts defined
10 in accordance with this section;

11 (10) provisions for fees for reasonable compensation
12 paid by the owner to the local government for the care and
13 feeding and other costs of seizing and impounding the
14 animal; the refusal or failure of the owner of any animal to
15 pay the compensation fee and charges after due notification
16 shall be held to be an abandonment of the animal by the
17 owner;

18 (11) provisions to prevent cruelty to animals; and

19 (12) other provisions deemed necessary to prevent
20 animals from being a public nuisance or a threat to public
21 health.

22 47A-6-5305. Custody of impounded animals. An animal
23 impounded by a municipality may be turned over to the humane
24 officer of the county.

25 47A-6-5306. Rabid animals. An impounded animal

1 suspected of having rabies or known to have bitten a human
2 or animal shall not be sold, destroyed, or otherwise
3 disposed of or released to its owner until authority to do
4 so is given by the responsible county health officer or his
5 agent.

6 Subpart 4

7 Television Program Distribution Services

8 47A-6-5401. Purpose and policy. The purpose of a
9 television program distribution service shall be to serve
10 the public interest, convenience, and necessity in the
11 construction, maintenance, and operation of television
12 translator stations and any system necessary for electric or
13 electronic television program distribution. These purposes
14 do not include the construction or operation of community
15 antenna systems, commonly known and referred to as cable TV
16 systems.

17 47A-6-5402. General provisions apply. A local
18 government providing television program distribution
19 services shall proceed under the provisions of this title,
20 except that specific powers, procedures, and instructions
21 contained in this subpart shall be considered to be
22 additional powers and additional requirements or to
23 supersede other provisions of this title.

24 47A-6-5403. Special provisions. (1) In providing
25 television program distribution services, the local

1 government may perform all the acts and take all the
2 necessary or proper steps to assure that there will be a
3 fair, efficient, and equitable distribution of television
4 services within the service area in order that all persons
5 within the service area shall be supplied by means of an
6 appropriate electrical or electronic system for television
7 program distribution. But the local government may not
8 perform any acts or take any steps to construct or operate
9 community antenna systems, commonly known and referred to as
10 cable TV systems.

11 (2) A system is to provide such flexibility as to
12 permit improvements in technical quality without rendering
13 inoperative its receivers, but discontinuance of service by
14 the district for improvements or repairs for a temporary
15 period shall not be construed as rendering the service
16 inoperative.

17 47A-6-5404. Exemptions from taxes or service charges.

18 (1) A system for financing television program distribution
19 services shall provide for the exemption of:

20 (a) persons who do not own television sets;

21 (b) persons who do not receive the signal of the
22 television translator station;

23 (c) persons who receive direct reception from the
24 television station from which the television translator
25 repeats a signal; and

1 (d) persons who receive service through the medium of
2 a community antenna system on which they are subscribers in
3 good standing.

4 (2) Persons filing with the finance administrator an
5 affidavit setting forth any of the grounds listed above
6 shall be exempt from taxes or service charges for financing
7 television program distribution services.

8 (3) Any person who makes a false or fraudulent claim
9 in the affidavit for exemption is guilty of a misdemeanor.

10 Subpart 5

11 Ditch Protection

12 47A-6-5501. Policy and purpose. (1) The legislature
13 declares that the control of ditch water in inhabited areas
14 of Montana affects the public interest. The purpose of this
15 part is to prevent drowning of children in ditches filled or
16 partially filled with water within the limits of
17 municipalities. This subpart shall be considered an
18 exercise of the police power of the state in and for the
19 protection of the welfare, health, peace, and safety of the
20 people of Montana.

21 (2) Nothing in this subpart shall be construed as
22 intending to effectuate the abandonment of any valid water
23 right, but instead shall be construed merely as a regulation
24 in the public interest so that the diversion,
25 transportation, and use of water in such ditches in

1 municipalities shall be in a safe manner.

2 47A-6-5502. General provisions apply. A local
3 government providing ditch protection and protective
4 services shall proceed under the provisions of this title,
5 except that specific powers, procedures, and instructions
6 contained in this chapter shall be considered to be
7 additional powers and additional requirements or to
8 supersede other provisions of this title.

9 47A-6-5503. Local improvement district for ditch
10 protection. (1) Any county or municipal government may
11 create a local improvement district for ditch protection.

12 (2) The owner or owners of open ditches carrying
13 irrigation or other water shall not be included in any local
14 improvement district under this title for the purpose of
15 assessment to support the local improvement district for the
16 installation, repair, or maintenance of any protective
17 devices to protect the safety of the public from open
18 ditches carrying irrigation or other water. Such devices or
19 improvements shall provide access to and shall not be
20 constructed so as to hinder the operation and maintenance of
21 the ditch.

22 47A-6-5504. Open ditch in municipality declared
23 nuisance. (1) Notwithstanding any provision contained in
24 Title 89 or any law pertaining to the use of water in
25 Montana, it is hereby declared that water which flows

1 through the limits of a municipality in an open ditch is a
2 public nuisance if such municipal governing body declares it
3 to be a nuisance.

4 (2) This title and section do not apply to ditches
5 carrying water used for commercial irrigation purposes.

6 (3) The governing body of a municipality is hereby
7 given the power to:

8 (a) investigate the dangerous condition of such
9 ditches within the limits of a municipality and to declare
10 any such ditch a public nuisance; and

11 (b) determine the measures necessary to remove the
12 danger and public nuisance, including fencing or use of
13 culvert or other protective device based upon standards to
14 be determined by the governing body.

15 (4) When a public nuisance has been declared as
16 provided in this section, the municipality shall give public
17 notice for at least 60 days to owners of the ditch and of
18 any water rights affected that such ditch has been declared
19 a public nuisance and that it shall be closed and filled
20 unless the owners of such rights desire to keep the ditch
21 open. Such notice shall include publication once each week
22 in an established newspaper published within the
23 municipality if one exists or in its absence in the official
24 county newspaper for at least 8 successive weeks.

25 (5) If a person claims that the water has not been

1 abandoned and claims the right to use water in a ditch that
 2 the municipality has declared a public nuisance, he shall
 3 notify the municipality before the expiration of the 60-day
 4 period that he wishes to continue the use of such water
 5 within the municipality and that he, individually or with
 6 others, will provide such protective devices as ordered by
 7 the municipality. If such notice is given, the person or
 8 persons claiming such right or rights shall have a period
 9 not to exceed 6 months to remove the public nuisance in the
 10 manner ordered by the municipality.

11 (6) If the municipality approves the work, it shall
 12 permit the water to flow into the municipality. If the
 13 protective device is not provided or if it does not meet
 14 specifications required by the municipality, the
 15 municipality may designate such ditch abandoned and order it
 16 closed or filled when the 6-month period ends.

17 Subpart 6

18 Libraries

19 47A-6-5601. Policy and purpose. (1) It is the policy
 20 of the state to encourage the establishment of library
 21 services by local governments to give the people of Montana
 22 the fullest opportunity to enrich and inform themselves.

23 47A-6-5602. General provisions apply. A local
 24 government providing library services shall proceed under
 25 the provisions of this title, except that the specific

1 powers, procedures, and instructions contained in this part
 2 shall be considered to be additional powers and additional
 3 requirements or to supersede other provisions of this title
 4 and Title 44.

5 47A-6-5603. Free library services. Library services
 6 provided by a local government shall be free for the use of
 7 residents of the local government. An ordinance or
 8 administrative rule may extend the use of the library to
 9 persons residing outside the local government upon such
 10 terms and conditions as it may prescribe. An ordinance or
 11 administrative rule may provide that persons who willfully
 12 violate the rules of the library may be excluded from use of
 13 library services.

14 47A-6-5604. Library federations. For the purpose of
 15 improving and expanding library services, local government
 16 governing bodies are encouraged to create and join library
 17 federations and library networks authorized in Title 44.

18 Part 6

19 Emergency Services

20 Subpart 1

21 Emergency Services

22 47A-6-6101. Policy and purpose. (1) It is a policy of
 23 the state that all levels of government should provide
 24 protection for its citizens from crime, fire, catastrophe,
 25 and death from unforeseen accident or disease and that these

1 protections constitute a basic tenet of our society. Local
2 governments have played and should continue to play a major
3 role in the development of services which provide law
4 enforcement, fire protection, emergency medical services,
5 and civil preparedness.

6 (2) It is the purpose of this part to effect these
7 policies by encouraging local governments to provide
8 emergency services based upon local conditions, needs, and
9 desires and by allowing the broadest possible discretion so
10 as to facilitate innovative, productive, and economical
11 emergency services.

12 47A-6-6102. Consolidation of emergency services. A
13 local government may combine emergency services, except that
14 specific procedures, instructions, training requirements,
15 qualifications, and licensing requirements of this chapter
16 shall apply in providing consolidated services.

17 Subpart 2

18 Fire Protection Services

19 47A-6-6201. Policy and purpose. It is a policy of the
20 state that all levels of government should share in the
21 responsibility of protecting society from the ravages of
22 destructive fire, that this protection constitutes a basic
23 tenet of our society, that traditionally local governments
24 have played and should continue to play a major role in the
25 development of fire prevention and protective services, and

1 that these services should be provided in an innovative
2 manner to maximize economy and cooperation.

3 47A-6-6202. General provisions apply. A local
4 government providing fire prevention and protective services
5 shall proceed under the provisions of this title, except
6 that specific powers, procedures, and instructions contained
7 in this subpart shall be considered to be additional powers
8 and additional requirements or to supersede other provisions
9 of this title.

10 47A-6-6203. How fire prevention and protection
11 services to be provided. (1) A municipality shall provide
12 fire protection services.

13 (2) A fire service may be established only by
14 ordinance. The ordinance shall specify the organization and
15 supervision of the fire service. Supervision of the fire
16 service shall be vested in the local government governing
17 body, in the chief executive, or in a board authorized to
18 supervise the fire service.

19 47A-6-6211. Fire prevention. (1) A local government
20 may, through its fire service, provide fire prevention
21 services, enforce fire codes, and conduct fire inspections
22 as authorized by ordinance.

23 (2) A fire inspection conducted by an agency other
24 than the local fire service may not be conducted until the
25 chief of the local fire service is notified. The chief or

1 other representative of the local fire service may accompany
2 the inspector on the inspection.

3 47A-6-6216. Reports of fire services. (1) A fire chief
4 shall investigate and report fires as required by 82-1209.

5 (2) The state fire marshal bureau shall promulgate
6 rules for the statistical reporting of fire activities,
7 training, equipment, personnel, and finances.

8 (3) The state board of education shall set fire
9 training standards and require reports on the training
10 activities of a fire service which shall be published in the
11 register and Montana administrative code.

12 47A-6-6221. Provisions common to all fire services.

13 (1) If a firefighter has reasonable suspicion to believe a
14 destructive fire is within a building, he may enter that
15 building at any time to suppress the fire.

16 (2) A fire chief or the commanding officer in charge
17 at the suppression of a fire has the necessary and
18 reasonable powers to insure the safety of firefighters,
19 safety of other persons, and the protection of property.
20 These powers include the power to:

21 (a) direct and control vehicular and pedestrian
22 traffic at the scene of a fire for the protection of persons
23 or property;

24 (b) enter any building in the fire area to evacuate
25 persons and property or to conduct fire suppression

1 activities; and

2 (c) destroy or move property in the necessary course
3 of fire suppression for the protection of persons and
4 property or to prevent the spread of the fire.

5 (3) No local government or its officers, employees, or
6 firefighters are liable for property damage or personal
7 injuries resulting from reasonable and necessary action
8 taken by a firefighter in the suppression of a fire, in the
9 prevention of the spread of a fire, or in safeguarding
10 persons or property in a fire area.

11 (4) In the event of a fire disaster, the chief
12 executive of a local government may conscript able-bodied
13 inhabitants over the age of 18 years to assist, directly or
14 indirectly, in the suppression of the fire.

15 47A-6-6231. Paid fire service. A paid fire service may
16 be established by ordinance to provide services for all its
17 jurisdictional area or for a subordinate service district.

18 47A-6-6232. Chief of the paid fire service. The chief
19 of a paid fire service is the administrator of the paid fire
20 service. He shall be a paid firefighter subject to the same
21 conditions for appointment, discharge, suspension, and
22 demotion as a paid firefighter. The powers, duties, and
23 responsibilities of the chief shall be established by
24 ordinance.

25 47A-6-6233. Volunteer firefighters of a paid fire

1 service. (1) A paid fire service may consist of volunteers
 2 as well as paid personnel. The chief may appoint and
 3 discharge volunteer personnel. A volunteer may be
 4 discharged at any time, without cause, in writing.
 5 Appointment qualifications and training requirements of
 6 volunteers for a paid fire service must equal or exceed the
 7 qualifications and training for volunteer firefighters as
 8 specified in 47A-6-6284 and 47A-6-6285.

9 (2) A municipality utilizing volunteer firefighters
 10 shall provide full workers' compensation coverage for the
 11 volunteer firefighters while they are providing actual
 12 service for a fire service. Coverage shall be provided
 13 through the state compensation insurance fund, and the
 14 municipality shall pay to the state fund an appropriate
 15 premium, as established by the state fund, to cover the
 16 insurance risk of providing that coverage.

17 47A-6-6234. Appointment of paid firefighters. The
 18 appointment of a paid firefighter shall conform to the
 19 following:

20 (1) "paid firefighter" means a person who is a
 21 probationary or confirmed firefighter employed as a
 22 full-time firefighter by a local government;

23 (2) (a) a paid firefighter shall be appointed on the
 24 basis of merit;

25 (b) prior to probationary appointment as a paid

1 firefighter, a person must meet the applicable entrance
 2 requirement qualifications set forth in national fire
 3 protection association standards and any additional or
 4 similar qualifications established by the local government
 5 and be not less than 18 or more than 31 years of age;

6 (c) a qualified person may be appointed as a
 7 firefighter for a probationary term not to exceed 1 year
 8 upon nomination by the chief executive and with consent of
 9 the governing body;

10 (d) after a probationary firefighter has exhibited
 11 satisfactory job performance, the chief executive officer
 12 may nominate the probationary firefighter for appointment as
 13 a confirmed firefighter with the consent of the governing
 14 body;

15 (e) a person appointed as a confirmed firefighter
 16 shall hold that appointment until discharged for cause,
 17 released from the appointment because of reduction in force,
 18 or retired.

19 47A-6-6215. Discharge, suspension, or demotion of a
 20 paid firefighter. (1) The chief executive officer and the
 21 entity responsible for supervision of the volunteer fire
 22 service may for cause discharge, suspend, or demote a paid
 23 fire chief, paid assistant fire chief, paid fire officer,
 24 paid firefighter, or employee of a public fire department.

25 (2) A fire chief may for cause discharge, suspend or

1 demote a paid assistant fire chief, paid fire officer, paid
2 firefighter, or employee of a public fire department.

3 (3) An assistant fire chief may for cause discharge,
4 suspend, or demote a paid firefighter.

5 47A-6-6236. Appeal of discharge, suspension, or
6 demotion. (1) A firefighter who has been discharged,
7 demoted, or suspended from a public fire service may appeal
8 the discharge, suspension, or demotion to the civil service
9 board, where one has been established, or may appeal by the
10 following procedure:

11 (a) A person who is discharged, suspended, or demoted
12 from a public fire service shall be given, in writing, the
13 specific reasons for the discharge, suspension, or demotion
14 and an opportunity to be heard in his own defense within 30
15 days by the person who discharged or suspended him.

16 (b) A person in the fire service aggrieved by his
17 discharge, suspension, or demotion may, within 30 days after
18 being heard in his own defense or after refusal of his right
19 to be heard, appeal to the governing body. The appeal shall
20 be in the form prescribed by the governing body.

21 (2) Upon receipt of an appeal, the governing body
22 shall set a time and place for a hearing on the issue. The
23 hearing shall be set for a date not later than 15 days after
24 the receipt of the appeal. The governing body shall give
25 reasonable notice to the parties of the time and place set

1 for hearing. At the hearing the governing body shall:

2 (a) keep a record in sufficient detail to allow an
3 appeal on the record. The record shall include all
4 pleadings, motions, and intermediate rulings; evidence; a
5 stenographic or mechanical record of oral proceedings when
6 demanded by a party; objections and rulings; and proposed
7 findings.

8 (b) accept evidence in substantial compliance with
9 statutory and common law rules of evidence.

10 (3) Following the hearing, the governing body shall
11 give a written decision on all issues before it, setting out
12 in detail the facts relied on.

13 (4) The aggrieved person may appeal the decision of
14 the governing body within 30 days after the decision is
15 made. The decision is subject to judicial review by the
16 district court of the proper judicial district. The judicial
17 review shall be a review of the hearing record on issues of
18 law, but in the interests of justice the court may require
19 additional evidence to be presented at the judicial review.

20 (5) If the person discharged, suspended, or demoted
21 prevails, he shall be reinstated and shall be entitled to
22 that compensation he would have received had he not been
23 discharged, suspended, or demoted.

24 47A-6-6237. Training of paid fire service. (1)
25 Training of paid fire service personnel shall be conducted

1 in accordance with the standards prescribed by the national
2 fire protection association and any additional standards or
3 requirements prescribed by the state board of education and
4 the chief of the paid fire service.

5 (2) The state fire training officer shall be
6 responsible for insuring that personnel of a paid fire
7 service comply with training standards and requirements. The
8 state training officer may conduct general or specific
9 training for paid fire service personnel and may provide
10 training support to a paid fire service.

11 47A-6-6261. Private fire service. A private fire
12 service is a fire service which is not publicly financed and
13 shall be either:

14 (1) a corporation, either profit or nonprofit, created
15 under the laws of this state; or

16 (2) a subdivision of a private business entity which
17 provides fire protection to residences of nonemployees or
18 which decides to be governed by the provisions of this part
19 by reporting as provided in 47A-6-6263.

20 47A-6-6262. Fire training for private fire services.

21 (1) The personnel employed by a private fire service
22 organized for profit or by a private business entity which
23 provides fire protection to residences of nonemployees shall
24 be trained in accordance with the applicable standards
25 established by the national fire protection association.

1 (2) The state fire training academy may provide
2 training for personnel of private fire services and may
3 charge a reasonable fee for training personnel of other
4 private fire services.

5 47A-6-6263. Report required of private fire services.
6 On or before April 1 of each year, each private fire service
7 shall submit a report to the state fire marshal containing:

8 (1) the name and address of the private service;

9 (2) whether the private fire service is a profit or
10 nonprofit corporation;

11 (3) the method and schedule of charges for the private
12 fire service plus any other manner utilized for obtaining
13 revenue;

14 (4) the number of personnel in the private fire
15 service, their job descriptions and training;

16 (5) the quantity and description of all major
17 equipment and buildings owned, rented, or leased by the
18 private fire service.

19 47A-6-6281. Volunteer fire service. (1) A volunteer
20 fire service shall consist of volunteer firefighters and
21 other volunteer personnel augmented by any number of paid
22 firefighters as the local government may authorize.

23 (2) A volunteer fire service may be established by
24 ordinance.

25 (3) A volunteer fire service may be divided into

1 companies by ordinance.

2 47A-6-6282. Rules of a volunteer fire service. The
3 active volunteer membership of a volunteer fire service
4 shall by vote establish rules for the discipline and
5 operation of the volunteer fire service, subject to the
6 approval of the entity responsible for supervision of the
7 volunteer fire service.

8 47A-6-6283. Chief of a volunteer fire service. The
9 ordinance creating the volunteer fire service shall specify
10 the manner in which the chief is to be selected and the
11 powers, duties, and responsibilities of the chief. The chief
12 of the volunteer fire service is the administrator of the
13 volunteer fire service.

14 47A-6-6284. Appointment and discharge of volunteer
15 fire service personnel. Appointment and discharge of
16 volunteer personnel of a volunteer fire service shall
17 conform to the following:

18 (1) a person who meets the entrance requirement
19 specifications of a firefighter as set forth in national
20 fire protection association standard 1001 or similar
21 qualifications established by the local government may be
22 appointed a volunteer firefighter by a vote of the
23 membership of the volunteer fire service;

24 (2) a person who meets the qualifications set forth by
25 the governing body of the volunteer fire service may be

1 appointed as a volunteer nonfirefighting member of the fire
2 service by vote of the membership of the volunteer fire
3 service;

4 (3) volunteer members may be discharged by vote of the
5 membership of the fire service or company to which they
6 belong or by the chief as determined by rule;

7 (4) the appointment, discharge, suspension, and
8 demotion of paid firefighters of a volunteer fire service
9 shall conform to the provisions of 47A-6-6234 through
10 47A-6-6236.

11 47A-6-6285. Training of personnel in a volunteer fire
12 service. A volunteer firefighter shall receive not less than
13 30 hours of fire training a year under the direction of the
14 state fire training academy in accordance with applicable
15 standards prescribed by the national fire protection
16 association and any additional training prescribed in the
17 state fire training academy. A paid member of a volunteer
18 fire service shall receive the same training required for a
19 paid firefighter of a paid fire service. The state fire
20 training academy may establish and conduct general or
21 specific fire training for volunteers. The academy shall
22 provide a program of training for paid firefighters of
23 volunteer fire services.

24 47A-6-6286. Fund raising activities of volunteer fire
25 service. A volunteer fire service may solicit moneys from

any source and may conduct fundraising activities. The moneys may be earmarked and expended by the unit responsible for their collection. All moneys shall be reported to the governing body of the local government but are not subject to control or appropriation by the local government.

47A-6-6287. Fire councils and county fire plans. (1) To encourage coordination of fire prevention and protection services, the county governing body shall provide by ordinance for the organization of a fire council encompassing all fire organizations operating within the county.

(2) As part of a county service plan, by October 1, 1981, the county governing body shall make a plan identifying all fire services in the county and shall on a biennial basis review and update the plan. The plan identifying all fire services in the county shall be sent to the state fire marshal bureau by October 1 each biennium and at any other time it is modified or updated.

Subpart 3

Law Enforcement Services

47A-6-6301. Policy and purpose. It is a policy of the state that the protection of its citizens from criminal activity is a shared responsibility of all levels of government. Traditionally, local governments have played and should continue to play a major role in the development and

provision of law enforcement services.

47A-6-6302. General provisions apply. A local government providing law enforcement services shall proceed under the provisions of this title, except that the specific powers, procedures, and instructions contained in this subpart shall be considered to be additional powers and additional requirements or to supersede other provisions of this title.

47A-6-6303. General definitions. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, nonregular volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities. An auxiliary officer has only the arrest authority granted a private person in 95-611.

(2) "Chief law enforcement administrator" means the elected or appointed administrator of the county law enforcement agency as provided in 47A-6-6316 and 47A-8-401 or the administrator of the municipal law enforcement agency as provided in 47A-6-6317.

(3) "General law enforcement duties" means patrol operations performed for detection, prevention, and

1 suppression of crime and the enforcement of the criminal and
2 traffic codes of this state and its local governments.

3 (4) "Law enforcement agency" means a law enforcement
4 service provided directly by a local government.

5 (5) "Law enforcement officer" means a sworn, employed
6 member of a law enforcement agency who is a peace officer as
7 defined in 95-210 and has arrest authority as described in
8 95-608.

9 (6) "Reserve officer" means a sworn, part-time,
10 nonregular volunteer member of a law enforcement agency who
11 is a peace officer as defined in 95-210 and has arrest
12 authority as described in 95-608 only when authorized to
13 perform these functions as a representative of the law
14 enforcement agency.

15 47A-6-6304. How law enforcement services to be
16 provided. (1) A local government shall provide law
17 enforcement services.

18 (2) Law enforcement services may be provided by any of
19 the methods prescribed in 47A-6-102, except general law
20 enforcement services may not be provided by a private
21 vendor. A local government may, however, contract with a
22 private vendor for security, guard, crowd control, or other
23 specific services which do not include arrest powers and
24 where arrest is not a reasonable consequence in providing
25 the service.

1 (3) A local government may create a subordinate
2 service district to provide law enforcement services. Law
3 enforcement services within a subordinate district shall be
4 provided by law enforcement officers employed by the local
5 government in which the subordinate service district is
6 located.

7 47A-6-6315. Rules for operation of law enforcement
8 agency. The elected sheriff or, if there is no elected
9 sheriff, the chief executive may promulgate rules for the
10 direction and management of the law enforcement agency of
11 the local government and for the discipline of its
12 personnel.

13 47A-6-6316. Sheriff. (1) As provided in 47A-8-401, it
14 shall be the duty of each county to provide for a chief law
15 enforcement administrator who may be called the sheriff and
16 who shall perform the following duties:

17 (a) preserve the peace;
18 (b) arrest and take before the nearest magistrate for
19 examination any person who attempts to commit or has
20 committed a public offense;

21 (c) prevent and suppress all affrays, breaches of
22 peace, riots, and insurrections which may come to the
23 administrator's knowledge;

24 (d) perform the duties of humane officer within the
25 county for the protection of animals until animal control

1 services are otherwise provided by the county;

2 (e) attend all courts, except justice and police
3 courts, at their respective terms or sessions held within
4 the county and obey their lawful orders and directions;

5 (f) command the aid of as many inhabitants of the
6 county as thought necessary in the execution of these
7 duties;

8 (g) take charge of and keep the county jail and the
9 prisoners therein;

10 (h) on the first Monday in January and every 3 months
11 thereafter, provide the governing body a certified list of
12 the names of all prisoners in custody on the last day of the
13 preceding month, with the time and cause of their
14 confinement, the length of time for which they were
15 committed, and the number received and discharged during the
16 preceding 3 months. In case he fails to do so, the law
17 enforcement administrator may not receive any compensation
18 for the sustenance of the prisoners in his custody.

19 (i) perform any other duty required of the sheriff by
20 law or ordinance.

21 (2) Where the county chief law enforcement
22 administrative officer is elected, he shall perform those
23 functions assigned by this part to either the elected
24 sheriff or the chief executive officer.

25 47A-6-6317. Chief of police. (1) The municipal chief

1 executive shall designate a law enforcement officer as the
2 chief law enforcement administrator, who may be called the
3 chief of police.

4 (2) It shall be the responsibility of the law
5 enforcement officer so designated to:

6 (a) arrest any person guilty of a breach of the peace
7 or for violation of any local government ordinance or state
8 law and bring the violator before the appropriate court;

9 (b) have charge and control of all municipal law
10 enforcement officers, subject to such rules as may be
11 prescribed by ordinance or promulgated under 47A-6-6315, and
12 report to the local government all delinquencies, neglect of
13 duty, or official misconduct of municipal law enforcement
14 officers; and

15 (c) perform such other duties as the municipal chief
16 executive officer or chief administrative officer may
17 require.

18 47A-6-6318. Assistant to elected sheriff. (1) An
19 elected sheriff may appoint an assistant sheriff.

20 (2) An assistant sheriff must be a sworn law
21 enforcement officer but need not be appointed according to
22 the provisions of 47A-6-6321.

23 (3) The assistant sheriff in his capacity as assistant
24 sheriff may be terminated without cause by an elected
25 sheriff.

(4) An assistant sheriff who is selected from the ranks of the law enforcement agency of the local government shall be entitled to reinstatement as a regular law enforcement officer in that agency at the termination of his appointment as assistant sheriff.

(5) Whenever a vacancy occurs in the office of an elected sheriff, the assistant sheriff shall execute the duties of that office until a successor is appointed to fill the vacancy according to 47A-3-407(3) (a).

47A-6-6319. Law enforcement board. (1) A local government with a law enforcement agency having three or more law enforcement officers shall have a law enforcement board. The board shall consist of at least three members who shall be residents of the local government who are eligible for public office and are not law enforcement officers or officers or employees of the local government. The members shall be appointed for terms of 3 years. The terms of the members shall be staggered so that as nearly as possible the appointments of one-third of the membership of the board will expire annually.

(2) The Montana board of crime control shall prepare a manual on the organization and operation of local law enforcement boards.

47A-6-6320. Standards and examination of law enforcement applicants. (1) Prior to appointment as a law

enforcement officer a person must meet the minimum qualifying standards for the appointment of peace officers as promulgated by the Montana board of crime control.

(2) The law enforcement board shall examine each applicant for the position of law enforcement officer to determine if that person meets statutory, regulatory, or other standards established for that position. The law enforcement board shall, subject to the approval of the chief executive, make rules regarding the examination of applicants.

(3) The board shall make available a manual explaining the minimum qualification, examination rules, minimum training standards, and any other information considered advisable by the board or chief law enforcement administrator for law enforcement officers, reserve officers, and auxiliary officers.

(4) The Montana board of crime control shall assist in the preparation of the manual.

47A-6-6321. Appointment of law enforcement officer. A person may be appointed as a sworn law enforcement officer of a local government only through the following procedure:

(1) The applicant shall file an application for appointment with the elected sheriff or the chief executive officer of the local government.

(2) The elected sheriff or the chief executive officer

1 may refer the application to the law enforcement board if in
2 his sound discretion the application merits examination by
3 the board.

4 (3) The board shall certify the application to the
5 elected sheriff or the chief executive officer if the
6 applicant passes the examination of the law enforcement
7 board and qualifies for appointment as a law enforcement
8 officer.

9 (4) The elected sheriff or the chief executive
10 officer:

11 (a) shall maintain an eligibility list of applicants
12 certified by the law enforcement board;

13 (b) shall appoint applicants from the eligibility list
14 to fill vacancies as they occur in the law enforcement
15 agency; and

16 (c) may cause additional applicants to be examined and
17 placed on the eligibility list, if in his discretion there
18 are no suitable applicants at the time a vacancy occurs.

19 (5) A law enforcement officer shall serve a
20 probationary term not to exceed 1 year from the date of
21 appointment. The elected sheriff or the chief executive
22 officer may revoke the appointment at any time prior to the
23 end of the probationary period.

24 (6) At the end of the probationary term, the elected
25 sheriff or the chief executive officer shall submit the

1 appointment to the governing body. Within 30 days of the
2 submission of the application, the governing body shall
3 confirm or reject the appointment.

4 (7) If the appointment is confirmed, the applicant
5 shall become a member of the law enforcement agency of the
6 local government and shall hold that position during good
7 behavior unless suspended or discharged by the board as
8 provided by law.

9 (8) If the appointment is not submitted to the
10 governing body, the governing body may consider the
11 application.

12 (9) If there has been no decision by the governing
13 body within 1 year and 30 days after probationary
14 appointment, the appointment is automatically confirmed.

15 47A-6-6323. Reduction in force. (1) The governing
16 body, or, in the case of a sheriff's department administered
17 by an elected sheriff, the sheriff may determine and limit
18 the number of law enforcement officers of the local
19 government and may reduce the number of law enforcement
20 officers at any time.

21 (2) Law enforcement officers of the law enforcement
22 agency shall be removed based upon length of service, those
23 with least service being released first.

24 (3) Law enforcement officers released because of a
25 reduction in force shall be placed upon the eligibility list

1 provided for in 47A-6-6321(4) in order of seniority ahead of
2 applicants on the eligibility list who were not removed from
3 the law enforcement agency. Reappointment to the law
4 enforcement agency shall be made from the eligibility list
5 when vacancies exist.

6 47A-6-6326. Temporary law enforcement officers. (1) On
7 recommendation of the chief executive officer or elected
8 sheriff, the law enforcement board may appoint temporary law
9 enforcement officers when, through some unforeseen
10 occurrence or because of training requirements, temporary
11 law enforcement officers are required.

12 (2) The temporary officers may be retired law
13 enforcement officers, sworn reserve officers, or law
14 enforcement officers from another law enforcement agency.

15 (3) The term may not exceed 30 days without the
16 consent of the governing body.

17 (4) In no event may a temporary officer serve for a
18 term to exceed 6 months.

19 (5) The law enforcement board may appoint nonsworn and
20 nontrained local residents only when no trained, sworn
21 officers are available. The term of the temporary officer
22 shall terminate at the termination of the occurrence which
23 occasioned the appointment.

24 47A-6-6331. Reserve and auxiliary officers. (1) A
25 local government may authorize auxiliary and reserve

1 officers. A person may be appointed as a reserve or
2 auxiliary officer if he meets the minimum standards of
3 employment promulgated by the Montana board of crime control
4 for a peace officer. Each applicant shall have resided
5 within the state continuously for at least 1 year prior to
6 appointment and within the county 6 months prior to
7 appointment.

8 (2) No reserve officer may be authorized to function
9 as a representative of a law enforcement agency performing
10 general law enforcement duties after 1 year from the
11 original appointment unless the reserve officer has
12 satisfactorily completed a minimum basic training program
13 prescribed by regulation promulgated by the Montana board of
14 crime control. The law enforcement agency shall be
15 responsible for training its reserve officers in accordance
16 with minimum standards established by the Montana board of
17 crime control.

18 (3) Reserve officers shall act only in a supplementary
19 capacity to the law enforcement agency. A reserve officer
20 may be appointed as a regular law enforcement officer
21 through the procedures in 47A-6-6321.

22 (4) Reserve officers shall serve as peace officers
23 only on the orders and at the direction of the chief law
24 enforcement administrator of the local government.

25 (5) The chief law enforcement administrator of a law

1 enforcement agency with reserve officers shall appoint a
2 regular law enforcement officer of the agency as a reserve
3 force coordinator and supervising officer. Reserve and
4 auxiliary officers:

5 (a) shall be subordinate to regular law enforcement
6 officers; and

7 (b) may not serve unless supervised by a regular law
8 enforcement officer whose span of control would be
9 considered within reasonable limits.

10 (6) No reserve officer may carry a weapon:

11 (a) while on assigned duty until the reserve officer
12 has qualified on the firing range with a weapon in
13 compliance with firearms training standards established by
14 the Montana board of crime control; and

15 (b) until authorized by the chief law enforcement
16 administrator to carry a weapon.

17 (7) A reserve officer shall be vested with the same
18 powers, rights, privileges, obligations, and duties as any
19 other peace officer of this state upon being activated by
20 the chief law enforcement administrator of the local
21 government and while on assigned duty only. A reserve or
22 auxiliary officer may not participate in any pension or
23 retirement system established for regular law enforcement
24 officers.

25 (8) Each law enforcement agency that utilizes reserve

1 and auxiliary officers shall provide full workers'
2 compensation coverage for the officers while they are
3 providing actual service for that agency. Coverage shall be
4 provided through the state compensation insurance fund. The
5 enforcement agencies shall pay to the state fund an
6 appropriate premium as established by the state fund to
7 cover the insurance risk of providing coverage to the
8 officers.

9 (9) A local government may not reduce the authorized
10 number of regular law enforcement officers through the
11 appointment or utilization of reserve officers.

12 (10) Reserve and auxiliary officers shall serve at the
13 pleasure of the chief law enforcement administrator and may
14 be terminated without cause at any time by the chief law
15 enforcement administrator by written notification.

16 47A-6-6336. Exemptions for law enforcement officer. A
17 law enforcement officer may not:

18 (1) be arrested on civil process while actually on
19 duty;

20 (2) be liable to militia or jury duty; or

21 (3) hold any office of the local government.

22 47A-6-6337. Summary suspension of law enforcement
23 officer. (1) An elected sheriff or the chief law enforcement
24 administrator, with the consent of the chief executive
25 officer, may summarily suspend, with or without pay, an

1 officer for a period not to exceed 10 regular working days
2 in any 30-day period.

3 (2) A suspended member or officer may appeal the
4 suspension to the law enforcement board.

5 (3) A summary suspension shall be reported to the law
6 enforcement board in writing within 48 hours of its
7 imposition. Within 7 days of the receipt of notification,
8 the law enforcement board may order a hearing before it
9 rather than accept the summary suspension. When a hearing
10 is ordered, the summary suspension shall be changed to a
11 suspension with or without pay, pending the hearing.

12 47A-6-6338. Hearing of charges against law enforcement
13 officer. (1) The law enforcement board shall hear, try, and
14 decide all charges brought by any person against a law
15 enforcement officer of the law enforcement agency. The
16 charges may state that:

17 (a) an officer is incompetent to discharge the duties
18 of his position by reason of age, disease, or other causes;

19 (b) an officer has been guilty of neglect of duty,
20 misconduct in his position, conduct unbecoming a law
21 enforcement officer, or conduct such as to bring reproach
22 upon the law enforcement agency; or

23 (c) an officer has been found guilty of a crime.

24 (2) The charges shall be brought not later than 1 year
25 after the law enforcement administrator has actual notice of

1 the action to be taken.

2 (3) A charge brought against a law enforcement officer
3 shall be in writing in the form required by the board. A
4 copy shall be served upon the accused officer at least 15
5 days prior to the time fixed for hearing on the charge.

6 (4) The law enforcement board may suspend the accused
7 officer, with or without pay, pending the hearing.

8 (5) Prior to and at the hearing, the law enforcement
9 board may subpoena persons and records for the hearing.

10 (6) At the hearing, the board shall:

11 (a) keep a record including:

12 (i) all pleadings, motions, and intermediate rulings;

13 (ii) all evidence received or considered, including a
14 stenographic or mechanical record of oral proceedings;

15 (iii) a statement of matters officially noticed;

16 (iv) questions and offers of proof, objections, and
17 rulings thereon; and

18 (v) proposed findings and exceptions;

19 (b) accept evidence in substantial compliance with
20 statutory and common law rules of evidence.

21 (7) Within 30 days after the completion of the
22 hearing, the board shall decide whether each charge was
23 proven or not proven.

24 (8) The board shall give a written decision on issues
25 before it, setting out in detail the facts relied on.

1 (9) One copy of its decision shall be filed with the
2 records administrator of the county in which the hearing was
3 held, one copy shall be certified to the chief executive,
4 and one copy shall be given to the accused officer.

5 (10) If the law enforcement board decides that the
6 charge is not proven, the accused law enforcement officer
7 shall be reinstated to the law enforcement agency and shall
8 be entitled to that compensation he would have received had
9 he not been suspended.

10 (11) If the law enforcement board decides by a priority
11 vote that the charge is proven, it may discipline, suspend,
12 demote, or discharge any law enforcement officer who has
13 been found guilty of the charge filed against him.

14 (12) If the board decides that the charges have been
15 proven against the law enforcement officer, the elected
16 sheriff or the chief executive officer may modify or veto
17 the decision of the board. The veto or modification shall be
18 made in writing and shall be filed with the county records
19 administrator within 5 days of the filing of the decision.

20 (13) When a charge against an officer is found proven
21 by the board and is not vetoed by the elected sheriff or the
22 chief executive, the elected sheriff or the chief executive
23 shall make an order enforcing the decision of the board. If
24 the decision is modified, the elected sheriff or the chief
25 executive shall make an order enforcing the decision as

1 modified.

2 (14) The decision of the law enforcement board or the
3 decision as modified is subject to judicial review by the
4 district court of the proper judicial district. The petition
5 for judicial review must be commenced within 30 days after
6 the decision has been filed with the records administrator.
7 Only an accused officer may petition for judicial review.

8 (15) The judicial review shall be a review of the
9 hearing record on all questions of law, but in the interests
10 of justice the court may require that additional evidence be
11 submitted at the judicial review.

12 47A-6-6339. Moneys received through provisions of
13 police retirement system. A local government not governed by
14 the statutory provisions of the police retirement system
15 shall expend moneys received through the provisions of that
16 system only for law enforcement training or for the purchase
17 of pensions for the members of its law enforcement agency.
18 On or before April 1 of each year the local government
19 finance administrator shall report to the state auditor how
20 those moneys were expended.

21 Part 7

22 Human Services

23 Subpart 1

24 Social Services

25 47A-6-7101. Policy and purpose. It is declared the

1 policy of the state that although both the state and federal
2 governments provide essential social services to the
3 citizens of Montana, the need exists for supplementary
4 services to be delivered to provide fully for the
5 development of the individual. It is the purpose of this
6 chapter to effect these policies by facilitating the
7 provision of supplementary social services by the county.

8 47A-6-7102. General provisions apply. A local
9 government providing social services shall proceed under the
10 provisions of this title, except that the specific powers,
11 procedures, and instructions contained in this subpart,
12 Title 71, and other state laws shall be considered to be
13 additional powers and additional requirements or to
14 supersede other provisions of this title.

15 47A-6-7103. Administration. (1) A county may create an
16 administrative board to administer any provision of this
17 chapter.

18 (2) A majority of the board shall be members of the
19 general public. One member shall be a member of the county
20 governing body.

21 (3) The board shall advise the local department of
22 public welfare, the department of social and rehabilitation
23 services, the department of institutions, and any other
24 social service related agency on:

25 (a) the development and concerns of locally sponsored

1 social service programs; and

2 (b) appeals and complaints of consumers and providers
3 of social services.

4 (4) The board may request authority from the state
5 department of social and rehabilitation services to serve as
6 a preliminary appeals board on objections to determinations
7 of eligibility made by the county department of social and
8 rehabilitation services. This authority is subject to the
9 rules and regulations of the state department of social and
10 rehabilitation services.

11 47A-6-7104. Coordination. (1) A county shall whenever
12 possible coordinate all municipal, county, state, federal,
13 and private social services provided within its boundaries.

14 (2) To facilitate coordination, a county shall require
15 all agencies providing social services within its boundaries
16 to file a registration statement describing the services
17 offered or provided.

18 (3) (a) Where a county or administrative board has
19 been established, it may formulate a development plan for
20 the provision of social services within the county.

21 (b) The plan shall include data about the available
22 local resources and their utilization, costs of existing and
23 proposed social services, and the effectiveness of existing
24 and proposed social services weighed against the current and
25 future needs of the county.

(c) If a plan has been formulated, the county shall evaluate all proposals to deliver social services on the basis of that plan.

Part 8

Water, Waste, and Utility Services

Subpart 1

Solid Waste

47A-6-8101. Policy and purpose. The sanitary and efficient collection and processing of solid wastes are necessary to ensure the health, safety, and welfare of state residents. It is the purpose of this part to provide the requirements and procedures by which local governments are to exercise the authority necessary to provide adequate solid waste services.

47A-6-8102. General provisions to apply. A local government providing or regulating solid waste collection, treatment, disposal, or resource recovery services shall proceed under the provisions of this title, except that specific powers, procedures, and instructions contained in this subpart shall be considered to be additional powers and additional requirements or to supersede other provisions of this title.

47A-6-8103. General definitions. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Garbage" means all putrescible waste matter except sewage.

(2) "Refuse" means putrescible or nonputrescible solid wastes (except sewage), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(3) "Rubbish" means nonputrescible solid wastes, consisting of either combustible or noncombustible wastes such as paper, cardboard, abandoned automobiles, tin cans, wood, glass, bedding, crockery, and similar materials.

(4) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(5) "Solid waste" means garbage, refuse, or rubbish.

(6) "Solid waste disposal area" means any land used for the disposal of solid wastes, including but not limited to dumps, landfills, and composting plants.

(7) "Resource recovery" means the process by which materials which still have useful physical or chemical properties after serving a specific purpose are reused or recycled for the same or other purposes, including as an energy source.

47A-6-8104. Special protest provisions. (1) An ordinance establishing a subordinate service district for the purpose of solid waste collection or disposal shall be void if, within 30 days of the notice required in 47A-3-418,

1 50% or more of the service units in the proposed subordinate
2 service district protest. This protest provision shall not
3 apply if the subordinate service district must be
4 established to comply with state or federal laws or rules.

5 (2) "Service unit" includes:

6 (a) the residence of a single family in a separate
7 residence or in a multiunit facility;

8 (b) each separate commercial and industrial unit; and

9 (c) each separate facility of a public agency.

10 47A-6-8105. Installment payments for land and
11 equipment. To defray the initial cost of purchasing land,
12 equipment, and facilities for solid waste collection,
13 treatment, and disposal, payments may be spread over a term
14 of not to exceed 20 years. Payments are to be made in equal
15 installments out of the moneys received for provision of the
16 service.

17 47A-6-8106. Regulation of refuse disposal areas.
18 County and district boards of health shall license and
19 inspect refuse disposal areas as provided in Title 69,
20 chapter 40.

21 47A-6-8107. Regulation of local government refuse
22 disposal areas. A local government may establish and operate
23 a disposal area without paying the annual license fee, but
24 must meet all other requirements of Title 69, chapter 40.

25 Subpart 2

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1 Water and Sewage

2 47A-6-8201. Policy and purpose. The utilization of
3 adequate water supply and sewage treatment facilities is
4 essential to the health and safety of Montana residents. It
5 is the purpose of this subpart to provide local governments
6 with the additional authority necessary to establish,
7 operate, and maintain adequate community water supply and
8 sewage systems and to regulate the use of individual water
9 supply and sewage systems.

10 47A-6-8202. General provisions apply. A local
11 government providing water supply and distribution, sanitary
12 and storm sewer, and sewage treatment services shall proceed
13 under the provisions of this title, except that specific
14 powers, procedures, and instructions contained in this
15 subpart shall be considered to be additional powers and
16 requirements or to supersede other provisions of this title.

17 47A-6-8203. General definitions. In this title, unless
18 otherwise provided or the context requires a technical or
19 other interpretation, the following definitions apply:

20 (1) "Community sewage system" means any system,
21 whether publicly or privately owned, serving two or more
22 individual lots for the collection and disposal of sewage or
23 industrial wastes.

24 (2) "Community water supply system" means a source of
25 water and a distribution system, including treatment

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1 facilities, whether publicly or privately owned, serving two
2 or more individual lots.

3 (3) "Individual sewage systems" means a single system
4 of sewers and piping, treatment tanks, or other facilities
5 serving only a single lot. Such a system may dispose, in
6 whole or in part, of sewage or industrial wastes of a liquid
7 nature on or in the soil of the property, into any waters of
8 this state, or by other methods.

9 (4) "Industrial water supply system" means a single
10 system of pipes, pumps, tanks, or other facilities utilizing
11 a source of groundwater or surface water to supply only a
12 single lot.

13 47A-6-8204. Appropriation of water. A governing body
14 may acquire water rights by purchase, appropriation,
15 location, condemnation, or otherwise.

16 47A-6-8205. Regulatory power over facilities. (1) A
17 local government shall have regulatory power and control
18 over:

19 (a) the territory occupied by a community water supply
20 and sewage facilities;

21 (b) the territory along the line of reservoirs,
22 streams, trenches, pipes, drains, sewers, and other
23 appurtenances used in the establishment and provision of the
24 services; and

25 (c) the source from which water is taken.

1 (2) A local government may exercise its jurisdiction
2 over the territory, the line of facilities, or the sources
3 of water only for the purpose of enforcing sanitary
4 conditions, abating nuisances, or preserving the purity of
5 its water supply.

6 47A-6-8206. Approval of department of health and
7 environmental sciences. (1) The construction, alteration, or
8 extension of water supply and distribution systems and
9 sewage facilities requires prior approval of the department
10 of health and environmental sciences as provided in Title
11 69, chapters 48, 49, and 50.

12 (2) All water and sewage treatment plants and water
13 distribution systems must be supervised by an operator
14 licensed under the provisions of Title 69, chapter 59.

15 47A-6-8207. Establishment and review of water and
16 sewer rates. (1) Rates for water and sewer service may be
17 established and revised by ordinance only after published
18 notice and public hearing.

19 (2) After adoption or revision of rates, 15% of the
20 electors may file a petition with the records administrator
21 to the effect that the rates are unreasonable or unjustly
22 discriminatory, and the records administrator shall deliver
23 the petition to the legislative body and the public service
24 commission. The public service commission shall, after the
25 hearing, file its findings and determinations. If the

1 findings and determinations conclude that the rates are
 2 unreasonable or unjustly discriminatory, the local
 3 government shall amend the rates to remove any unreasonable
 4 or unjustly discriminatory features found by the public
 5 service commission.

6 (3) Except as provided in this section, a local
 7 government is subject to the jurisdiction of the public
 8 service commission as established by Title 70, chapter 1.

9 47A-6-8208. Power to construct works across
 10 trafficways, right-of-way through state lands. The local
 11 government shall have power to construct water and sewer
 12 works across any stream of water, watercourse, trafficway,
 13 railway, canal, ditch, or flume which the route of the works
 14 may intersect or cross, provided that the works are
 15 constructed in a manner to afford security for life and
 16 property, and the local government shall restore the
 17 crossings and intersections to as close to their former
 18 state as possible. The right-of-way is hereby given,
 19 dedicated, and set apart to locate, construct, and maintain
 20 water and sewer works over and through any of the lands
 21 which are now or may be the property of the state.

22 47A-6-8209. Consent to annexation for water or sewer
 23 service. Any person receiving water or sewer service outside
 24 of municipal limits may be required by the municipality as a
 25 condition for initiating such service to waive in writing

1 any right to protest annexation and to consent in writing to
 2 the future annexation of the tract of property served by the
 3 municipality. The waiver and consent to annexation is
 4 limited to that tract or parcel or portion of tract or
 5 parcel that is clearly and immediately and not potentially
 6 being serviced by the water or sewer service.

7 Part 9

8 Transportation

9 Subpart 1

10 Airports

11 47A-6-9101. Policy and purpose. Air transportation is
 12 essential to the welfare of Montana residents. It is the
 13 purpose of this part to provide local governments with the
 14 additional powers necessary to establish, operate, and
 15 maintain airports and air navigation facilities. In
 16 addition, it is the purpose of this subpart to ensure that
 17 when airports or air navigation facilities are provided by a
 18 local government they are operated in a manner consistent
 19 with state and federal laws and regulations.

20 47A-6-9102. General provisions apply. A local
 21 government providing airport services shall proceed under
 22 the provisions of this title, except that the specific
 23 powers, procedures, and instructions contained in this
 24 subpart and Title 1 shall be considered to be additional
 25 powers and additional requirements or to supersede other

1 provisions of this title.

2 47A-6-9103. General definitions. In this title, unless
3 otherwise provided or the context requires a technical or
4 other interpretation, definitions established by 1-102 and
5 other definitions established by Title 1 shall apply.

6 47A-6-9104. Federal and state requirements. (1) This
7 title shall be so interpreted and constructed as to make
8 uniform so far as possible the laws and regulations of this
9 state and other states and of the government of the United
10 States having to do with the subject of local government
11 airports.

12 (2) An airport and air navigation facility owned or
13 controlled by a local government shall be supplementary to
14 and coordinated in design and operation with those
15 established and operated by the state and federal
16 governments.

17 (3) All ordinances, resolutions, rules, regulations,
18 and orders issued by a local government pursuant to this
19 part shall be kept in substantial conformity with applicable
20 federal and state laws, regulations, and standards.

21 (4) No application may be made by a local government
22 for federal aid on behalf of an airport, air navigation
23 facility, or facility incidental to their operation unless
24 the project application shall have been approved by the
25 department of community affairs.

1 47A-6-9105. Airport hazards. A local government may
2 acquire any easement or interest in airport hazards or other
3 property which its governing body considers necessary to
4 permit the safe and efficient operation of an airport and
5 may provide for the removal, elimination, marking, or
6 lighting of airport hazards or prevent the establishment of
7 airport hazards.

8 47A-6-9106. Liens. To enforce the payment of any
9 charges for repairs or improvements to or storage or care of
10 any personal property made or furnished by the local
11 government or its agents in connection with the operation of
12 an airport or air navigation facility owned or controlled by
13 the local government, the local government may establish
14 liens on the property, which shall be enforceable by the
15 local government as provided by law.

16 47A-6-9107. Establishment of airports on public waters
17 and reclaimed lands. A local government may acquire,
18 establish, operate, and maintain airports in, over, and upon
19 any public waters of this state, any submerged land under
20 the state's public waters, and any reclaimed lands which
21 prior to their reclamation constituted a portion of
22 submerged land under the state's public waters. This
23 authorization includes the establishment, operation, and
24 maintenance of all facilities incidental to the operation of
25 an airport.

1 47A-6-9108. Airport zoning. In order to ensure public
2 safety and promote airport efficiency, local governments are
3 authorized to adopt airport zoning ordinances in the manner
4 provided in 1-701 through 1-723.

5 47A-6-9109. Reserve fund for repair, maintenance, and
6 capital outlays. In addition to the capital improvement
7 program as provided in 47A-9-503, a local government may
8 create a reserve fund and accumulate therein the sum of \$5
9 million together with interest thereon for the use, repairs,
10 maintenance, and capital outlays of an airport.

11 47A-6-9110. Goods and services. A local government may
12 purchase and sell goods and services that are incidental to
13 the operation of an airport.

14 Subpart 2

15 Trafficways

16 47A-6-9201. Policy and purpose. To further implement
17 the policy of the state with regard to safe and efficient
18 highway transportation as established by Title 32, chapter
19 22, it is the intent of this subpart to provide for the
20 efficient administration of county and municipal trafficway
21 systems.

22 47A-6-9202. General provisions apply. A local
23 government providing trafficway services shall proceed under
24 the provisions of this title, except that the specific
25 powers, procedures, and instructions contained in this

1 subpart, Title 32, and other state laws shall be considered
2 to be additional powers and additional requirements or to
3 supersede other provisions of this title.

4 47A-6-9203. General definitions. In this title, unless
5 otherwise provided or the context requires a technical or
6 other interpretation, the following definitions apply:

7 (1) The definitions established by 32-2102 through
8 32-2123, 32-2203, and other definitions established by Title
9 32 shall apply.

10 (2) "Trafficway" means the entire area of the
11 right-of-way or other interest in property obtained by a
12 local government or the state as a public way for the
13 purposes of vehicular, pedestrian, bicycle, livestock, or
14 other traffic. The term is used in this title to include
15 highways, roads, streets, alleys, malls, parking, bicycle
16 ways, paths, bridges, shoulders, embankments, retaining
17 walls, culverts, drains and ditches, sluices, drainage
18 structures including curbs and gutters, railroad crossings,
19 tunnels, overpasses, signs, guardrails, gates, fences,
20 autopasses, and other appurtenances.

21 47A-6-9204. Administration. Subject to such policies
22 established by the governing body, the chief executive shall
23 be responsible for the administration of all trafficway
24 services including records, survey, maintenance, and
25 construction.

1 47A-6-9205. Local trafficway systems. (1) County
2 trafficways are those rights-of-way acquired, opened,
3 constructed, maintained, changed, and vacated in accordance
4 with this title.

5 (2) Municipal trafficways are those rights-of-way
6 acquired, opened, constructed, maintained, changed, or
7 vacated in accordance with this title.

8 (3) County and municipal trafficways shall be
9 classified as county roads and municipal streets as provided
10 in Title 32.

11 (4) By July 1, 1981, each county governing body shall
12 designate a county trafficway system.

13 (5) The county shall be responsible for maintenance of
14 the county trafficway system.

15 (6) (a) The county governing body may enter into
16 interlocal agreements with the department of highways for
17 inclusion of additional roads in the county trafficway
18 system.

19 (b) If a portion of a state highway or other
20 trafficway under state jurisdiction is moved by mutual
21 consent of the department of highways and a county governing
22 body to a county trafficway system, the state of Montana
23 shall transfer to the county all rights, privileges, and
24 responsibilities concerning the trafficway necessary for the
25 county to properly manage the trafficway.

1 (7) Within 1 year after the designation of the county
2 trafficway system, each county shall have on record a map
3 showing the county trafficway system. A copy of the map
4 shall be sent to the department of highways.

5 47A-6-9206. Standards. (1) Each governing body may by
6 resolution adopt standards and criteria which shall be met
7 before any trafficway may be dedicated to public use,
8 accepted, opened, vacated, changed, renumbered, renamed, or
9 otherwise substantially made different.

10 (2) The governing body may adopt by ordinance or
11 resolution maintenance and construction standards or goals
12 and objectives for trafficways.

13 (3) Prior to the adoption of the annual budget, the
14 governing body shall prepare a plan describing construction
15 priorities for the subsequent 3 years on trafficways
16 presently under their jurisdiction, and maintenance
17 priorities for the following year. The plan shall contain:

18 (a) specific proposals for maintenance and
19 construction of trafficways;

20 (b) a schedule for construction and maintenance by
21 project; and

22 (c) a cost estimate by project.

23 (4) After public notice, a hearing shall be held on
24 the plan.

25 47A-6-9207. Trafficway record system. (1) Each county

1 chief executive shall prepare by July 1, 1981, a record
2 system for all county and municipal trafficways. The system
3 shall thereafter be maintained on a permanent basis.
4 Municipal officials shall cooperate in the preparation of
5 the system and maintain possession of municipal records in
6 the system.

7 (2) The record system shall include all existing:

8 (a) plats of trafficways;

9 (b) records of dedication or other acquisition of
10 property;

11 (c) survey records;

12 (d) records of proceedings to establish and change the
13 grade of trafficways;

14 (e) construction and maintenance plans and
15 construction records;

16 (f) names and numbers of trafficways and lot numbers
17 in approved subdivisions;

18 (g) records of all other official proceedings with
19 reference to trafficways; and

20 (h) maps of the county trafficway system as required
21 by 47A-6-9205(10).

22 (3) Municipal records need not be physically placed
23 with county records. An index of where municipal records may
24 be found shall be included with the county records.

25 47A-6-9212. Financing of trafficways. (1) Local

1 governments may levy taxes authorized in chapter 9 for
2 trafficway purposes.

3 (2) Taxes and other revenue for county trafficways
4 shall be used for the acquisition, construction, repair, and
5 maintenance of all trafficways within a county's trafficway
6 system unless otherwise determined by interlocal agreement.

7 (3) Taxes and other revenue for county trafficways
8 shall be used for the acquisition, construction, repair, and
9 maintenance of all trafficways within a county's boundaries
10 which are outside the boundaries of any municipality and are
11 not state highways.

12 (4) Local governments may receive and expend any
13 federal funds available for trafficways. The following
14 federal funds shall be allocated:

15 (a) timber funds as provided by law;

16 (b) secondary road systems funds as provided in
17 32-2607 through 32-2608;

18 (c) federal-aid urban highway funds as provided in
19 32-2611; and

20 (d) safer-off-system funds as provided by law.

21 (5) The following state funds available for
22 trafficways shall be distributed to local governments:

23 (a) fuel taxes as provided in 84-1840;

24 (b) funds for footpaths and bicycle paths as provided
25 in 32-2626 and 32-2627;

1 (c) motor vehicle license and registration fees as
2 provided in 47A-6-9213; and

3 (d) public transportation aid as provided in
4 47A-6-9304.

5 47A-6-9213. Distribution of motor vehicle license and
6 registration fees. (1) All license and registration fees
7 collected by the finance administrator of the county in
8 which any motor vehicle is registered shall be credited to
9 the county motor vehicle account.

10 (2) The county finance administrator shall segregate
11 from the county motor vehicle account and designate as the
12 "municipal road account" 50% of the net license fees derived
13 from the registration of motor vehicles whose owners reside
14 within the limits of any municipality.

15 (3) The balance of the county motor vehicle account
16 remaining after segregation of the municipal road account
17 shall be transferred to the county road account.

18 (4) At the end of each month, the county finance
19 administrator shall pay to the appropriate municipal finance
20 administrator the fees held in the municipal road account.

21 (5) The revenue shall be used by the county and the
22 municipality for the construction and repair of trafficways
23 within their respective jurisdictions, maintenance of
24 trafficways within their respective jurisdictions unless
25 interlocal agreements should determine otherwise,

1 enforcement of trafficway safety, driver education, tourist
2 promotion, and administrative collection costs, unless
3 otherwise provided by ordinance.

4 47A-6-9218. Right-of-way. (1) A governing body may
5 acquire right-of-way for trafficways over private property.

6 (2) A governing body may acquire right-of-way through
7 acceptance by resolution of the dedications of trafficways
8 in subdivisions or by gift, grant, donation, purchase,
9 devise, bequest, or prescriptive use or by eminent domain
10 proceedings to acquire property for trafficways opened by
11 resolution of the governing body.

12 (3) (a) By taking or accepting interests in real
13 property for trafficways, the public acquires only the
14 right-of-way and the incidentals necessary to enjoy and
15 maintain it.

16 (b) When a right-of-way is vacated, the land shall
17 revert to the original owners or their grantees or
18 successors in interest.

19 (c) In platted townsites and subdivisions, the land
20 shall be evenly divided between the abutting property
21 owners.

22 (d) Public right-of-way shall be taken off the tax
23 rolls, except for those rights-of-way acquired by
24 prescriptive use.

25 (4) No trafficway dedicated to public use shall be

1 considered accepted unless the dedication is accepted and
2 confirmed by resolution of the governing body or unless the
3 provisions relating to subdivisions have been complied with.

4 (5) (a) When a right-of-way is voluntarily given or
5 purchased, an instrument in writing conveying the
6 right-of-way and incidents thereto must be signed and
7 acknowledged by the person making it. It must then be
8 recorded in the office of the records administrator of the
9 county where the land is located.

10 (b) When a right-of-way is condemned, a certified copy
11 of the judgment of the court must be made and filed in the
12 office of the records administrator of the county where the
13 land is located.

14 (c) Both types of instruments shall particularly
15 describe the land, unless the right-of-way is noted on a
16 plat filed with the records administrator of the county
17 where the land is located.

18 (6) All trafficways and other public places designated
19 to public use under the provisions of sections 5060 through
20 5080 and sections 5100 to 5124 (Political Code of 1895) are
21 the property of the municipality for incorporated towns and
22 the county for unincorporated towns. The dedicated property
23 may be vacated as other dedicated property.

24 (7) (a) Unless otherwise provided by the governing
25 body, the width of all county trafficways, except bridges,

1 shall be 60 feet.

2 (b) Nothing in this section shall be construed as
3 increasing or decreasing the width of any trafficway already
4 acquired or in use.

5 47A-6-9219. County acquisition of right-of-way. (1)
6 Any 10 electors of the county or any 10 or a majority of
7 freeholders of land abutting on the road petitioned for may
8 petition the governing body to acquire right-of-way for a
9 county trafficway.

10 (2) The petition must set forth:

11 (a) the particular trafficway to be opened;

12 (b) the general route thereof;

13 (c) the lands and owners affected;

14 (d) whether the owners who can be found consent
15 thereto;

16 (e) where consent is not given, the probable cost of
17 the right-of-way; and

18 (f) the necessity for and advantage of the petitioned
19 action.

20 (3) (a) Within 30 days after the filing of any
21 petition, the governing body shall investigate the
22 feasibility, desirability, and cost of granting the request.
23 The investigation shall be sufficient to properly determine
24 the merit of the petition.

25 (b) After a public hearing considering the petition

1 and the results of the investigation, the governing body may
2 adopt a resolution of intent to acquire right-of-way for the
3 trafficway.

4 (4) Within 10 days thereafter, the governing body
5 shall cause notice of its decision to be sent by certified
6 mail to all owners of land abutting the road petitioned for.
7 The owners shall be those listed on the last county
8 assessment roll and any affected government agencies.
9 Affected property owners may protest the acquisition of
10 right-of-way, as provided in subsection (5) of this section.

11 (5) The right-of-way shall not be acquired if, within
12 60 days after the notice has been mailed, protests are
13 received from the owners of more than one-half in assessed
14 value of the property or by more than one-half of the number
15 of property owners or the owners of more than one-half of
16 the area abutting the trafficway.

17 47A-6-9220. Damages for county trafficways. (1) Except
18 for any right-of-way acquired by dedication, whenever the
19 governing body makes an order acquiring the right-of-way for
20 a trafficway, it must determine the following:

21 (a) the value of the property sought and all
22 improvements pertaining to the realty and of each and every
23 separate estate and interest; if it consists of different
24 parcels, the value of each parcel and each estate or
25 interest must be separately assessed;

1 (b) if the property sought constitutes only a part of
2 a larger parcel, the depreciation in value which will accrue
3 to the portion not sought by reason of its severance from
4 the portion sought and the construction of the trafficways
5 in the manner proposed by the governing body;

6 (c) separately, how much the portion not sought and
7 each estate or interest will be benefited, if at all, by the
8 construction of the trafficway proposed by the governing
9 body; and if the benefit is equal to the amount assessed
10 under subsection (b), the owner of the parcel shall be
11 allowed no compensation except the value of the portion
12 taken; but if the benefits are less than the amount assessed
13 under subsection (b), the former shall be deducted from the
14 latter and the remainder shall be the only amount allowed in
15 addition to the value.

16 (2) If damages are awarded, payment shall be made to
17 the owner or claimant, if known, upon his showing or
18 establishing his right or title to the lands or improvements
19 and furnishing deeds and releases.

20 (3) If all awards are accepted, the governing body
21 shall declare the road a county trafficway and open it.

22 (4) (a) If any award of damages provided for in this
23 section is not accepted within 20 days after the date of the
24 award, it shall be considered rejected by the owner. The
25 governing body may by order direct that proceedings to

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1 procure the right-of-way be instituted under 93-9901 through
2 93-9926 by the county attorney against all nonaccepting
3 landowners.

4 (b) Such proceedings shall in no way be affected or
5 invalidated by the failure of the governing body to give any
6 notice or do any act provided for in this title. Failure to
7 give notice shall not be considered by any court as a
8 defense in any proceedings for procuring right-of-way.

9 (c) The governing body shall not direct the county
10 attorney to initiate condemnation proceedings under 93-9901
11 through 93-9926 until it adopts an order declaring that:

12 (i) public interest and necessity require the
13 construction of the trafficway;

14 (ii) the interest described in the order and sought to
15 be condemned is necessary to the trafficway;

16 (iii) the trafficway is planned and located in a manner
17 which will be compatible with the greatest public good and
18 the least private injury.

19 (d) The order required in subsection (c) of this
20 section creates and establishes a disputable presumption:

21 (i) of the public necessity of the proposed
22 trafficway;

23 (ii) that the taking of the interest sought is
24 necessary for the building of the trafficway;

25 (iii) that the proposed trafficway is planned or

1 located in a manner that will be most compatible with the
2 greatest public good and the least private injury.

3 (5) All awards of damages estimated by the governing
4 body or made by the proper court and all expenses, including
5 those of the members of the governing body and their per
6 diem, shall be paid out of the county trafficway account on
7 order of the governing body.

8 47A-6-9221. Change of trafficway upon petition. (1) A
9 majority of the freeholders or electors residing on any
10 county trafficway or portion thereof may petition the
11 governing body in writing to so change the trafficway or
12 portion.

13 (2) The governing body shall investigate the
14 trafficway in the same manner as provided in 47A-6-9219.
15 After investigation, the governing body may order the making
16 of the change if it can be done without material damage,
17 injury, or serious inconvenience to the public customarily
18 using the trafficway or portion.

19 (3) Those petitioning for the change shall bear all or
20 such portion of the cost and expense of making it as the
21 governing body may order.

22 47A-6-9222. Stock lanes. (1) Upon presentation of a
23 proper petition, each county governing body may acquire the
24 right-of-way for, open, change, or vacate stock lanes when
25 it considers it expedient and necessary for the convenience

1 of the public and for the convenience of travel on
2 trafficways now opened. Any stock lane may adjoin and
3 parallel a county trafficway and shall be described in the
4 petition for creation and in the order of the governing body
5 creating it.

6 (2) A stock lane is a county trafficway opened and
7 maintained for the driving and travel of livestock. It shall
8 be not less than 60 feet wide unless the governing body
9 determines otherwise.

10 (3) The provisions of 47A-6-9219, 47A-6-9220,
11 47A-6-9221, 47A-6-9263, and the general laws relating to
12 acquiring rights-of-way, opening, changing, or vacating
13 county trafficways, including the exercise of the right of
14 eminent domain, shall apply to stock lanes. References in
15 all petitions, orders, and proceedings shall be to "stock
16 lanes" in order to differentiate them from other
17 trafficways.

18 47A-6-9227. County to transfer responsibility for
19 right-of-way. A county shall transfer its control over and
20 responsibility for a county trafficway when the department
21 of highways notifies it that:

22 (1) a federal-aid or state highway route has been
23 established and definitely located over a county trafficway;

24 (2) funds are available for immediate construction of
25 the trafficway; and

1 (3) the trafficway will be improved and maintained by
2 the highway department.

3 47A-6-9232. Trafficway crossing railroad, canal, or
4 ditch. (1) Whenever any trafficway is opened on public lands
5 across any railroad, canal, or ditch, the owners thereof
6 must at their expense so prepare the railroad, canal, or
7 ditch that the road may cross it without damage or delay.

8 (2) When the right to cross is obtained through the
9 judgment of any court, no damages shall be awarded.

10 47A-6-9237. County trafficway to follow subdivision or
11 section lines. County trafficways must be laid out and
12 opened when practicable upon subdivision or section lines.
13 However, when public purposes shall be best served thereby,
14 county trafficways may be laid out in diagonal lines.

15 47A-6-9242. Survey. (1) The governing body may order
16 any trafficway surveyed.

17 (2) Prior to opening any trafficway, the governing
18 body shall order that the trafficway be surveyed.

19 (3) All surveying for trafficways shall be performed
20 by a registered land surveyor.

21 47A-6-9243. Grade. (1) The governing body may
22 establish and change the grade of trafficways.

23 (2) When the grade has been established, it shall not
24 be changed except by vote of a majority of the members of
25 the governing body and not until the damage to property

1 owners caused by change of grade has been determined and
2 paid to the property owners. The amount of damages shall be
3 reduced by the consideration of benefits to the property
4 caused by the change in grade.

5 (3) When the grade of any trafficway in any
6 municipality is established by the governing body and a
7 building shall thereafter be constructed upon a lot abutting
8 the trafficway, no change may be made in the grade of the
9 trafficways which requires the raising or lowering of any
10 building so constructed until the damages which may accrue
11 by reason of the raising or lowering are ascertained and
12 paid as is provided herein.

13 (4) In case the governing body of the municipality and
14 the owner of the building are unable to agree upon the
15 amount of the damages, the governing body shall appoint
16 three disinterested freeholders of the municipality to
17 appraise the damages. After being duly sworn, the appraisers
18 must appraise the damage and make a written report signed by
19 at least a majority of them, copies of which shall be
20 delivered to the records administrator of the municipality
21 to be immediately filed in his office, and to the owner of
22 the building.

23 (5) The report shall be made and delivered within 10
24 days after the appointment of the appraisers.

25 (6) If either party is dissatisfied with the

1 appraisal, within 20 days after the report is filed with the
2 records administrator, the party may file a copy of the
3 report certified by the municipal records administrator to
4 the appropriate clerk of district court. The party filing
5 the report shall file a notice of appeal with the records
6 administrator and serve upon the opposing party a copy of
7 the notice of appeal. Upon receipt of the certified report,
8 the clerk of district court shall enter the proceedings on
9 the register of actions, designating the municipality as
10 plaintiff and the owner of the building as defendant.

11 (7) The report of the appraisers is the complaint, all
12 the material facts of which in reference to damages are
13 considered denied, and these constitute the issues to be
14 tried.

15 (8) In case the owner of the building appeals and the
16 damages are not increased or in case the municipality
17 appeals and the damages are decreased in the district court,
18 the costs shall be paid by the defendant. In all other cases
19 or when no appeal is taken, the costs shall be paid by the
20 municipality.

21 47A-6-9248. Vacating of trafficways. (1) County
22 trafficways may be vacated by resolution of the county
23 governing body if it can be done without detriment to the
24 public interest. The resolution vacating the trafficway may
25 be adopted only after:

1 (a) petitions of 10 or a majority of freeholders of
2 land abutting on the trafficway are submitted;

3 (b) notice of intent to vacate the trafficway has been
4 sent by certified mail to all owners of land abutting on the
5 trafficway. The owners shall be those listed on the last
6 assessment role and any affected government agencies.

7 (c) notice of intent to vacate the trafficway is
8 published and a public hearing is held.

9 (2) If the county trafficway was dedicated in a
10 subdivision, the trafficway may be vacated by resolution of
11 the county governing body upon the petition of all owners of
12 property abutting the trafficway and if it can be done
13 without detriment to the public interest. The resolution
14 vacating the trafficway may be adopted only after published
15 notice of intent to vacate the trafficway and a public
16 hearing.

17 (3) When a trafficway is on the dividing line between
18 two counties, the same procedures for acquiring right-of-way
19 or opening, changing, or vacating a trafficway shall be
20 followed, except that a copy of the petition shall be
21 presented to each governing body and the governing bodies
22 shall act jointly.

23 (4) (a) The governing body of a municipality may by
24 resolution, after a finding of public interest, order the
25 vacating or narrowing of any municipal trafficway.

1 (b) Notice shall be given and public hearing held.

2 (c) The resolution shall not take effect if the
3 vacating or narrowing is opposed by:

4 (i) 51% of the abutting property owners;

5 (ii) the owners of more than one-half in assessed value
6 of the abutting property; or

7 (iii) the owners of more than one-half of the area
8 abutting the trafficway.

9 (d) Any order provided for in this section which
10 vacates or narrows a municipal trafficway shall not impair
11 the right-of-way or easement of any lot owner.

12 (5) The vacating of a trafficway shall not affect the
13 right of any public utility to continue to maintain the
14 plant and equipment in the trafficway.

15 (6) (a) Trafficways in an unincorporated townsite may
16 be vacated by resolution of the county governing body upon
17 the petition of two-thirds of the owners of property
18 abutting the trafficway and if it can be done without
19 detriment to the public interest.

20 (b) The resolution vacating the trafficway may be
21 adopted only after published notice of intent to vacate the
22 trafficway and a public hearing.

23 (7) (a) All previous actions by municipal governing
24 bodies to vacate trafficways in incorporated municipalities
25 are valid.

1 (b) All previous actions by county governing bodies to
2 vacate trafficways in unincorporated townsites are valid.

3 47A-6-9253. Closing of trafficways. (1) The governing
4 body may by ordinance, after a finding of public interest,
5 order the closing of any trafficway within its jurisdiction,
6 except those trafficways acquired by prescriptive use.

7 (2) Notice shall be published and given to all
8 property owners abutting the affected trafficway. Owners
9 shall be those listed on the last tax assessment role and
10 all affected government agencies.

11 (3) The governing body may order the trafficway closed
12 unless, within 60 days after notice has been given, protests
13 are received from:

14 (a) 51% of the abutting property owners;

15 (b) the owners of more than one-half in assessed value
16 of the abutting property; or

17 (c) owners of more than one-half of the area abutting
18 the trafficway.

19 (4) When closing a trafficway pursuant to this
20 section, a local government retains its right-of-way over
21 that trafficway.

22 (5) (a) A local government may upon a two-thirds
23 majority vote of the governing body reopen any trafficway
24 closed pursuant to this section.

25 (b) Any action reopening a trafficway closed pursuant

1 to this section is not subject to protest.

2 (c) Notice shall be published and given to all
3 abutting property owners prior to the reopening of the
4 trafficway.

5 (6) Any closing action pursuant to this section shall
6 not impair local access.

7 47A-6-9263. Initiation of actions by the governing
8 body. (1) The governing body may by resolution, after first
9 passing a resolution of intent showing public interest and
10 necessity, acquire right-of-way for, vacate, or change
11 trafficways within its jurisdiction.

12 (2) Notice of the resolution shall be published and
13 mailed to all property owners abutting the affected
14 trafficway. Owners shall be those listed on the last tax
15 assessment role and all affected government agencies. A
16 public hearing shall be held.

17 (3) The governing body may order the trafficway
18 vacated or changed or the governing body may acquire the
19 right-of-way for the trafficway unless, within 60 days after
20 notice has been given, protests are received from:

21 (a) 51% of the number of abutting property owners;

22 (b) the owners of more than one-half in assessed value
23 of the abutting property; or

24 (c) owners of more than one-half of the area abutting
25 the trafficway.

1 47A-6-9268. Construction of trafficways. (1) The local
2 government may construct and reconstruct trafficways.

3 (2) The department of highways may assist local
4 governments in the location, establishment, construction,
5 reconstruction, maintenance, and improvement of any
6 trafficways.

7 47A-6-9269. Maintenance of trafficways. (1) The local
8 government shall maintain all trafficways, and if any
9 trafficway becomes obstructed or dangerous for the passage
10 of vehicles or persons, the local government shall remove
11 the obstruction or repair the dangerous trafficway. For
12 purposes of this section, snow shall not be considered an
13 obstruction.

14 (2) Nothing in this section shall be construed as
15 holding the governing body or any official responsible or
16 liable for anything other than willful, intentional neglect
17 of an official act.

18 47A-6-9270. Acquiring rights-of-way and construction
19 of trafficways. If a petition to acquire a right-of-way for
20 a trafficway as authorized by 47A-6-9219 also meets the
21 requirements for petition for a local improvement district
22 as established in 47A-3-427 or a joint subordinate service
23 district as established in 47A-3-424 or a joint subordinate
24 service district and local improvement district as provided
25 in 47A-3-426, the districts may be created by the same

1 proceedings which open a trafficway.

2 47A-6-9271. Contracts with highway department or
3 federal agencies. The governing body may, whenever
4 trafficway construction work is to be financed in whole or
5 in part by federal funds, contract jointly or independently
6 with the department of highways, United States federal
7 highway administration, or other federal agency for the
8 construction or reconstruction of trafficways, to acquire
9 rights-of-way, and to do any other thing essential and
10 practical in securing these ends. All contracts for work on
11 trafficways which are awarded pursuant to this section shall
12 be awarded by the highway commission pursuant to the
13 provisions of 32-4101 or other applicable state laws.

14 47A-6-9272. State payment of construction and
15 maintenance costs within municipalities. (1) The department
16 of highways shall pay the entire costs of construction and
17 maintenance of trafficways which are state highway routes.

18 (2) Maintenance and construction responsibilities
19 decided by interlocal agreement shall supersede subsection
20 (1) of this section.

21 47A-6-9273. Bypassing of municipalities — consent of
22 municipal governing body. (1) The department of highways may
23 not construct highway bypasses or highway relocation
24 projects without prior consent of the governing body of an
25 incorporated municipality when the bypasses or projects are

1 not part of the national system of interstate highways built
2 under the national defense highway act.

3 (2) The department shall notify the governing body of
4 the municipality by certified mail that it proposes to
5 bypass the municipality. A contract may not be let or work
6 commenced until the governing body notifies the department
7 of its consent or until the lapse of 60 days after the
8 notice has been sent by the department to the municipality,
9 whichever occurs first. The failure of the municipality to
10 act and notify the department of its action within the
11 60-day period is implied consent to the bypass.

12 (3) Actual consent or refusal to bypass shall be in
13 the form of a resolution adopted by the governing body of
14 the municipality.

15 (4) The governing body may not withdraw consent after
16 the department has been notified of the consent.

17 47A-6-9274. Drains and ditches. (1) Drains and ditches
18 may be constructed and maintained for making and preserving
19 trafficways. As little damage as possible shall be done to
20 adjoining land.

21 (2) A person who stops or obstructs any drain or ditch
22 is punishable by a fine not to exceed \$50 which may be
23 recovered in any justice or district court.

24 47A-6-9275. Auto passes excluding livestock. (1)
25 Autopasses, appurtenances, fences, and gates may be

1 constructed and maintained on and adjacent to county
2 trafficways by the governing body or with its consent.

3 (2) Where a county trafficway connects with a state or
4 federal highway which is fenced on both sides, the local
5 government may construct and maintain extensions of the
6 fence across the right-of-way of the intersecting county
7 trafficway. The local government shall construct a pass
8 which will permit passage of vehicles but will prevent
9 unattended livestock from passing onto the state or federal
10 highway. In the extensions of the fence, a gate to permit
11 the passage of livestock and vehicles shall be maintained.

12 (3) A local government may construct on a county
13 trafficway passes which shall permit the travel of vehicles
14 but which shall prevent the passage of unattended livestock.
15 Where necessary, gates shall be maintained to permit the
16 passage of livestock. Such passes may be removed when, in
17 the judgment of the governing body, the need therefor no
18 longer exists.

19 47A-6-9276. Control of noxious plants on right-of-way.
20 The department of highways shall enter into an interlocal
21 agreement with each county providing for the management of
22 noxious plants along highway rights-of-way within the county
23 in compliance with the county noxious plant management
24 program as provided by chapter 6, part 3, of this title.

25 47A-6-9277. Reseeding of right-of-way areas. Whenever

1 the natural sod cover or growth of beneficial plants on
2 right-of-way areas is disturbed by the construction or
3 maintenance of trafficways, the governing body shall require
4 that the disturbed area be reseeded as provided by chapter
5 6, part 3, of this title.

6 47A-6-9278. Utility's use of right-of-way. As provided
7 for in 70-301, utilities regulated by the public service
8 commission have the right to use trafficways as provided in
9 47A-3-312 but they must compensate the local government for
10 any and all damages caused by the construction or
11 maintenance to its former condition.

12 47A-6-9279. Utility connections. A governing body may
13 compel the construction or reconstruction of sewer, water,
14 gas, electric, and other connections to abutting property
15 lines prior to the construction, repair, replacement, or
16 reconstruction of a trafficway. The cost shall be a
17 responsibility of the abutting property owner which may be
18 paid by special assessment as provided in 47A-6-9295 or may
19 be paid in whole or part by the local government.

20 47A-6-9280. Underground placement of utilities on
21 public right-of-way. A governing body has the authority to
22 compel the underground placement of electric, telephone,
23 cable television, and other utilities prior to the
24 construction or reconstruction of a trafficway. The cost may
25 be financed by creation of a local improvement district; the

1 resolution creating the district is not subject to petition
2 or protest.

3 47A-6-9281. Excavation information. No person may make
4 or begin any excavation in a trafficway without complying
5 with Title 32, chapter 48, to determine the location of any
6 underground facility such as water and sewer pipes and
7 electric or telephone cables.

8 47A-6-9282. Excavations across trafficways — permits
9 and bridging. (1) (a) Any person contemplating the
10 excavation or construction of any ditch, dike, flume, or
11 canal across a trafficway shall obtain a written permit from
12 the local government before beginning construction or
13 excavation.

14 (b) Any person obtaining written permit shall bridge
15 at once in accordance with plans and specifications approved
16 by the local government.

17 (2) The bridge shall be maintained by the local
18 government.

19 (3) Any person obtaining a construction permit or any
20 person using the water of the ditch, dike, flume, or canal
21 shall keep it in repair where the water may flow over or in
22 any way injure a trafficway.

23 47A-6-9283. Liability for permitting water to
24 overflow. (1) Every person who excavates or constructs or
25 owns any ditch, dike, flume, or canal or stores,

1 distributes, or uses water for any purpose and permits the
2 water to flow over any trafficway to the injury thereof
3 must, upon notification by the local government, repair the
4 damages incurred. If the repairs are not made within a
5 reasonable time, the local government must make them and
6 recover the expense in an action at law.

7 (2) Every person constructing, owning, or using the
8 ditch or flume who permits an overflow is liable as provided
9 in 94-3565.

10 47A-6-9284. Encroachments — power to remove. (1) If
11 any trafficway is encroached upon by fence, building, or
12 otherwise, the local government must give notice, orally or
13 in writing, requiring the encroachment to be removed from
14 the trafficway.

15 (2) If the encroachment obstructs and prevents the use
16 of the trafficway for vehicles or pedestrians, the local
17 government must immediately remove it.

18 (3) The governing body may at any time order the
19 immediate removal of any encroachment.

20 (4) Notice to remove the encroachment immediately,
21 specifying the width of the trafficway and the place and
22 extent of the encroachment, must be given to the occupant or
23 owner of the land or person owning or causing the
24 encroachment.

25 (5) Notice must be given in the following manner:

1 (a) by leaving it at the owner's place of residence if
2 the person resides within the jurisdiction of the local
3 government; or

4 (b) by posting it on the encroachment if the person
5 does not reside within the jurisdiction of the local
6 government.

7 (6) If the encroachment is not removed immediately or
8 removal is not diligently conducted, the one who causes,
9 owns, or controls the encroachment is liable to the penalty
10 which may be set by the governing body in accordance with
11 47A-3-309.

12 (7) If the encroachment is denied, the local
13 government shall commence in the proper court an action to
14 abate the encroachment as a nuisance. If it recovers
15 judgment, the local government may have costs and \$10 for
16 every day the nuisance remains after notice.

17 (8) If the encroachment is not denied and is not
18 removed for 5 days after notice is complete, the local
19 government may remove it at the expense of the owner or
20 occupant of land or of the person owning or controlling the
21 encroachment. The local government may recover the expense
22 of removal, \$10 for each day the encroachment remained after
23 notice and costs in an action brought for that purpose.

24 (9) The county or municipal attorney, upon complaint
25 of a local government officer, employee, or any other

1 person, shall prosecute all actions heretofore provided in
2 the name of the state of Montana. All penalties shall be
3 paid into the general fund of the local government.

4 (10) If the governing body chooses not to seek a remedy
5 in the proper court, the costs of removing the encroachment
6 plus \$10 for every day the nuisance remains after notice may
7 be assessed against the property. The costs may be assessed
8 and collected as provided in chapter 3, part 4, of this
9 title.

10 47A-6-9291. Bridges. (1) The county governing body
11 shall maintain all public bridges within the county except
12 those maintained by the department of highways.

13 (2) A municipality may provide for the construction,
14 repair, and maintenance of bridges only by following the
15 procedure prescribed by 47A-6-212 and only with the consent
16 of the county governing body.

17 (3) After a municipality assumes responsibility for
18 the construction, repair, and maintenance of bridges, bridge
19 services provided in the area of the county excluding the
20 exempted municipality may be financed only through a
21 subordinate service district excluding the exempted
22 municipality and may not be financed by the county
23 all-purpose mill levy.

24 (4) Counties shall enter into interlocal agreements to
25 determine their respective responsibilities for construction

1 and maintenance of bridges that cross the boundary between
2 counties.

3 (5) Unless otherwise prohibited, state and federal
4 funds allocated for trafficways may be expended on bridges.

5 47A-6-9292. Ferries. (1) The governing body of a
6 county may provide public ferry services across rivers or
7 streams within the county. Ferry service between counties
8 shall be provided under interlocal agreements between the
9 affected counties.

10 (2) A local government providing ferry services shall
11 proceed under the provisions for this title, except that the
12 specified powers, procedures, and instructions contained in
13 this chapter shall be considered to be additional powers and
14 requirements or to supersede other provisions of this title.

15 (3) If a franchise for operating a public ferry is
16 granted, the notice must describe the landings of the
17 proposed ferry and the names of the owners, if known; if the
18 applicant is not the owner of the land, notices of the
19 person applying shall be served on the owner at least 10
20 days prior to the first reading of the ordinance for the
21 ferry franchise.

22 (4) At the hearing, proof of giving the notice,
23 required by the preceding section, must be made and any
24 person may appear and contest the application. If the board
25 finds that the ferry is either a public necessity or

1 convenience and that the applicant is a suitable person and
2 by reason of the ownership of the landing or failure of the
3 owner thereof to apply, authority to erect and take tolls on
4 the ferry may be granted to him for the term of 10 years.

5 (5) Franchises for a ferry over waters dividing two
6 counties shall be granted by the governing body of that
7 county situated on the left bank descending the river or
8 stream, but any license or franchise fee shall be equally
9 divided between the counties.

10 (6) Subject to regulations adopted by the governing
11 body, ferrykeepers must make trips to accommodate all
12 passengers who desire to cross and any failure to do so
13 subjects the franchise to forfeiture.

14 (7) No ferry franchise may be established within 1
15 mile immediately above or below a regularly established
16 ferry unless the situation of a town, the crossing of a
17 trafficway, or the intersection of some creek or ravine
18 renders it necessary for public convenience. In addition to
19 the public notice required, notice of intention to apply for
20 authority to erect a ferry, as provided in this section,
21 must be served upon the proprietor of the ferry already
22 established at least 10 days prior to the first reading of
23 the ordinance giving the time, place, and grounds of the
24 application.

25 (8) The owner of the land on either of the waters to

1 be crossed and the owner of the land on the left bank
2 descending, over the owner of the land on the right bank, is
3 entitled to preference in procuring a ferry franchise, but
4 where the owner fails or neglects to apply for the authority
5 within a reasonable time after the necessity arises, the
6 governing body may grant the authority to another person.

7 (9) When there are lands necessary for the
8 construction, erection, or use of the ferry which cannot be
9 procured by agreement between the owner and landowner, the
10 right-of-way and all other lands necessary for the use and
11 construction or erection thereof may be acquired by
12 condemnation.

13 47A-6-9293. Number and naming of trafficways, houses,
14 and lots. The governing body may name and rename trafficways
15 and number and renumber trafficways, houses, and lots by
16 resolution.

17 47A-6-9294. Dumping of garbage on trafficways. As
18 provided in 32-4410, the dumping of garbage or other debris
19 or refuse on a trafficway is unlawful.

20 47A-6-9295. Sidewalks, curbs, gutters, and alley
21 approaches. (1) In addition to other methods for
22 constructing and financing sidewalks, curbs, gutters, and
23 alley approaches, the governing body may by resolution order
24 sidewalks, curbs, gutters, and alley approaches constructed
25 or repaired. After adoption of the resolution, mailed

1 notices of the resolution shall be given the owner or agent
2 of each property affected.

3 (2) The construction or repair of sidewalks, curbs,
4 and gutters is a responsibility of owners of property
5 abutting the sidewalk, curb, or gutter.

6 (3) The construction or repair of alley approaches is
7 a responsibility of owners having access to their properties
8 by the alley approach.

9 (4) The local government may pay all or part of the
10 costs of sidewalks, curbs, gutters, and alley approaches.

11 (5) If the owners shall fail or neglect for a period
12 of 30 days after the date of mailed notice to cause the
13 sidewalks, curbs, gutters, or alley approaches to be
14 constructed or repaired, the local government may construct
15 the sidewalk, curb, gutter, or alley approaches and assess
16 all project costs enumerated in 47A-3-427 against the
17 property.

18 (6) The costs may be assessed and collected as
19 provided in chapter 3, part 4.

20 (7) Special local improvement district bonds for the
21 payment of costs may be issued.

22 (8) This special procedure for sidewalks, curbs,
23 gutters, and alley approaches is not subject to the petition
24 and protest procedures available under other local
25 improvement district procedures in chapter 3, part 4.

1 47A-6-9296. Traffic regulations. (1) As provided in
2 32-2130, traffic on all local government trafficways is
3 subject to the provisions of Title 32, chapter 21, unless
4 expressly authorized herein.

5 (2) Local governments may adopt additional traffic
6 regulations which are not in conflict with this chapter, and
7 local governments may regulate traffic as authorized in
8 32-2131.

9 (3) Local governments may place and maintain traffic
10 control devices as provided in 32-2134 and 32-2135.

11 (4) Local governments may regulate pedestrians and
12 establish crosswalks as provided in 32-3176.

13 (5) Local governments may regulate driving by persons
14 under the influence of intoxicating liquor or drugs as
15 provided in 32-2142.

16 (6) Local governments may regulate reckless driving as
17 provided in 32-2143.

18 (7) Local governments may regulate speed contests on
19 public highways as provided in 32-2143.1.

20 (8) Local governments may establish speed limits as
21 provided in 32-2146.

22 (9) Local governments may establish through highways
23 and establish stop intersections as provided in 32-2195.

24 (10) Any local government may require accident reports
25 as authorized in 32-1215.

(11) Local governments may conduct highway traffic safety programs as provided in Title 32, chapter 47.

(12) A local government may restrict, limit, or otherwise restrict the weight of public vehicles on highways only as provided in 32-1123.12, 32-1127.2, and 32-1128.

(13) Local governments may plan, designate, acquire, regulate, vacate, change, improve, maintain, and provide controlled access facilities for public use as provided in 32-3932, 32-4305, 32-4307, and 32-4308.

(14) Local governments may regulate outdoor advertising along trafficways as provided in Title 32, chapter 47.

Subpart 3

Public Transportation

47A-6-9301. Policy and purpose. It is the policy of the state of Montana to encourage the establishment of public transportation services and facilities by local governments to provide innovative, economical, safe, and efficient public transportation for residents and other person.

47A-6-9302. General provisions apply. A local government providing public transportation services shall proceed under the provisions of this title, except that the specific powers, procedures, and instructions contained in this subpart and other applicable state laws shall be considered to be additional powers and additional

requirements or to supersede other provisions of this title.

47A-6-9303. Exemptions from motor carrier act. Public transportation systems operated by local government are subject to all the provisions of the motor carrier act (8-101 to 8-129), except that a local government may be issued a certificate of public convenience and necessity without proof of the existence of public convenience and necessity, and the local government is exempt from the payment of fees provided by 8-116 and 8-127.

47A-6-9304. Aid for public transportation. (1) The department of community affairs shall allocate each year one-half of the funds appropriated for the purposes of this section among the local governments of the state which operate or contract for the operation of a public bus or other public transportation system. A local government is eligible for an allocation based upon the amount of the operating deficit of the system as follows: the proportion of the operating deficits of all local government public transportation systems in the state represented by the operating deficit of the applicant local government, multiplied by the rate of system usage based on bus passengers per mile in the applicant local government where full usage of the system would have a value of one. Each applicant local government shall compute its operating deficit and rate of usage for a fiscal year immediately

following the end of the year and shall apply allocations received against that deficit.

(2) One-half of the funds appropriated for the purposes of this section shall be paid by the state treasurer to the counties of the state in the manner provided in 84-1840 (1) (a). Moneys distributed to counties under this section shall be used by the counties for trafficways or other transportation purposes.

(3) A local government may not receive more than 50% of any year's operating deficit as an allocation under this section.

(4) The department of community affairs may make rules for the keeping of accounts for and otherwise implementing this section.

Subpart 4

Civil Defense and Armories

47A-6-6401. Civil defense and disaster preparedness services. A local government providing civil defense and disaster preparedness services shall proceed under the provisions of this title, except that the specified powers granted, procedures, and instructions contained in the Montana Disaster Act of 1977 shall be considered to be additional powers and additional requirements or to supersede the provisions of this title.

47A-6-6402. Armories and home guard. (1) A local

government providing armories and home guard facilities shall proceed under the provisions of this title, except that the specific powers, procedures and instructions contained in this part and Title 77 shall be considered to be additional powers and additional requirements or to supersede the provisions of this title.

(2) As provided in 77-203, the governing body may make available to the home guard any facility or property belonging to or under contract to the local government.

Subpart 5

Ambulance and Emergency Medical Services

47A-6-6501. Ambulance and emergency medical services.

(1) A local government providing ambulance services shall proceed under the provisions of this title, except that the specified powers granted and procedures, instructions, and licensing requirements contained in Title 69, chapter 36, shall be considered to be additional powers and additional requirements or to supersede other provisions of this title.

(2) A local government providing emergency medical services shall proceed under the provisions of this title, except that the specified powers granted, and procedures, instructions, and licensing requirements contained in Title 69, chapter 70 shall be considered to be additional powers and additional requirements or to supersede other provisions of this title.

CHAPTER 8

DUTIES OF LOCAL GOVERNMENTS AS AGENTS OF THE STATE

Part 1

General Provisions

47A-8-101. Purpose. (1) It is the policy of the state of Montana to encourage resourceful and responsible local government.

(2) To further this policy it is the purpose of this chapter to set out those services which a local government shall provide.

(3) In providing any service required by this chapter, a local government acts as an agent of the state.

47A-8-102. Assignment of duties. (1) The governing body of the local government shall provide by ordinance for the provision of the services required by this chapter.

(2) The governing body shall by ordinance assign responsibility for required services to one or more departments, officers, or employees of the local government.

(3) The responsibility for required services or components of required services may be divided between one or more departments, officers, or employees of the local government.

(4) The governing body may by ordinance at any time reassign responsibility for any required service to a different department, office, or employee.

(5) The governing body may enter into interlocal agreements to provide services required by this chapter.

47A-8-103. Mandatory financing of required services. Subject to the provisions of 47A-9-402, the governing body shall appropriate sufficient resources to provide fully the services required by this chapter.

Part 2

Records

47A-8-201. Filing. Each county shall provide for the filing of the following documents and their related documents:

- (1) executions;
- (2) assignments;
- (3) applications for tax deed;
- (4) attachments;
- (5) bills of sale;
- (6) certificates of fictitious name;
- (7) lis pendens;
- (8) liens and notices of liens;
- (9) notarial commissions;
- (10) notices of desire to hold mining claim;
- (11) certificates of incorporation and articles of incorporation;
- (12) continuation statements;
- (13) certificates of sale;

1 (14) judgments;
 2 (15) financing statements;
 3 (16) leases;
 4 (17) powers of attorney;
 5 (18) collateral releases;
 6 (19) affidavits;
 7 (20) notices of trustee sale;
 8 (21) water rights;
 9 (22) copartnerships and amendments;
 10 (23) agreements;
 11 (24) birth and death certificates;
 12 (25) certifications of redemption from sheriff's sale;
 13 (26) assignments for the benefit of creditors;
 14 (27) declarations for homestead; and
 15 (28) such other documents required by law to be filed.
 16 47A-8-202. Recording. Each county shall provide for
 17 the recording of the following documents and their related
 18 documents:
 19 (1) trust indentures;
 20 (2) notices of mining locations and declaratory
 21 statements;
 22 (3) leases;
 23 (4) bills of sale;
 24 (5) certificates of redemption from sheriff's sale;
 25 (6) affidavits;

1 (7) declarations for homestead;
 2 (8) agreements;
 3 (9) resolutions;
 4 (10) court orders;
 5 (11) partnerships;
 6 (12) assignments;
 7 (13) financing statements;
 8 (14) joint tenancy;
 9 (15) quiet title documents;
 10 (16) water rights;
 11 (17) deeds, grants, transfers, and contracts to sell or
 12 convey real estate;
 13 (18) mortgages of real estate, releases of mortgages,
 14 and powers of attorney to convey real estate;
 15 (19) leases which have been acknowledged or proved and
 16 abstracts of instruments which have been acknowledged or
 17 proved;
 18 (20) wills devising real estate admitted to probate;
 19 (21) official bonds;
 20 (22) transcripts of judgments which by law are made
 21 liens upon real estate;
 22 (23) instruments describing or relating to the
 23 individual property of married individuals and sole trader
 24 judgments;
 25 (24) all orders and decrees made by the district court

1 in probate matters affecting property which are required to
2 be recorded;

- 3 (25) notice of preemption claims;
- 4 (26) notice and declaration of water rights;
- 5 (27) affidavits of annual work done on mining claims;
- 6 (28) notices of mining locations and declaratory
7 statement;
- 8 (29) estrays and lost property;
- 9 (30) a book containing appraisal of state lands;
- 10 (31) certified copies of final judgments or decrees
11 participating in or affecting the title or possession of
12 real property, any part of which is situated in the county;
- 13 (32) certificates of discharge of persons honorably
14 discharged who served with the United States forces; and
- 15 (33) such other writings as are required or permitted
16 by law to be recorded.

17 47A-8-203. Indexes. (1) The governing body shall by
18 ordinance require the elected official or the employee
19 designated as the records administrator to keep the
20 following indexes in the form prescribed by the department
21 of community affairs:

- 22 (a) an index of deeds, grants, transfers, and
23 contracts to sell or convey real estate;
- 24 (b) an index of real property mortgages;
- 25 (c) an index of releases of real property mortgages;

- 1 (d) an index of powers of attorney;
- 2 (e) an index of leases;
- 3 (f) an index of marriage certificates;
- 4 (g) an index of assignments of mortgages and leases;
- 5 (h) an index of wills;
- 6 (i) an index of official bonds;
- 7 (j) an index of notices of liens;
- 8 (k) an index to transcripts of judgments;
- 9 (l) an index of attachments;
- 10 (m) an index of notices of pending actions;
- 11 (n) an index of certificates of sale of real estate
12 sold under execution or under orders made in any judicial
13 proceeding;
- 14 (o) an index of the separate property of married
15 persons and sole trader judgments;
- 16 (p) an index to affidavits for annual work done on
17 mining claims;
- 18 (q) an index of mining claims and declaratory
19 statements;
- 20 (r) an index to the register of births and deaths;
- 21 (s) an index to notices and declaration of water
22 rights;
- 23 (t) an index to the "estray and lost property book";
- 24 (u) an index to the record of assignments for the
25 benefit of creditors;

(v) an index to financing statements as provided in part 4 of the Uniform Commercial Code — secured transactions;

(w) an index to the official records of the county as are prescribed in 47A-8-207;

(x) all other indexes required by law; and

(y) a miscellaneous index of papers not stated in this section.

(2) In keeping indexes, any county may keep in the same volume any number of the indexes mentioned in this section. All indexes must be kept separate and distinct, and all volumes must be clearly marked as to which indexes they contain.

(3) A county may use methods of information storage as are authorized by the department of community affairs.

47A-8-204. Procedure for filing and recording — requirements — authorized fees. (1) Immediately upon receipt of any document offered for filing or recording, the county records administrator shall note in an official receipt book the exact time and date of receipt. Upon subsequent proper filing or recording as prescribed in this section, the county records administrator shall note in the reception book where the document is filed, if it is filed, or the book and page where the document is recorded, if it is recorded.

(2) A document offered for filing must, within a reasonable time after receipt and upon payment of the authorized fee, be properly retained and filed in the office of the county records administrator. If requested, a signed receipt shall be furnished containing the exact date and time the document was received and an adequate description or the title of the filed document.

(3) A document offered for recording must, within a reasonable time after receipt and upon payment of the authorized fee, be properly recorded in the office of the county records administrator and have written on the document the exact time it was received and recorded and the book and pages in which it is recorded and shall be returned to the person who left it upon his request or instructions. If requested, a signed receipt shall be furnished containing the exact time the document was received and recorded and an adequate description or title of the document.

(4) Any document submitted for recording which seeks to convey property must describe that property by metes and bounds or have a certificate of survey on record to which the document can refer for description. Any document submitted for recording which seeks to convey property by referring to a previously recorded document by book and page number may be refused.

(5) Any document, subsequently filed or recorded in a

1 proper manner as prescribed in this section, shall be
2 considered to have been filed or recorded at the time of
3 noted receipt in the official reception book of the office
4 of the county records administrator.

5 (6) If a document is filed in the office of the county
6 records administrator, it is considered to be recorded in
7 the same office. If a document is only recorded, it is not
8 considered to be filed.

9 (7) If requested and upon payment of the authorized
10 fee, the county records administrator shall certify any
11 document offered for filing or recording. Certification
12 shall be used only for the purpose of acknowledging the
13 filing or recording of the document and may not be used to
14 verify the validity of the document.

15 (8) Any document offered for recording must be
16 legible. The office of the county records administrator may
17 refuse any illegible document.

18 (9) Fees shall be:

19 (a) for filing, \$2 per instrument;

20 (b) for recording, \$2 per page;

21 (c) for certification, \$1 plus copying costs; and

22 (d) for searches, \$3 for any 5-year period plus \$1 per
23 year thereafter.

24 (10) Seed liens and thresher's liens filed for record
25 with a county shall be retained by the county for a period

1 of 8 years after the lien has ceased to be a lien on the
2 property described therein.

3 47A-8-205. Making of searches. The records
4 administrator may, upon the application of any person and
5 upon the payment or tender of the required fees, make
6 searches for conveyances, mortgages, and all other
7 instruments, papers, or notices recorded or filed in his
8 office and furnish a certificate thereof stating the names
9 of the parties to the instruments, papers, and notices, the
10 dates thereof, the time they were recorded or filed, and the
11 book and pages where they are recorded or where they are
12 filed.

13 47A-8-206. Liability for neglect of duty. Any records
14 administrator to whom an instrument, proved or acknowledged
15 according to law, or any paper or notice which may by law be
16 recorded is delivered for record is liable to the party
17 aggrieved for three times the amount of the damages which
18 may be occasioned thereby and is punishable as provided by
19 94-7-209, if he:

20 (1) neglects or refuses to record the instrument,
21 paper, or notice within reasonable time after receiving it;

22 (2) records any instruments, papers, or notices in any
23 other manner than as prescribed;

24 (3) neglects or refuses to keep in his office indexes
25 as are required by this part or to make the proper entries

1 therein;

2 (4) neglects or refuses to give the certificates
3 required by this part; or if the certificates are incomplete
4 or defective, when this incompleteness or defect is due to
5 his direct responsibility particularly affecting the
6 property in respect to which it is requested; or

7 (5) alters, changes, or obliterates any records
8 deposited in his office or inserts any new matter therein.

9 47A-8-207. Official records. (1) the governing body of
10 each county shall provide for the keeping of the following
11 official records:

12 (a) maps of all municipalities or additions to
13 municipalities within the county, together with the
14 description, acknowledgment, or other writing thereon;

15 (b) maps of all subordinate service districts and
16 authorities and all additions to these within the county,
17 together with the descriptions, acknowledgments, or other
18 writings thereon;

19 (c) in suitable plat books, all final subdivision
20 plats made within the county;

21 (d) a correct record numbered progressively of all
22 county surveys required by court order; and

23 (e) all other records required to be kept by law.

24 (2) Any original drawings, the original book or books
25 of field notes, and all original calculations and

1 computations all properly endorsed as to their number of
2 survey shall be retained with the official records.

3 (3) The county shall upon request make copies of all
4 official records available to the public and may impose
5 reasonable fees for providing the copies.

6 47A-8-208. Recordation of instruments under prior law.

7 (1) All instruments properly recorded under the laws of
8 Montana prior to the enactment of this chapter are declared
9 to be properly recorded under the laws of Montana.

10 (2) Instruments recorded in accordance with this
11 section are expressly validated insofar as validation may be
12 necessary to establish them as correctly or legally recorded
13 instruments.

14 (3) Methods of recordation in use under the laws of
15 Montana prior to the enactment of this chapter shall remain
16 proper until changed or abolished by the laws of Montana.

17 Part 3

18 Public Health

19 47A-8-301. Policy and purpose. It is the policy of the
20 state of Montana to ensure that all its citizens are
21 protected against disease, disability, and unsanitary
22 conditions through the adequate provision of quality
23 preventive health and sanitation services.

24 47A-8-302. General provisions apply. A local
25 government providing public health services shall proceed

1 under the provisions of this title, except that the specific
2 powers, procedures, and instructions contained in this part,
3 Title 69, and other state laws shall be considered
4 additional powers and additional requirements or to
5 supersede other provisions of this title.

6 47A-8-303. General definitions. In this title, unless
7 otherwise provided or the context requires a technical or
8 other interpretation, the following definitions apply:

9 (1) "Board" means a local board of health which is
10 either a county board or a district board comprised of
11 membership from two or more contiguous counties.

12 (2) "Department" means the department of health and
13 environmental sciences.

14 (3) "Environmental health services" means those
15 services provided by a public agency by means of sanitarian
16 services that are directed toward promoting sanitation,
17 controlling or eradicating environmental pollution, and
18 maintaining a healthful environment for the general public.

19 (4) "Local health officer" means a physician or
20 nonphysician county or district health officer.

21 (5) "Local health department" means either a local
22 board of health or a local health officer, whichever has
23 been designated by the county governing body to administer
24 the local public health program defined in 47A-8-304 and any
25 additional public health programs and services provided

1 according to local needs and priorities.

2 (6) "Personal health services" means those services
3 provided by a public agency by means of public health
4 nursing and other professional and ancillary services that
5 are directed toward promoting and maintaining optimum health
6 and preventing illness among the general public.

7 (7) "Public health personnel" means all employees
8 whose services have been obtained by the local health
9 department to provide the local public health program,
10 including the local health officer if the program is
11 administered by a local board of health.

12 47A-8-304. Local public health program defined. There
13 shall be a local public health program provided by each
14 county which may include but not necessarily be limited to
15 the following:

16 (1) the services, at least part-time, of a local
17 health officer;

18 (2) community health nursing, including home health
19 nursing;

20 (3) school nursing;

21 (4) sanitarian services;

22 (5) health and nutrition education; and

23 (6) dental health education and services.

24 47A-8-305. Structure. (1) The local health department
25 may be administered by either a local health officer or a

1 local board of health to be appointed in the manner provided
2 by the plan of government.

3 (2) If a board is formed, it may be either:

4 (a) a county board of health created by ordinance; or

5 (b) a district board of health created by interlocal
6 agreement with at least one member appointed by each
7 participating county.

8 (3) Board membership shall include the following
9 individuals:

10 (a) no more than one member of the county governing
11 body from each participating county;

12 (b) at least one member to represent the interests of
13 the municipalities within the county;

14 (c) a physician licensed to practice medicine in
15 Montana, if available in the county and if he wishes to
16 serve, and if not, some other health professional;

17 (d) at least one representative of the schools within
18 the county; and

19 (e) additional members to be selected to represent a
20 reasonable cross section of the community.

21 (4) Except for provisions contained in this part,
22 appointments to boards shall comply with 47A-3-404.

23 (5) No public health personnel employed by the local
24 health department may be designated as members of the board
25 for that county.

1 (6) If a district board of health is formed, the
2 governing bodies of all participating counties shall
3 mutually agree on which county shall appoint each of the
4 individuals in subsection (3) of this section.

5 47A-8-306. Administrative provisions. (1) The board,
6 if any, shall meet at least quarterly.

7 (2) Each local health department shall obtain, at
8 least part-time, the services of:

9 (a) a local health officer;

10 (b) a nurse licensed under Title 66, section 1228, and
11 preferably one with public health education or experience;
12 and

13 (c) a sanitarian licensed under Title 69, chapter 34.

14 (3) The local health officer shall be either a
15 physician licensed to practice medicine in Montana, an
16 individual with a master's degree in public health, or an
17 individual with appropriate public health experience as
18 determined by the department.

19 (4) If a nonphysician health officer is appointed, all
20 components of the public health program requiring the
21 services of a physician shall either be obtained from a
22 physician employee of the department or contracted from
23 another physician licensed to practice medicine in Montana.

24 (5) The county governing body shall provide, by
25 ordinance, the methods by which public health personnel are

1 appointed, supervised, dismissed, and their salaries are
2 established.

3 (6) Except where a school district itself provides
4 school nursing services in accordance with Title 75, section
5 5934, school nursing services shall be provided by the local
6 health department. A school district may also contract with
7 a county for the provision of school nursing services.

8 (7) The local health officer shall report:

9 (a) communicable diseases each week to the department;

10 (b) sanitary conditions within the jurisdiction of the
11 local health department each month to the board, if any, or
12 the county governing body and to the department; and

13 (c) general public health conditions and activities in
14 the areas of personal and environmental health services
15 conducted within the jurisdiction of the local health
16 department each month to the board, if any, or the county
17 governing body and to the department.

18 (8) Reports shall be submitted on forms provided by
19 the department and contain information required by the
20 department.

21 (9) Each county shall provide adequate office space
22 for local public health personnel.

23 47A-9-307. Functions, powers, and duties of local
24 health departments. (1) A local health department shall:

25 (a) provide for a program of public health services

1 which may include those services defined in 47A-8-304;

2 (b) employ the minimum qualified staff necessary to
3 conduct the public health program in accordance with the
4 provisions of 47A-8-306(2);

5 (c) provide annually to the department a budget and a
6 detailed program plan for the local health department.

7 (2) A local health department may:

8 (a) hire personnel in addition to those required in
9 47A-8-306(2) to assist with the provision of the public
10 health program;

11 (b) initiate and implement programs and measures other
12 than those defined in 47A-8-304 to enhance the general
13 public health within the jurisdiction of the local health
14 department;

15 (c) solicit and accept funds from the federal
16 government or from any other agency or individual for the
17 purpose of conducting public health programs. If a local
18 health officer administers the local health department, the
19 acceptance of funds is contingent upon the approval of the
20 county governing body.

21 (d) contract with another county or agency to perform
22 all or portions of the public health program;

23 (e) adopt rules, fees, and permit systems for:

24 (i) the control and disposal of sewage from private
25 and public buildings not currently connected to any

1 municipal system;

2 (ii) the regulation and control of sanitary conditions

3 in establishments licensed by the state under Title 27,

4 chapter 6; Title 34, chapter 3; and Title 69, chapter 56;

5 (f) adopt other rules which do not conflict with the

6 rules of the department but which are necessary to the

7 provision of the public health program and to the

8 implementation of state laws and rules relating to public

9 health. These rules may include but are not limited to:

10 (i) the control of communicable diseases;

11 (ii) sanitation, heating, ventilation, water supply,

12 and waste disposal in public buildings and public

13 accommodations; and

14 (iii) other environmental and personal health services.

15 (g) take any action, including legal action, necessary

16 to meet an emergency endangering the public health or to

17 restrain the violation of public health laws, ordinances, or

18 rules being violated within the jurisdiction of the local

19 health department; and

20 (h) provide public health services to residents of

21 Indian reservations which are contiguous to the jurisdiction

22 of the local health department at the same level and under

23 the same conditions as those provided to any other residents

24 of the state. In order to receive these services, residents

25 and tribal councils of Indian reservations must comply with

1 all rules adopted by the local health department and all

2 public health laws and rules of the department. The local

3 health department may charge the tribal council for the

4 costs of providing these services.

5 (3) If the rules adopted under the provisions of

6 subsections (2) (e) and (2) (f) of this section are not

7 adopted by a board, the adoption of the rules is contingent

8 upon the approval of the county governing body.

9 (4) The local health officer, with the concurrence of

10 the board, if any, or the county governing body and the

11 assistance of other local public health personnel, shall:

12 (a) keep the department informed of changes in the

13 membership of the board, if any, and changes in personnel

14 employed by the local health department;

15 (b) make inspections and otherwise ensure sanitary

16 conditions in the jurisdiction of the local health

17 department. Establishments to be inspected shall include but

18 are not necessarily limited to the following:

19 (i) food service establishments;

20 (ii) lodging establishments;

21 (iii) tourist campgrounds and trailer courts;

22 (iv) schoolhouses;

23 (v) churches;

24 (vi) theaters;

25 (vii) jails; and

1 (viii) other buildings or facilities where persons
2 assemble;

3 (c) guard against the introduction and spread of
4 communicable diseases;

5 (d) conduct other environmental and personal health
6 programs as required by law and rules of the department;

7 (e) cooperate with the department in the provision of
8 statewide programs; and

9 (f) submit reports in accordance with 47A-8-306(7).

10 (5) The local health officer, with the concurrence of
11 the board, if any, or the county governing body and the
12 assistance of other local public health personnel, may:

13 (a) establish and maintain quarantines and take other
14 measures to guard against the spread of communicable
15 diseases;

16 (b) isolate persons, animals, and objects which are
17 infected or suspected of being infected with a communicable
18 disease which is a threat to human health;

19 (c) disinfect places when a period of quarantine ends;

20 (d) forbid persons to assemble if the assembly
21 endangers the public health;

22 (e) validate state licenses issued by the department
23 in accordance with 27-613, 34-303, and 69-5604;

24 (f) abate nuisances affecting the public health and
25 safety;

1 (g) make full use of the consultative services,
2 technical assistance, and continuing education services
3 available from the department;

4 (h) with the concurrence or upon the request of the
5 chief law enforcement administrator, remove a diseased
6 prisoner who is held in jail and whose condition is in need
7 of medical treatment or is considered dangerous to the
8 health of other prisoners to a hospital or other secure
9 place where he may be treated and return the prisoner to
10 jail when he is cured;

11 (i) issue a written order to close for up to 72 hours
12 an establishment licensed under Title 27, chapter 6; Title
13 34, chapter 3; and Title 69, chapter 56, the sanitary
14 conditions of which, in the opinion of the health officer,
15 are an imperative threat to the public health and require
16 emergency action. The local health officer shall offer the
17 proprietor of the establishment a plan for improvement of
18 the conditions which caused the closure; if the improvements
19 are made, the order for closure may be rescinded within the
20 72-hour period, but in no event may such closure exceed 72
21 hours.

22 (j) collect fees; and

23 (k) request a law enforcement officer or another
24 public official to assist in carrying out the provisions of
25 this chapter. The official shall render the services as

1 requested.

2 47A-8-308. Role of department. (1) The department
3 shall develop manuals and handbooks for optional use by
4 local health departments, local health officers, and other
5 local public health personnel. The manuals and handbooks
6 shall include but not necessarily be limited to the
7 following:

8 (a) an appropriate local public health program which
9 may include but not necessarily be limited to those services
10 defined in 47A-8-304 and which takes into account both the
11 rural and urban characteristics of local health departments
12 in Montana and available manpower and financial resources as
13 well as available private medical and health services and
14 facilities throughout the state;

15 (b) a recommended minimum fee schedule for personal
16 health services, basing the schedule on actual costs and
17 providing for a sliding scale based on income;

18 (c) the format and content of budgets and program
19 plans required as a condition of receiving state and federal
20 revenues for public health services and programs;

21 (d) the content of training and continuing education
22 programs which the department shall conduct for local public
23 health personnel; and

24 (e) the content of standard reporting forms required
25 periodically of local health departments by the department.

1 (2) In developing the content of the manuals or
2 handbooks or any rules affecting local health departments,
3 the department shall solicit formal comment and suggestions
4 from local health officers, boards, if any, and other local
5 public health personnel.

6 (3) The department shall annually evaluate the staff
7 of and services and programs provided by local health
8 departments and by school districts which provide their own
9 school nursing services. Public health programs and services
10 provided by other agencies shall also be evaluated by the
11 department if local funds in any proportion are utilized to
12 provide the services. The report on the evaluation shall be
13 made available to the local health officer, board, if any,
14 and county governing body.

15 (4) If, in the opinion of the department, the services
16 of the minimum required staff have not been obtained by a
17 county, the department shall, after adequate notice has been
18 given to the affected county or school district, provide the
19 staff services itself. The department may then submit an
20 itemized billing to the appropriate county or school
21 district for an equitable amount of the county or school
22 district share to cover the costs of providing the services.

23 (5) In order to fulfill its responsibility of
24 providing supportive services to local health departments,
25 the department shall:

1 (a) provide consultative and legal services and
2 technical assistance in the formation and ongoing operation
3 and administration of and budgeting for the local health
4 department;

5 (b) coordinate between all bureaus of the department
6 all contacts with and visits and communications to counties,
7 boards, local health officers, and other public health
8 personnel; and

9 (c) actively and continuously solicit funds available
10 from federal and other agencies for use by local health
11 departments.

12 (6) The department may:

13 (a) when practicable and particularly in emergency
14 public health situations, provide department employees on a
15 temporary loan basis as supplemental staff to local health
16 departments; and

17 (b) request any necessary reports of local health
18 officers and other local public health personnel in addition
19 to those required in 47A-8-306(7). The department should,
20 however, give adequate notice about the due date and
21 adequate explanation of the need for any reports it intends
22 to request.

23 47A-8-309. Financing. (1) Rather than providing direct
24 public health services itself, the department shall offer
25 any available financial resources to local health

1 departments to provide public health programs which are
2 authorized or mandated by state or federal law and whose
3 purposes are to provide services directly to the citizens of
4 the state. Exceptions to this are the following programs:

5 (a) air quality programs;

6 (b) central recording of vital statistic documents;

7 (c) departmental consulting and reference services
8 available to local public health personnel and boards;

9 (d) family planning programs;

10 (e) hospital and medical facilities licensing and
11 certification;

12 (f) specialized medical and diagnostic services;

13 (g) statewide health planning; and

14 (h) water quality programs.

15 (2) If the local health department does not wish to
16 provide or is incapable of providing any program offered by
17 the department, the department may provide the program.

18 (3) Noncategorical federal moneys which are
19 appropriated to the state for distribution to local health
20 departments, including those appropriated under Public Law
21 94-63, shall be allocated at the rate of at least 45 cents
22 per capita of state population per year for as long as the
23 program continues. This amount may be adjusted if the total
24 federal allocations to Montana increase or decrease under
25 any federal programs but not less than 70% of the total

1 amount received from the federal government under Public Law
2 94-63 shall be allocated to local health departments. The
3 minimum amount allocated to any county shall be at least
4 \$800 per year.

5 (4) Except for a school district which provides the
6 minimum school nursing services itself in accordance with
7 75-5934, each elementary and secondary school district shall
8 appropriate to the local health department an amount to be
9 agreed upon by the school district and the county for the
10 purpose of providing school nursing services and for other
11 services of the local health department which will benefit
12 the schools and school children.

13 (5) As a condition of receiving state revenues or
14 federal revenues allocated to the state for public health
15 programs and services, the local health department shall
16 submit the proposed and adopted annual budget and a detailed
17 program plan to the department annually. No conditions other
18 than the provisions contained in this chapter and federal
19 merit system requirements may be imposed on boards as
20 requirements for eligibility to receive state and federal
21 revenues.

22 (6) All fees collected by the local health department
23 shall be deposited in an account to be used only to defray
24 the expenses of providing the program of the local health
25 department.

1 (7) All fees available to the department for licenses,
2 permits, or other programs shall be shared with local health
3 departments if the local health department has assisted with
4 the administration of the program from which the fee
5 resulted. The department shall share an appropriate
6 percentage of the fee commensurate with the local health
7 department's effort.

8 (8) Allocation to a county of state or federal block
9 grant aid funds is contingent upon the county maintaining
10 its contribution to the budget of the local health
11 department at the level contributed for fiscal year 1977.

12 Part 4

13 Law Enforcement

14 47A-8-401. Law enforcement administrator. It shall be
15 the duty of each county to provide for a chief law
16 enforcement administrator who may be called the sheriff and
17 who shall perform the duties required by 47A-6-6216, law, or
18 ordinances.

19 47A-8-402. Inquests. (1) It shall be the duty of each
20 county governing body to designate an officer, department,
21 or employee who shall:

22 (a) hold inquests as provided in 95-801 to 95-814;

23 (b) keep an official register, to be labeled "register
24 of inquests", in which the officer must enter the date of
25 holding all inquests, the name of the deceased, when known,

1 and when not, a description of the deceased as may be
2 sufficient for identification; property found on the person
3 of the deceased, if any; what disposition of the property
4 was made by the officer or employees; the cause of death,
5 when known, and any other information which may pertain to
6 the identity of the deceased;

7 (c) if the officer, department, or employee considers
8 it necessary, may hold an inquest as provided in 95-801 to
9 95-814 when a person confined in a state institution has
10 died. The inquest may be held only by the officer,
11 department, or employee in whose county the state
12 institution is located.

13 (d) whenever an inquest as described in subsection (c)
14 is held, properly certify a statement of all costs incurred
15 by the county in the inquest. The statement shall be
16 certified by the officer, department, or employee and sent
17 to the department of institutions for approval. Upon
18 approval, the department must cause the amount of the costs
19 to be paid out of the money appropriated for the state
20 institution to the county financial administrator where the
21 inquest was held.

22 (e) deliver, within 30 days after an inquest on a dead
23 body, to the county financial administrator of the county or
24 the legal representatives of the deceased any moneys or
25 other property found upon the dead body;

1 (f) when an inquest is held and no other person takes
2 charge of the body of the deceased, the officer, department,
3 or employee shall cause it to be decently interred; and if
4 there is not sufficient property belonging to the estate of
5 the deceased to pay the necessary expenses of burial, the
6 expenses are a legal charge against the county; and

7 (g) file with the county finance administrator of the
8 governing body of the county a statement in writing,
9 verified by his affidavit, showing the amount of money or
10 other property belonging to the estate of the deceased
11 person which has come into his possession since his last
12 statement and the disposition of the property; and

13 (h) perform any other duty required by law.

14 (2) If the governing body of the county fails to
15 designate an officer, department, or employee or the person
16 designated is absent or unable to attend, the duties of this
17 section may be discharged by any justice of the peace of the
18 county with like authority and subject to the same
19 obligations and penalties as the person designated.

20 47A-8-403. Prosecuting attorney. (1) It shall be the
21 duty of each county to provide for a prosecuting attorney
22 who may be the county civil attorney. If the plan of
23 government provides for an elected legal officer,
24 prosecutor, or county attorney, the duties of the
25 prosecuting attorney as provided in this section shall be

1 performed by that person. The public prosecutor must:

2 (a) attend the district court and conduct, on behalf
3 of the state, all prosecutions for public offenses and
4 represent the state in all matters and proceedings to which
5 it is a party, or in which it may be beneficially
6 interested, at all times and in all places within the limits
7 of his county;

8 (b) institute proceedings before magistrates for the
9 arrest of persons charged with or reasonably suspected of
10 public offenses, when he has information that the offenses
11 have been committed, and for that purpose, whenever not
12 otherwise officially engaged, must attend upon the
13 magistrate in cases of arrest, and attend before and give
14 advice to the grand jury, whenever cases are presented to it
15 for their consideration;

16 (c) draw all indictments and informations, defend all
17 suits brought against the state in the county, prosecute all
18 recognizances forfeited in the courts of record and all
19 actions for the recovery of debts, fines, penalties, and
20 forfeitures accruing to the state;

21 (d) deliver receipts for money or property received in
22 his official capacity, and file duplicates thereof with the
23 county finance administrator;

24 (e) on the first Monday of January, April, July, and
25 October, in each year, file with the finance administrator

1 an account of all moneys received by him in his official
2 capacity during the preceding 3 months;

3 (f) keep a register of all official business, in which
4 must be entered a note of every action, whether criminal or
5 civil, prosecuted officially, and of the proceedings
6 therein;

7 (g) when ordered or directed by the attorney general
8 to do so, promptly institute and diligently prosecute in the
9 proper court and in the name of the state of Montana any
10 criminal or civil action or special proceeding, it being
11 hereby declared that the supervisory powers granted to the
12 attorney general by 82-401(5) include the power to order and
13 direct prosecuting attorneys and county civil attorneys in
14 all matters pertaining to the duties of their offices;

15 (h) institute an action if the governing body of the
16 county, without authority of law, orders any money paid as a
17 salary, fees, or for any other purpose and the money has
18 been actually paid; or if any other county officer has drawn
19 any warrant or warrants in his own favor or in favor of any
20 other person without authorization by the governing body of
21 the county or by law and the same has been paid. The action
22 shall be in the name of the county against the person or
23 persons to recover the money so paid and for 25% damages for
24 the use of the moneys. No order of the governing body of the
25 county is necessary to maintain the suit, but when the money

1 has not been paid on the order or warrants, it is the duty
2 of the public prosecutor, upon receiving notice thereof, to
3 commence an action in the name of the county for restraining
4 its payment, and no order of the governing body of the
5 county is necessary to maintain the action; and

6 (i) perform any other duty required by law or
7 ordinance.

8 (2) For counties where the prosecuting attorney is
9 also the county civil attorney, the legislature shall
10 appropriate and the department of community affairs shall
11 annually distribute \$10,000 to each county, plus \$1 per
12 person within the county based on the most recent federal
13 census or population estimate, to be applied against the
14 expenses budgeted by a county for that office.

15 (3) Except in counties where a separate office of
16 prosecuting attorney is established by ordinance:

17 (a) the annual state share of the expenses budgeted by
18 a county for the office performing both civil and
19 prosecuting duties may not exceed one-half; and

20 (b) the annual state contribution to a county may not
21 exceed \$50,000.

22 (4) For counties where a separate office of
23 prosecuting attorney is established by ordinance, the
24 legislature shall appropriate and the department of
25 community affairs shall distribute sufficient moneys to

1 defray the expenses budgeted by a county for the office of
2 prosecuting attorney.

3 (5) In each county with a population in excess of
4 30,000 where the prosecuting attorney is also the civil
5 attorney or where a separate office of prosecuting attorney
6 is established by ordinance, that person is prohibited from
7 engaging in the private practice of law or sharing directly
8 or indirectly in the profits of any private practice of law,
9 except that he may represent himself and his immediate
10 family. He may prohibit deputies from engaging in the
11 private practice of law or sharing directly or indirectly in
12 the profits of any private practice of law, except that a
13 deputy may represent himself and his immediate family.

14 47A-8-404. Claims against prosecuting attorney's or
15 civil attorney's own county. The prosecuting attorney or
16 civil attorney, except for his own services, must not
17 present any claim, account, or other demand for allowance
18 against the county, or in any way advocate the relief asked
19 on the claim or demand made by another.

20 47A-8-405. Jails. (1) A jail shall be built or
21 provided and maintained at the expense of the county in each
22 county, except that whenever, in the discretion of the
23 governing bodies of two or more counties, it is necessary or
24 desirable to build, provide, or utilize a common jail, they
25 may do so in one of the counties concerned. The common jail

1 shall be built or provided and maintained at the expense of
 2 the counties concerned on a basis as the governing bodies
 3 shall agree. The common jail shall be kept by the law
 4 enforcement officers of the counties utilizing it on a basis
 5 as the chief law enforcement administrators utilizing the
 6 common jail shall agree.

7 (2) The governing body has the duty of building,
 8 inspecting, and repairing the jail, and must, once every 3
 9 months, inquire into the security of the jail and must take
 10 all necessary precautions against escape, sickness, or
 11 infection.

12 (3) County jails shall be used for:

13 (a) the detention of persons committed to secure their
 14 attendance as witnesses in criminal cases;

15 (b) the detention of persons charged with crime and
 16 committed for trial;

17 (c) the confinement of persons committed for contempt,
 18 or upon civil process, or by other authority of law; and

19 (d) the confinement of persons sentenced to
 20 imprisonment upon a conviction of crime.

21 (4) Each county jail must contain a sufficient number
 22 of rooms to allow all persons belonging to any one of the
 23 following classes to be confined separately and distinctly
 24 from persons belonging to any of the other classes:

25 (a) persons committed on criminal process and detained

1 for trial;

2 (b) persons already convicted of crime and held under
 3 sentence;

4 (c) persons detained as witnesses, or held under civil
 5 process, or under an order imposing punishment for a
 6 contempt;

7 (d) males separately from females; and

8 (e) juveniles separately from adults.

9 47A-8-406. Who may be detained, expense of prisoners,
 10 exceptions. (1) The chief law enforcement administrator must
 11 receive all persons committed to jail by a competent
 12 authority, and provide them with necessary food, clothing,
 13 and bedding, for which claims shall be submitted for the
 14 actual expenses incurred to the governing body of the county
 15 for their determination and, except as provided in this
 16 section, to be paid by the finance administrator.

17 (2) If a person is committed to jail by an agency of
 18 the state of Montana, the agency shall, upon a claim
 19 presented by the county, pay the county the actual and
 20 necessary expenses incurred for each and every prisoner held
 21 in the county jail upon order or commitment of the agency.
 22 For the purposes of this section, a day shall be defined as
 23 a 24-hour period or portion thereof, beginning with the time
 24 of incarceration.

25 (3) If the governing body of the county and the United

1 States, through or by the proper officer or officers, enter
2 into an agreement that the United States shall pay on demand
3 by the county the actual and necessary expenses for each
4 federal prisoner confined, the chief law enforcement
5 administrator must receive and keep in the county jail any
6 prisoner committed thereto by process or order issued under
7 the authority of the United States until the prisoner is
8 discharged according to law as if he had been committed
9 under process issued under the authority of this state.

10 (4) Whenever a person is committed upon process in a
11 civil action or proceeding, except when the state is a party
12 thereto, the chief law enforcement administrator is not
13 bound to receive the person, unless security is given on the
14 part of the party at whose instance the process is issued by
15 a deposit of money to meet expenses of necessary food,
16 clothing, and bedding for the person committed or to detain
17 the person any longer than these expenses are provided for.
18 This section does not apply to cases where a party is
19 committed as a punishment for disobedience to the mandates,
20 process, writs, or order of court.

21 (5) If, in the opinion of the chief law enforcement
22 administrator, any prisoner, while detained, requires
23 medication, medical services, or hospitalization, the
24 expense of the prisoner shall be borne by the agency or
25 authority at whose instance the prisoner is detained when

1 the agency or authority is not the county wherein the
2 prisoner is being detained. The public prosecutor shall
3 initiate proceedings to collect any charges arising from
4 medical services or hospitalization for the prisoner
5 involved if it is determined the prisoner is financially
6 able to pay.

7 47A-8-407. Prisoners. (1) Persons committed on
8 criminal process and detained for trial, persons convicted
9 and under sentence, and persons committed upon civil process
10 must not be kept or put into the same room, nor shall male
11 and female prisoners (except husband and wife) be kept or
12 put into the same room.

13 (2) A prisoner committed to the county jail for trial
14 or for examination or upon conviction for a public offense
15 must be actually confined in the jail until he is legally
16 discharged; and if he is permitted to go at large out of the
17 jail, except by virtue of a legal order or process, it is an
18 escape.

19 (3) A chief law enforcement administrator to whose
20 custody a prisoner is committed, as provided in 47A-8-406
21 (3), is answerable for his safekeeping in the courts of the
22 United States according to the laws thereof.

23 (4) A law enforcement officer or jailer upon whom a
24 paper in a judicial proceeding, directed to a prisoner in
25 his custody, is served must immediately deliver it to the

1 prisoner with a note thereon of the time of its service.
2 For a neglect to do so he is liable to the prisoner for all
3 damages occasioned thereby.

4 (5) Persons confined in the county jail under a
5 judgment of imprisonment rendered in a criminal action or
6 proceeding may be required by the governing body of the
7 county to perform labor on the public works or ways in the
8 county. The governing body of the county making the order
9 may prescribe and enforce the rules under which the labor is
10 to be performed.

11 47A-8-408. Removal of prisoners in case of fire or
12 pestilence. (1) When a county jail or building contiguous to
13 it is on fire, and there is reason to believe that the
14 prisoners may be injured or endangered, the chief law
15 enforcement administrator must remove them to a safe and
16 convenient place and there confine them as long as it may be
17 necessary to avoid the danger.

18 (2) When a pestilence or contagious disease breaks out
19 in or near a jail, and a physician certifies that it is
20 likely to endanger the health of the prisoners, the district
21 judge may by a written appointment designate a safe and
22 convenient place in the county, or the jail in a contiguous
23 county, as the place of their confinement. The appointment
24 must be filed in the office of the district court and
25 authorize the chief law enforcement administrator to remove

1 the prisoners to the place or jail designated and there
2 confine them until they can be safely returned to the jail
3 from which they were taken.

4 47A-8-409. Contiguous county jail — when used —
5 process. (1) When there is no jail in the county or when the
6 jail becomes unfit or unsafe for the confinement of
7 prisoners, the district judge may designate the jail of a
8 contiguous county for the confinement of the prisoners of
9 his county by filing a written appointment with the clerk of
10 the district court. He may at any time modify or annul the
11 appointment.

12 (2) A copy of the appointment, certified by the clerk
13 of the district court, shall be served on the chief law
14 enforcement administrator or keeper of the jail designated.
15 That law enforcement officer or keeper:

16 (a) shall receive into his jail all prisoners
17 authorized to be confined to it, in accordance with this
18 section; and

19 (b) is responsible for the safekeeping of the persons
20 so committed in the same manner and to the same extent as if
21 he were chief law enforcement administrator of the county
22 for whose use his jail is designated.

23 (3) With respect to the persons so committed, he is
24 considered the chief law enforcement administrator of the
25 county from which they were removed.

(4) When a jail is erected in the county or when the existing jail is rendered fit and safe for the confinement of prisoners, the district judge of that county must, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased, and that it is revoked.

(5) The clerk must immediately serve a copy of the revocation upon the chief law enforcement administrator of the county, who must thereupon remove the prisoners to the jail from which the removal was made.

47A-8-410. Mileage and expense of sheriff. (1) A sheriff serving a warrant or arrest or conveying a person under arrest before a magistrate or to jail shall be paid the following:

(a) for utilizing a privately owned vehicle or aircraft, mileage as provided in 59-801; or

(b) for utilizing a common carrier, expenses incurred for himself and the person conveyed; and

(c) for all other reasonable and necessary expenses incurred therein.

(2) A sheriff shall receive only expenses incurred in conveying a person to the state prison, a youth detention facility, or state mental health facility or for the return of fugitives apprehended and arrested outside the county. The expenses shall be evidenced by vouchers which shall be

submitted to the department of administration or the local government, whichever is responsible for the expense.

(a) For use of a privately owned vehicle or aircraft, a sheriff shall be compensated as provided in 59-801.

(b) For lodging and subsistence, the sheriff shall be reimbursed for expenses not to exceed the amounts provided in 59-538 and 59-539 for himself and for the person conveyed.

Part 5

Judicial

47A-8-501. Justice and municipal courts. (1) Each county shall provide one or more justice of the peace courts as provided in Title 11, chapter 50.

(2) Each municipality shall provide for a municipal court as provided in Title 11, chapter 50.

47A-8-502. District court facilities. (1) Each county shall provide the district court with suitable rooms and chambers together with attendants, furniture, fuel, lights, books, and stationery necessary for the transaction of the court's business.

(2) Each county shall provide for the safekeeping of court records, adequately protecting them against fire and other hazards.

(3) If a county fails to meet the obligations imposed by this section, the district judge may order the deficiency

1 corrected at county expense.

2 47A-8-503. Clerk of district court. Each county shall
3 designate one or more departments, officers, or employees to
4 perform the following duties:

5 (1) take charge of and safely keep, or dispose of
6 according to law, all books, papers, and records which may
7 be filed or deposited with or in the district court;

8 (2) act as clerk of the district court and attend each
9 term or session thereof, and attend the judges at chambers
10 when required;

11 (3) issue all processes and notices required to be
12 issued; enter all orders, judgments, and decrees proper to
13 be entered; keep in each court a register of action, as
14 provided in the code of civil procedure, which must also
15 state the names of the attorneys and all fees charged in
16 each action, and a list of all the fees charged;

17 (4) keep for the district court, in separate volumes:

18 (a) an index of all suits, labeled "general index -
19 plaintiffs", each page of which must be divided into seven
20 columns, under their respective heads, alphabetically
21 arranged as follows: "number of suit", "plaintiffs",
22 "defendants", "date of judgment", "number of judgment",
23 "page of entry of judgment in judgment book", "page in
24 minute book of district court"; and

25 (b) an index labeled "general index - defendants",

1 each page of which must be divided into seven columns under
2 their respective heads, alphabetically arranged as follows:
3 "number of suit", "defendants", "plaintiffs", "date of
4 judgment", "number of judgment", "page of entry of judgment
5 in judgment book", "page in minute book of district court";

6 (5) keep a record containing the daily proceedings of
7 the court which may be signed by the clerk;

8 (6) keep a record called the "judgment record", in
9 which judgments must be entered as provided in Title 93,
10 chapter 57;

11 (7) keep a record called the "probate record", in
12 which must be recorded all wills, bonds, letters
13 testamentary, and other papers as prescribed elsewhere in
14 this code. The record must be indexed in the same manner as
15 the "record of probate proceedings".

16 (8) keep proper records for indexing bonds given in
17 criminal cases, and all the bonds filed therein shall be
18 entered showing the title and docket number of the case in
19 which the bond is filed, the names of principals and
20 sureties on the bonds in alphabetical order, the date and
21 amount of the bond and, upon its release, the date of the
22 order or authority for the release;

23 (9) keep records of naturalization proceedings as
24 required by federal law;

25 (10) keep a record called, "register of criminal

1 actions", in which must be entered the title and number of
2 the action, with a memorandum of every paper filed, order or
3 proceeding had therein, with the date thereof, the name of
4 every witness, and a proper index to the register;

5 (11) keep a record called "register of probate and
6 guardianship proceedings", in which must be entered the name
7 of the estate; the register number; a memorandum of every
8 paper filed, order or proceeding had therein, with the date
9 thereof; and the fees charged;

10 (12) keep an index of persons committed to state
11 institutions as provided in 38-208;

12 (13) keep a fee record, in which must be shown in an
13 itemized form all fees that he has received for any services
14 rendered as clerk;

15 (14) keep a record called "jurors' certificates", in
16 which must be contained the blank certificates and stubs to
17 be filled, as provided in this code;

18 (15) keep a "witness record", in which must be
19 contained blank certificates and stubs to be filled as
20 provided in this title;

21 (16) keep a record of the attendance of all jurors and
22 of witnesses in criminal actions, number of days in
23 attendance, witness fees, and compute the mileage of each;

24 (17) keep in a separate record a general index to court
25 records and an inverse general index to court records. Each

1 index shall be in the form prescribed by supreme court rule.
2 Entries shall be made in each index as the progress of the
3 case may require.

4 (18) perform any other duty required by law.

5 47A-8-504. Jurors. (1) Each county shall provide the
6 district court with a jury list drawn as provided in Title
7 93, chapter 14.

8 (2) The officer or employee designated in 47A-8-503
9 shall receive the list and prepare jury boxes as provided in
10 Title 93, chapters 14 and 15.

11 (3) The chief law enforcement administrator or an
12 employee of the local government shall summon jurors as
13 provided in 93-1509.

14 (4) The county shall pay jurors' fees as provided in
15 Title 25, chapter 4.

16 47A-8-505. Witnesses. (1) The county shall pay
17 witnesses as provided in Title 25, chapter 4.

18 (2) The officer or employee designated as provided in
19 47A-8-503 shall issue summons for witnesses as provided by
20 law.

21 47A-8-506. Court reporters. (1) Each district court
22 judge may appoint a court reporter as provided by 92-1906.

23 (2) The salary and expenses of the court reporter
24 shall be paid by the county subject to the limits contained
25 in 93-1906.

(3) If more than one county is included within the judicial district, the court reporter's salary and expenses shall be apportioned between the counties as provided in 93-1906.

47A-8-507. Interpreters. (1) Whenever a party to or a witness in any criminal proceeding cannot speak or understand the English language, the court may appoint an interpreter.

(2) The county shall pay a reasonable fee for the services of an interpreter as the court may establish.

47A-8-508. Public defenders. Each county shall pay the compensation and expenses of counsel assigned to represent indigent criminal defendants as provided in 95-1005.

47A-8-509. Youth probation officer. Each county shall provide facilities for and pay the salaries and expenses of the youth court probation officer in the manner and subject to the limitations contained in 10-1234.

47A-8-510. Service of process and notice. (1) Each local government shall designate an officer or employee who shall:

(a) endorse all notices and processes with the year, month, day, hour, and minute of reception, and issue to the person delivering them, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

(b) serve all processes or notices in the manner prescribed by law, except those the sheriff or chief of police is specifically required by law to serve; and

(c) certify by hand upon the process or notice the manner and time of service, or if there is a failure to make service, the reasons for the failure, and return the same without delay.

(2) The return of the designated officer or employee, upon process or notice, is prima facie evidence of the facts in such return stated.

47A-8-511. Fees for service of process. (1) The following fees shall be charged for service of process:

(a) for serving a summons on each defendant, \$2;

(b) for levying and serving each writ of attachment or execution on real or personal property, \$2;

(c) for serving an attachment on the body or order of arrest on each defendant, \$2;

(d) for serving an affidavit, order, and undertaking in claim and delivery, \$2;

(e) for serving a subpoena on each witness summoned, \$2;

(f) for serving writ of possession or restitution, \$4;

(g) for trial of the right of property or damages, including all services except mileage, \$5;

(h) for taking bond or undertaking in any case

1 authorized by law, \$2;

2 (i) for serving every notice, rule, or order, for each
3 person served, \$2;

4 (j) for copying any writ, process, or other paper when
5 demanded or required by law, per page, 25 cents;

6 (k) for advertising any property for sale on execution
7 or under any judgment or order of sale, exclusive of cost of
8 publication, \$2; and

9 (l) for mileage required for serving the paper or
10 process and returning to the office in the amount specified
11 in 59-801.

12 (2) Mileage shall be charged only once for serving
13 more than one paper upon a single person at the same time.

14 (3) Mileage not requiring more than one trip for
15 serving two or more persons shall be computed only for the
16 shortest required single route to the most distant service.

17 (4) A court may order payment of expenses incurred for
18 the taking, possession, and preservation of property under
19 attachment, execution, or other process. If the property is
20 of such a character or the situation warrants employment of
21 a caretaker to insure the safety of the property, the court
22 may order the employment of a caretaker at a rate not to
23 exceed \$10 per day.

24 Part 6

25 Administrative

1 47A-8-601. Assessment of property. (1) Each county
2 shall designate a department, officer, or employee to
3 perform the duties of assessor and to act as the agent of
4 the state for the assessment of property for taxation as
5 provided in Title 84.

6 (2) The county shall make reports as are required by
7 the department of revenue.

8 47A-8-602. Levy and collection of taxes. (1) Each
9 county shall levy all property taxes certified to it by the
10 state, county, school district, authority, municipality, or
11 other entity authorized by law to certify property taxes to
12 a county for collection located wholly or partially within
13 the county.

14 (2) The state or any political subdivision with
15 property tax authority shall cause to be delivered a copy of
16 the certified mill levy to the county finance administrator
17 for the collection of the property tax no later than the
18 third Monday of August.

19 (3) If the jurisdictional area of the entity
20 certifying the tax is less than countywide the tax shall be
21 levied only on that part of the county that is within the
22 jurisdictional area of the entity.

23 (4) All moneys collected by the county on the property
24 tax levies shall be placed in a depository and distributed
25 to the appropriate accounts as provided by law or ordinance.

1 47A-8-603. School finance. Each county, through its
2 finance administrator, shall provide to school districts
3 located within its boundaries the following services:

4 (1) keep all school moneys in a separate account and
5 keep a separate accounting of their disbursement to the
6 several school districts which are entitled to receive them;

7 (2) notify the officer or body of the amount of the
8 county school account in the county treasury subject to
9 apportionment, whenever required, and inform the officer or
10 body of the amount of school moneys belonging to any other
11 fund subject to apportionment;

12 (3) pay all warrants drawn on school district moneys
13 in accordance with the provisions of law, whenever the
14 warrants are countersigned by the district clerk and
15 properly endorsed by holders;

16 (4) make annually during the month of September a
17 financial report for the preceding year ending with August
18 31 to the officer or body in the form as may be required by
19 the officer or body; and

20 (5) comply with other financial requirements as are
21 prescribed in Title 75.

22 47A-8-604. School administration. (1) Each county
23 shall designate one or more departments, officers, or
24 employees to perform the duties of county superintendent of
25 schools as prescribed in Title 75, Chapter 58.

1 (2) One or more departments, officers, or employees
2 shall be designated to serve in official positions required
3 of the county superintendent of schools by Title 75, chapter
4 58.

5 (3) The person performing the duties prescribed by
6 75-5805(20) and 75-5811 shall have the qualifications of an
7 elected county superintendent.

8 47A-8-605. Board of school budget supervisors. The
9 governing body of the county shall constitute the board of
10 school budget supervisors and in that capacity shall
11 exercise the powers and duties prescribed in Title 75. The
12 board may appoint the county school district officer as
13 clerk of the board.

14 47A-8-606. Elections. (1) Each county shall provide
15 for the registration of electors as provided in Title 23.

16 (2) Each county shall undertake all action and provide
17 all facilities, materials, supplies, and personnel required
18 by Title 23 to conduct state or other elections.

19 (3) Each county shall provide each municipality,
20 school district, and authority with lists of registered
21 voters and all other materials and assistance required by
22 Title 23 for its elections.

23 47A-8-607. Noxious plant control. Each county shall
24 provide for the control of noxious plants in that county as
25 provided by 47A-6-3201 through 47A-6-3210 and 47A-6-3221

1 through 47A-6-3228.

2 47A-8-608. Public administrator. Each county shall
3 designate one or more departments, officers, or employees to
4 carry out the duties of the public administrator as
5 established by Title 91, chapter 6. The public administrator
6 is allowed to receive and collect for his own use, for
7 services rendered, the same fees allowed personal
8 representatives, as provided in 91A-3-719.

9 47A-8-609. Tax appeals board. (1) The governing body
10 of each county shall appoint a county tax appeals board as
11 provided in 84-601.

12 (2) The tax appeals board shall have the power and
13 shall proceed as provided in Title 84, chapter 6.

14 47A-8-610. Surveyor. The governing body shall provide
15 for any survey required by order of the court. No survey may
16 be made by a person interested in lands to be surveyed.

17 47A-8-611. Motor vehicle graveyards. Each county shall
18 provide a motor vehicle graveyard as provided for in Title
19 69, chapter 68.

20 47A-8-612. Licensing of refuse disposal districts.
21 Each county shall provide for the licensing of refuse
22 disposal districts as provided for in Title 69, chapter 40.

23 47A-8-613. Open burning. (1) Each local government
24 shall establish by ordinance procedures for controlled
25 burning within their jurisdiction.

1 (2) The ordinance shall:

2 (a) provide for seasons closed to open burning;

3 (b) take into account different types of controlled
4 burning by class and may establish different permit criteria
5 for differing types or classes of burning, including
6 campfires, slash burning, land clearing, stubble burning, or
7 burning of structures;

8 (c) provide for the issuance of burning permits;

9 (d) designate departments, employees, or persons of
10 the local government that may issue burning permits;

11 (e) establish guidelines and conditions for the
12 issuance of burning permits;

13 (f) provide for the timely notification of the fire
14 service protecting the area:

15 (i) of the time of the burning;

16 (ii) where the burning is to be conducted; and

17 (iii) the type and size of the burning; and

18 (g) comply with state and federal laws establishing
19 environmental, air quality, safety, and other standards.

20 (3) The fire service providing protection for the area
21 where the burning permit is requested may veto the permit in
22 cases where such burning is determined to be hazardous.

23 47A-8-614. Registration of motor vehicles. Each county
24 shall provide for the registration of motor vehicles in that
25 county as provided for in Title 53.

47A-8-615. Inspection of hides. Each county shall provide for the inspection of hides as required by Title 46, chapter 5.

47A-8-616. Purebred stock. Each county shall maintain and report, in the manner prescribed by Title 46, chapter 12, a record containing the names and addresses of all owners of purebred stock within the county.

47A-8-617. Administrative rules. Each county shall retain and maintain at least one copy of the Montana Administrative Code and any accompanying books or documents, as provided by Title 82, chapter 42, for the use of the county and the public.

47A-8-618. Underground facilities record. Each county shall maintain, as prescribed in Title 32, chapter 48, a record of all underground facilities located within the county.

47A-8-619. Realty Transfer Act. Each county shall designate an officer, employee, or department to carry out the duties required by Title 84, chapter 73.

CHAPTER 9

LOCAL GOVERNMENT FINANCES

Part 1

General Provisions

47A-9-101. Strict accountability. In accordance with Article VIII, section 12, of the Montana constitution, it is

the purpose of this chapter to insure strict accountability of all local government finance through minimum statutory standards, state technical assistance and supervision, and effective local government management.

47A-9-102. Local government finance advisory council.

(1) The department of community affairs shall establish a local government finance advisory council in the manner provided in 82A-110. The council shall include, but not be limited to, local and state officers and employees familiar with local government finance administration. It shall review all rules promulgated by any state agency pertaining to local government financing, budgeting, accounting, and reporting systems prior to their adoption.

(2) The provisions of 82A-110(11) shall not apply to the local government advisory review council.

(3) The terms of members of the council shall not exceed 2 years.

47A-9-103. Technical assistance. The department of community affairs may provide technical assistance upon request to local governments in order to improve the administration of local government finance.

47A-9-104. Financial rules and forms by the department of community affairs. (1) The department of community affairs shall adopt rules and forms for local government financial accounting, budgeting, and reporting procedures.

(2) The rules shall:

(a) permit the full utilization of a modern budgeting, accounting, and reporting system;

(b) provide a system of internal control;

(c) provide citizens, local government governing bodies, and officials with a greater measure of control over public moneys;

(d) enable the records of local governments to accurately reflect governmental cost and resources;

(e) provide for a uniform fund structure and chart of accounts which shall be utilized in all budgeting, accounting, and reporting systems; and

(f) coordinate the utilization of electronic data processing systems for all local governmental purposes.

(3) The department shall, where practicable, utilize the standards and recommendations established by the national council of governmental accounting.

47A-9-105. Local finance ordinances. A governing body may adopt ordinances regulating local government financial administration. All ordinances must be consistent with the constitution of Montana, the laws of Montana, and the charter of the local government.

47A-9-106. Annual compilations by department of community affairs. The department of community affairs shall reproduce annual compilations of:

(1) local government budgets and mill levies; and

(2) local government annual financial reports.

47A-9-107. Audits. The department of community affairs shall audit the affairs of local governments as provided in 82-4515 through 82-4529.

47A-9-108. General definitions. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Accounting system" means the total structure of records and procedures which discover, record, classify, and report information on the financial position and operations of a local government or any of its funds, balanced account groups, and organizational components.

(2) "Accrual basis" means the basis of accounting under which revenues are recorded when earned and expenditures are recorded as soon as they result in liabilities for benefits received, notwithstanding that the receipt of the revenue or the payment of the expenditure may take place, in whole or in part, in another accounting period.

(3) "Activity" means a specific and distinguishable line of work performed by one or more organizational components of a local government for the purpose of accomplishing a function for which the local government is responsible.

1 (4) "Appropriation" means the authorization granted by
2 a governing body to make expenditures and to incur
3 obligations for specific purposes.

4 (5) "Assess" means to value property officially for
5 the purpose of taxation.

6 (6) "Assessment" means the process of making the
7 official valuation of property for purposes of taxation.

8 (7) "Assessed value" means the value placed on
9 property for tax purposes by the assessment procedure.

10 (8) "Audit" means the examination of documents,
11 records, reports, systems of internal control, accounting,
12 and financial procedures.

13 (9) "Budget" means a plan of financial operation
14 embodying an estimate of proposed expenditures for a given
15 period and the proposed means of financing them. An adopted
16 budget shall be considered the appropriation for the ensuing
17 fiscal year.

18 (10) "Capital outlays" means expenditures which result
19 in the acquisition of or addition to fixed assets.

20 (11) "Capital program" means the plan for capital
21 expenditures to be incurred each year over a fixed period of
22 years to meet capital needs arising from the long-term work
23 program or otherwise. It sets forth each project or other
24 contemplated expenditure in which the government is to have
25 a part and specifies the full resources estimated to be

1 available to finance the projected expenditures.

2 (12) "Cash" means currency, coin, checks, postal and
3 express money orders, and bankers' drafts on hand or on
4 deposit with an officer or employee.

5 (13) "Cash basis" means the basis of accounting under
6 which revenues are recorded when received in cash and
7 expenditures are recorded when paid.

8 (14) "Character" means a basis for distinguishing
9 expenditures according to the periods they are presumed to
10 benefit.

11 (15) "Check" means a bill of exchange drawn on a bank
12 and payable on demand or a written order on a bank to pay on
13 demand a specified sum of money to a named person, to his
14 order, or to bearer out of money on deposit to the credit of
15 the maker.

16 (16) "Debt" means bonds, notes, and installment
17 purchases as defined in chapter 9, part 5, of this title.

18 (17) "Debt service fund" means a fund established to
19 finance and account for the payment of interest and
20 principal on debt.

21 (18) "Delinquent tax" means a tax remaining unpaid on
22 and after the date on which a penalty for nonpayment is
23 attached. Even though the penalty may be subsequently waived
24 and a portion of the tax may be abated or cancelled, the
25 unpaid balance continues to be a delinquent tax until

1 abated, cancelled, paid, or converted into a tax lien.

2 (19) "Disbursement" means payment in cash.

3 (20) "Effectiveness measure" means a criterion for
4 measuring the degree to which the objective sought is
5 attained.

6 (21) "Encumbrance" means a purchase order, contract, or
7 salary commitment which is chargeable to an appropriation
8 and for which a part of the appropriation is reserved. It
9 ceases to be an encumbrance when paid or when the actual
10 liability is set up.

11 (22) "Estimated revenue" means the amount of revenue
12 estimated to be accrued during a given period regardless of
13 whether or not it is all to be collected during the period.

14 (23) "Expenditures" means that where the accounts are
15 kept on the accrual basis or the modified accrual basis,
16 this term designates the cost of goods delivered or services
17 rendered, whether paid or unpaid, including expenses,
18 provision for debt retirement not reported as a liability of
19 the fund from which retired, and capital outlays. Where the
20 accounts are kept on the cash basis, the term designates
21 only actual cash disbursements for these purposes.

22 (24) "Functions" means a group of related activities
23 aimed at accomplishing a major service or regulatory program
24 of local government.

25 (25) "Fund" means an independent fiscal and accounting

1 entity with a self-balancing set of accounts recording cash
2 and other resources together with all related liabilities,
3 obligations, reserves, and equities which are segregated for
4 the purpose of carrying on specific activities or attaining
5 certain objectives in accordance with special regulations,
6 restrictions, or limitations.

7 (26) "Fund accounts" means all accounts necessary to
8 set forth the financial operations and financial position of
9 a fund.

10 (27) "General fund" means a fund used to account for
11 all transactions of a local government which are not
12 accounted for in another fund.

13 (28) "General revenue" means the revenues of a local
14 government other than those derived from and retained in an
15 enterprise.

16 (29) "Grant" means a contribution by one governmental
17 unit to another unit. The contribution is usually made to
18 aid in the support of a specified function, but it is
19 sometimes also made for general purposes.

20 (30) "Income" is a term used in accounting for
21 governmental enterprises to represent the excess of revenues
22 earned over the expenses incurred in carrying on the
23 enterprise's operations.

24 (31) "Intergovernmental revenue" means the revenue
25 received from other governments in the form of grants,

1 shared revenues, or payments in lieu of taxes.

2 (32) "Internal control" means a plan of organization
3 under which employees' duties are so arranged and records
4 and procedures so designed as to make it possible to
5 exercise effective accounting control over assets,
6 liabilities, revenues, and expenditures. Under this system,
7 the work of employees is subdivided so that no single
8 employee performs a complete cycle of operations. Under
9 this system, the procedures to be followed are definitely
10 laid down and require proper authorization by designated
11 officials for all actions to be taken.

12 (33) "Judgment" means an amount to be paid or collected
13 by a local government as the result of a court decision,
14 including a condemnation award in payment for private
15 property taken for public use.

16 (34) "Levy" means to impose a tax, special assessment,
17 or service charge for the support of a governmental
18 activity, or the total amount of taxes, special assessments,
19 or service charges imposed by a governmental unit.

20 (35) "Modified accrual basis" means the basis of
21 accounting under which expenditures other than accrued
22 interest on general long-term debt are recorded at the time
23 liabilities are incurred and revenues are recorded when
24 received in cash, except for material and available revenues
25 which should be accrued to reflect properly the taxes levied

1 and the revenues earned.

2 (36) "Mortgage" shall include deeds of trust,
3 mortgages, building and loan contracts, or other instruments
4 conveying real or personal property as security for bonds
5 and conferring a right to foreclose and cause a sale
6 thereof.

7 (37) "Object" means (as used in expenditure
8 classification) the article purchased or the service
9 obtained (as distinguished from the results obtained from
10 expenditures).

11 (38) "Performance budget" means a budget wherein
12 expenditures are based primarily upon a measurable
13 performance of activities and work programs. A performance
14 budget may also incorporate other bases of expenditure
15 classification, such as character and object, but these are
16 given a subordinate status to activity performance.

17 (39) "Priority listing" means a ranking of proposed
18 expenditures in order of importance.

19 (40) "Program" means a combination of resources and
20 activities designed to achieve an objective or objectives.

21 (41) "Program budget" means a budget wherein
22 expenditures are based primarily on programs of work and
23 secondarily on character and object.

24 (42) "Program size" means the magnitude of a program
25 such as the size of clientele served, the volume of service

1 in relation to the population or area, or any other criteria
2 as considered appropriate.

3 (43) "Program size indicator" means a measure to
4 indicate the magnitude of a program.

5 (44) "Purchase order" means a document which authorizes
6 the delivery of specified merchandise or the rendering of
7 certain services and the making of a charge for them.

8 (45) "Registered warrant" means a warrant which is
9 registered by the finance administrator for future payment
10 because of present lack of funds and which is to be paid in
11 the order of its registration.

12 (46) "Requisition" means a written demand or request,
13 usually from one department to the purchasing officer or to
14 another department, for specified articles or services.

15 (47) "Reserve" means an account which records a portion
16 of the fund balance which must be segregated for some future
17 use and which is, therefore, not available for further
18 appropriation or expenditure.

19 (48) "Resources" means the actual assets of a local
20 government such as cash, taxes receivable, land, buildings,
21 and other assets, plus contingent assets such as estimated
22 revenues applying to the current fiscal year not accrued or
23 collected and bonds authorized and unissued.

24 (49) "Revenue" means designated additions to assets
25 which do not:

1 (a) increase any liability;

2 (b) represent the recovery of an expenditure;

3 (c) represent the cancellation of certain liabilities
4 without a corresponding increase in other liabilities or a
5 decrease in assets; and

6 (d) represent contributions of fund capital in
7 enterprise and intragovernmental service funds. The same
8 definition applies to those cases where revenues are
9 recorded on the modified accrual or cash basis, except that
10 additions would be partially or entirely to cash.

11 (50) "Shared revenue" means revenue which is levied by
12 one governmental unit but shared, usually in proportion to
13 the amount collected, with another unit of government or
14 class of government.

15 (51) "Special assessment" means a levy by a local
16 government on properties within its taxing jurisdiction,
17 situated in a local improvement district defined by the
18 governing body, to pay part or all of the cost of the
19 capital outlay for a publicly owned improvement or of the
20 current expense of a public service which is presumed to be
21 of special benefit to such properties.

22 (52) "Taxable value" means the percentage of the
23 assessed value of property of each class defined by law,
24 which is required by law to be used in ascertaining the rate
25 of taxation to be extended upon all taxable property within

the taxing jurisdiction of a local government in order to produce the amount of taxes levied by it upon such property for collection in any fiscal year.

(53) "Warrant" means an order drawn by the finance administrator upon a fund of a local government, directing payment of a specified amount from that fund to a named person or to the bearer. A warrant is not a check but may be made a "check/warrant" by being printed on the same piece of paper as a check on a specified depository bank, payable to the warrant payee or order, which may be signed by the fiscal administrator if there is sufficient money on deposit in that bank applicable to expenditures of the fund on which the warrant is drawn. As used in this title, "warrant" shall include "check/warrant".

Part 2

Budget and Appropriation

47A-9-201. Purpose. It is the intent of the legislature to authorize and encourage the transition to a program and performance budgeting system.

47A-9-202. Budget administrator. The authority to prepare the budget is vested in the officer or officers specified in the form of government. Such officer or officers are designated the budget administrator.

47A-9-203. Fiscal year defined. The fiscal year of all local governments shall begin July 1 and end June 30.

47A-9-204. Transition. Local government budgets for fiscal year 1978 shall be adopted under the procedures provided in Title 16, chapter 19; Title 11, chapter 14; and rules promulgated by the department of community affairs; but budgets so adopted shall be based on the sources of revenue provided in this title and administered under the provisions of this title.

47A-9-205. Budget information and estimates. (1) On or before April 1, the budget administrator shall issue a statement of governmental goals and objectives and obtain from each department head his estimate of resources and expenditures for the following fiscal year, a departmental statement of goals and objectives, and other information required for budget preparation.

(2) The department of community affairs shall report to each local government budget administrator on or before April 15 an estimate of all state-shared revenues and grants that will be distributed to the local government in the ensuing local government fiscal year.

47A-9-206. Budget preparation. (1) Each local government shall adopt an annual budget which presents a complete financial plan for the ensuing fiscal year.

(2) The budget shall set forth:

(a) all proposed appropriations of each department or program including publicly-owned utilities and enterprises;

(b) the appropriations and actual or estimated expenditures and resources from the 2 preceding fiscal years;

(c) all debt redemptions and interest charges during the budget year;

(d) proposed appropriations for capital projects to be undertaken or executed during the budget year;

(e) all anticipated revenue and all other resources;

(f) proposed contingency funds; and

(g) proposed reserves.

(3) The budget administrator shall prepare a budget message to be submitted with the proposed budget. The budget message shall include:

(a) a statement of department goals and objectives and a statement of goals and objectives for each program;

(b) an evaluation of how effective each program has been in the past and the apparent reason for the level of success attained;

(c) a general summary setting forth the aggregate figures of the proposed budget and matching proposed appropriations and anticipated resources;

(d) a statement contrasting the proposed budget appropriations, resources, and expenditures for the 2 preceding fiscal years; and

(e) explanatory material which classifies the proposed

program appropriations by fund, function, activity, object, and department and anticipated resources by source.

(4) The budget may anticipate the collection of delinquent taxes, and anticipated tax revenue may be reduced by anticipated delinquent taxes.

(5) The budget may include funds for contingencies. These funds may be appropriated only by resolution.

(6) The budget may include a reserve to meet expenditures to be made during the months of July and November. The reserve may not exceed one-third of the total proposed budget and may not exceed any mill levy limitation imposed by state law, charter, or ordinance.

47A-9-207. Submission and public hearing. (1) The budget administrator shall submit the proposed budget to the local government governing body on or before the first Monday of June.

(2) Upon receipt of the proposed budget, the governing body of the local government shall publish notice including:

(a) a statement that the proposed budget is available for distribution and inspection at the office of the local government;

(b) a summary of the proposed budget showing the balanced relationship between the total proposed expenditures and total anticipated revenue, anticipated mill levies, and comparative information for the 2 preceding

1 fiscal years;

2 (c) the date, time, and place of the public hearing on
3 the proposed budget; and

4 (d) a statement that the governing body shall adopt a
5 budget on or before June 30.

6 (3) The public hearing shall be held on or before the
7 third Monday of June and prior to the adoption of the
8 budget.

9 (4) The above notice shall contain the necessary
10 information in order to comply with Title 84, chapter 72.

11 47A-9-208. Adoption of budget. (1) The governing body
12 shall review the proposed budget and at its discretion may
13 revise the budget.

14 (2) After consideration the governing body shall by
15 resolution adopt a budget on or before June 30.

16 (3) Expenditures authorized by the budget shall not
17 exceed anticipated resources.

18 (4) The resolution adopting the budget shall be
19 considered as the appropriation for the ensuing fiscal year.

20 (5) The approved budget shall be reproduced and made
21 available for general distribution.

22 47A-9-209. Fixing levies. On or before the second
23 Monday in August and after the adoption of the budget, the
24 governing body shall fix by resolution each property tax
25 levy at a rate, not exceeding limits prescribed by law or

1 charter, that will raise the amount set out in the budget as
2 the amount necessary to be raised by property taxes during
3 the ensuing fiscal year.

4 47A-9-210. Filing of budget. The chief executive shall
5 file a certified copy of the adopted budget and mill levies
6 with the department of community affairs within 30 days
7 after the adoption of the budget and a certified copy of the
8 mill levies with the county finance administrator no later
9 than 7 days after the fixing of the tax levies.

10 47A-9-211. Unexpended appropriations. (1) After June
11 30 of each fiscal year, all unexpended appropriations,
12 except encumbered moneys, shall revert to the account from
13 which originally appropriated and may not be expended until
14 reappropriated.

15 (2) When the governing body determines by ordinance
16 that the purpose for which a separate fund was established
17 no longer exists, the governing body may eliminate the fund
18 and the net resources shall be deposited as miscellaneous
19 revenue to the general fund of the local government, in
20 compliance with rules adopted by the department of community
21 affairs. This procedure shall not apply to the combining of
22 funds.

23 47A-9-212. Appropriation transfers. (1) Within a
24 program or department the chief executive may revise and
25 transfer appropriations.

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1 (2) The governing body may approve the reallocation of
2 appropriations between departments and programs by
3 resolution.

4 (3) The governing body may rescind or defer any
5 appropriation in whole or in part by resolution. Rescinded
6 appropriations may be transferred to the contingency fund.

7 47A-9-213. Budget amendment. (1) If the authorization
8 of bonds pursuant to chapter 9, part 5, is made after the
9 adoption of the budget, it is an appropriation of the
10 proceeds of the bonds to the purpose for which they are
11 authorized to be issued and an appropriation of the taxes,
12 special assessments, or revenues pledged for the payment
13 thereof, with interest and redemption premiums. The
14 appropriation shall be entered into the approved budget as
15 an amendment.

16 (2) The governing body may by resolution amend the
17 budget during any fiscal year by authorizing additional
18 expenditures of funds received or assured from loans or
19 grants in excess of revenues anticipated in the original
20 budget.

21 (3) After notice, the governing body shall hold a
22 public hearing on all proposed budget amendments as provided
23 in subsection (2) of this section.

24 (4) Revenues may not be expended in excess of the
25 amount originally budgeted until a budget amendment is

1 adopted as provided by subsections (1) and (2) of this
2 section.

3 47A-9-214. Emergency appropriations. (1) In the case
4 of an emergency which was not foreseen at the time of the
5 adoption of the budget, the governing body may by resolution
6 authorize additional appropriations by two-thirds vote of
7 the whole governing body.

8 (2) The authorizing resolution shall be published once
9 and shall be included with facts concerning the emergency in
10 the minutes of the meeting at which the governing body
11 adopted the resolution.

12 47A-9-215. Financing for emergency appropriations. (1)
13 In the case of an emergency appropriation, the governing
14 body shall transfer from any unencumbered appropriation any
15 resources which, in the judgment of the governing body, will
16 not be needed for expenditures in the balance of the fiscal
17 year to the fund from which the emergency expenditure is to
18 be paid.

19 (2) If sufficient resources which can be transferred
20 are not available to meet the authorized emergency
21 appropriation, the governing body may register warrants. The
22 total amount of the registered warrants shall not exceed the
23 amount that can be raised by a 2-mill levy. An appropriation
24 to retire these registered warrants shall be included in the
25 budget for the ensuing fiscal year.

(3) The governing body may apply under 79-2501 for state financial assistance when it has agreed to utilize the special emergency mill levy authorized by 47A-9-404 and the emergency is beyond the financial capability of the local government.

47A-9-216. Reports. (1) On or before November 1, the chief executive of the local government shall submit to the department of community affairs and the governing body a certified annual financial report in the form prescribed by the department of community affairs.

(2) The governing body shall publish the certified annual financial report upon its receipt.

(3) The governing body shall publish a quarterly financial report in a form approved by the department of community affairs.

47A-9-217. Interim budget. In case the adoption of the budget resolution is delayed until after July 1, the governing body shall pass a continuing resolution for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local government for the interval between the beginning of the fiscal year and the adoption of the budget resolution. Interim appropriations so made shall be charged to the proper appropriations in the budget resolution.

Part 3

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Local Government Financial Administration

47A-9-301. General provisions. (1) The governing body shall allocate the responsibilities for financial administration established by this chapter by ordinance.

(2) All of the responsibilities of the finance administrator may be allocated to a single department or elected officer, or they may be allocated to separate department heads or elected officers.

(3) Any allocation for responsibility for financial administration shall provide for internal controls.

(4) The finance administrator shall perform the duties of the treasurer as provided by law.

(5) The county treasurer and county clerk and recorder and county auditor, if there is an elected auditor, shall continue to perform their respective financial duties as required by previous law until an ordinance is adopted allocating the responsibilities of the finance administrator.

47A-9-302. Trust and agency. (1) The county governing body shall provide by ordinance for the administration of school finance functions that are a responsibility of the county as required by law.

(2) (a) The governing body shall provide by ordinance for the collection, security, and disbursement by the finance administrator of state, municipal, authority, and

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1 other moneys as provided by law or ordinance.

2 (b) Trust and agency moneys received by the finance
3 administrator for other governmental entities shall be
4 transmitted on a timely basis.

5 (3) The municipal governing body may, by interlocal
6 agreement, contract with the county for the provision of
7 municipal financial administration.

8 47A-9-303. Accounting and reporting. The finance
9 administrator shall be responsible for:

10 (1) operation of the uniform budgeting, accounting,
11 and reporting systems specified by the department of
12 community affairs;

13 (2) providing information on financial transactions to
14 the chief executive and the governing body at their request;

15 (3) keeping a record showing revenues received by the
16 local government;

17 (4) keeping a record showing resources appropriated by
18 the adopted budget and the warrants drawn against the
19 appropriations;

20 (5) keeping a record of the transfer of appropriations
21 and of any authorized emergency appropriations;

22 (6) keeping records showing at all times the
23 unexpended balance in each of the budgeted funds;

24 (7) submitting a monthly report to the governing body
25 showing the revenues and expenditures to date and the

1 unexpended balance in each of the appropriated funds;

2 (8) submitting the annual financial report to the
3 chief executive on or before November 1; and

4 (9) providing the budget administrator with
5 information on resources, revenues, expenditures, and debt
6 necessary for preparation of the proposed budget.

7 47A-9-304. Cash management. (1) Beginning with the
8 fiscal year 1981, the finance administrator shall prepare
9 and submit to the chief executive a cash management plan by
10 October 1 of each fiscal year.

11 (2) The department of community affairs shall provide
12 local governments technical assistance on request in the
13 administration of cash management plans.

14 47A-9-305. Treasury functions. (1) The finance
15 administrator shall be responsible for and may delegate the
16 duties of:

17 (a) receiving and accounting for all moneys received
18 by the local government;

19 (b) providing a receipt for all moneys received by the
20 local government;

21 (c) custody of moneys and securities of the local
22 government;

23 (d) disbursement of moneys of the local government
24 upon proper authorization, including the payment of all
25 warrants presented for payment in the order in which they

1 are presented, when there are sufficient moneys in the fund;
2 and

3 (e) maintaining the integrity of bond and other
4 dedicated funds.

5 (2) As authorized by law or ordinance, local
6 government departments and officers may receive and account
7 for moneys paid to the local government.

8 (a) Each officer or department shall provide a receipt
9 for all moneys received.

10 (b) All moneys collected by any other officer or
11 department shall be deposited on a timely basis with the
12 finance administrator.

13 47A-9-306. Deposit and investment of public moneys.

14 (1) The finance administrator of each local government shall
15 deposit all public moneys in his possession or under his
16 control in a bank, building and loan association, or savings
17 and loan association subject to state or national inspection
18 and designated by resolution of the governing body.

19 (2) The finance administrator may provide for the
20 investment of public moneys not necessary for immediate use
21 by the local government in any of the following manners:

22 (a) in time or savings deposits with any bank,
23 building and loan association, or savings and loan
24 association subject to state or national inspection. Such
25 deposits may be made either:

1 (i) on a pro rata basis, based on the amount of
2 property tax paid in the preceding year, in all such
3 institutions which are willing to accept public moneys and
4 are located within the local government; or

5 (ii) on the basis of bids by the institutions within
6 the county, provided that if there are less than two
7 institutions within the county, the governing body may
8 solicit bids from institutions in adjoining counties. If an
9 institution located within the local government agrees to
10 pay the same rate of return as an institution outside the
11 local government, the funds shall be deposited with the
12 institution within the local government.

13 (b) in any of the securities enumerated in 79-310; or

14 (c) in the state investment fund as provided in
15 79-311.

16 (3) (a) No deposits of public moneys may be made in
17 any bank, building and loan association, or savings and loan
18 association until the governing body has approved securities
19 equal to the amount of deposits in excess of the amount
20 insured by federal law.

21 (b) The governing body shall approve as security only
22 items enumerated in 79-307.

23 (c) Securities for local government deposits shall be
24 delivered to the finance administrator of the local
25 government, except that when negotiable securities are

1 furnished, the securities may be placed in trust and the
2 trustee's receipt may be accepted when the receipt is in
3 favor of the local government and the state of Montana. The
4 department of community affairs shall approve the form for
5 the receipts, the quality of securities, and their release.

6 (d) All negotiable securities must be properly
7 assigned or endorsed in blank, unless payable to bearer.

8 (e) The governing body upon acceptance and approval of
9 securities shall make a complete entry of the acceptance and
10 approval in the minutes and shall reapprove the securities
11 at least quarterly thereafter, or the governing body may
12 delegate the responsibility of the approval of securities to
13 the finance administrator. The finance administrator shall
14 report to the governing body the securities accepted on a
15 quarterly basis.

16 (4) Interest on local government moneys invested shall
17 be taken up into its accounts in the manner provided by
18 ordinance; except that interest on the proceeds of bonds and
19 on moneys held in the debt service fund and in other trust
20 and agency funds shall be credited to those funds. In the
21 event that any such funds are combined in deposit accounts
22 or investments with other funds, a proper portion of the
23 income from such deposits and investments shall be allocated
24 to each such fund in proportion to the average amount of
25 assets thereof deposited or invested during each fiscal

1 year.

2 (5) When public moneys have been invested or deposited
3 as provided, neither the finance administrator nor the
4 governing body or its members shall be liable for any loss
5 occasioned through causes other than their neglect, fraud,
6 or dishonorable conduct.

7 (6) The department of community affairs and the
8 department of administration shall provide a local
9 government assistance on request in the investment of public
10 moneys.

11 (7) Interest requirements shall comply with the
12 provisions of 79-302.

13 47A-9-307. Petty cash. (1) The finance administrator
14 may, with the consent of the governing body, establish a
15 petty cash fund for the purpose of paying incidental
16 expenses as provided by ordinance.

17 (2) Each department shall provide the finance
18 administrator an accounting of the expenditures from the
19 account on a monthly basis. The account may be replenished
20 at the discretion of the finance administrator.

21 47A-9-308. Expenditures. (1) The finance administrator
22 of each local government shall be responsible for the proper
23 expenditure of appropriations.

24 (2) No contract, requisition, purchase order, or
25 agreement requiring the payment of money may be made unless

1 an appropriation appears in the budget for the current
2 fiscal year or has been made by the authorization of bonds
3 or a grant and a sufficient unencumbered balance remains in
4 the appropriation.

5 (3) All invoices shall be paid by the issuance of a
6 warrant. The form of the warrant shall be approved by the
7 department of community affairs.

8 (4) All invoices shall be verified prior to their
9 submission to the finance administrator by the officer or
10 employee charged with administering that portion of the
11 appropriation to which it is to be charged that goods or
12 services were received by the local government.

13 (5) Warrants issued by the local government shall be
14 valid for only 1 calendar year from the date of the issuance
15 of the warrant by the local government. This provision shall
16 not apply to registered warrants issued by the local
17 government.

18 (6) All warrants shall be signed and issued by the
19 finance administrator and countersigned by the chief
20 executive or by the chairman in the commission form.

21 (7) (a) When any warrant is presented to the finance
22 administrator for payment and there are insufficient moneys
23 in the funds in the account on which the warrant was drawn,
24 he shall register the warrant.

25 (b) The finance administrator shall endorse on the

1 warrant "not paid for insufficient moneys", the date of
2 presentation, and sign his name. From the date of
3 presentation until it is called for payment, the warrant
4 shall bear interest at a rate fixed by resolution.

5 (c) The finance administrator shall record the date of
6 presentation, the number, the date of the warrant, to whom
7 payable, the fund on which drawn, and the amount of the
8 warrant.

9 (d) Registered warrants shall be paid in order of
10 registration, and no subsequent warrants may be paid from
11 the same fund unless all registered warrants are paid.

12 (e) When there are sufficient moneys in the local
13 government treasury applicable to the payment of any
14 registered warrants, the finance administrator shall give
15 notice that he is ready to pay the registered warrants or
16 check personally or by certified mail to the payee or
17 assignee. From the time of notice the registered warrants
18 will cease to draw interest.

19 (f) Warrants issued for the payment of the local
20 government payroll shall be drawn by the finance
21 administrator on the order of the chief executive.

22 (g) The governing body may by resolution enter into an
23 agreement with a depository institution for the purchase of
24 registered warrants at par, at an agreed interest rate not
25 exceeding the contract usury rate provided by law. The rate

1 may be related to the rate charged by the institution from
2 time to time to prime commercial borrowers and may vary with
3 that rate from month to month. The depository institution
4 may enter into agreements with other financial institutions,
5 within or outside the county or state, for participating in
6 such financing.

7 (h) No warrant shall be required or issued for the
8 payment of interest or principal of bonds when due or the
9 charges of paying agents for bonds. Amounts sufficient for
10 these payments shall be withdrawn from the debt service fund
11 and transmitted by the finance administrator to the paying
12 agent on or before the due dates.

13 (8) (a) Local governments are encouraged to use
14 purchase orders for all purchases except for purchases made
15 from petty cash. Purchase orders may be issued directly,
16 following solicited bids, or following public bids.

17 (b) A purchase order may be issued by the chief
18 executive or other officer or employee of the local
19 government whom the chief executive designates the
20 purchasing administrator.

21 47A-9-309. Purchasing. (1) A local government may make
22 direct purchases not exceeding \$5,000.

23 (2) (a) A local government may make purchases
24 exceeding \$5,000 and not exceeding \$10,000 only after
25 solicitation of bids.

1 (b) The local government may compile a list of
2 persons, firms, or corporations from whom they wish to
3 receive solicitations for bids. Any person, firm, or
4 corporation may file with the governing body of the local
5 government a request for solicitations, stating which items
6 or types of items it is interested in bidding on. Whenever
7 an item listed is to be purchased by solicited bid, the
8 governing body may notify such persons, firms, or
9 corporations as it has entered and maintained on its list of
10 prospective bidders.

11 (c) If a person, firm, or corporation which has
12 requested notice of solicitations fails for a period of 1
13 year to respond to any solicitations, the request for
14 solicitations may be cancelled by the local government.

15 (d) The local government may solicit bids from other
16 persons, firms, and corporations which have not requested
17 solicitations. Except as provided in 47A-9-310 and subject
18 to the governing body's right to reject any or all bids, the
19 purchase shall be made from the lowest and most responsible
20 bidder. If the lowest bid is not accepted, the reasons shall
21 be entered in the minutes.

22 (3) (a) A local government may make purchases of more
23 than \$10,000 only after public bid.

24 (b) The governing body shall give notice calling for
25 bids on all purchases required to be by public bid and may

1 also give notice in such trade journal or journals as the
2 governing body may consider advisable. The notice shall
3 describe in general terms the item or items to be purchased,
4 state where a copy of the detailed description may be
5 obtained, and state the last date on which the bid will be
6 accepted. When the item to be purchased is work and
7 materials required for a construction project, plans and
8 specifications for it shall be approved by the governing
9 body and made available to all bidders at a place or places
10 designated in the notice. No changes shall be made in plans
11 and specifications referred to in the notice, except by
12 addendum furnished to all persons who have requested plans
13 and specifications.

14 (c) The purchase shall be made from the lowest and
15 most responsible bidder subject to the requirements of
16 47A-9-310, except that the governing body may reject any or
17 all bids. If the lowest bid is not accepted, the reasons
18 shall be entered in the minutes.

19 (4) The governing body may, in its discretion, use
20 solicited bids for purchases of less than \$5,000 and public
21 bids for purchases of less than \$10,000.

22 (5) Local governments shall not circumvent the
23 provisions of this section by dividing into several parts a
24 purchase which constitutes an integral whole.

25 (6) Bids and tenders shall comply with 6-501.

1 (7) The governing body may by motion approve the
2 purchase of an item or items of any kind from federal and
3 state agencies and local governments.

4 (8) The purchasing administrator may enter into an
5 agreement with the department of administration to utilize
6 the services of the state purchasing bureau.

7 (9) A contract for the rental or lease of any item or
8 items which provides that after a certain fixed amount has
9 been paid on the contract the item or items become the
10 property of the local government shall be considered a
11 contract for the purchase of the item or items.

12 (10) Before entering upon performance of the work, the
13 contractor shall comply with the requirements of 6-401
14 through 6-404.

15 (11) Partial payments may be provided for in the
16 contract and paid upon approval of the officer or employee
17 of the governing body in charge of the project.

18 (12) A contract shall not be completed until the
19 governing body accepts by resolution all of the work
20 required by the contract.

21 (13) All contracts shall contain the freedom from
22 discrimination clause required by 64-319.

23 47A-9-310. Contractors, materials, and labor. (f) All
24 contracts awarded shall comply with the requirements of
25 Title 4, chapter 7, and Title 82, chapter 19, in regards to

1 preference of Montana contractors, materials, and labor.

2 (2) When there is no prevailing rate of wages set by
3 collective bargaining, the governing body shall determine
4 the prevailing rate to be stated in the contract.

5 47A-9-311. Exempt purchases. (1) Personnel may be
6 employed in the manner provided in chapter 4, part 1, of
7 this title.

8 (2) Legal, engineering, and other professional and
9 technical services may be purchased without complying with
10 47A-9-309.

11 (3) Real estate may be purchased without complying
12 with 47A-9-309.

13 47A-9-312. Property control. The chief executive of
14 the local government shall annually conduct a physical
15 inventory of the fixed assets of the local government.

16 47A-9-313. Sale and lease of property. (1) A local
17 government may sell, lease, exchange, or otherwise dispose
18 of any interest in either real or personal property acquired
19 other than by tax deed.

20 (2) The governing body shall approve all sales,
21 leases, exchanges, or other dispositions of local government
22 property by resolution.

23 (3) (a) If the property interest to be sold, leased,
24 exchanged, or otherwise disposed of has an estimated value
25 of more than \$500, the governing body shall have the

1 property appraised and give notice of the sale, lease,
2 exchange, other disposition, the terms, and that bids will
3 be accepted on the property.

4 (b) At the regular meeting of the governing body
5 following the closing of bids, the governing body shall
6 examine the bids offered and order the property sold or
7 leased to the highest or most responsible bidder. The
8 governing body may reflect any or all bids.

9 (4) Subsection (3) shall not apply to a sale, lease,
10 or exchange to or between two political subdivisions of the
11 state or between a local government and a state or federal
12 agency or to a sale or exchange which is made as a part of a
13 contract to purchase similar property by the local
14 government or to a lease which is approved by a two-thirds
15 vote of the entire governing body.

16 (5) The governing body may establish by ordinance a
17 schedule of rents and charges for the use of public
18 property.

19 (6) A local government shall not circumvent the
20 provisions of this section by dividing into several sales
21 any transaction which constitutes an integral whole.

22 (7) Proceeds from the sale, lease, or other
23 disposition of property shall be taken up into the accounts
24 from which the property was purchased unless otherwise
25 provided by ordinance.

47A-9-314. Excess expenditures not liability of local government, personal liability of officer. Liabilities incurred in excess of any of the budget appropriations are not a liability of the local government; but the official or employee making or incurring the expenditure in an amount known by him to be in excess of the unencumbered balance of the appropriation against which it is drawn is liable personally and upon his official bond.

Part 4

Sources of Revenue for Local Governments

with General Government Powers

47A-9-401. Purpose. It is the purpose of this chapter to grant local governments with general government powers authority to finance local government services and facilities.

47A-9-402. Funding of mandated state services and facilities. (1) Any law enacted by the legislature after January 1, 1979, which imposes additional costs on a local government to provide a service or facility must provide a specific means to finance the service or facility other than the existing all-purpose mill levy. Any law that fails to provide a specific means to finance any service or facility other than the existing all-purpose mill levy shall not become effective until specific means of financing are provided by the legislature.

(2) The legislature may provide for an increase in the all-purpose mill levy, special mill levies, or remission of moneys by the state of Montana to local governments; however, an increase in the all-purpose mill levy or any special mill levy must provide an amount necessary to finance the additional costs, and if financing is provided by remission of moneys by the state of Montana, the remission shall bear a reasonable relationship to the cost of providing the service or facility.

(3) The local government may refuse to comply with or enforce any law which does not meet the requirements of this section by resolution.

(4) This section shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

(5) No subsequent legislation shall be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that the legislation shall do so expressly.

47A-9-403. Sources of revenue. Local governments with general government powers are authorized to finance any services and facilities from:

(1) taxes;

(a) The governing body may impose only those taxes authorized by state law.

1 (b) The taxes shall be levied and collected as
2 provided by state law.

3 (2) licenses and permits;

4 (a) The governing body may by ordinance provide for
5 the licensing of any occupation, business, and industry that
6 affects the general health, safety, well-being, or welfare
7 of its inhabitants and may issue permits for activities
8 subject to local government regulation.

9 (b) The governing body shall establish by ordinance
10 the amount for each kind or class of license or permit, the
11 manner in which licenses and permits are issued and revoked,
12 and the penalties for failure to comply with license and
13 permit requirements.

14 (c) The fee for licenses or permits shall be
15 reasonably related to the costs of regulating the activity
16 license.

17 (3) intergovernmental revenues;

18 (a) The governing body may receive, budget, and
19 appropriate grants, shared revenues, and payments-in-lieu of
20 taxes.

21 (b) Intergovernmental revenues may be expended only
22 for specified purposes.

23 (4) fees and charges for services;

24 (a) The governing body may impose a charge by
25 ordinance for any service which it provides and provide a

1 method of collection. Charges for services may be entered on
2 tax notices to be collected with other taxes. If a property
3 owner fails to pay the charge for service, it shall become a
4 lien on the property.

5 (b) The charges may be used to recover all or any part
6 of the cost of providing the services. The governing body
7 may establish differing charges for various classes of
8 users.

9 (c) Service charges shall be established at a rate or
10 rates which are reasonably calculated to recover no more
11 than the cost of providing the service and are not
12 discriminatory. Schedules of charges shall be submitted to
13 the public service commission when required by law. In
14 determining the cost of providing a service, the governing
15 body may include such items as actual operating expenses,
16 debt retirement, replacement of equipment or physical
17 plants, reserves, and general administrative costs.

18 (d) The governing body may impose and establish
19 charges for the provision of specific services delivered to
20 public and private tax-exempt entities.

21 (e) The governing body shall by ordinance provide for
22 the procedure for the administration of fees and charges for
23 services delivered to public and private tax-exempt
24 entities. The ordinance shall be adopted prior to the
25 beginning of the fiscal year.

1 (f) It is the duty of each officer, employee, or
2 department entitled to collect fees or service charges to
3 keep posted and have available a plain and legible statement
4 of fees and service charges allowed by law or ordinance.

5 (5) fines and forfeitures;

6 (a) The governing body may by ordinance establish
7 fines for the violation of ordinances.

8 (b) The governing body may receive, budget, and
9 appropriate fines and forfeitures authorized by ordinance or
10 state law.

11 (c) The governing body may provide for the forfeiture
12 of performance bonds and other deposits by ordinance.

13 (6) interest earning;

14 (a) The governing body may budget and appropriate
15 interest earnings on public moneys.

16 (b) Interest earnings shall be credited to the account
17 from which the interest was accrued, unless otherwise
18 provided by ordinance.

19 (7) rents, leases, and royalties;

20 (a) The governing body may by ordinance establish a
21 policy for the renting or leasing and receipt of royalties
22 for local government equipment, facilities, and property.

23 (b) The governing body may by resolution establish
24 rents and lease and rent schedules for local government
25 equipment, facilities, and property.

1 (c) The governing body may budget and appropriate the
2 proceeds from rents, leases, and royalties due the local
3 government.

4 (8) special assessments;

5 (a) The governing body may levy a special assessment
6 against the property within a local improvement district.

7 (b) The special assessment within a local improvement
8 district shall not exceed the amount established in the
9 payment plan adopted under 47A-3-427.

10 (c) Special assessments shall be a lien against the
11 property.

12 (9) sales of and compensation for loss of fixed
13 assets;

14 (a) The governing body may receive, budget, and
15 appropriate from the sale of fixed assets and proceeds from
16 compensation for loss of fixed assets.

17 (b) Compensation for loss of fixed assets shall be
18 deposited to the fund from which the lost asset was
19 purchased.

20 (10) public enterprise charges;

21 (a) The governing body may receive, budget, and
22 appropriate proceeds of public enterprises only for
23 enterprise purposes, except as provided herein.

24 (b) The governing body may provide for the
25 reimbursement of public enterprise costs subsidized by

1 general government revenue by ordinance.

2 (c) Any moneys not necessary for the operation,
3 maintenance, or service of debt may be transferred to the
4 general fund by ordinance.

5 (11) contributions and donations from private sources;

6 (a) The governing body may receive, budget, and
7 appropriate contributions and donations from private
8 sources.

9 (b) The governing body may comply with any condition
10 of the contribution or donation that is not contrary to the
11 public interest.

12 (12) premiums on bonds sold and proceeds from sale of
13 bonds;

14 (a) The governing body may receive, budget, and
15 appropriate premiums on bonds sold, proceeds from the sale
16 of bonds, and accrued interest, if any.

17 (b) Proceeds from bond premiums, the sale of bonds,
18 and accrued interest, if any, shall be expended only for the
19 purposes for which the bonds were authorized or for the
20 retirement of the debt.

21 47A-9-404. Property taxes. (1) A local government is
22 granted the authority to impose ad valorem taxes on real and
23 personal property within the boundary or municipal limits of
24 the local government.

25 (2) Property taxes shall be levied against the taxable

1 value of the property as established and equalized by the
2 state.

3 (3) The governing body of a local government with
4 general government powers is authorized to levy the
5 following property taxes each fiscal year:

6 (a) (i) for counties, an all-purpose tax not exceeding
7 55 mills;

8 (ii) for municipalities, an all-purpose tax not
9 exceeding 65 mills [75 mills];

10 (b) for counties, a tax for constructing, maintaining,
11 and improving trafficways except bridges not exceeding 18
12 mills. This tax shall not be levied in municipalities unless
13 the governing body of the municipality has authorized the
14 county to levy the tax in lieu of a municipal appropriation
15 from the all-purpose tax levy for trafficways.

16 (c) for counties and municipalities, a tax for paying
17 the interest and principal due during the fiscal year and
18 reserves as necessary on each series or issue of outstanding
19 general obligation bonds. The levy must be high enough to
20 raise an amount sufficient to pay all interest and principal
21 of the bonds as will become due and payable during the
22 ensuing fiscal year and to establish reserves as necessary.

23 (d) for counties and municipalities, a tax for paying
24 any judgment against the local government if there are
25 insufficient moneys available from the all-purpose tax to

1 pay the judgment. Payments for judgment may be prorated for
2 a period of 3 years from its presentation.

3 (e) for counties and municipalities, a tax to maintain
4 a local improvement district revolving fund at an amount not
5 exceeding the maximum amount of the principal and interest
6 on outstanding local improvement bonds in any fiscal year;

7 (f) for counties and municipalities, a tax to pay
8 premiums for comprehensive insurance as authorized in
9 82-4309;

10 (g) for counties and municipalities, a tax not
11 exceeding 4 mills for the fire department relief association
12 fund when the cash balance of the fund is less than 2% of
13 the taxable value of the property within the local
14 government;

15 (h) for municipalities, a tax not exceeding 3 mills
16 for the police reserve fund if the obligations against the
17 fund cannot be met by the all-purpose mill levy;

18 (i) for counties and municipalities, a tax to finance
19 services provided in subordinate service districts levied
20 only on property within the district not to exceed the
21 maximum mill levy established by the ordinance creating the
22 district;

23 (j) for counties and municipalities, a tax not
24 exceeding the amount or the mill levy limit established by
25 vote of the electors on a voted mill levy approved by the

1 electors in a special or general election. The voted levy
2 may exceed the statutory mill levy limits for either the
3 county or municipality. The voted property tax mill levy
4 shall be in effect for the period of time approved by the
5 electors.

6 (k) for counties and municipalities, a tax not
7 exceeding 2 mills for emergency purposes as authorized in
8 47A-9-215.

9 47A-9-405. Local income tax. (1) (a) Any county with
10 general or self-government powers is authorized to impose a
11 local income tax on its residents and on all other persons
12 earning or receiving income from activities carried out in
13 the county not exceeding 20% of an individual's state income
14 tax liability.

15 (b) The income tax may be imposed or repealed only
16 after an affirmative vote of the electors of the county.

17 (c) The question may be presented to the electors of
18 the county by:

19 (i) a petition of the electors of the county;

20 (ii) a resolution of a governing body of a municipality
21 of the county; or

22 (iii) a resolution of the governing body of the county.

23 (d) Upon the receipt of a petition or a resolution
24 requesting the local income tax, the question on the local
25 income tax shall be placed on the ballot of the next

1 regularly scheduled countywide election by the county
2 governing body.

3 (e) The question shall be presented in substantially
4 the following form:

5 FOR the local government income tax.

6 AGAINST the local government income tax.

7 (f) The question of the imposition of the income tax
8 may not be placed before the electors more than one time in
9 any one fiscal year.

10 (2) (a) The rate of the income tax shall be determined
11 by ordinance, or the rate may be determined by the electors
12 when voting on the question. The governing body of the
13 county shall certify the rate of the tax to the department
14 of revenue on or before October 1.

15 (b) The governing body of a county imposing an income
16 tax, with the consent of the governing bodies of the
17 municipalities of the county, may suspend for any fiscal
18 year the collection of the county income tax only after
19 first giving at least 120 days notice of the suspension to
20 the department of revenue. The suspension shall be
21 effective the first day of the next calendar year. The
22 suspension shall not impair the authority of the county to
23 impose the tax in subsequent years.

24 (c) Any portion or all of the proceeds of the income
25 tax may be utilized for the reduction of property taxes in

1 the local government.

2 (3) (a) The local income tax shall be administered by
3 the department of revenue under rules adopted by the
4 department. The rules for the administration of the state
5 income tax shall apply to the local income tax except when,
6 in the judgment of the department of revenue, the rules
7 would be inconsistent or not feasible for proper
8 administration.

9 (b) The department of revenue is authorized to make
10 refunds to taxpayers pursuant to this title.

11 (c) Moneys collected pursuant to this title shall be
12 accounted for separately and shall be credited to a separate
13 local income tax account which is hereby established in the
14 state treasury.

15 (d) The department of revenue may deduct from the
16 moneys collected an amount not exceeding 1% to cover
17 necessary costs incurred by the department in administering
18 the local income tax.

19 (4) (a) In the case of a nonresident, the local income
20 tax liability shall be limited solely to his place of
21 employment or business, provided such jurisdiction imposes a
22 local income tax. One-half of the tax imposed by the
23 jurisdiction of employment or business shall be credited by
24 the department of revenue to the nonresident's place of
25 residence provided the jurisdiction also imposes the local

1 income tax.

2 (b) In the event the nonresident lives in a county
3 that does not impose a tax but earns income in a county that
4 does impose a tax, the department of revenue shall credit
5 the total net proceeds of the nonresident's tax liability
6 exclusively to the jurisdiction of employment or business.

7 (c) In the event the nonresident derives income in a
8 county that does not impose a local income tax but resides
9 in a jurisdiction which does impose such a tax, the
10 department of revenue shall credit the proceeds of the local
11 income tax exclusively to the jurisdiction of residence.

12 (5) All moneys collected pursuant to this section
13 shall be distributed by the department of community affairs
14 to the county of origin on a monthly basis after the
15 following deductions are made:

- 16 (a) the amount for refunds;
- 17 (b) a reserve for expected or anticipated refunds; and
- 18 (c) the costs of administering the tax.

19 (6) All revenues collected pursuant to this section
20 shall be credited to a special local income tax fund which
21 is hereby established in the state treasury. After deducting
22 the amount of refunds made, a reserve for expected or
23 anticipated refunds, and the costs of administering the tax,
24 the remaining sums shall be distributed by the department of
25 community affairs to the county of origin on a quarterly

1 basis.

2 (7) The county finance administrator shall distribute
3 the revenues according to the terms and conditions of an
4 interlocal agreement between the county and all
5 municipalities within the county. The interlocal agreement
6 shall be adopted by all the municipalities and the county
7 prior to the calling of the election.

8 (8) In the absence of an interlocal agreement, the
9 proceeds of the income tax shall be distributed in the
10 following manner:

11 (a) One-half of the proceeds shall be distributed
12 between the municipalities and county in a ratio based on
13 the total income tax collections in each jurisdiction. For
14 this purpose the municipality jurisdiction shall include all
15 taxpayers residing in the municipality. The county
16 jurisdiction shall include only taxpayers residing in the
17 county outside of municipalities.

18 (b) The remainder of the proceeds shall be distributed
19 to local governments in the county in the same proportion
20 that their populations bear to the county total. For this
21 purpose the population of the county shall include all
22 county residents including municipal residents and shall be
23 added to the population of the municipalities to calculate
24 the proportions.

25 (9) The department of community affairs shall provide

1 the necessary information for the proper distribution of the
2 revenues to the county finance administrator.

3 47A-9-406. Motor vehicle license fees. (1) A governing
4 body of a local government may by ordinance impose a license
5 fee up to 50% of the motor vehicle license fees established
6 in 53-122.

7 (2) The registrar of motor vehicles shall by rule
8 provide for the collection by counties of the license fee
9 and the distribution of proceeds to counties and
10 municipalities imposing the license fee.

11 (3) A county may impose the fee only in that portion
12 of the county that is not within a municipality, and a
13 municipality may impose the fee only within the
14 municipality.

15 (4) The revenue shall be used by the county and the
16 municipality for the construction and repair of trafficways
17 within their respective jurisdictions, maintenance within
18 their respective jurisdictions unless interlocal agreements
19 provide otherwise, enforcement of trafficway safety, driver
20 education, tourist promotion, and administrative collection
21 costs.

22 47A-9-407. Selective excise taxes. A governing body of
23 a local government with general or self-government powers
24 may impose the following selective excise taxes by
25 ordinance:

1 (1) (a) A tax on the use of hotel or motel facilities,
2 as defined in 34-302(d) and (e), shall not exceed 10% of the
3 room rental.

4 (b) The imposing local government shall provide for
5 the administration and the collection of this tax.

6 (2) (a) A tax on the purchase of fuels taxable under
7 Title 84, chapter 18, shall not exceed an amount equal to 2
8 cents for each gallon of fuel.

9 (b) The fuels tax shall be imposed countywide. The
10 distribution of the proceeds from the fuels tax shall be
11 according to the terms and conditions of an interlocal
12 agreement between the county and all the municipalities
13 within the county. The interlocal agreement shall be adopted
14 by the county and all municipalities prior to the imposition
15 of this tax.

16 (c) The proceeds of the tax shall be used in a manner
17 that is consistent with the provisions of Article VIII,
18 section 6, of The Constitution of the State of Montana.

19 47A-9-408. Intergovernmental revenues. (1) The
20 department of community affairs shall distribute to a local
21 government on a quarterly basis all state-shared revenues,
22 state grants, and payments-in-lieu of taxes.

23 (2) Any state agency that administers a program that
24 provides revenue to local governments shall provide the
25 necessary information to the department of community affairs

so that the revenue may be distributed by the department of community affairs in an efficient manner.

(3) All revenue that is to be distributed to local governments shall be placed in the necessary accounts to the credit of the department of community affairs to be distributed by the department in the manner or manners provided by law and on instructions of the responsible departments.

(4) Revenues received by a local government shall be expended only for those purposes provided by law.

(5) All state agencies shall notify the department of community affairs of any state or federal grants, shared revenues, or payments administered by the agency and distributed to a local government.

(6) The department of community affairs shall review and evaluate all state-aid programs to determine the extent that they meet fiscal, administrative, and program objectives.

(7) The department of community affairs shall evaluate and provide information on federal-aid programs, including direct federal-local-aid programs, in terms of their compatibility with state objectives and their fiscal and administrative impact on state and local programs.

Part 5

Debt Management

47A-9-501. Purpose. It is the purpose of this chapter to implement Article VIII, sections 10 and 11, of the Montana constitution by establishing limits on local government debt and providing procedures for incurring debt and utilizing proceeds from bond sales.

47A-9-502. General definitions. In this title, unless otherwise provided or the context requires a technical or other interpretation, the following definitions apply:

(1) "Bond" means an obligation of a local government to pay a fixed sum of money at a fixed future date. It does not include a payment under a purchase or lease contract.

(2) "General obligation bond" means a bond which is secured by the full faith and credit of a local government pledged for the principal and interest.

(3) "Local improvement bond" means a bond which is payable solely from the proceeds of special assessment levied for a local improvement district.

(4) "Project cost" means the expense of any or all of the following kinds of work and materials that are foreseen or subsequently ascertained to be necessary to accomplish the purpose or purposes for which bonds are authorized to be issued:

(a) acquisition of land, structures, fixtures, easements, and other interests in land, air, and water rights, including but not limited to the acquisition thereof

1 by eminent domain and the payment of damages for the
2 invasion thereof as determined by agreement or by a court in
3 eminent domain or other judicial proceedings;

4 (b) acquisition of machinery, equipment, furnishings,
5 and other personal property constituting capital items under
6 accepted accounting practice, whether or not included in a
7 construction contract;

8 (c) construction, including demolition,
9 reconstruction, remodelling, extension, addition, renting of
10 construction equipment, supply, and installation of
11 materials and equipment and, without limitation, any other
12 operation called for in plans and specifications and
13 furnished by a contractor or the local government for the
14 purpose of producing an improvement of a capital nature
15 under accepted accounting standards;

16 (d) the local government's agreed share of the
17 acquisition and construction of an improvement under an
18 agreement entered into by authority of the governing body
19 with one or more other local governments or the state or
20 federal government or an agency or instrumentality thereof;

21 (e) administration and supervision of a project by
22 officers and employees of the local government, including
23 but not limited to planning, engineering, accounting, levy
24 and collection of special assessments, inspection, hearings,
25 and bond issuance and payment; the cost of which may be

1 estimated and averaged among projects as a percentage of
2 other costs or may be accounted for in such other manner as
3 the governing body may determine reasonable to allocate a
4 proper share of the compensation of government employees to
5 time expended on project construction, assessment, and
6 financing;

7 (f) engineering, surveying, planning, testing, design,
8 accounting, legal, printing, publication, and other
9 professional service needed, other than that furnished by
10 government employees;

11 (g) interest, if any, estimated to accrue on all money
12 borrowed for the project, prior to the receipt of taxes,
13 special assessments, or revenues pledged to pay bonds issued
14 for the project; and

15 (h) without limitation, any other real or personal
16 property, the cost of which is of a capital nature under
17 accepted accounting standards.

18 (5) "Registered bond" means a bond whose owner is
19 registered with the issuing local government and which
20 cannot be sold or exchanged without a change of
21 registration. The bond may be registered as to principal and
22 interest or as to principal only.

23 (6) "Revenue bond" means a bond of a local government
24 which is secured by the revenues of a project pledged to
25 payment of the principal and interest on the bond.

(7) "Series" means all the bonds or notes to be sold and delivered at one time in respect to one project or to any two or more projects which have been combined for purposes of financing or where the bonds or notes have been combined for sale as provided in this title.

47A-9-503. Capital improvement program. (1) A local government may establish and amend by ordinance a capital improvement program which anticipates needed expenditures for acquisition or replacement of property, plant, or equipment, which costs in excess of \$5,000 and has a life expectancy of 5 years or more, or for the acquisitions of library materials.

(2) A capital improvement program may be financed by:

(a) allocating not more than 5% of each fund included in the capital improvement and replacement program to that fund's credit in the capital improvement program fund; and

(b) any other resources available to the local government.

(3) The ordinance establishing the capital improvement program shall state:

(a) the purposes for which the fund is created;

(b) the approximate periods of time during which the moneys are to be accumulated for each purpose;

(c) the approximate amounts to be accumulated for each purpose; and

(d) the sources from which moneys for each purpose will be derived.

(4) Appropriations from the capital improvement program fund shall be included in the annual budget.

47A-9-504. Debt incurred without a vote. A governing body by resolution may incur general obligation debts for capital acquisitions up to a total of \$40,000 for any service or function authorized by this title without submitting the question to the electors.

47A-9-505. Lease or installment purchases. (1) When the amount to be paid on a contract for a capital acquisition of real or personal property exceeds \$5,000, the governing body may provide for payment in installments extending over not more than 5 years with interest not to exceed the contract usury rate provided by law.

(2) Except as provided by subsection (3), no installment contract may be entered into unless there is an unencumbered appropriation in the current fiscal year available and sufficient to pay the portion of the contract price that is payable during the current fiscal year; and the budget for each following year, in which any portion of the purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

(3) The governing body may enter into a conditional sale contract or lease-purchase agreement, for a term not

1 exceeding 5 years, providing for the acquisition of title
2 upon completion of all payments thereunder, provided that
3 the remedy for enforcement of the contract or agreement is
4 limited to the repossession of the property in the event of
5 nonpayment.

6 (4) Installment contracts of more than 5 years may be
7 entered into only if approved by a vote of the electors,
8 except that nothing herein shall preclude the governing body
9 from entering into a contract for such term of years as it
10 may determine, for a supply of or outlet for utility
11 services furnished by the local government to the public.

12 47A-9-506. Department of community affairs -- rule
13 making and technical assistance. (1) The department of
14 community affairs shall by rule prescribe bond signature
15 requirements, the manner of execution, and the form of
16 bonds, bond authorizing ordinances, and notices.

17 (2) The department of community affairs and the
18 department of administration may provide a local government
19 with technical advice and assistance on request in planning,
20 preparing, presenting, and issuing any bond authorized by
21 this title.

22 (3) The governing body may retain private technical
23 advice and assistance in planning, preparing, presenting,
24 marketing, and issuing any bond authorized by this title.

25 47A-9-507. Application of this title to pending and

1 outstanding bonds. (1) Where, prior to the enactment of this
2 title, proceedings for the issue and sale of bonds by any
3 local government under its powers as set forth in the
4 Revised Codes of Montana, 1947, have been commenced or
5 completed in accordance with the provisions of the Revised
6 Codes of Montana, 1947, the proceedings shall be held valid
7 and sufficient and the completion of the proceedings under
8 the authority of this title is hereby authorized, and the
9 proceedings when completed shall be of the same force and
10 effect as if the provisions of this title had been in effect
11 when the proceedings were commenced.

12 (2) Proceedings for the issue and sale of bonds by any
13 local government commenced prior to the enactment of this
14 title shall be completed under prior law, except that bonds
15 authorized for sale prior to the enactment of this title may
16 be sold in the manner provided in this title.

17 (3) All of the provisions of this title with reference
18 to the payment of principal and interest of bonds,
19 redemption and payment thereof, investment of debt service
20 funds, levying of taxes for payment of principal and
21 interest, maintenance of debt service funds, and all other
22 provisions of this title which can be made applicable
23 thereto shall apply to all bonds heretofore lawfully issued
24 by any local government under any law or laws of this state,
25 which bonds shall be outstanding at the time this title

1 takes effect; except nothing herein shall be construed to
2 modify or invalidate any covenants or agreements entered
3 into prior to the effective date of this title.

4 47A-9-508. Debt limits. (1) (a) No county may issue
5 general obligation bonds other than general obligation
6 revenue bonds which, with all outstanding general obligation
7 bonds, will exceed 2 1/2% of the assessed value of property
8 in the county, except that a county may issue additional
9 general obligation bonds which, with all outstanding general
10 obligation bonds, will not exceed 10% of the assessed value
11 of property in the county for purposes of a county water
12 distribution and supply system, sewage collection and
13 treatment system, or a public transportation system. The
14 additional debt may be utilized only to provide funds for
15 the cost of capital facilities for any or all of the
16 foregoing purposes.

17 (b) The governing body may issue general obligation
18 bonds, which with all outstanding general obligation bonds
19 will exceed 2 1/2% but will not exceed 5% of the assessed
20 value of property in the county, when necessary for the
21 purpose of replacing, rebuilding, or repairing county
22 buildings, bridges, or highways which have been destroyed or
23 damaged by accident or catastrophe.

24 (2) No municipality may issue general obligation bonds
25 other than general obligation revenue bonds which, with all

1 outstanding general obligation bonds, will exceed 2 1/2% of
2 the assessed value of property in the county, except that a
3 county may issue additional general obligation bonds which,
4 with all outstanding general obligation bonds, will not
5 exceed 10% of the assessed value of property in the county
6 for purposes of a municipal water distribution and supply
7 system, a sewage collection and treatment system, or a
8 public transportation system. The additional debt may be
9 utilized only to provide funds for the cost of capital
10 facilities for any or all of the foregoing purposes.

11 (3) No consolidated government may issue general
12 obligation bonds other than general obligation revenue bonds
13 which, with all outstanding general obligation bonds, will
14 exceed 7 1/2% of the assessed value of property in the
15 consolidated government, except that a consolidated
16 government may issue additional general obligation bonds
17 which, with all outstanding general obligation bonds, will
18 not exceed 10% of the assessed value of property in the
19 consolidated government for purposes of a consolidated
20 government water distribution and supply system, sewage
21 collection and treatment system, or public transportation
22 system. The additional debt may be utilized only to provide
23 funds for the cost of capital facilities for any or all of
24 the foregoing purposes.

25 (4) General obligation bonds issued for school

purposes shall not be included as a part of a local government's outstanding general obligation bonds for purposes of determining whether or not the debt limit of the local government has been reached. The bonds shall be limited as provided in 75-7104.

(5) The assessed value of property in a local government shall be ascertained by the last assessment for state and county taxes that has been completed before the date of delivery of the bonds. Any bonds issued within the limit as of the date of delivery shall be and remain valid notwithstanding any subsequent change in the assessed value.

47A-9-509. General obligation bonds. (1) A local government may, in the manner provided by this chapter, issue general obligation bonds to finance a project to provide any service or facility authorized by this title.

(2) Except as provided in 47A-9-513, general obligation bonds may be issued only after the electors have approved a bond authorization ordinance as provided in 47A-9-510. The bond authorization ordinance may contain the purpose or purposes and the amount or amounts, for which the bonds will be used.

(3) A bond authorization ordinance may be submitted to the electors either through the adoption of the ordinance by the governing body or by initiative of the electors.

(4) If the bond authorization ordinance is submitted

to the electors by initiative, the governing body shall carry out all acts required to comply with 47A-9-510.

(5) General obligation bonds may not be issued for a term exceeding 20 years, except general obligation revenue bonds may be issued for a term not to exceed 40 years.

(6) The maximum annual interest rate of any general obligation bonds may not exceed 7%.

47A-9-510. Election of general obligation bond. (1) A local government may issue general obligation bonds only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election.

(2) The election shall be conducted as provided in 47A-3-514.

(3) An individual bond issue may not be placed before the electors more than one time in any one fiscal year.

(4) The approval of a general obligation bond authorization ordinance by the electors does not obligate the governing body to issue the bonds but merely grants them the authority to issue them.

47A-9-511. Terms of sale and payment. (1) After approval of the bond authorizing ordinance by the electors, the governing body shall fix the date of issue, denominations, maturities, redemption terms, and registration privileges by resolution.

(2) (a) The full faith and credit of the local government is pledged for the payment of principal and interest on general obligation bonds.

(b) The governing body shall levy for each fiscal year an ad valorem tax on all taxable property within its taxing jurisdiction in an amount sufficient, with any funds on hand and appropriated for the purpose, to pay the principal and interest which will fall due during the fiscal year and to establish a reserve at least sufficient to meet such payments due in the first 6 months of the following fiscal year. Such taxes shall not be subject to any limitation of rate or amount, and the obligation to levy and collect them shall be an irrevocable covenant with the holders of the bonds.

(3) The full faith and credit of a local government may be pledged for the payment of principal and interest with respect to bonds issued to finance the project costs for a revenue producing facility, including a combined facility, providing:

(a) the governing body shall throughout the term of the bonds impose and collect charges for the service of the facility, payable at the times and in the amounts necessary to pay all reasonable and current expenses of operation, administration, and maintenance of the facility and to produce net revenues adequate to pay when due the principal

of and interest on these bonds and any other bonds for which such revenues may theretofore or thereafter be pledged;

(b) any taxpayer may enforce this obligation as provided in 47A-9-526; and

(c) such bonds shall be designated as general obligation revenue bonds, they may be issued only after the approval of the electors of the local government as provided in 47A-9-510, and they shall not be subject to the limitations in 47A-9-508.

(4) In financing a redevelopment project, the local government may use moneys from the tax allocation plan as provided in 47A-6-4818 for the payment of principal and interest on general obligation bonds.

47A-9-512. General obligation bonds issued without a vote. A governing body may adopt a bond authorizing ordinance to issue general obligation bonds without submitting the question to the electors for the following purposes:

(1) for the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;

(2) for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment in a court of competent jurisdiction when there are not sufficient funds available to pay the judgment by an annual

1 tax levy of 10 mills levied on all the taxable property
2 within the local government through a period of 3 years. The
3 ordinance providing for the issue of the bonds must recite
4 the facts concerning the judgment to be funded and the terms
5 of any compromise agreement which may have been entered into
6 between the governing body and the judgment creditor.

7 (3) for the purpose of funding, paying, and retiring
8 outstanding warrants when there is not sufficient money in
9 the accounts against which warrants are drawn to pay and
10 retire the warrants, and the levying of taxes sufficient to
11 pay and retire the warrants within a period of 3 years
12 would, in the judgment of the governing body, work a
13 hardship and be an undue burden on the taxpayers of the
14 local government; and

15 (4) whenever the total indebtedness exceeds the debt
16 limit, and the governing body finds and determines that the
17 local government is unable to pay and discharge the
18 indebtedness in full, the governing body shall have the
19 power and authority to negotiate with the holders of the
20 bonds of the local government for an agreement or agreements
21 whereby the bondholders agree to accept less than the full
22 amount of the bonds and the accrued unpaid interest thereon
23 in full payment and satisfaction thereof and to enter into
24 an agreement or agreements and to issue refunding bonds for
25 the amount agreed upon. The plan agreed upon between the

1 governing body and the bondholders shall be embodied in full
2 in the ordinance providing for the issue of the bonds.

3 47A-9-513. Revenue bonds. (1) A local government may,
4 in the manner provided by this title, issue revenue bonds to
5 finance a project to provide any revenue-producing facility
6 authorized by this title.

7 (2) (a) No election is required to authorize the issue
8 and sale of revenue bonds.

9 (b) A revenue bond authorizing ordinance may be
10 submitted to the electorate by the governing body or by
11 initiative or referendum.

12 (c) If the revenue bond authorizing ordinance is
13 submitted to the electors, the election shall be conducted
14 as provided in 47A-3-514, and approval by a majority of
15 those voting on the question is required for adoption.

16 (d) An individual bond issue may not be placed before
17 the voters more than one time in any fiscal year.

18 (3) Revenue bonds may not be issued for a term
19 exceeding 40 years.

20 (4) The maximum annual interest rate of any revenue
21 bond shall not exceed 9%.

22 (5) The governing body shall by ordinance fix or
23 approve the execution of indenture fixing, the date of
24 issue, the amount of principal, denominations, maturities,
25 redemption terms, and other terms of the bonds and the

1 covenants and agreements to be established for their
2 security, which may include such provisions on the following
3 matters as the governing body may consider advisable:

4 (a) the purposes to which the proceeds of sale of the
5 bonds may be applied and the use and disposition thereof;

6 (b) the use and disposition of the revenue of the
7 facility for which the bonds are to be issued, including the
8 creation and maintenance of reserves;

9 (c) the transfer from the general funds of the local
10 government to the facility an amount equal to the cost of
11 furnishing the local government with the services of the
12 facility;

13 (d) the conditions for the issuance of other or
14 additional bonds payable from the revenue of the facility;

15 (e) the operation and maintenance of the facility;

16 (f) the insurance to be carried and the use and
17 disposition of insurance moneys;

18 (g) financial records and their inspection and audit;

19 (h) the relative priority of liens on the revenues in
20 favor of bonds of one or more series or issues, whether
21 issued concurrently or at different times;

22 (i) the naming of trustee, which may be a trust
23 company or bank having the power of a trust company within
24 or outside the state;

25 (j) the terms and conditions upon which the

1 bondholders or any proportion of them or any trustee shall
2 be entitled to the appointment of a receiver by the district
3 court. The district court shall have jurisdiction in the
4 proceedings and may authorize the receiver to enter and take
5 possession of the facility, operate and maintain it,
6 prescribe rates, fees, or charges subject to the approval of
7 the public service commission, and collect, receive, and
8 apply all revenue of the facility in the same manner as the
9 local government itself might do.

10 (k) make any other covenants and agreements and as to
11 actions to be taken by the local governments as may be
12 necessary, convenient, or desirable in order to secure the
13 bonds or in the discretion of the governing body to make the
14 bonds more marketable.

15 47A-9-514. Payment on revenue bonds. (1) A local
16 government which has issued revenue bonds to finance a
17 revenue-producing facility may use moneys received from the
18 facility in the following manner to:

19 (a) pay when due all bonds and interest for the
20 payment of which the revenue is pledged, charged, or
21 otherwise encumbered;

22 (b) provide for all costs of operation and maintenance
23 of the facility;

24 (c) pay and discharge notes, bonds, or other
25 obligations and interest thereon for the payment of which

1 the revenue of the facility is pledged, charged, or
2 encumbered;

3 (d) pay and discharge notes, bonds, or other
4 obligations and interest thereon which do not constitute a
5 lien, charge, or encumbrance on the revenue of the facility
6 and which shall have been issued for the purpose of
7 financing the acquisition, purchase, construction,
8 reconstruction, improvement, or extension of the facility;
9 and

10 (e) provide for reserves.

11 (2) No local government may transfer the revenue of
12 the facility to its general fund until adequate provision
13 has been made for the foregoing purposes.

14 (3) No holder or holders of any revenue bonds shall
15 ever have the right to compel any exercise of taxing power
16 of a local government to pay revenue bonds or the interest
17 thereon. However, nothing herein shall preclude the use of
18 the local government's taxing power for the payment of
19 principal or interest on revenue bonds.

20 (4) In financing a redevelopment project, the local
21 government may use moneys from the tax allocation plan as
22 provided in 47A-6-4818 for the payment of principal and
23 interest on revenue bonds.

24 47A-9-515. Facilities to be self-supporting. A
25 governing body issuing revenue bonds pursuant to this title

shall, subject to the approval of the public service
commission where required, prescribe and collect reasonable
and nondiscriminatory charges for the use and services of
the facility and shall revise the rates, fees, or charges
from time to time whenever necessary so that the facility
shall be and always remain self-supporting. The charges
prescribed shall produce revenue at least sufficient to:

(1) pay when due all bonds and interest thereon for
the payment of which the revenue is pledged, charged, or
otherwise encumbered, including reserves; and

(2) provide for all expenses of operation and
maintenance of the facility, including reserves.

47A-9-516. Local improvement bonds. (1) The governing
body may by ordinance authorize the issue and sale of local
improvement bonds to pay all or part of the cost of an
improvement in a local improvement district as authorized by
an improvement plan. The principal and interest of bonds
issued shall be payable from the levy of special assessments
against the property to be benefited and other revenues
appropriated by the governing body. Proceeds from the
special assessments shall be credited to the debt service
fund for the payment of principal and interest on the bonds.

(2) Local improvement bonds may not be issued for a
term exceeding 20 years. Local improvement bonds shall
mature and bear interest payable at such times and in such

1 amounts that the principal and interest payable with respect
 2 to the special assessments pledged for the payment will be
 3 sufficient to pay the bonds and interest thereon when due;
 4 provided that the governing body may by resolution pledge
 5 the net revenues of a water, sanitary, or storm sewer to pay
 6 part of the principal and interest on the bonds in which
 7 case the bond maturities may be fixed by reference also to
 8 the revenues annually available.

9 (3) (a) Before the governing body may issue local
 10 improvement bonds, it shall establish a local improvement
 11 revolving fund in order to secure prompt payment of
 12 principal and interest on any local improvement bond and
 13 appropriate to the amount annually from the general fund or
 14 any other fund or by the levy of a tax as provided for in
 15 47A-9-404(e) a sum adequate to cover any anticipated
 16 deficiency in meeting payments of principal or interest on
 17 local improvement bonds by reason of nonpayment of special
 18 assessments when due. The governing body shall maintain the
 19 revolving fund at such amounts as may be necessary by its
 20 ordinance pursuant to which the bonds are issued; provided
 21 that the required amount shall not at any time exceed the
 22 maximum amount of interest and principal to become due on
 23 outstanding local improvement bonds in any fiscal year.

24 (b) Should a local improvement district lack
 25 sufficient revenues to meet principal and interest payments

1 due, the governing body by resolution shall loan to the
 2 desired fund a sum sufficient to meet principal and interest
 3 payments due from the local improvement district revolving
 4 fund at the interest rate that equals that of the
 5 outstanding bonds.

6 (c) Whenever a loan is made to any local improvement
 7 district from the revolving fund, the revolving fund shall
 8 have a lien on all unpaid special assessments and
 9 installments of special assessments of the district and all
 10 moneys thereafter coming into the district fund to the
 11 amount of the loan and interest from the time the loan was
 12 made.

13 (d) Whenever there are moneys in a district fund which
 14 are not required for bond or interest payments, a portion of
 15 the money as may be necessary to pay the loan shall be
 16 transferred to the revolving fund by resolution.

17 (e) Moneys received from an action taken against
 18 property for nonpayment of a special assessment shall be
 19 credited to the local improvement district fund.

20 (f) Any remaining moneys in a local improvement fund
 21 after all outstanding bonds and interest are fully paid
 22 shall be transferred to the local improvement district
 23 revolving account by resolution.

24 (4) The local government may collect delinquent
 25 special assessments in the same manner as delinquent

1 property taxes.

2 (5) Except for the purpose of funding the local
3 improvement district revolving fund, no holder or holders of
4 any local improvement district bonds shall have the right to
5 compel any exercise of taxing power of a local government to
6 pay the bonds or interest.

7 (6) The maximum annual interest rate on local
8 improvement bonds may not exceed 10%.

9 47A-9-517. Refunding bonds. (1) If a local government
10 has outstanding general obligation bonds and revenue bonds,
11 and the governing body determines that it would be
12 financially advantageous to refund the bonds, the governing
13 body may provide for the issue of general obligation or
14 revenue refunding bonds by ordinance.

15 (2) The refunding bonds may take up and refund all or
16 any part of the outstanding bonds at or before their
17 maturity or redemption date. The governing body may include
18 various series and issues of bonds in a single issue of
19 refunding bonds by ordinance.

20 (3) No refunding bonds shall be issued unless the
21 refunding bonds shall bear interest at a rate of at least
22 1/2 of 1% less than the interest rate of the outstanding
23 bonds to be refunded.

24 (4) No election is required to authorize the issue and
25 sale of refunding bonds. Refunding bond issues may be

1 authorized and all proceedings with reference to them
2 prescribed by ordinance of the governing body. However, when
3 it is desirable to use general obligation bonds to refund a
4 revenue bond issue, the governing body shall call an
5 election on the question.

6 (5) General obligation refunding bonds are payable
7 according to 47A-9-511. Revenue refunding bonds are payable
8 according to 47A-9-514.

9 (6) General obligation or revenue refunding bonds may,
10 in the discretion of the governing body, be sold at public
11 or private sale for an amount not less than par and accrued
12 interest. They may be issued and delivered at any time
13 before the date of maturity or redemption of the bonds being
14 refunded.

15 (7) The issuing of bonds for refunding outstanding
16 bonds is not the incurring of a new or additional
17 indebtedness, but merely the changing of the evidences of
18 outstanding indebtedness.

19 47A-9-518. Bond anticipation borrowing. (1) A local
20 government may borrow money in anticipation of the sale of
21 general obligation bonds, revenue bonds, and local
22 improvement district bonds if:

23 (a) the general obligation bonds to be sold have been
24 authorized and ratified at a regular or special election;

25 (b) the revenue bonds to be sold have been authorized

1 by ordinance; or

2 (c) the local improvement district bonds to be sold
3 have been authorized.

4 (2) The governing body shall issue negotiable or
5 nonnegotiable notes for the amounts borrowed with a maturity
6 date not to exceed 1 year from the date of issue. All notes
7 and the interest on them are payable at fixed places on or
8 before a fixed time from the proceeds of the sale of bonds
9 in anticipation of which the original note or notes were
10 issued, unless the bonds have not been sold by the maturity
11 date of the notes.

12 (3) If the sale of the bonds has not occurred before
13 the maturity of the notes issued in anticipation of the
14 sale, the governing body shall issue new notes in order to
15 meet payment of the notes when maturing or shall renew the
16 outstanding bond anticipation notes. New notes issued or
17 renewals of outstanding bond anticipation notes shall bear a
18 maturity date not to exceed 1 year from the date of issue.
19 Notes, new notes, and renewals of notes shall not be
20 outstanding for a total elapsed time of more than 3 years.
21 The maximum annual interest rate of any bond anticipation
22 note issued by the local government may not exceed the
23 maximum annual interest rate of the bond which the notes
24 anticipate.

25 47A-9-519. Repayment of notes. (1) Every bond

1 anticipation note is payable from the proceeds of the sale
2 of bonds which the notes anticipated or from the proceeds of
3 the sale of new bond anticipation notes.

4 (2) (a) Notwithstanding any other provisions of this
5 chapter as to payment of notes, notes issued in anticipation
6 of the sale of general obligation bonds and the interest on
7 them are secured by the full faith, credit, taxing power,
8 and resources of the local government. The local government
9 may levy ad valorem taxes for payment without limitation of
10 rate or amount.

11 (b) Notes issued in anticipation of the sale of
12 revenue bonds and the interest on them are secured in the
13 same manner as are local improvement district bonds in
14 anticipation of which the notes are issued.

15 (c) Notes issued in anticipation of the sale of local
16 improvement district bonds and the interest on them are
17 secured in the same manner as are local improvement district
18 bonds in anticipation of which the notes are issued.

19 47A-9-520. Limitations. (1) The total amount of notes
20 issued and outstanding shall at no time exceed the total
21 amount of bonds authorized to be issued.

22 (2) The proceeds from the sale of notes shall be used
23 only for the purposes for which the proceeds from the sale
24 of bonds may be used or to meet payment of outstanding bond
25 anticipation notes.

(3) Notes issued under this chapter shall be sold by the local government in the manner and at the price it determines at either public or private sale, but no note may be sold for less than par and accrued interest.

§7A-9-521. Conditions of sale and miscellaneous provisions. (1) The governing body shall give notice of the sale of bonds. The notice shall state:

(a) the type of bond to be sold;

(b) the purpose or purposes for the bond to be issued;

(c) the amount of the issue; and

(d) where and when bids for the purchase of the bonds will be accepted.

(2) The governing body shall consider the bids submitted and may reject any and all bids and sell the bonds at a private sale if they consider it to be in the best interest of the local government.

(3) A bond may not be sold at less than par and accrued interest to date of delivery.

(4) A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

(5) All bonds and notes shall be payable as stated in the authorization or in the bond or note.

(6) Bonds shall be fully negotiable.

(7) The governing body may, in its discretion, provide

that bonds may be issued and sold in two or more series or installments.

(8) If the authorized bonds have not been sold and issued within 3 years from the date of the bonding election and no vested rights have accrued thereunder, the governing body may rescind the authority to sell and issue the bonds by resolution wherein is recited the reason for the rescission of the authority.

(9) All local governments shall include as a condition of sale for any bond or note submission by the bidder of an indemnity bond as provided in 6-501.

(10) At least 15 days prior to the date set for sale, notice of the sale shall be mailed to the board of investments.

(11) After the sale, the bond or notes may not be delivered to the purchaser until payment in full has been received for the bonds or notes.

(12) Subsection (9) shall not apply to the board of investments as a bidder or purchaser.

(13) All general obligation and revenue bond issues shall be submitted to the attorney general prior to sale as provided in 82-410 through 82-413.

(14) The governing body may designate one or more banks or trust companies in the United States as the paying agents for the local government for the payment of interest and

1 principal on bonds issued by the local government.

2 (15) The governing body may authorize local government
3 employees to perform the work necessary for any project
4 financed by the bonds authorized in this title, or they may
5 let the project to bid under the procedures of 47A-9-309.

6 (16) Local government bonds shall be validated as
7 provided in Title 79, chapter 20.

8 47A-9-522. Bond record. (1) The finance administrator
9 shall maintain a record of all bonds. The bond record shall
10 show the number and amount of each bond, the date of issue,
11 date redeemable, the date when the same will become due, the
12 amount of all payments of both principal and interest
13 required to be made on each bond with the dates when the
14 same are required to be made, and the name and address of
15 the purchaser.

16 (2) All payments on bonds and interest coupons and the
17 date of payment shall be entered on the bond register.

18 (3) All bonds and interest coupons paid shall be
19 cancelled.

20 47A-9-523. Lost bonds or warrants. (1) The finance
21 administrator is authorized upon satisfactory proof that any
22 original bond, warrant, or coupon has been lost or destroyed
23 to issue to the owner or holder of the bond, warrant, or
24 coupon a duplicate thereof which will take the place in
25 order of registration and payment of the original bond,

1 warrant, or coupon and in all cases supersede and take place
2 of the original.

3 (2) Before issuing the duplicate bond, warrant, or
4 coupon, the governing body must require the person demanding
5 the duplicate to execute and deliver to the finance
6 administrator a bond payable to the local government in
7 double the amount of the bond, warrant, or coupon with at
8 least two good and sufficient sureties, which must be
9 required to justify, as in the case of attachment, the
10 conditions of the bond, being that the principal and
11 sureties therein will indemnify and save harmless the local
12 government from all loss, costs, or damages by reason of the
13 issuing of the duplicate, and will pay to any person
14 entitled to receive the duplicate bond, as the lawful holder
15 of the original bond, warrant, or coupon, all moneys
16 received upon the duplicate.

17 (3) The finance administrator, at the time of issuing
18 any duplicate bond, warrant, or coupon, must write across or
19 upon the face thereof the word "duplicate".

20 (4) The word "duplicate" upon any bond, warrant, or
21 coupon imparts notice to all persons that the duplicate is
22 issued subject to the provisions of this section.

23 (5) It is the duty of the finance administrator, upon
24 the production to him of any original bond, warrant, or
25 coupon by the lawful owner or holder thereof, to assign by

endorsement and to deliver to him the bond mentioned in this section, and the owner or holder may maintain an action in his own name upon the bond for the recovery of any moneys paid upon the duplicate, but the delivery of the bond does not relieve or exonerate the local government from the payment of the amount specified therein upon a demand and refusal of the sureties named in the indemnifying bond to pay the same.

47A-9-524. Validity of bonds. (1) Bonds bearing the signatures of officers in office on the date of signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment any or all the persons whose signatures appear thereon shall have ceased to be officers of the local government issuing the bonds.

(2) (a) Judicial review to determine the validity of the procedures whereby any bond issue is authorized may be had by petition of an interested party of 10 or more registered voters of the local government within 60 days after the bond authorization ordinance has been approved. The petitioner may in the court's discretion be awarded costs which may include reasonable attorney's fees.

(b) If no petition is filed within the period, compliance with all procedures required by this title and the validity of the manner in which the bond authorizing

ordinance was approved shall be conclusively presumed. It shall be presumed that proper procedure was followed and all procedural requirements were met. The bond authorizing ordinance or bonds sold shall not be considered invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected such adoption.

(3) The validity of the bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which the bonds are issued.

(4) The ordinances authorizing the bonds may provide that the bonds shall contain a recital that they are issued pursuant to this title, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

47A-9-525. Liability of members of governing body. (1) If the governing body shall fail, neglect, or refuse in any year to make an ad valorem property tax levy or special assessment or establish charges sufficient to pay the interest on and principal of any issue or series of general obligation, local improvement district, or revenue bonds, the holder of any bond of the issue or series or any taxpayer paying taxes or special assessments on property

1 situated in the jurisdiction may apply to the district court
2 for a writ of mandate to compel the governing body to make a
3 proper and sufficient levy or special assessment for such
4 purposes.

5 (2) If, upon the hearing of the application, it shall
6 appear to the satisfaction of the court that the governing
7 body has willfully failed, neglected, or refused to make any
8 levy or special assessment whatever for such purposes, or
9 has made a levy or special assessment but that the same is
10 insufficient, the court shall determine the amount of the
11 deficiency and shall issue a writ of mandate directed to and
12 requiring the governing body, at its next meeting for the
13 purpose of making and fixing levies and special assessments,
14 to raise the amount of the deficiency.

15 (3) The levy or special assessment shall be in
16 addition to the levy or special assessment required to be
17 made for the then current fiscal year.

18 (4) Any costs which may be allowed or awarded the
19 petitioner shall be paid by the members of the governing
20 body and shall not be a charge against the local government.

21 (5) Officers of the local government that fails to
22 make a levy for the debt service fund are liable as provided
23 in 59-534 and 59-535.

24 Part 6

25 Fiscal Emergencies

1 47A-9-601. Purpose. (1) It is the purpose of this
2 chapter to preserve and protect the fiscal solvency of local
3 governments in Montana through the improvement of local
4 financial management and the avoidance of financial
5 obligations that exceed the capacity of the local
6 government.

7 47A-9-602. Local government fiscal emergencies. (1)
8 The department of community affairs, with the approval of
9 the local government finance advisory council, may declare a
10 financial emergency to exist in any local government upon
11 determination that one or more of the following conditions
12 have occurred:

13 (a) The local government fails to pay loans from banks
14 or principal or interest due on notes or bonded debt in full
15 within 28 days of the due date.

16 (b) The local government for a period of 28 days or
17 more fails to transfer to the appropriate agency:

18 (i) taxes withheld on the income of employees; or
19 (ii) employer and employee contributions for federal
20 social security or any pension, retirement, or benefit plan
21 of an employee.

22 (c) The unit of local government fails for a period of
23 28 days to pay:

24 (i) wages and salaries owed to employees; or
25 (ii) pension and retirement benefits owed to former

1 employees.

2 (2) The department of community affairs is authorized
3 to take the following actions with respect to any local
4 government in which a financial emergency has been declared:

5 (a) to make an analysis of all factors and
6 circumstances contributing to the financial condition of the
7 local government and to recommend steps to be taken to
8 correct such conditions;

9 (b) to amend or revise or to approve or disapprove the
10 budget of the local government and to limit the total amount
11 of funds appropriated or expended during the balance of the
12 fiscal period and during the period of financial emergency;

13 (c) to require and to approve or disapprove or to
14 amend or revise a plan of liquidating current debt;

15 (d) to require and prescribe the form of special
16 reports to be made by the finance administrator to the
17 governing body, the creditors, the agency, or the public;

18 (e) to have access to all records and books of account
19 and to require the attendance of witnesses and the
20 production of books, papers, contracts, and other documents
21 relevant to an analysis of the financial condition of the
22 local government;

23 (f) to approve or disapprove any appropriation,
24 contract, expenditure, loan, the creation of any new
25 position, or the filling of any vacancy in a permanent

1 position by the local government;

2 (g) to approve or disapprove payrolls or other claims
3 against the local government prior to payment;

4 (h) to act as an agent of the local government in
5 collective bargaining with employees or representatives and
6 to approve any agreement prior to its becoming effective;

7 (i) to appoint a local administrator of finance to
8 exercise the authority of the department of community
9 affairs with respect to the local government, and to perform
10 duties under the general supervision of the department of
11 community affairs;

12 (j) to employ or contract for, at the expense of the
13 local government such auditors and other personnel as may be
14 necessary to carry out the provisions of this title;

15 (k) to require compliance with orders of the
16 department of community affairs by court action if
17 necessary; and

18 (l) to provide a temporary cash loan or the guarantee
19 of a loan from private sources sufficient to the immediate
20 needs of the city.

21 (3) The declaration of a local financial emergency in
22 a local government shall be withdrawn and revoked if the
23 local government completes 1 fiscal year in which none of
24 the conditions enumerated in subsection (1) occurs.

25 (4) The department of community affairs shall

represent the interests of the state and all local governments in any proceedings under the Federal Bankruptcy Act which pertain to the financial distress of any local government and is further authorized to perform any administrative or supervisory function requested by the court as part of, or pursuant to, such proceedings.

Section 2. Justice of the Peace and Municipal Courts. There is a new series of R.C.M. sections relating to justice of the peace and municipal courts that read as follows:

Chapter 50

Justice of the Peace and Municipal Courts

Part 1

Justice Courts

11-50-101. Establishment of justice court. (1) There shall be one justice court in each county of the state.

(2) The governing body of a county may establish one additional justice court in the county as the governing body considers necessary.

(3) One justice court in each county must be located at the county seat, and the governing body of the county shall determine the location of the other justice court.

11-50-102. Civil jurisdiction of justice court. A justice of the peace court as a court of limited jurisdiction shall have only the following civil jurisdiction:

(1) original jurisdiction of the following proceedings, if the sum claimed, exclusive of interests and costs, does not exceed \$1,500:

(a) actions for the recovery of money only, arising out of a contract, express or implied;

(b) actions for the recovery of personal property, if the value of the personal property does not exceed \$1,500;

(c) actions for damages for:

(i) taking, detaining, or injuring personal property;

(ii) injury to real property where no issue is raised involving the title to or possession of the real property; and

(iii) physical injury to the person, which is to be defined as bodily harm or hurt and to exclude mental distress, emotional distress, fright, or injury to the reputation;

(d) actions for fine, penalty, or forfeiture for violation of statute where no question is raised as to the legality of the statute. These actions are to be prosecuted in the name of the state of Montana.

(e) actions upon bonds or undertakings conditioned for the payment of money. The penalty in such actions may exceed the \$1,500 limit, although the sum claimed may not.

(f) judgments for the recovery of money not exceeding \$1,500, on the confession of the defendant;

(2) concurrent jurisdiction with district courts for the following actions in which the county is a party or is interested if the sum claimed, exclusive of interest and costs, does not exceed \$1,500:

(a) actions for violation of any county civil or criminal ordinance if no question is raised as to the legality of the ordinance. These actions are to be prosecuted in the name of the county.

(b) actions for collection of county taxes and assessments, but no lien upon the property taxed or assessed for nonpayment of taxes can be foreclosed in any such action;

(c) actions for money due to or from the county;

(d) actions for breach of any official bond given by a county officer or employee;

(e) actions for damages;

(f) actions for breach of any contract;

(g) actions on all forfeited recognizances;

(h) actions on all bonds given upon any appeal taken from the judgment of the justice of the peace court in any action named in subsections (2) (d) through (2) (g) of this section;

(i) actions for recovery of any personal property belonging to the county where the value of the personal property does not exceed \$1,500;

(j) actions for the collection of any license fee required by any county ordinance; and

(k) actions of forcible entry and unlawful detainer;

(3) all other actions as specifically granted by law. 11-50-103. Criminal jurisdiction of justice courts. A justice of the peace court as a court of limited jurisdiction shall have only the following criminal jurisdiction:

(1) all violations of state law punishable by a fine not exceeding \$500 or by imprisonment not exceeding 6 months or by both fine and imprisonment, excluding jurisdiction in cases commenced under the Montana Dangerous Drug Act, except to act as examining and committing courts and to conduct preliminary hearings as provided in subsection (4). These actions are to be prosecuted in the name of the state of Montana.

(2) concurrent jurisdiction with municipal courts for all violations of state law within the municipality punishable by a fine not exceeding \$500 or by imprisonment not exceeding 6 months or by both fine and imprisonment;

(3) concurrent jurisdiction with district courts for all violations of state law punishable by a fine not exceeding \$1,500;

(4) to act as examining and committing courts and for such purpose to conduct preliminary hearings. The

1 jurisdiction shall be concurrent with municipal courts when
2 the felony charged is committed within the municipal limits.

3 (5) all other actions as specifically granted by law.
4 11-50-104. Proceedings. (1) Proceedings in a justice
5 of the peace court:

6 (a) in civil actions, must be in conformity with
7 provisions of 93-6601 through 93-7804 of the code of civil
8 procedure;

9 (b) in criminal actions, must be in conformity with
10 the provisions of 95-2001 through 95-2010 of the code of
11 criminal procedure; and

12 (c) in preliminary hearings, must be in conformity
13 with the provisions of 95-1201 through 95-1204 of the code
14 of criminal procedure.

15 (2) All actions prosecuted under 11-50-102(2) in the
16 name of the county must be under the direction of the public
17 prosecutor.

18 11-50-105. Duties. (1) A justice of the peace may:

19 (a) administer and certify oaths;

20 (b) hold inquests as provided in 47A-8-402(2);

21 (c) solemnize a marriage.

22 (2) A justice of the peace shall:

23 (a) keep his records in the formats designated by the
24 supreme court of Montana;

25 (b) submit a proposed budget for his court to the

1 county governing body on a designated date, for review,
2 coordination, and approval;

3 (c) receive all money collected on any process or
4 order issued from his court and, without delay, pay the
5 money and all money paid to him in his official capacity
6 over to the parties entitled or authorized to receive it;

7 (d) make reports, in writing and under oath, to the
8 county governing body on dates set by that body, showing in
9 detail all fees, emoluments, and compensation received and
10 disbursed by him in his official capacity during the quarter
11 preceding the making of each report;

12 (e) perform such duties as are prescribed in 93-6601
13 through 93-7714 of the code of civil procedure and such
14 other duties as are prescribed by law.

15 Part 2

16 Municipal Courts

17 11-50-201. Establishment of municipal court. (1) A
18 municipal court shall be established in each municipality.
19 The number of municipal judges shall be determined by the
20 local governing body by ordinance.

21 (2) The governing body of a municipality may choose
22 not to establish a municipal court. If it chooses not to
23 establish a municipal court:

24 (a) it shall by interlocal agreement vest the powers
25 of a municipal judge in the justice of the peace for the

1 county in which the municipality is located;

2 (b) a justice of the peace with the powers of a
3 municipal judge shall discharge the duties of the office of
4 municipal judge as prescribed by law as well as the duties
5 of the office of the justice of the peace. The justice of
6 the peace so serving shall take the oath for both offices.
7 The amount of surety bond to be posted shall be determined
8 by the interlocal agreement.

9 11-50-202. Jurisdiction of municipal courts. The
10 municipal court as a court of limited jurisdiction shall
11 have only the following jurisdiction:

12 (1) exclusive jurisdiction of all actions for
13 violations of any municipal, civil, or criminal ordinance
14 prosecuted in the name of the municipality:

15 (a) if no question is raised as to the legality of the
16 ordinance; and

17 (b) when the penalty does not exceed a fine of \$500 or
18 6 months' imprisonment, or both;

19 (2) concurrent jurisdiction of the following actions
20 in which the municipality is a party or is interested, if
21 the sum claimed, exclusive of interest and costs, does not
22 exceed \$500:

23 (a) actions for collection of municipal taxes and
24 assessments, but no lien upon the property taxed or assessed
25 for nonpayment of taxes can be foreclosed in any such

1 action;

2 (b) actions for money due to or from the municipality;

3 (c) actions for breach of any official bond given by a
4 municipal officer or employee;

5 (d) actions for damages;

6 (e) actions for the breach of contract;

7 (f) actions on all forfeited recognizances;

8 (g) actions on all bonds given upon any appeal taken
9 from the judgment of the municipal court in any action named
10 in subsections (2) (c) through (2) (f) of this section;

11 (h) actions for recovery of personal property
12 belonging to the municipality where the value of the
13 personal property does not exceed \$500;

14 (i) actions for collection of any license fee required
15 by any municipal ordinance, regardless of the amount in
16 controversy; and

17 (j) proceedings for violation of state law within the
18 municipality punishable by a fine not exceeding \$500 or by
19 imprisonment not exceeding 6 months or by both fine and
20 imprisonment. The proceedings are to be brought in the name
21 of the state of Montana.

22 (3) concurrent jurisdiction with the justice of the
23 peace courts to act as examining and committing courts and
24 for such purposes to hold preliminary hearings when
25 applications for search warrants or complaints charging the

1 commission of a felony within the municipal limits are made
2 in municipal court. The civil attorney may file an
3 application for a search warrant or a complaint charging the
4 commission of a felony when the offense was committed within
5 the municipal limits. The public prosecutor, however, must
6 handle the action after a defendant is bound over to
7 district court.

8 (4) all other actions as specifically granted by law.
9 11-50-203. Proceedings. (1) Proceedings in municipal
10 court:

11 (a) in civil actions, must be in conformity with the
12 provisions of 93-7801 through 93-7804 of the code of civil
13 procedure;

14 (b) in criminal actions, must be in conformity with
15 the provisions of 95-2001 through 95-2010 of the code of
16 criminal procedure; and

17 (c) in preliminary hearings, must be in conformity
18 with the provisions of 95-1201 through 95-1204 of the code
19 of criminal procedure.

20 (2) All actions in and appeals from a municipal court
21 shall be conducted by the municipal civil attorney.

22 Part 3

23 Common Provisions

24 11-50-301. General definitions. In this chapter,
25 unless otherwise provided or the context requires a

1 technical or other interpretation, the following definitions
2 apply:

3 (1) the definitions established in 47A-1-202;

4 (2) "court" means a municipal court established
5 according to 11-50-201 or a justice of the peace court
6 established according to 11-50-101;

7 (3) "judge" means a municipal court judge or a justice
8 of the peace.

9 11-50-302. Extent of jurisdiction. (1) The
10 jurisdiction of the justice of the peace courts extends to
11 the limits of the county in which the court is held. Process
12 of any justice court in a county may be issued and served in
13 any part of the county.

14 (2) The jurisdiction of a municipal court extends to
15 the limits of the county in which the municipality is
16 located.

17 11-50-303. Dockets. (1) Every justice of the peace
18 shall keep a docket according to the provisions of 93-7601
19 through 93-7606 of the code of civil procedure.

20 (2) Every municipal judge shall keep a docket in which
21 must be entered:

22 (a) the title of every action or proceeding;

23 (b) the object of the action or proceeding and, if a
24 sum of money is claimed, the amount;

25 (c) the date of the summons and the time of its return

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1 and, if an order to arrest the defendant is made or a writ
2 of attachment is issued, a statement of facts;

3 (d) the time when the parties or either of them appear
4 or their nonappearance if default is made and minutes of the
5 pleadings and motions referring to them, if in writing, or,
6 if not in writing, a concise statement of the material parts
7 of the pleadings;

8 (e) every adjournment, stating on whose application
9 and to what time;

10 (f) the demand for a trial by jury, when it is made,
11 and by whom made; the order for the jury; and the time
12 appointed for the return of the jury and for the trial;

13 (g) the names of the jurors who appear and are sworn
14 and the names of all witnesses sworn and at whose request;

15 (h) the judgment of the court, specifying the costs
16 included, the time when rendered, and an itemized statement
17 of the costs;

18 (i) the issuing of the execution, when issued, and to
19 whom; the renewal, if any, and when made; and a statement of
20 any money paid to the municipal judge, when and by whom; and

21 (j) the receipt of a notice of appeal, if any is
22 given, and of the undertaking of appeal, if any is filed.

23 (3) A municipal judge must keep an alphabetical index
24 to this docket in which the names of the parties to each
25 judgment shall be entered, with a reference to the page of

1 entry. The names of the plaintiffs and defendants must be
2 entered in the index in alphabetical order of the first
3 letter of the family name.

4 (4) Every judge, upon the expiration of his term of
5 office, must deposit with his successor his official dockets
6 and all papers filed in his office, his own as well as those
7 of his predecessors, and any other records which may be in
8 his custody, to be kept as public records.

9 11-50-304. Holding court for other justices of the
10 peace or for municipal judges. (1) Under the circumstances
11 established in this section and if requested to do so by the
12 chief executive of the local government or by the affected
13 municipal judge or justices of the peace:

14 (a) a justice of the peace may hold court for another
15 justice of the peace or for municipal judge of a
16 municipality located within his county;

17 (b) a municipal judge may hold court for any other
18 municipal judge or for a justice of the peace of the county
19 in which the municipality is located;

20 (c) a resident qualified under 11-50-308 and 11-50-309
21 may hold court for a justice of the peace or municipal
22 judge.

23 (2) As provided in subsection (1) of this section, a
24 judge may be called if:

25 (a) there is no judge in office;

1 (b) the judge has been disqualified because of implied
2 bias;

3 (c) the judge is ill, on vacation, or absent from the
4 municipality;

5 (d) the judge is unable to act because he is a party
6 to the action, interested in the action, or related to one
7 of the parties by consanguinity or affinity within the sixth
8 degree.

9 (3) A judge holding court for another municipal judge
10 or justice of the peace is vested with all the power of the
11 judge or justice for whom he holds court.

12 (4) The proper entry of the proceedings, subscribed by
13 the judge, must be made in the docket of the judge or
14 justice for whom he holds court.

15 11-50-305. Consolidated governments. A consolidated
16 local government may by ordinance choose either to elect
17 justices of the peace or to elect or appoint municipal
18 judges or to elect justices of the peace with the powers of
19 a municipal judge.

20 11-50-306. Selection of judges. (1) Each justice of
21 the peace shall be elected by the electors of the county at
22 the local government general election next preceding the
23 expiration of the term of office of his predecessor. A
24 justice of the peace shall be nominated and elected on the
25 nonpartisan judicial ballot in the same manner as judges of

1 the district court. Each justice of the peace shall be a
2 separate and independent office for election purposes and
3 each office shall be numbered by the governing body and
4 number of the office for which he seeks to be elected. A
5 candidate may not file for more than one office. Section
6 23-4511 prohibiting political party endorsement for judicial
7 officers shall also apply to justices of the peace.

8 (2) The governing body of a municipality may by
9 ordinance provide for:

10 (a) the election of a municipal judge on a partisan or
11 nonpartisan ballot at its general election; or

12 (b) the appointment of a municipal judge by its
13 appointing authority subject to confirmation by a majority
14 vote of the governing body.

15 11-50-307. Term of office. (1) The term of office for
16 a justice of the peace shall be 4 years. The term shall
17 begin the first Monday in January following election.

18 (2) The term of office for a municipal judge shall be
19 set by ordinance. If elected, the term shall begin on the
20 first Monday in May following election. If appointed, the
21 term shall begin on the first Monday of the month following
22 appointment.

23 11-50-308. Eligibility. No person is eligible to be a
24 judge unless he qualifies as provided in 47A-3-506.

25 11-50-309. Requirements before assumption of office.

1 Before he may assume the duties of the office of judge, an
2 individual shall:

3 (1) present proof that he is:

4 (a) an attorney-at-law authorized to practice law in
5 the state of Montana; or

6 (b) a person who has held the office of judge within
7 the preceding 5 years; or

8 (c) a person who has completed the orientation course
9 of study directed by the university of Montana law school
10 for justices of the peace and municipal judges or, if a
11 person is appointed after the course is offered, he must
12 agree to take the course at the next offering and failure to
13 do so will disqualify him from office;

14 (2) post any required bond; and

15 (3) take the constitutional oath of office.

16 11-50-310. Vacancies. (1) The office of judge shall be
17 considered vacant if any one of the conditions described in
18 47A-3-407 exists.

19 (2) The governing body shall appoint a person to fill
20 the vacancy.

21 (3) To be eligible for appointment to the vacancy, the
22 person appointed must meet all the requirements for election
23 or appointment to the office.

24 (4) (a) A person appointed to fill a vacancy in an
25 elective judgeship shall serve until the next regularly

1 scheduled local election, at which time the remainder of the
2 term shall be filled by election.

3 (b) A person appointed to fill a vacancy in an
4 appointive judgeship shall serve for the remainder of the
5 term.

6 11-50-311. Hours. (1) A court must always be open,
7 except on nonjudicial days when it may conduct only criminal
8 proceedings.

9 (2) The governing body shall establish by ordinance
10 the office hours of a judge.

11 11-50-312. Salary. (1) The supreme court shall
12 establish minimum salary schedules for justices of the
13 peace. The salary schedule shall be set by classes based
14 upon the workload of the justices of the peace. The salary
15 of a justice of the peace shall be set by ordinance or by
16 interlocal agreement. The salary may not be less than the
17 minimum prescribed by the supreme court.

18 (2) The salary of a municipal judge shall be set by
19 ordinance.

20 (3) A salary may not be decreased during the term of
21 office.

22 11-50-313. Facilities — expenses. (1) The governing
23 body of a county shall provide for each judge:

24 (a) the office and courtroom necessary to enable him
25 to perform his duties in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary in the proper keeping of records and files of the judicial office and the transaction of business;

(c) the latest edition of the Revised Codes of Montana and all official supplements; and

(d) a copy of all ordinances.

(2) Salary, costs of authorized clerical assistance, and all actual and necessary expenses, including mileage and per diem, incurred by the judge in the performance of his official duties or by one acting for the judge are a legal charge against the local government.

(3) Mileage and per diem shall be paid to the judge by the local government for attending the orientation course of study and the annual training sessions.

11-50-314. Attendance at annual training session. The judge shall attend the annual training session for justices of the peace and municipal judges. This training session, which may be held in conjunction with the Montana magistrate association convention, shall be supervised by the supreme court of Montana.

11-50-315. Traffic offenses. (1) When practicable, traffic cases shall be tried separately and apart from other cases. The court shall designate a specific day or days or a specific daily time on certain days for the trial of traffic

cases.

(2) The court shall pay a portion of the fines assessed and bails forfeited on all traffic offenses involving a violation of a state statute or ordinance, except a parking violation, into the state traffic education account as provided in 75-7902 and 75-7903.

11-50-316. Traffic violations bureau. (1) With the consent of the municipal court, the governing body may establish by ordinance a traffic violations bureau and designate an officer or employee of the local government to act as a violations clerk for the traffic violations bureau.

(2) Subject to the limitations prescribed in this section, the violations clerk may:

(a) accept written appearance, waiver of trial, plea of guilty, and payment of fine and costs in traffic offense cases; and

(b) accept bonds forfeiture in traffic offense cases as prescribed by the court.

(3) The violations clerk shall serve under the direction and control of the court.

(4) The court shall, by order which may from time to time be amended, supplemented, or repealed, designate the traffic offenses within the authority of the violations clerk. The offenses shall not include:

(a) indictable offenses;

1 (b) offenses resulting in an accident;
 2 (c) operation of a motor vehicle while under the
 3 influence of an intoxicating liquor or a narcotic or
 4 habit-producing drug or permitting another person who is
 5 under the influence of an intoxicating liquor or a narcotic
 6 or habit-producing drug to operate a motor vehicle owned by
 7 the defendant or in his custody or control;
 8 (d) reckless driving;
 9 (e) driving while under suspension or revocation of
 10 driver's license;
 11 (f) driving without being licensed to drive; and
 12 (g) exceeding the speed limit by more than 15 miles
 13 per hour.
 14 (5) Within the limits prescribed by law, the court
 15 shall establish schedules of fines or bonds to be imposed or
 16 forfeited for first, second, and subsequent offenses. The
 17 order of the court establishing the schedules shall be
 18 prominently posted where the fines or bonds are paid.
 19 (6) Any person charged with a parking, standing, or
 20 nonmoving offense may mail or deliver to the violations
 21 clerk the amount of the fine and costs indicated on the
 22 ticket for the violation.
 23 (7) (a) A person charged with any traffic offense
 24 within the authority of the violations clerk other than a
 25 parking, standing, or nonmoving offense may appear before

1 the violations clerk and:
 2 (i) pay the fine according to the schedule and sign an
 3 appearance, plea of guilty, and waiver of trial; or
 4 (ii) post bond according to the schedule for
 5 forfeiture.
 6 (b) Prior to any plea, waiver, payment, or bond
 7 tender, the person charged shall be informed:
 8 (i) of his right to stand trial;
 9 (ii) that a record of his signature to a plea of guilty
 10 or his bond forfeiture will be sent to the highway patrol
 11 board of this state or the appropriate officers of the state
 12 where his license to drive was issued and will become part
 13 of his driving record;
 14 (iii) that his signature to a plea of guilty will have
 15 the same force and effect as a judgment of the court; and
 16 (iv) that forfeiture of bond does not have the same
 17 force and effect as a judgment of the court.
 18 (8) Fines, costs, and bond forfeiture shall be paid
 19 to, receipted by, and accounted for by the violations clerk
 20 in accordance with 11-50-315(2).
 21 11-50-317. Consolidated traffic violations bureau.
 22 Under an interlocal agreement and with the consent of the
 23 affected judges, the traffic violations clerk shall accept
 24 written appearance, waiver of trial, plea of guilty, payment
 25 of fine and costs, and bond forfeitures in traffic offenses

1 as provided for in 11-50-316 for both the county and the
2 municipality, maintaining records and fees as designated by
3 the agreement.

4 11-50-318. Financial duties of a judge. (1) The judge
5 at a date set by the local governing body shall submit to
6 the budget administrator a proposed budget for the coming
7 fiscal year.

8 (2) The judge shall submit a financial statement to
9 the finance administrator each month on a designated date.

10 (3) All fines and costs paid to the municipal court
11 shall be recorded, receipted, and deposited on a timely
12 basis with the finance administrator.

13 (4) All judgments to be paid to or collected by the
14 local government as the result of a court action shall be
15 recorded, received, receipted, and disbursed to the proper
16 recipients by the local finance administrator.

17 11-50-319. Prohibitions. (1) A judge may not perform
18 any legal duties other than those prescribed by law as his
19 official duties in the conduct of cases and proceedings in
20 his court. The violation of this provision shall be
21 considered malfeasance in office and shall disqualify the
22 judge from thereafter holding such office.

23 (2) No judge who is an attorney licensed to practice
24 before the supreme court of the state of Montana, his law
25 partner, an associate, or an employee of his firm shall

1 represent a party involved in a case filed in his court or
2 which is appealed from his court. The violation of this
3 provision shall be considered malfeasance in office and
4 shall disqualify the judge from thereafter holding such
5 office.

6 (3) No judge shall purchase or have an interest in the
7 purchase of any judgment or part thereof on the docket of or
8 on any docket in the possession of such judge. The violation
9 of this provision is a misdemeanor.

10 Section 3. Section 1-714, R.C.M. 1947, is amended to
11 read as follows:

12 "1-714. Procedure for adoption of zoning regulations.
13 (1) Notice and hearing. In adopting, amending, ~~and~~ or
14 repealing airport zoning regulations under this act, the
15 political subdivision or joint airport zoning board shall
16 follow the procedure prescribed by the laws of this state
17 for the adoption, amendment, the repeal of comprehensive
18 zoning regulations, as provided in ~~sections 11-2701 to~~
19 ~~11-2709~~ 47A-6-4331 through 47A-6-4335.

20 (2) Airport zoning ~~commission~~ board. Prior to the
21 initial zoning of any airport hazard area under this act,
22 the political subdivision or joint airport zoning board
23 which is to adopt the regulations shall appoint a ~~commission~~
24 board, to be known as the airport zoning ~~commission~~ board,
25 to recommend the boundaries of the various zones to be

1 established and the regulations to be adopted therefor. Such
 2 ~~commission board~~ shall make a preliminary report and hold
 3 public hearings thereon before submitting its final report,
 4 and the legislative body of the political subdivision or the
 5 joint airport zoning board shall not hold its public
 6 hearings or take other action until it has received the
 7 final report of such ~~commission board~~. Where a city planning
 8 ~~commission board~~ or ~~comprehensive zoning commission board~~
 9 already ~~exists~~ exists, it may be appointed as the airport
 10 zoning ~~commission board~~."

11 Section 4. Section 1-718, R.C.M. 1947, is amended to
 12 read as follows:

13 "1-718. Board of adjustment — appeals — judicial
 14 review. All airport zoning regulations adopted under this
 15 act shall provide for a board of adjustment to be appointed
 16 in the manner and have and exercise all the powers provided
 17 in ~~section 11-2707 47A-6-4336 and 47A-6-4337~~, and each and
 18 all of the provisions of ~~said section~~ the sections relating
 19 to appeals and judicial review shall be applicable to this
 20 act."

21 Section 5. Section 1-912, R.C.M. 1947, is amended to
 22 read as follows:

23 "1-912. Bonds and other obligations. (1) An authority
 24 shall have the power to borrow money for any of its
 25 corporate purposes and issue its bonds therefor, including

1 refunding bonds, in such form and upon such terms as it may
 2 determine, payable out of any revenues of the authority,
 3 including revenues derived from:

4 (a) an airport or air navigation facility or
 5 facilities;

6 (b) taxes levied pursuant to ~~section~~ 1-916, or other
 7 law, for airport purposes;

8 (c) grants or contributions from the federal
 9 government; or

10 (d) other sources.

11 (2) The bonds may be issued by resolution or
 12 resolutions of the authority, without an election, and
 13 without any limitation of amount except, ~~as follows: No that~~
 14 no such bonds shall be issued at any time if the total
 15 amount of principal and interest to become due in any year
 16 on such bonds, and on any ~~then-outstanding~~ then-outstanding
 17 bonds for which revenues from the same source or sources are
 18 pledged, exceeds the amount of such revenues to be received
 19 in that year as estimated in the resolution authorizing the
 20 issuance of the bonds, ~~and~~ In that case, the authority
 21 shall be obligated to take all action necessary and possible
 22 to impose, maintain, and collect rates, charges, rentals,
 23 and taxes, if any are pledged, sufficient to make the
 24 revenues from the pledged source or sources in such year at
 25 least equal to the amount of such principal and interest due

1 in that year. They may be sold at public or private sale and
 2 shall bear interest at a rate or rates not exceeding ~~ten per~~
 3 ~~centum (10%) per annum~~ a year. Except as otherwise provided
 4 herein, any bonds issued pursuant to this chapter by an
 5 authority shall be payable as to principal and interest
 6 solely from revenues of the authority, and shall state on
 7 their face the applicable limitations or restrictions
 8 regarding the source or sources from which such principal
 9 and interest are payable.

10 (3) Bonds issued by an authority or municipality
 11 pursuant to the provisions of this chapter are declared to
 12 be issued for an essential public and governmental purpose
 13 by a political subdivision within the meaning of ~~section~~
 14 ~~84-4905(2) (a)~~.

15 (4) For the security of any such bonds, the authority
 16 or municipality may by resolution make and enter into any
 17 covenant, agreement, or indenture and exercise any
 18 additional powers authorized to be made, entered into, or
 19 exercised by a municipality under Title ~~41, chapter 24~~ 47A,
 20 chapter 9, part 5. The sums required from time to time to
 21 pay principal and interest and to create and maintain a
 22 reserve for the bonds may be made payable from any and all
 23 revenues referred to in this chapter, prior to the payment
 24 of current costs of operation and maintenance of the
 25 facilities.

1 ~~(2)~~ (5) Subject to the conditions stated in this
 2 ~~paragraph (2)~~ subsection, the governing body of any
 3 municipality having a population in excess of ~~ten thousand~~
 4 ~~(10,000)~~ may, with respect to bonds issued pursuant to this
 5 chapter by the municipality or by an authority in which the
 6 municipality is included, by resolution covenant that, in
 7 the event that at any time all revenues, including taxes,
 8 appropriated and theretofore collected for such bonds are
 9 insufficient to pay principal or interest then due, it will
 10 levy a general tax upon all of the taxable property in the
 11 municipality for the payment of such deficiency and may
 12 further covenant that at any time a deficiency is likely to
 13 occur within ~~one~~ (1) year for the payment of principal and
 14 interest due on such bonds, it will levy a general tax upon
 15 all the taxable property in the municipality for the payment
 16 of such deficiency; and such taxes shall not be subject to
 17 any limitation of rate or amount applicable to other
 18 municipal taxes but shall be limited to a rate estimated to
 19 be sufficient to produce the amount of the deficiency. In
 20 the event more than one municipality having a population in
 21 excess of ~~ten thousand (10,000)~~ is included in an authority
 22 issuing bonds pursuant to this chapter, the municipalities
 23 may apportion the obligation to levy taxes for the payment
 24 of or in anticipation of a deficiency in the revenues
 25 appropriated for such bonds in such manner as the

municipalities shall determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution shall become effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for ~~said the~~ purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by ~~section 11-2308 and 11-2310 for an election called by cities and towns and section 16-202 and 16-2026 for an election called by counties 47A-3-514.~~ If a majority of the electors voting thereon vote against approval of the resolution, the municipality shall have no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in paragraph (1) above."

Section 6. Section 1-916, R.C.M. 1947, is amended to read as follows:

"1-916. Tax levy may be certified by airport authority or municipality. The airport authority may certify annually to the governing bodies, the amount of tax to be levied by each municipality participating in the creation of the

airport authority, and the ~~municipality~~ county shall levy the amount certified, pursuant to provisions of law authorizing ~~cities and other political subdivisions~~ counties of this state to levy taxes for airport purposes. The levy made shall not exceed the maximum levy permitted by the laws of this state for airport purposes or any such lower limit as may have been established by the municipality or municipalities in the resolution creating the authority. The ~~municipality~~ county shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of such taxes, when and as paid to the airport authority, shall be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under ~~section~~ 1-912, the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied, and deposited annually as herein provided, until the bonds and interest thereon are fully paid."

Section 7. Section 1-917, R.C.M. 1947, is amended to read as follows:

1 "1-917. County tax levy for airport purposes. In
2 counties supporting airports or airport authorities, a levy,
3 ~~as provided for in section 1-804, R.C.M. 1947,~~ may be made
4 for such purposes. The levy shall not exceed the equivalent
5 of 2 mills."

6 Section 8. Section 3-3501, R.C.M. 1947, is amended to
7 read as follows:

8 "3-3501. Definitions. As used in this chapter:

9 (1) "agricultural insect pest" means those insects
10 which reduce the quantity or quality of food, feed, forage,
11 or fiber during production; damage commodities during
12 harvest or storage; or transmit disease organisms to
13 valuable plants. Agricultural insect pests include but are
14 not limited to grasshoppers, cutworms, pale western
15 cutworms, army cutworms, chinch bugs, and any other insect
16 or arthropod generally recognized as a destroyer of grain,
17 hay, range, or horticultural crops;

18 (2) "alternative control program" means a system of
19 controlling agricultural insect pest populations through
20 biological or other means not involving toxic chemicals;

21 (3) "Cropland cropland" means land used for the
22 production of food and forage, including the headlands,
23 ditches, and rights-of-way rights-of-way adjacent to such
24 land;

25 ~~(2) (4)~~ "Cropland cropland" spraying program" means the

1 application of chemical or other substances to croplands for
2 the purpose of destroying insect pests;

3 ~~(3) "Condition of insect pest infestation" means a~~
4 ~~condition where an insect pest, as defined in section~~
5 ~~16-1153, or combination of such pests, exists in cropland in~~
6 ~~such numbers and at such times as to destroy or~~
7 ~~substantially damage, or threaten to destroy or~~
8 ~~substantially damage, a significant part of the crop~~
9 ~~production in a county.~~

10 ~~(4) (5)~~ "Department department" means the department of
11 agriculture;

12 ~~(5) "Alternative control program" means a system of~~
13 ~~controlling insect pest populations through biological or~~
14 ~~other means not involving toxic chemicals.~~

15 (6) "infestation" means that a pest exists in such
16 numbers, under such conditions, or at such times as to
17 destroy or substantially damage or threaten to destroy or
18 substantially damage livestock or other agricultural crops
19 or damage or threaten to damage human health;

20 (7) "insect pest detection and surveillance program"
21 means annual field surveys of cropland for the purpose of
22 detecting new or unusual insect pests and monitoring the
23 number and movement of insect pest populations;

24 (8) "emergency" means a serious agricultural insect
25 infestation that meets the conditions of 79-2501."

Section 9. Section 3-3502, R.C.M. 1947, is amended to read as follows:

"3-3502. Insect surveillance and detection and Cropland cropland spraying program — powers of department. The department may:

(1) employ permanent and seasonal personnel to administer this chapter;

(2) survey pest infestation conditions for and maintain surveillance of agricultural insect pests during appropriate seasons, and enter upon any croplands in the course of conducting such surveillance;

(3) determine or assist a county to determine, upon investigation, that a condition of insect pest whether a serious infestation exists or threatens to occur within a county;

(4) declare that an agricultural insect pest infestation constitutes a serious infestation;

~~(4)(5)~~ operate, or contract for, or assist a county to obtain spraying or other appropriate services to counteract a condition of insect pest an actual or threatened serious infestation, having first determined that a any person contracting to supply such services is properly equipped to apply substances designated and approved by the department;

(6) conduct, cooperate in, or coordinate, upon request by any affected county, agricultural insect pest management

services for serious pest infestations in one or more counties;

~~(5)(7)~~ conduct or assist counties, upon request, to co-ordinate coordinate simultaneous cropland spraying county agricultural insect pest management programs in two (2) or more contiguous counties;

(8) assist a county as provided by 47A-6-3208 and 47A-6-3245;

(9) adopt all rules, regulations, and policies necessary to carry out the intent of 3-3501 through 3-3506. The department, in promulgating rules, regulations, and policies, shall follow the Montana Administrative Procedure Act."

Section 10. Section 3-3503, R.C.M. 1947, is amended to read as follows:

"3-3503. Cropland spraying program — duties of department. The department shall:

(1) develop and publish a list of substances approved for all cropland spraying programs, which shall be the least harmful to beneficial insects among effective available substances;

(2) develop and publish technical guidelines for county-conducted cropland spraying programs;

~~(3) publish, upon finding that a condition of insect pest infestation exists within a county, notice of intent to~~

~~conduct a cropland spraying program within that county, such notice to appear in a newspaper generally circulating in the county;~~

(3) notify a county of its survey results and state whether the infestation is normal or serious;

~~(4) conduct a cropland spraying program within a county, after notice of intent has been published, unless within two (2) weeks or such lesser time as the notice may specify, the board of county commissioners adopts a plan to conduct a cropland spraying program which is approved by the department;~~

(4) review and comment on or review and approve all preliminary county agricultural insect pest management plans as provided by 47A-6-3245 and consider whether the plan conforms to the technical guidelines of the department and whether implementation of the plan will probably counteract the condition of insect pest infestation in a timely and proper manner;

~~(5) approve a county plan to conduct a cropland spraying program which is submitted in a timely manner, which conforms to the technical guidelines of the department, and which will counteract a condition of insect pest infestation in a timely manner;~~

~~(6)~~ (5) consider, prior to conducting or approving any cropland spraying program, whether an alternative control

program would be as efficient as spraying on a ratio of total costs to total benefits and ~~to state a summary of such consideration in a notice of intent published under subsection (3) of this section~~ provide the county with a summary of its findings. If the alternative control program is ~~more efficient~~ considered adequate, the department may conduct or approve such a program. In ~~such~~ that event, any reference to cropland spraying program in this act includes the alternative control program."

Section 11. Section 3-3504, R.C.M. 1947, is amended to read as follows:

"3-3504. Financing of cropland spraying program. (1) The costs of a cropland spraying program conducted by the state shall be apportioned one-third ~~(1/3)~~ to the state, one-third ~~(1/3)~~ to the county where the program is conducted, and one-third ~~(1/3)~~ to the owners of cropland in the county or within the boundaries of the program. Prior to implementation of any state ~~or~~ and county cropland spraying program, the department and the ~~board of county commissioners~~ governing body of any county for which the program is proposed, shall enter into a ~~written~~ an interlocal agreement on the maximum amount of moneys each shall appropriate or provide toward the proposed program. If either party does not sign and approve the agreement, the program may not be conducted.

(2) The ~~board of county commissioners governing body~~ of any county for which a cropland spraying program is intended, shall appoint a ~~three member insect evaluation committee once the department has published its notice of intent proceed as provided by 47A-6-3241 through 47A-6-3247.~~ The members shall be composed of farmers and ranchers having lands within the proposed program area. The committee, prior to the deadline of the notice of intent or within seven days of publication, whichever is less, shall review the finding of fact provided by the department to determine whether an area cropland spraying program shall be conducted for the agricultural producers in the proposed program area. If the committee determines that an area cropland spraying program is needed, by independently substantiating the department's finding of fact that a condition of insect pest infestation exists, the county or department shall call for a meeting of producers, landowners and other potentially affected taxpayers within the proposed program area. The call for the meeting shall include public notice at least five (5) days in advance. If a majority of those attending the meeting approve the program, then all producers and landowners within the proposed program area shall be included in the spray program and shall be subject to payment for the program.

Individual farm and ranch landowners pay formally

~~petition by written affidavit protesting their inclusion within the proposed cropland spraying program. The department or county commissioners shall refrain from spraying any land petitioned to be excluded. Such excluded land remains subject to assessment under section 3-3505.~~

(3) If the department conducts the program, the department shall pay all costs of the program. The county shall pay its share and the landowners' share, as provided in section 3-3505, to the department for deposit in the appropriate fund.

(4) If the county conducts the program, the county shall pay all costs of the program, including its share. The department shall pay one-third ~~(1/3)~~ of the costs of the cropland spraying program from moneys appropriated for that purpose to the county in which the program was conducted. The county ~~treasurer~~ finance administrator shall collect the landowners' special assessments as provided in section 3-3505."

Section 12. Section 3-3505, R.C.M. 1947, is amended to read as follows:

"3-3505. Computation and collection of assessments on landowners. Each owner of cropland ~~benefited~~ benefiting under a cropland spraying program is liable for such portion of the landowners' share of the program costs as his cropland is a portion of all cropland within the county

benefited by boundaries of the program. The county treasurer finance administrator shall compute each such landowner's liability and mail a special assessment therefor to each landowner or his agent owner or occupier of land within the boundaries of the program. Unless otherwise mutually agreed upon. This this assessment is due and payable within ~~thirty-two~~ (32) days of mailing or ~~thirty~~ (30) days of receipt, if receipt is shown to be more than ~~two~~ (2) days after mailing. A delinquent assessment is a lien upon the land assessed."

Section 13. Section 4-1-206, R.C.M. 1947, is amended to read as follows:

"4-1-206. Local option. The electors of a county may, by approving an initiative as provided under Title 47 47, Chapter 3, ~~R.C.M. 1947~~ part 3, prohibit the sale and consumption of liquor, or of all alcoholic beverages, within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under ~~section 37-304~~ 47A-3-313."

Section 14. Section 11-3861, R.C.M. 1947, is renumbered 47A-6-4503 and is amended to read as follows:

"~~11-3861~~ 47A-6-4503. Definitions. As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the

following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

~~(2-4)~~ (3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that, where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, ~~rent~~ rental, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

~~(3)~~ (4) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

~~(3)~~ "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

~~(4)~~ (5) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

~~(5)~~ (6) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof, which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

~~(6)~~ (7) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

~~(7)~~ (8) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

~~(8)~~ (9) "Final plat" means the final drawing of the

subdivision and dedication required by this act to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

~~(9)~~ (10) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (~~sections~~ 66-2301 through 66-2347) to practice surveying in the state of Montana.

~~(10)~~ (11) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (~~sections~~ 66-2301 through 66-2347) to practice engineering in the state of Montana.

~~(11)~~ (12) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

~~(12)~~ (13) "Subdivision" means a division of land, or land so divided, which creates one or more parcels, containing less than ~~twenty~~ (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision, and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than

1 ~~twenty~~ (20) acres which have been segregated from the
 2 original tract, and the plat thereof shall show all such
 3 parcels, whether contiguous or not. Provided, however, ~~that~~
 4 condominiums constructed on land divided in compliance with
 5 this chapter are exempt from the provisions of this chapter.

6 ~~(13)~~ (14) "Occasional sale" means one sale of a division
 7 of land within any ~~twelve~~ (12) ~~month~~ 12-month period."

8 Section 15. Section 11-3866, R.C.M. 1947, is
 9 renumbered 47A-6-4508 and is amended to read as follows:

10 ~~"11-3866~~ 47A-6-4508. Submission of subdivision plat to
 11 governing body — notice — hearing — approval —
 12 disapproval. (1) Except where a plat is eligible for summary
 13 approval, the subdivider shall present to the governing
 14 body, or the agent or agency designated thereby, the
 15 preliminary plat of the proposed subdivision for local
 16 review. When the proposed subdivision lies within the
 17 boundaries of ~~an incorporated city or town~~ a municipality,
 18 the preliminary plat shall be submitted to and approved by
 19 the ~~city or town~~ municipal governing body. When the proposed
 20 subdivision is situated entirely in an unincorporated area,
 21 the preliminary plat shall be submitted to and approved by
 22 the governing body of the county; however, ~~if the proposed~~
 23 ~~subdivision lies within one (1) mile of a third class city~~
 24 ~~or town or within two (2) miles of a second class city or~~
 25 ~~within three (3) miles of a first class city the county~~

1 ~~governing body shall submit the preliminary plat to the city~~
 2 ~~or town governing body or its designated agent for review~~
 3 ~~and consent a municipality may by resolution establish its~~
 4 ~~authority to review and comment on subdivisions within its~~
 5 ~~extraterritorial area.~~ If the proposed subdivision lies
 6 partly within an incorporated ~~city or town~~ municipality, the
 7 proposed plat thereof must be submitted to and approved by
 8 both the ~~city or town~~ municipal and the county governing
 9 bodies. ~~This section does not limit the authority of certain~~
 10 ~~municipalities to regulate subdivisions beyond their~~
 11 ~~corporate limits pursuant to section 11-3305.~~

12 (2) The governing body shall approve, conditionally
 13 approve, or reject the preliminary plat within ~~sixty~~ (60)
 14 days of its presentation unless the subdivider consents to
 15 an extension of the review period. The preliminary plat
 16 shall show all pertinent features of the proposed
 17 subdivision and all proposed improvements. The governing
 18 body or its designated agent or agency shall review the
 19 preliminary plat to determine whether it conforms to the
 20 local master plan if one has been adopted pursuant to
 21 ~~sections~~ 11-3801 through 11-3856, to the provisions of this
 22 act, and to rules and regulations prescribed or adopted
 23 pursuant to this act.

24 (3) The governing body or its authorized agent or
 25 agency shall hold a public hearing on the preliminary plat

1 and shall consider all relevant evidence relating to the
 2 public health, safety, and welfare, including the
 3 environmental assessment, to determine whether the plat
 4 should be approved, conditionally approved, or disapproved
 5 by the governing body. Notice of such hearing shall be
 6 given by publication in a newspaper of general circulation
 7 in the county not less than ~~fifteen~~ (15) days prior to the
 8 date of the hearing. The subdivider and each property owner
 9 of record immediately adjoining the land included in the
 10 plat shall also be notified of the hearing by registered
 11 mail not less than ~~fifteen~~ (15) days prior to the date of
 12 the hearing. When a hearing is held by an agent or agency
 13 designated by the governing body, the agent or agency shall
 14 act in an advisory capacity and recommend to the governing
 15 body the approval, conditional approval, or disapproval of
 16 the plat. This recommendation must be submitted to the
 17 governing body in writing not later than ~~ten~~ (10) days after
 18 the public hearing. If the governing body rejects or
 19 conditionally approves the preliminary plat, it shall
 20 forward one ~~four~~ copy of the plat to the subdivider,
 21 accompanied by a letter over the appropriate signature
 22 stating the reason for rejection or enumerating the
 23 conditions which must be met to assure approval of the final
 24 plat.

25 (4) The basis for the governing body's decision to

1 approve, conditionally approve, or disapprove a subdivision
 2 shall be whether the preliminary plat, environmental
 3 assessment, public hearing, planning board recommendations,
 4 and additional information demonstrate that development of
 5 the subdivision would be in the public interest. The
 6 governing body shall disapprove any subdivision which it
 7 finds not to be in the public interest. To determine
 8 whether the proposed subdivision would be in the public
 9 interest, the governing body shall issue written findings of
 10 fact which weigh the following criteria for public interest:

- 11 (a) the basis of the need for the subdivision;
- 12 (b) expressed public opinion;
- 13 (c) effects on agriculture;
- 14 (d) effects on local services;
- 15 (e) effects on taxation;
- 16 (f) effects on the natural environment;
- 17 (g) effects on wildlife and wildlife habitat; and
- 18 (h) effects on the public health and safety.

19 (5) Upon approving or conditionally approving a
 20 preliminary plat, the governing body shall provide the
 21 subdivider with a dated and signed statement of approval.
 22 This approval shall be in force for not more than ~~one~~ (1)
 23 calendar year; at the end of this period, the governing body
 24 may, at the request of the subdivider, extend its approval
 25 for no more than ~~one~~ (1) calendar year."

1 Section 16. Section 16-1708, R.C.M. 1947, is
2 renumbered 3-822 and is amended to read as follows:

3 "~~16-1708~~ 3-822. Embargo against introduction of
4 noxious ~~weed~~ plant seed from other states. If the department
5 of agriculture believes that movements of grain, plants,
6 seed, tubers, nursery stock, hay, straw, fruit, or other
7 materials containing noxious ~~weed~~ plant seed or plants
8 dangerous or inimical to the horticultural or agricultural
9 industries are about to be introduced into the state, ~~it may~~
10 the department shall advise the governor. The governor
11 shall, by proclamation, declare an embargo against the
12 importation or shipment of ~~the any~~ grain, plants, tubers,
13 nursery stock, seed, hay, straw, fruit, or other materials
14 into the state, except under restrictions established in
15 this act, and provided in the rules adopted by the
16 department of agriculture."

17 Section 17. Section 16-1708.1, R.C.M. 1947, is
18 renumbered 3-823 and is amended to read as follows:

19 "~~16-1708.1~~ 3-823. Rules for enforcement of interstate
20 embargo. The department of agriculture ~~shall may promulgate~~
21 and adopt all necessary rules ~~in for~~ the enforcement of ~~an~~
22 any such embargo prior to or upon its being proclaimed as
23 ~~provided in section 16-1708~~. The department of agriculture,
24 in adopting the rules, may provide for the establishment of
25 inspection stations, the appointment of inspectors, the

1 establishment of the inspection fees, the issuance of
2 certificates, the methods of transporting and packaging, and
3 other rules and procedures necessary to carry out ~~this act~~
4 the embargo."

5 Section 18. Section 16-1708.2, R.C.M. 1947, is
6 renumbered 3-824 and is amended to read as follows:

7 "~~16-1708.2~~ 3-824. Violations of ~~interstate embargo~~
8 and penalty. Any person who refuses to obey an order of an
9 appointed inspector or willfully disobeys the embargo
10 provisions of ~~this act~~ shall be guilty of a misdemeanor and
11 upon conviction shall be fined not less than ~~fifty dollars~~
12 ~~(\$50)~~ and not more than ~~five hundred dollars (\$500)~~."

13 Section 19. Section 16-1708.3, R.C.M. 1947, is
14 renumbered 3-825 and is amended to read as follows:

15 "~~16-1708.3~~ 3-825. Disposition of fines and inspection
16 fees. All fines levied ~~as provided in section 16-1708.2, for~~
17 violations of embargo provisions and all fees collected from
18 embargo inspections shall be deposited with the state
19 treasurer to the credit of the earmarked revenue fund for
20 the use of the department of agriculture for the purpose of
21 administering and enforcing ~~this act~~ the embargo."

22 Section 20. Section 23-2601, R.C.M. 1947, is amended to
23 read as follows:

24 "23-2601. Definitions. As used in this act, unless the
25 context clearly indicates otherwise:

1 (1) "~~Election~~ election" means a general, special,
2 primary nominating, or municipal election, or an election in
3 a school district-;

4 (2) "~~General~~ general election" means an election held
5 for the election of officers throughout the state at times
6 specified by law-;

7 (3) "~~Special~~ special election" means an election
8 called by the proper authorities to fill vacancies or to
9 raise money-;

10 (4) "~~Vacancy~~ vacancy" means an office which does not
11 have an incumbent who has a right to exercise its functions
12 and take its fees or emoluments-;

13 (5) "~~Primary~~ primary" or "primary election" means a
14 statutory procedure for nominating candidates to public
15 office at the polls-;

16 (6) "~~Party~~ party" means any political organization
17 which at the last preceding election for governor polled at
18 least ~~three per cent (3%)~~ of the votes for governor-;

19 (7) "~~Taxpayer~~ taxpayer" means a person who has paid a
20 tax on property assessed on a county or city assessment roll
21 next preceding the election at which a question is to be
22 submitted to the vote of the taxpayers-;

23 (8) "~~Registrar~~ registrar" means the ~~county clerk and~~
24 ~~recorder officer or employee designated by the governing~~
25 ~~body to perform the duties of the election administrator~~ and

1 any regularly appointed deputy ~~clerk and recorder~~-;

2 (9) "~~Commissioners~~ commissioners" means the ~~board of~~
3 ~~county commissioners governing body of the county~~-;

4 (10) "~~City~~ city" means any incorporated ~~city or town~~
5 ~~municipality~~-;

6 (11) "~~Council~~ council" means any municipal ~~council or~~
7 ~~commission governing body~~."

8 Section 21. Section 23-2902, R.C.M. 1947, is amended
9 to read as follows:

10 "23-2902. Publication and posting by county
11 ~~commissioners governing body~~. When a proclamation prescribed
12 by ~~section~~ 23-2901 is received, the ~~commissioners governing~~
13 ~~body~~ shall have a copy published in a newspaper published in
14 the county if a newspaper is published therein, otherwise in
15 a newspaper of general circulation therein, and shall, ~~post~~
16 ~~a copy ten (10) days or more before the election, post a~~
17 ~~copy~~ at each polling place."

18 Section 22. Section 23-2903, R.C.M. 1947, is amended
19 to read as follows:

20 "23-2903. Election proclamation by county
21 ~~commissioners governing body~~. When a special election is
22 ordered by the ~~commissioners governing body~~, ~~they~~ it must
23 issue an election proclamation containing the statement
24 contained in ~~section~~ 23-2901(1). The statement must be
25 published and posted in the same manner as a proclamation

1 issued by the governor."

2 Section 23. Section 23-3002, R.C.M. 1947, is amended
3 to read as follows:

4 "23-3002. County ~~clerk as county~~ registrar. (1) Each
5 county ~~clerk and recorder is an official county registrar. He~~
6 shall appoint an elections administrator as registrar who
7 shall

8 ~~(a) Serve without extra pay or compensation;~~

9 ~~(b) Have~~ have custody of registration books, cards,
10 and other records provided for by this act.

11 (2) The official register of electors is an official
12 record of the county ~~clerk and recorder.~~

13 Section 24. Section 23-3003, R.C.M. 1947, is amended
14 to read as follows:

15 "23-3003. Notaries public as deputy registrars —
16 appointment of additional deputies — qualifications —
17 duties. (1) All notaries public are deputy registrars in the
18 county in which they reside. They may register electors
19 residing in any precinct within the county. No notary
20 public may register any voter until he has been issued a
21 certificate of approval by the county registrar certifying
22 that he has received instructions on registration procedure
23 from the county registrar.

24 (2) The ~~commissioners~~ county governing body shall
25 appoint a minimum of two ~~(2)~~ deputy registrars who are not

1 notaries public, a minimum of one ~~(1)~~ from each of the two
2 ~~(2)~~ major political parties, for each precinct in the county
3 from lists of persons recommended by the political parties.
4 If the parties fail to submit lists, the ~~commissioners~~
5 county governing body shall appoint deputy registrars
6 without recommendations from the parties. The number of
7 appointed deputy registrars for each county shall always be
8 equally divided between the two ~~(2)~~ major political parties.

9 A deputy registrar shall:

10 (a) ~~Be~~ be a qualified resident elector in the precinct
11 for which he is appointed;

12 (b) ~~Register~~ register electors residing in any
13 precinct in the county.

14 ~~(c) (3)~~ No duly appointed deputy registrar ~~shall~~ may
15 register any voter until such deputy registrar ~~shall have~~
16 has been issued a certificate of approval by the county
17 registrar, certifying that ~~said~~ the deputy registrar has
18 received instructions on registration procedure from the
19 county registrar.

20 ~~(3) (4)~~ Within ~~three (3)~~ days after a registration card
21 is filled out, deputy registrars shall forward the card to
22 the registrar. Registration cards properly executed prior to
23 the registration deadline shall be accepted by the registrar
24 for ~~three (3)~~ days after the deadline."

25 Section 25. Section 23-3101, R.C.M. 1947, is amended

1 to read as follows:

2 "23-3101. Establishment of election precincts —
3 change of boundaries — certification of changes —
4 designation — map — boundary to conform to ~~wards~~
5 commissioner election districts or school districts. (1) The
6 territorial unit for elections is the election precinct.

7 (2) The ~~commissioners~~ governing body of each county
8 shall establish a convenient number of election precincts
9 equalizing the number of electors in each precinct as nearly
10 as possible.

11 (3) The ~~commissioners~~ governing body may change the
12 boundaries of precincts, but not between January 1 and
13 December 1 in any year during which a general biennial
14 election will be held, except that the ~~commissioners~~
15 governing body may change the boundaries of precincts in the
16 year during which a general biennial election will be held
17 when the changes are required to make precinct boundaries
18 conform to legislative district boundaries following the
19 adoption of reapportionment plans under ~~article~~ Article V,
20 section 14, of the 1972 Montana constitution. In those
21 instances, the changing of precinct boundaries must be
22 accomplished within ~~sixty~~ sixty (60) days of the filing of the
23 final reapportionment plan.

24 (a) All changes must be certified to the registrar
25 ~~three~~ three (3) days or less after the change is made.

1 (b) All election precincts shall be designated by
2 numbers, names, or both.

3 (c) Not more than ~~ten~~ (10) days after an order of the
4 ~~commissioners~~ governing body has established or changed the
5 boundaries of an election precinct, the ~~commissioners~~
6 governing body shall cause to be prepared and delivered a
7 map to the registrar a map showing the borders of all
8 precincts and school districts within the county.

9 (4) The boundaries of election precincts may conform
10 to the ~~wards~~ commissioner election districts of counties and
11 to the commissioner election districts of cities
12 municipalities of the first, second, and third class with a
13 population greater than 1,500 and may conform to the
14 boundaries of ~~first-class~~ first-class school districts.

15 (5) A ~~ward~~ commissioner election district or school
16 district may be divided into two ~~(2)~~ or more precincts, and
17 a precinct may be divided into two ~~(2)~~ or more polling
18 places.

19 (6) In ~~cities~~ municipalities not of the first, second,
20 or third class with a population of less than 1,500,
21 precincts may include two ~~(2)~~ or more ~~wards,~~ commissioner
22 election districts or may comprise territory included by one
23 ~~(1)~~ or more ~~wards~~ commissioner election districts together
24 with contiguous territory lying outside the incorporated
25 limits of the ~~cities~~ municipality."

1 Section 26. Section 23-3103, R.C.M. 1947, is amended
2 to read as follows:

3 "23-3103. Designation of polling place. The
4 ~~commissioners shall make an order designating the polling~~
5 ~~place for each precinct, at the session at which election~~
6 ~~judges are appointed. Such order may provide for polling~~
7 ~~places to be located outside the boundaries of the precinct.~~
8 (1) Polling places shall be designated as provided in
9 47A-3-507.

10 (2) Not more than ten (10) nor or less than three (3)
11 days before an election, the registrar or city clerk shall
12 publish in a newspaper of general circulation in the county,
13 a statement of the locations of the precinct polling
14 places."

15 Section 27. Section 23-3201, R.C.M. 1947, is amended
16 to read as follows:

17 "23-3201. Appointment of election judges and clerks —
18 second board of election judges — duties. (1) At their
19 regular meeting next preceding a general primary election,
20 the commissioners shall appoint five (5) election judges and
21 two (2) clerks for each precinct having ~~two hundred (200)~~ or
22 more electors and three (3) election judges and two (2)
23 clerks for each precinct having less than ~~two hundred (200)~~
24 electors. Judges for new precincts shall be appointed based
25 upon the estimated number of electors.

1 (2) If a precinct has ~~three hundred fifty (350)~~ or
2 more electors, the commissioners may appoint a second board
3 of five (5) election judges and two (2) clerks who shall
4 have the same qualifications as the first board. The second
5 board shall:

6 (a) ~~Meet~~ meet at their respective polling places as
7 ordered;

8 (b) ~~Count~~ count and tabulate ballots as soon as the
9 first board has completed their duties in regard to the
10 voting.

11 (3) If counting and tabulating the ballots is not
12 completed by 8 a.m. on the day following the election, the
13 first board shall reconvene and relieve the second board
14 until 8 p.m. when the second board shall again reconvene and
15 relieve the first board until the ballots are counted and
16 tabulated.

17 (4) The election judges constituting the boards shall
18 number the ballots and count the tally upon the tally sheets
19 and indicate upon the tally sheets the work of each board.
20 The board completing the ~~seats~~ count shall certify the
21 returns as required by law.

22 (5) The municipal governing body shall appoint
23 election judges and clerks for all municipal elections in
24 the manner provided by this chapter. At the option of the
25 municipal governing body, the number of election judges and

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clerks required by subsection (1) may be based on the number of votes cast at the last general municipal election rather than on the number of electors in the precinct. The election judges and clerks so appointed shall perform the duties of their offices as specified by this title for all municipal elections."

Section 28. Section 23-3302, R.C.M. 1947, is amended to read as follows:

"23-3302. Primaries in ~~cities~~ municipalities over certain size — procedure. In ~~cities~~ municipalities having a population of ~~three thousand five hundred~~ {3,500} or more as shown by the ~~most recent federal or state census~~:

(1) ~~The~~ the nomination of candidates by primary election for ~~city~~ municipal offices shall be subject to the provisions of this chapter;

(2) ~~Political~~ political parties shall file declarations of nominations for ~~city~~ municipal offices with the ~~city clerk~~ municipal elections administrator;

(3) ~~The~~ the duties of the ~~city clerk~~ elections administrator are the same as the registrar in conducting the primary elections, and the ~~city clerk~~ elections administrator shall send notices of the primary election in the same manner as registrars send notices for nominations for county offices at primary elections;

(4) ~~On~~ on the ~~fourteenth~~ 14th day preceding a ~~city~~

municipal election, the ~~cities~~ municipalities shall hold primary elections;

(5) ~~If~~ if no declarations are filed ~~forty~~ {40} days or more before the primary election, no primary election shall be held and the ~~city clerk~~ election administrator shall certify to the registrar ~~thirty-five~~ {35} days or more before the date of the primary election that no petitions have been filed;

~~(6) The council shall;~~

~~(a) establish city voting precincts and wards,~~

~~(b) appoint city judges and clerks of elections and other officers necessary for the election,~~

~~(c) perform other necessary duties in the same manner prescribed for city elections."~~

Section 29. Section 23-3304, R.C.M. 1947, is amended to read as follows:

"23-3304. Declaration of nomination — filing — fees — printing of victorious write-in candidates on general election ballot. (1) Each candidate in the primary election shall send a declaration of nomination to the secretary of state, registrar, or city clerk. Each candidate for governor must send a joint declaration of nomination with a candidate for lieutenant governor.

(2) Each candidate must sign the declaration and send with it the required filing fee, or, in the case of a

1 candidate who cannot afford the filing fee, send with it the
2 documents required in lieu of a filing fee. The declaration
3 of nomination shall be acknowledged by a notary public, if
4 by mail, or by the officer of the office at which the filing
5 is made.

6 (3) The declaration, when filed, is conclusive
7 evidence that the elector is a candidate for nomination by
8 his party.

9 (4) Nominating declarations are filed:

10 (a) ~~In~~ in the office of secretary of state for
11 congressional offices, state or district offices to be voted
12 for in more than one ~~(+) county~~, members of the legislative
13 assembly legislature, and judges of the district court;

14 (b) ~~In~~ in the office of the registrar for county and
15 district offices to be voted for in one ~~(+) county only~~, and
16 for township and precinct offices;

17 (c) ~~In~~ in the office of the city clerk for all city
18 officers.

19 (5) Filing fees are as follows:

20 (a) ~~For~~ for offices having a salary of ~~one thousand~~
21 ~~dollars (\$1,000)~~ or less ~~per annum~~ a year, ~~ten dollars~~
22 ~~(\$10)~~, except candidates for the legislature must pay
23 ~~fifteen dollars (\$15)~~;

24 (b) ~~For~~ for offices having a salary of more than ~~one~~
25 ~~thousand dollars (\$1,000)~~ ~~per annum~~ a year, ~~one per cent~~

1 ~~(1%)~~ of the total annual salary;

2 ~~(e) For the offices of county commissioners,~~

3 ~~(i) in counties of the first class, forty dollars~~
4 ~~(\$40),~~

5 ~~(ii) in counties of the second class, thirty-five~~
6 ~~dollars (\$35),~~

7 ~~(iii) in counties of the third class, thirty dollars~~
8 ~~(\$30),~~

9 ~~(iv) in counties of the fourth class, twenty-five~~
10 ~~dollars (\$25),~~

11 ~~(v) in counties of other classes, ten dollars (\$10);~~

12 ~~(d) (c) For~~ for offices in which compensation is paid
13 in fees, ~~five dollars (\$5)~~;

14 ~~(e) (d) For~~ for state, county, and precinct
15 committeemen, delegates to national conventions, and
16 presidential electors, no fees are required.

17 (6) A person nominated by having his name written in
18 on the primary ballot and desiring to accept the nomination
19 shall not have his name printed on the general election
20 ballot unless he:

21 (a) ~~Files~~ files with the secretary of state,
22 registrar, or city clerk, within at least ~~ten~~ ~~(10)~~ days
23 after the primary, a written declaration indicating his
24 acceptance of the nomination;

25 (b) ~~Pays~~ pays the required filing fee;

(c) ~~Received~~ received at least ~~five-per-cent~~ (5%) of the votes cast for the office at the last preceding general election.

(7) Indigent candidates. If a person is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(a) from a write-in candidate, a verified statement that he is unable to pay the filing fee;

(b) from a candidate for nomination, a verified statement that he is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(i) contains the name of the office to be filled, the candidate's name, residence, occupation, and business address;

(ii) is signed by ~~five-percent~~ (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding general election; and

(iii) is signed by electors residing within the political division of the state in which the candidate petitions for nomination.

(8) The declaration for nomination shall be in the form and contain the information prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination."

Section 30. Section 23-3502, R.C.M. 1947, is amended to read as follows:

"23-3502. ~~City clerk~~ Municipal elections administrator to act in ~~city~~ municipal elections. In ~~city~~ municipal elections, the ~~city clerk~~ municipal elections administrator shall perform all duties prescribed for registrars in this chapter."

Section 31. Section 23-3604, R.C.M. 1947, is amended to read as follows:

"23-3604. Sufficient booths to be provided — only one person to occupy booth — may be ejected after occupying booth for unreasonable time. (1) All officers who designate polling places shall:

(a) ~~Provide~~ provide in each polling place a sufficient number of booths. The officers must furnish each booth with a door or curtain to screen the voter from observation;

(b) ~~Furnish~~ furnish the booths adequately to enable the elector to prepare his ballot;

(c) ~~Furnish~~ furnish at least one ~~(4)~~ booth for every ~~fifty~~ (50) electors registered in the precinct.

(2) No more than one ~~(4)~~ person may occupy a booth at one ~~(4)~~ time, and no person may occupy a booth longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

(3) At the option of the municipal governing body, for

municipal elections, the number of booths required by subsection (1) (c) may be based on the number of votes cast at the last general municipal election rather than on the number of electors in the precinct."

Section 32. Section 23-4121, R.C.M. 1947, is amended to read as follows:

"23-4121. Procedure upon tie vote for state executive officers -- county officers other than county commissioner -- ~~township officers~~ commissioners. (1) If there is a tie vote for governor, and lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislative assembly, at its next regular session, shall elect a person to fill the office by joint ballot of the two ~~(2)~~ houses.

(2) If there is a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, ~~or for a township officer, the commissioners shall appoint~~ an eligible person shall be appointed as in case of other vacancies in the office.

(3) If there is a tie vote for commissioner, the senior district judge shall appoint an eligible person to fill the office ~~as in other cases of vacancy.~~

(4) If there is a tie vote for state officers, the

secretary of state shall transmit a certified copy of the statement to the ~~legislative assembly~~ legislature showing the votes cast for the two ~~(2)~~ or more persons having an equal and the highest number of votes."

Section 33. Section 25-209, R.C.M. 1947, is amended to read as follows:

"25-209. No fees to be charged ~~state, county or public officer in habeas corpus proceedings~~. No fees ~~must~~ may be charged ~~the state, or any county, or any subdivision thereof, or any public officer acting therefor, or~~ in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees."

Section 34. Section 25-236, R.C.M. 1947, is renumbered 95-815 and is amended to read as follows:

"~~25-236~~ 95-815. Fees of coroner. (1) The coroner is entitled to receive and collect for his own use the following fees:

(a) ~~For~~ for each day or fraction of day engaged in making an investigation relative to a death, whether an inquest is later held or not, the sum of ~~five dollars (\$5), provided that not more than one day's fees shall be charged for making an investigation in any one case, except in counties of the first, second and third class;~~

(b) ~~For~~ for each day or fraction of day engaged in

1 holding an inquest, ~~five dollars (\$5)~~, provided that not
2 more than ~~two~~ 2 days' fees shall be charged for holding an
3 inquest in any one case;

4 (c) ~~Fee for~~ subpoenaing each witness, including copy
5 of subpoena, ~~thirty 30 cents (\$30)~~;

6 (d) ~~Fee for~~ summoning each juror, including copy of
7 summons, ~~thirty 30 cents (\$30)~~;

8 (e) ~~Fee for~~ each oath administered, ~~five 5 cents (\$5)~~;

9 (f) ~~Fee for~~ making transcript of testimony, per folio,
10 ~~fifteen 15 cents (\$15)~~;

11 (g) ~~Fee for~~ each mile actually traveled in the
12 performance of any duty, a mileage allowance as provided in
13 ~~section 59-801~~;

14 (h) ~~Fee for~~ filing papers, ~~each--five 5 cents (\$5)~~
15 ~~each~~;

16 (2) The total amount of fees allowed by the board of
17 county commissioners to a coroner, except when acting as
18 sheriff, must not exceed ~~twenty-one hundred dollars (\$2100)~~
19 ~~in any one year, including compensation paid all clerks,~~
20 ~~stenographers and other clerical assistants employed by him,~~
21 ~~provided the coroner in a county having a population of~~
22 ~~forty-five thousand (45,000) or more, according to the~~
23 ~~latest federal census enumeration, say, at the discretion of~~
24 ~~the county commissioners receive a salary of not to exceed~~
25 ~~three thousand seven hundred fifty dollars (\$3,750) per year~~

1 ~~and mileage as above provided in lieu of all fees~~
2 ~~above-mentioned, and all clerical and stenographic help~~
3 ~~except as provided in section 16-2408, shall be included in~~
4 ~~such salary. Said population to be based on the latest~~
5 ~~United States census an amount established by ordinance, or~~
6 ~~the coroner may receive a salary established by ordinance in~~
7 ~~lieu of all fees mentioned above.~~

8 (3) A justice of the peace, acting as coroner, is
9 allowed the same fees as the coroner, and no more.

10 (4) If acting as sheriff, the coroner is allowed the
11 same fees as sheriff or constable for like services."

12 Section 35. Section 27-613, R.C.M. 1947, is amended to
13 read as follows:

14 "27-613. Licenses required -- limited to premises --
15 local health officer validation -- publicly owned
16 establishments exempt -- right to license. (1) A person
17 operating an establishment shall procure an annual license
18 from the department.

19 (2) A separate license is required for each
20 establishment, but if more than one (4) type of
21 establishment is operated on the same premises and under the
22 same management, only one (4) license is required.

23 (3) Only one (4) license is required for a person
24 owning and operating one (4) or more vending machines.

25 (4) No license issued under this chapter is valid

until countersigned by the local health officer having jurisdiction in each county in which the business will be conducted. The department shall refer all licenses to the local health officer for his signature prior to the issuance of a license by the department. The initial license and subsequent renewals shall be invalid until the validation signature is affixed. The validation signature shall be affixed only after the local health officer is satisfied that the establishment has met sanitary conditions required by rules of the department.

~~(4)~~ (5) Licenses expire on December 31 following the date of issue unless canceled for cause.

~~(5)~~ (6) Licenses are not transferable ~~are~~ or applicable to any premises other than that for which the license was issued.

~~(6)~~ (7) Establishments owned or operated by the state or a political subdivision of the state, are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the state department under this chapter.

~~(7)~~ (8) Licenses shall be granted as a matter of right unless grounds for denial or cancellation exist."

Section 36. Section 27-614, R.C.M. 1947, is amended to read as follows:

"27-614. Application for license — fee. (1) An

application for a license is made to the department on forms, and contains information, required by the department.

(2) For each license issued, the department shall collect a fee of ~~twenty dollars~~ \$20. It shall deposit receipts in the state general fund.

(3) Before June 30 of each year, the department shall pay to a local ~~board of health~~ department as established under ~~section 69-4504, 69-4506, or 69-4507, R.C.M. 1947~~ Title 47A, chapter 8, part 3, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this act; provided, however, that there is a functioning local ~~board of health~~ department, and that the local ~~board of health~~ department, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(4) Before June 1 of each year, the local ~~board of health~~ department shall submit to the department a list of the establishments in each jurisdiction that are licensed under this chapter. The funds received by the local ~~board of health~~ department shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under ~~section 69-4508, R.C.M. 1947~~ Title 47A, chapter 9, part 3."

Section 37. Section 32-1215, R.C.M. 1947, is amended

1 to read as follows:

2 "32-1215. ~~Any incorporated city~~ Local government may
3 require accident reports. Any ~~incorporated city, town,~~
4 ~~village, or other municipality~~ local government may by
5 ordinance require that the driver of a vehicle involved in
6 an accident shall also file with a designated ~~city~~
7 department a report of such accident or a copy of any report
8 herein required to be filed with the supervisor. All such
9 reports shall be for the confidential use of the ~~city~~
10 designated department and subject to the provisions of
11 ~~section 32-1213.~~"

12 Section 38. Section 32-2142, R.C.M. 1947, is amended
13 to read as follows:

14 "32-2142. Persons under the influence of intoxicating
15 liquor or of drugs. ~~(a)(1)~~ It is unlawful and punishable as
16 provided in ~~paragraph (d)~~ subsection (4) of this section for
17 any person who is under the influence of intoxicating liquor
18 to drive or be in actual physical control of any motor
19 vehicle upon the highways of this state.

20 ~~(b)(2)~~ In any criminal prosecution for a violation of
21 ~~paragraph (a) subsection (1)~~ of this section relating to
22 driving a vehicle while under the influence of intoxicating
23 liquor, the amount of alcohol in the defendant's blood at
24 the time alleged as shown by chemical analysis of the
25 defendant's blood, urine, breath, or other bodily substance,

1 shall give rise to the following presumptions:

2 ~~4-(a)~~ If there was at that time ~~0.05-per-cent~~ 0.05% or
3 less by weight of alcohol in the defendant's blood, it shall
4 be presumed that the defendant was not under the influence
5 of intoxicating liquor.

6 ~~2-(b)~~ If there was at that time in excess of ~~0.05-per~~
7 ~~cent~~ 0.05% but less than ~~0.10-per-cent~~ 0.10% by weight of
8 alcohol in the defendant's blood, such fact shall not give
9 rise to any presumption that the defendant was or was not
10 under the influence of intoxicating liquor, but such fact
11 may be considered with other competent evidence in
12 determining the guilt or innocence of the defendant.

13 ~~3-(c)~~ If there was at that time ~~0.10-per-cent~~ 0.10% or
14 more by weight of alcohol in the defendant's blood, it shall
15 be presumed that the defendant was under the influence of
16 intoxicating liquor.

17 ~~4-(3)~~ ~~Per-cent~~ Percent by weight of alcohol in the
18 blood shall be based upon grams of alcohol per ~~one hundred~~
19 ~~(100)~~ cubic centimeters of blood.

20 ~~5-(4)~~ The foregoing provisions of ~~paragraph (b)~~
21 subsection (2) shall not be construed as limiting the
22 introduction of any other competent evidence bearing upon
23 the question whether or not the defendant was under the
24 influence of intoxicating liquor.

25 ~~(a)(5)~~ It is unlawful and punishable as provided in

paragraph ~~(4)~~ subsection (6) of this section for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive a motor vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such a drug under the laws of this state shall not constitute a defense against any charge of violating this paragraph.

~~(4)~~ (6) Every person who is convicted of a violation of this section shall be punished by imprisonment in the county or ~~city~~ municipal jail for not more than ~~six~~ (6) months or by a fine of not less than ~~one hundred dollars~~ (\$100.00) or more than ~~five hundred dollars~~ (\$500.00) or by both such fine and imprisonment. On a second conviction, he shall be punished by imprisonment in the county or ~~city~~ municipal jail for not less than ~~ten~~ (10) days ~~or~~ or more than ~~six~~ (6) months, to which may be added, at the discretion of the court a fine of not less than ~~three hundred dollars~~ (\$300.00) ~~or~~ or more than ~~five hundred dollars~~ (\$500.00). On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than ~~thirty~~ (30) days ~~or~~ or more than ~~one~~ (1) year, to which may be added at the discretion of the court a fine of not less than ~~five hundred dollars~~ (\$500.00) ~~or~~ or more than ~~one thousand dollars~~ (\$1,000.00).

~~(\$1,000.00).~~

~~(e)~~ (7) Each ~~and every municipality local government~~ in this state is hereby given authority to enact as an ordinance the ~~foregoing paragraphs (a), (b), (c) and (d)~~ subsections (1), (2), (5), and (6) of this section, with the word "state" in the first sentence of ~~paragraphs (a) (1) and (c) (5)~~ changed in each instance to read "municipality," or "county" ~~as an ordinance~~, and is hereby given jurisdiction of the enforcement of ~~said the~~ the ordinance, and of the imposition of the fines and penalties therein provided.

~~(f)~~ (8) The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person upon receiving a record of such person's conviction or forfeiture of bail not vacated under this section."

Section 39. Section 32-2143, R.C.M. 1947, is amended to read as follows:

"32-2143. Reckless driving. ~~(a)~~ (1) Any person who drives ~~any~~ a vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

~~(b)~~ (2) Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not more than ~~ninety~~ (90) days, or by fine of not less than ~~twenty-five dollars~~ (\$25.00) ~~or~~ or more than ~~three hundred dollars~~ (\$300.00), or by both such fine

1 and imprisonment, and on a second or subsequent conviction
2 shall be punished by imprisonment for not less than ~~ten~~ (10)
3 days ~~or~~ or more than ~~six~~ (6) months, or by a fine of not
4 less than ~~fifty dollars~~ (\$50.00) ~~or~~ or more than five
5 hundred dollars (\$500.00), or by both such fine and
6 imprisonment.

7 ~~(a) (3)~~ Each ~~and every municipality~~ local government in
8 this state is hereby given authority to enact ~~the foregoing~~
9 ~~paragraphs (a) subsections (1) and (b) (2)~~ of this section
10 as an ordinance, and is hereby given jurisdiction of the
11 enforcement of ~~said the~~ ordinance and of the imposition of
12 the fines and penalties therein provided."

13 Section 40. Section 32-2143.1, R.C.M. 1947, is amended
14 to read as follows:

15 "32-2143.1. Permission of authorities to hold speed
16 contest. No race or contest for speed shall be held and no
17 person shall engage in or aid or abet in any motor vehicle
18 speed contest or exhibition of speed on a public highway or
19 street without written permission of the authorities of the
20 state, county, ~~or city or municipality~~ having jurisdiction
21 and unless the same is fully and efficiently patrolled for
22 the entire distance over which such race or contest for
23 speed is to be held."

24 Section 41. Section 32-2150.3, R.C.M. 1947, is amended
25 to read as follows:

1 "32-2150.3. Erection of signs. ~~(a) (1)~~ No operator of a
2 motor vehicle may be arrested under this act unless signs
3 have been placed at or near the state line on the primary
4 highway system, outside ~~towns or cities~~ municipalities
5 having over ~~two thousand five hundred~~ (2,500) population,
6 and outside county seats on the primary highways to indicate
7 the legal rate of speed.

8 ~~(b) (2)~~ Any ~~municipality~~ local government which uses
9 ~~radioisere waves~~ radio microwaves or other electrical device
10 for law enforcement purposes shall erect and maintain
11 appropriate signs giving notice of such use at a conspicuous
12 place, at or near the corporate limits of the municipality,
13 upon each state highway and arterial street or highway
14 entering the municipality, and at such other places as may
15 be ~~deemed~~ considered necessary by the ~~municipal~~ local
16 authorities for the information of the traveling public.

17 ~~(a) (3)~~ Signs giving notice that the speed of vehicles
18 may be measured by ~~radioisere waves~~ radio microwaves or
19 other electrical device shall be placed as required for
20 speed signs in subsection ~~(a) (1)~~ above; provided, however,
21 that the absence of such signs shall not, in itself,
22 invalidate an otherwise proper arrest."

23 Section 42. Section 32-2202, R.C.M. 1947, is amended
24 to read as follows:

25 "32-2202. Legislative policy and intent. Consistent

with the foregoing determinations and declarations, the ~~legislative-assembly~~ legislature intends:

(1) ~~To~~ to place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state for present as well as for future use;

(2) ~~To~~ to make the department of highways custodian of the federal-aid and state highways, and to impose similar responsibilities upon ~~the boards of county commissioners~~ governments with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction;

(3) ~~That~~ that the state shall have integrated systems of highways, roads, and streets, and that the department of highways, the counties, and the municipalities assist and ~~co-operate~~ cooperate with each other to that end;

(4) ~~To~~ to provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed."

Section 43. Section 32-2203, R.C.M. 1947, is amended to read as follows:

"32-2203. General definitions. Subject to additional definitions contained in this Title which are applicable to specific chapters or sections, and unless the context otherwise requires otherwise, terms are defined as follows:

(1) "~~Abandonment~~ abandonment"—~~Cessation~~ cessation of use of ~~right-of-way~~ right-of-way (easement) or activity thereon with no intention to reclaim or use again. (~~Sometimes~~ sometimes called "vacation.");

(2) "~~Auditor~~ auditor"—~~County auditor, county finance administrator;~~

(3) "~~Board~~ board"—~~Board of county commissioners, local government governing body;~~

(4) "~~Bridge~~ bridge"—~~Includes rights-of-way~~ includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches, except dirt fills;

(5) "~~Clerk~~ clerk"—~~County clerk and recorder, county records administrator;~~

(6) "~~Commission~~ commission"—~~Highway~~ highway commission provided for in section 82A-706.1;

(7) "~~Committee~~"—~~Local improvement district committee of supervisors;~~

(8) (7) "~~Condemnation~~ condemnation"—~~Taking~~ taking by exercise of the right of eminent domain;

(9) (8) "~~Construction~~ construction"—~~Supervising~~ supervising, inspecting, actual building, and all expenses

1 incidental to the construction or reconstruction of a
2 highway, including locating, surveying, and mapping, costs
3 of ~~right-of-way~~ right-of-way or other interests in land, and
4 elimination of hazards at ~~railway-grade~~ railway grade
5 crossings;

6 ~~(10)(19)~~ "Control control of access"—~~The the~~ condition
7 in which the right of owners or occupants of abutting land
8 or other persons to access, light, air, or view in
9 connection with a highway is fully or partially controlled
10 by public authority;

11 ~~(11)(10)~~ "County county road"—~~any any~~ public highway
12 opened, established, constructed, maintained, abandoned, or
13 discontinued in accordance with ~~chapters 31 and 40 of this~~
14 title, chapter 6, part 9, of Title 47A;

15 ~~(12)(11)~~ "Department department"—~~Department department~~
16 of highways provided for in Title 82A, chapter 7;

17 ~~(13)(12)~~ "Director director"—~~Director director~~ of
18 highways, a position provided for in ~~section~~ 82A-701;

19 ~~(14)(13)~~ "Easement easement"—~~A a~~ right acquired by
20 public authority to use or control property for a designated
21 purpose;

22 ~~(15)(14)~~ "Eminent eminent domain"—~~The the~~ right of the
23 state to take private property for public use;

24 ~~(16)(15)~~ "Federal-aid federal-aid highway"—~~any any~~
25 public highway which is a portion of any of the federal-aid

1 highway systems;

2 ~~(17)(16)~~ "Federal-aid federal-aid highway systems"—~~all~~
3 all of the systems ~~named~~ hereafter named and their urban
4 extensions;

5 ~~(18)(17)~~ "Federal-aid federal-aid interstate
6 system"—~~That that~~ system of public highway selected by the
7 commission in ~~co-operation~~ cooperation with adjoining
8 states, subject to the approval of the secretary of commerce
9 as provided in the Federal Highway Act, as amended;

10 ~~(19)(18)~~ "Federal-aid federal-aid primary system"—~~That~~
11 that system of connected public highways designated by the
12 commission, subject to the approval of the secretary of
13 commerce, as provided in the Federal Highway Act, as
14 amended;

15 ~~(20)(19)~~ "Federal-aid federal-aid secondary
16 system"—~~That that~~ system of public highways not on the
17 federal-aid primary or interstate systems selected by the
18 commission in ~~co-operation~~ cooperation with the boards of
19 county commissioners, subject to the approval of the
20 secretary of commerce, as provided in the Federal Highway
21 Act, as amended;

22 ~~(21)(20)~~ "Fee fee simple"—~~A an~~ absolute estate or
23 ownership in property including unlimited power of
24 alienation;

25 ~~(22)(21)~~ "Highway highway"—~~Includes rights of way~~

1 includes rights-of-way or other interests in land,
2 embankments, retaining walls, culverts, sluices, drainage
3 structures, bridges, railroad-highway crossings, tunnels,
4 signs, guardrails, and protective structures;

5 ~~(23)~~ (22) "Highway, highway", "road", "street"—~~Whether~~
6 ~~whether~~ they appear together or separately or are preceded
7 by the adjective "public", these are general terms denoting
8 a public way for purposes of vehicular travel, including the
9 entire area within the ~~sight-of-way~~ right-of-way;

10 ~~(24)~~ (23) "Highway highway authority(ies)"—~~The the~~
11 entity(ies) at any level of government authorized by law to
12 construct and maintain highways;

13 ~~(25)~~ (24) "Maintenance maintenance"—~~Preservation~~
14 preservation of the entire highway, including surface,
15 shoulders, roadsides, structures, and such traffic-control
16 devices as are necessary for its safe and efficient
17 utilization;

18 ~~(26)~~ (25) "Public public highways"—~~All all~~ streets,
19 roads, highways, bridges, and related structures, which have
20 been or shall be:

21 (a) ~~built built~~ and maintained with appropriated funds
22 of the United States or the state or any political
23 subdivision thereof;

24 (b) ~~dedicated~~ dedicated to public use;

25 (c) ~~acquired~~ acquired by eminent domain;

1 (d) ~~acquired~~ acquired by adverse user by the public,
2 jurisdiction having been assumed by the state or any
3 political subdivision thereof;

4 ~~(27)~~ (26) "Right-of-way right-of-way"—~~A~~ a general term
5 denoting land, property, or any interest therein, usually in
6 a strip, acquired for or devoted to highway purposes;

7 ~~(28)~~ (27) "State state highway"—~~Any any~~ public highway
8 planned, laid out, altered, constructed, reconstructed,
9 improved, repaired, maintained, or abandoned by the
10 department;

11 ~~(29)~~ "Superintendent"—~~County road superintendent.~~

12 ~~(30)~~ "Supervisor"—~~County road supervisor.~~

13 ~~(31)~~ (28) "Surveyor surveyor"—~~County county~~ surveyor;

14 ~~(32)~~ (29) "Toll toll bridge"—~~Any any~~ bridge constructed
15 by the department, together with all appurtenances,
16 additions, alterations, improvements, replacements, and the
17 approaches thereto, lands used therefor, and improvements
18 thereon;

19 ~~(33)~~ (30) "Treasurer treasurer"—~~County treasurer county~~
20 finance administrator.

21 Section 44. Section 32-2301, R.C.M. 1947, is amended
22 to read as follows:

23 "32-2301. Classification — highways and roads. (1)
24 Public highways of this state are classed as follows:

25 (a) ~~Federal-aid~~ federal-aid highways;

(b) ~~State~~ state highways;

(c) ~~County~~ county roads;

(d) ~~City~~ municipal streets.

(2) All highways which are not designated, selected, or established, by the commission or constructed or maintained by the department are county roads or ~~city~~ municipal streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued, in accordance with chapters 31 and 40 of this title.

(4) ~~City~~ Municipal streets are those public highways under the jurisdiction of municipal officials."

Section 45. Section 32-2407, R.C.M. 1947, is amended to read as follows:

"32-2407. Commission to designate highways — rules of department. (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall in ~~co-operation~~ cooperation with the ~~board of county commissioners,~~ governing body select such public highways in the state as shall be classed as the federal-aid secondary system, taking into consideration the traffic count on those highways, the continuity of the highways in relation to the state highway

systems as they may connect or tie into a unified system of federal-aid highways, and the taxable valuations which are affected by those public highways.

(3) The commission shall, in ~~co-operation~~ cooperation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways, and the department shall adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges."

Section 46. Section 32-2410, R.C.M. 1947, is amended to read as follows:

"32-2410. Compilation of statistics — investigation — consultation. (1) The department shall compile statistics regarding public highways throughout the state and collect all related information ~~deemed~~ considered expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state, and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The department may be consulted at all reasonable times by county and municipal officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The department shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. It shall at all times lend its aid in promoting highway improvement throughout the state.

(5) Each local government chief executive shall make reports relating to trafficways under the local government's supervision which are requested by the department of highways."

Section 47. Section 32-3204, R.C.M. 1947, is amended to read as follows:

"32-3204. Disposition of fees collected by county treasurer. At the time of collecting the fees provided for in section 32-3201, each county ~~treasurer~~ finance administrator shall retain ~~five per cent (5%)~~ of the fees collected ~~by him~~ for the cost of administration, and for deposit in the general fund of the county. The remaining ~~ninety-five per cent (95%)~~ shall be remitted monthly to the state treasurer for deposit to the credit of the department of highways. The remittance shall be made on forms furnished to the county ~~treasurer~~ finance administrator by the department."

Section 48. Section 32-3205.1, R.C.M. 1947, is amended to read as follows:

"32-3205.1. Blank forms furnished county ~~treasurers~~

finance administrator. The department shall furnish all county ~~treasurers~~ finance administrators with the following:

4-(1) ~~Blank~~ blank application forms and affidavit forms outlining and providing for the information needed in each classification of registration required;

2-(2) ~~Registration~~ registration, license licenses, or certificates in a form determined most suitable by the department;

3-(3) ~~The~~ the other forms, stickers, certificates, or blanks the department considers necessary to carry out chapters 32 and 33 of this title."

Section 49. Section 32-3905, R.C.M. 1947, is amended to read as follows:

"32-3905. Acquisition of whole parcel -- sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes, leaving the remainder in a shape or condition as to be of little market value, or ~~to give~~ giving rise to claims or litigation over severance or other damage, the department may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in a shape or size as to come within ~~section 44-644~~ 47A-6-4501 through 47A-6-4518, the department

shall prepare and file the required plat in the office of the county clerk and recorder."

Section 50. Section 32-4018, R.C.M. 1947, is renumbered 32-3932 and is amended to read as follows:

"~~32-4018~~ 32-3932. Acquisition of property for controlled access facility. The highway authorities of the state, counties, ~~incorporated cities, and towns~~ municipalities, respectively or in ~~co-operation~~ cooperation each with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions."

Section 51. Section 32-4101, R.C.M. 1947, is amended to read as follows:

"32-4101. Letting of contracts on state and federal-aid highways. All contracts for work on state and federal-aid highways, including portions in ~~cities and towns~~ municipalities, and all contracts entered into under ~~section 44-4022~~ 47A-6-438 shall be let by the commission. Except as otherwise specifically provided, the commission may enter

such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of ~~sections 41-701 ==~~ through 41-703. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract."

Section 52. Section 32-4602, R.C.M. 1947, is amended to read as follows:

"32-4602. Definitions. Unless the context requires otherwise, in this chapter:

(1) "~~Highway~~ highway traffic safety program" means a program designed to reduce traffic accidents, deaths, and injuries to persons, and damage to property. The program shall be in accordance with uniform standards established by the secretary of commerce of the United States under Title 23, United States Code Annotated, as amended. Nothing in this chapter restricts or prohibits the establishment of standards which enlarge or implement the federal standards.

(2) "~~Political~~ political subdivisions" means every county, ~~incorporated city or town~~ municipality, and ~~or~~ school district within the boundaries of the state;

(3) "~~Department~~ department" means the department of community affairs provided for in Title 82A, chapter 9."

Section 53. Section 32-4716, R.C.M. 1947, is amended to read as follows:

"32-4716. Definition of terms. As used in this act:

(a)(1) "Interstate interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, ~~"Highways."~~

(b)(2) "~~Primary~~ primary system" means that portion of connected main highways, as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, ~~"Highways."~~

(c)(3) "Outdoor outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended, or used to advertise or inform and which is visible from any place on the main traveled way of the interstate or primary systems.

(d)(4) "Commission commission" means the state highway commission of Montana.

(e)(5) "~~Secretary~~ secretary" means the secretary of the United States department of transportation.

(f)(6) "Safety safety rest area" means an area or site established and maintained within or adjacent to the ~~right of way~~ right-of-way, by or under public supervision or

control, for the convenience of the traveling public.

(g)(7) "~~Information~~ information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(h)(8) "Visible visible" means capable of being seen, and legible, without visual aid by a person of normal visual acuity.

(i)(9) "~~Commercial~~ commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations, or enabling state legislation, or state legislation itself, including highway service areas lawfully zoned as highway service zones where the primary use of the land is ~~used or reserved~~ for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to ~~section 16-4711, B.C.M., 1947, 47A-6-4341~~ shall not be considered as covered by this definition.

(j)(10) "~~Unzoned~~ unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance, which is occupied by one or more industrial or

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commercial activities, other than outdoor advertising, on the lands along the highway for a distance of ~~six hundred~~ ~~(600)~~ feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions, and to a maximum depth of ~~six hundred sixty~~ (660) feet when measured from the highway right-of-way, provided, those lands on the opposite side of the highway are not ~~deemed~~ considered scenic or having aesthetic value as determined by the commission;

~~(k)~~ (11) "Commercial commercial or industrial activities" means, for purposes of subsection ~~(j)~~ (10), those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

~~(i)~~ (a) ~~Agricultural~~ agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

~~(ii)~~ (b) ~~Transient~~ transient or temporary activities;

~~(iii)~~ (c) ~~Activities~~ activities not visible from the main traveled way;

~~(iv)~~ (d) ~~Activities~~ activities conducted in a building principally used as a residence;

~~(v)~~ (e) ~~Railroad~~ railroad tracks and minor sidings;

~~(vi)~~ (f) ~~Activities~~ activities more than ~~six hundred~~

~~and sixty~~ (660) feet from the nearest edge of the ~~right-of-way~~ right-of-way;

~~(i)~~ (12) ~~Maintain~~ maintain means to allow to exist, subject to the provisions of this act;

~~(ii)~~ (13) ~~Maintenance~~ maintenance means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use;

~~(iii)~~ (14) ~~Interchange~~ interchange or "intersection" means those areas and their ~~approach~~ approaches where traffic is channeled off or onto an interstate route, including the ~~de-acceleration~~ deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route;

~~(iv)~~ (15) ~~Urban~~ urban areas means an urbanized area or place, as designated by the United States bureau of the census, having a population of ~~five thousand~~ (5,000) or more and within boundaries fixed by the department of highways, which ~~said~~ boundaries shall, as a minimum, encompass the entire urban place designated by ~~said~~ the bureau of the census."

Section 54. Section 34-303, R.C.M. 1947, is amended to read as follows:

"34-303. License required. (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, retirement home, or rooming house

shall procure a license issued by the department. A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required ~~which and it~~ shall enumerate on the certificate thereof the types of establishments licensed.

(2) Applications for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary.

(3) No license issued under this chapter is valid until countersigned by the local health officer having jurisdiction in each county in which the business will be conducted. The department shall refer all licenses to the local health officer for his signature prior to the issuance of a license by the department. The initial license and subsequent renewals shall be invalid until the validation signature is affixed. The validation signature shall be affixed only after the local health officer is satisfied that the establishment has met sanitary conditions required by rules of the department.

(4) Existing licenses shall be renewed as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.

(5) If determination is made to deny an initial application for a license, or if a renewal application is

denied and a license canceled, the denial or cancellation shall be preceded by written notice of the grounds therefor and the opportunity to request a hearing before the board to show cause why the license should be denied."

Section 55. Section 34-304, R.C.M. 1947, is amended to read as follows:

"34-304. Fee — term of license. ~~(a)~~ (1) There shall be paid to the department with each application for such license or for renewal of such license, an annual license fee of ~~twenty dollars (\$20)~~. These fees shall be deposited with the state treasury to the credit of the general fund.

~~(b)~~ (2) Each license shall expire on December 31 following its date of issue, unless canceled for cause. Renewal may be obtained annually by paying the required annual license fee. Such license shall not be transferable ~~nor~~ or be applicable to any premises other than that for which originally issued.

~~(c)~~ (3) Before June 30 of each year, the department shall pay to a local board of health department as established under ~~section 69-4504, 69-4506, or 69-4507, R.C.M. 1947, Title 47A, chapter 8, part 3,~~ an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this act; provided, however, that there is a functioning local board of health department, and the local board of

health department, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

~~(3)~~ (4) Before June 1 of each year, the local ~~board~~ of health department shall submit to the department a list of the establishments in each jurisdiction that are licensed pursuant to this section. The funds received by the local ~~board of~~ health department shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under ~~section 69-4508, R.C.M. 1947~~ Title 47A, chapter 8, part 3."

Section 56. Section 36-203, R.C.M. 1947, is amended to read as follows:

"36-203. Conciliation court — judges — budget — conciliation counselors — probation officers — proceedings confidential. (1) Exercise of Jurisdiction. Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in ~~the month of~~ January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of

the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

(3) Transfer of Cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) Budget. The provisions of the county budget system, ~~section[s] 16-1901 to 1911, inclusive, R.C.M. 1947,~~ as provided in Title 47A, chapter 9, part 2, shall, except as provided by ~~section 4, subsection 2 [36-204 (9)] of this act,~~ be applicable to expenditures for the court of conciliation, ~~provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.~~

(5) Manner of Conciliation. The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be

referred to herein as the conciliation counselor. The conciliation counselor shall:

(a) ~~held~~ hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) ~~Cause~~ cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) Probation Officers Duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) Privacy of Hearings.

(a) All district court hearings or conferences in proceedings under this chapter shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his counsel

separately, and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

(b) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) Jurisdiction. The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the ~~Constitution~~ constitution of Montana, ~~and Chapter~~ Chapter 3 ~~of [Title 93], Revised Codes of Montana, 1947,~~ and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court."

Section 57. Section 38-212, R.C.M. 1947, is amended to read as follows:

"38-212. Cost of examination and commitment. The cost of the examination, committal, and taking a person who is seriously mentally ill to a mental health facility must be paid by the county in which he resides at the times he is adjudged to be seriously mentally ill. The sheriff must be allowed the actual expenses incurred in taking a person who

1 is seriously mentally ill to the facility, as provided by
2 ~~section 46-2722 of this code 47A-8-410.~~"

3 Section 58. Section 41-1121, R.C.M. 1947, is amended
4 to read as follows:

5 "41-1121. Hours of labor for state ~~and municipal~~
6 governments, mines, mills, smelters. A period of eight 8
7 hours shall constitute a day's work in all works and
8 undertakings carried on or aided by any ~~municipal, county,~~
9 ~~or state government, or first-class first-class~~ school
10 ~~districts, district~~ and on all contracts let by them, and
11 for all janitors, ~~except in courthouses of sixth and seventh~~
12 ~~class counties,~~ engineers, firemen, caretakers, custodians,
13 and laborers employed in or about any buildings, works, or
14 grounds used or occupied for any purpose by any ~~municipal,~~
15 ~~county, or state governments, government or~~ school districts
16 district of first class, and in mills and smelters for the
17 treatment of ores, and in underground mines, and in the
18 washing, reducing, and treatment of coal; except in cases of
19 emergency when life or property are in imminent danger.
20 ~~Provided, that for fire fighters in cities of the first and~~
21 ~~second class, a work week shall be a period of a maximum of~~
22 ~~forty hours during a five day week. In counties where~~
23 ~~regular road and bridge departments are maintained, the~~
24 ~~county commissioners may, with the approval of the employees~~
25 ~~or their duly constituted representative, establish a forty~~

1 ~~(40) hour work week consisting of four (4) consecutive ten~~
2 ~~(10) hour days. No employee shall be required to work in~~
3 ~~excess of eight (8) hours in any one (1) work day if they~~
4 ~~prefer not to.~~"

5 Section 59. Section 41-2302, R.C.M. 1947, is amended
6 to read as follows:

7 "41-2302. Definitions. ~~(a)~~ As used in this act:

8 (1) "commissioner" means the commissioner of labor and
9 industry;

10 ~~(b)~~ (2) "wage wage" means compensation due to an
11 employee by reason of his employment, payable in legal
12 tender of the United States or ~~check checks~~ on banks
13 convertible into cash on demand at full face value, subject
14 to such allowance as may be permitted by regulations of the
15 commissioner under ~~section 5 [41-2305] of this act.~~ The term
16 "wage" includes the reasonable cost to the employer of
17 furnishing such employee with board, lodging, or other
18 facilities, if such board, lodging, or other facilities are
19 customarily furnished by such employer to his employees;
20 provided, however, that in no case shall such inclusion
21 exceed an amount equal to ~~forty per cent (40%)~~ of the total
22 wage paid by such employer to such employee.

23 ~~(c)~~ (3) "Employ employ" means to suffer or permit to
24 work;

25 ~~(d)~~ (4) "Employee employee" includes any individual

1 employed by an employer- including local government law
2 enforcement officers and firefighters;

3 ~~(e)~~ (5) "Occupation occupation" means any occupation,
4 service, trade, business, industry, or branch or group of
5 industries or employment or class of employment in which
6 employees are gainfully employed;

7 ~~(f)~~ (6) "Farm farm worker" means any person employed to
8 do any service performed on a farm or ranch;

9 ~~(g)~~ (7) "Farm farm or ranch" shall mean any endeavor
10 primarily engaged in cultivating the soil, or in connection
11 with raising or harvesting any agricultural or horticultural
12 commodity, including the raising, shearing, feeding, caring
13 for, training, and management of livestock, bees, and
14 poultry and fur-bearing animals and wildlife."

15 Section 60. Section 43-711.5, R.C.M. 1987, is amended
16 to read as follows:

17 "43-711.5. Expenses incurred, == how paid. The
18 expenses incurred by the legislative services division of
19 the legislative council in carrying into effect the
20 provisions of ~~sections~~ 43-711.1 ~~to 43-711.4 inclusive~~
21 through 43-711.3 must be paid out of any moneys specially
22 appropriated for the purpose."

23 Section 61. Section 44-131, R.C.M. 1987, is amended to
24 read as follows:

25 "44-131. Powers of state library commission. (1) The

1 state library commission shall have the power to:

2 ~~(4)~~ (a) To give assistance and advice to all
3 tax-supported or public libraries in the state and to all
4 ~~counties, cities, towns~~ local governments or regions in the
5 state which may propose to establish libraries, as to the
6 best means of establishing and improving such libraries;

7 ~~(4)~~ (b) To maintain and operate the state library and
8 make provision for its housing;

9 ~~(4)~~ (c) To accept and ~~to~~ expend in accordance with the
10 terms thereof any grant of federal funds which may become
11 available to the state for library purposes;

12 ~~(4)~~ (d) To make rules and regulations and establish
13 standards for the administration of the state library, and
14 for the control, distribution, and lending of books and
15 materials;

16 ~~(5)~~ (e) To serve as the agency of the state to accept
17 and administer any state, federal, or private funds or
18 property appropriated for or granted to it for library
19 service or to foster libraries in the state and to establish
20 regulations under which funds shall be ~~dispersed~~ disbursed;

21 ~~(6)~~ (f) To provide library services for the blind and
22 physically handicapped;

23 ~~(7)~~ (g) To furnish, by contract or otherwise, library
24 assistance and information services to state officials,
25 state departments, and residents of those parts of the state

1 inadequately serviced by libraries;

2 ~~(8)-(h)~~ ~~To~~ act as a state board of professional
3 standards and library examiners and develop standards for
4 public libraries and adopt rules and regulations for the
5 certification of librarians; and

6 ~~(9)-(i)~~ ~~To~~ designate areas for the establishment of
7 federations of libraries and to designate the headquarters
8 library for ~~such federations~~ each federation.

9 (2) The librarian of the headquarters library shall
10 serve as the coordinator of the federation and as a
11 ~~non-voting nonvoting~~ member of the federation advisory board
12 ~~of trustees~~. It is the policy of the legislature to
13 encourage the most efficient delivery of library services to
14 the people of Montana. To that end the state should be
15 divided into regions within which libraries desiring to
16 participate in the distribution of such state funding to
17 libraries as may be available from time to time shall
18 organize into library federations to pool resources and
19 information and avoid duplication of effort."

20 Section 62. Section 44-212, R.C.M. 1947, is amended to
21 read as follows:

22 "44-212. Library systems defined -- establishment.
23 Library systems shall include library federations, or
24 library networks as defined hereafter:

25 (1) Library federations. A library federation is a

1 combination of libraries serving a ~~multi-county~~ multicounty,
2 ~~multi-city~~ multimunicipal, or ~~city-county~~ municipal-county
3 area within a federation area designated by the state
4 library commission. Any other public library or ~~town, city,~~
5 ~~or-county~~ local government within the federation area may
6 participate in such a federation. Two ~~(2)~~ or more ~~cities,~~
7 ~~towns, counties, or a city and one or more counties~~ local
8 governments may agree by ~~contract~~ interlocal agreement to
9 form such a federation by action of their respective
10 governing bodies or duly created ~~boards of library trustees~~
11 library boards, provided that one of the parties is or
12 maintains a library which has been designated by the state
13 library commission as a headquarters library for that
14 federation area. The participating entities may retain such
15 autonomy over their respective libraries as may be specified
16 in the ~~contract~~ interlocal agreement. The expense of
17 providing library services for the library federation shall
18 be apportioned between or among the ~~towns, cities and~~
19 ~~counties~~ local governments involved on such basis as shall
20 be agreed upon in the ~~contract~~ interlocal agreement. The
21 ~~treasurer finance administrator~~ of one of the participating
22 units, as shall be provided in the ~~contract~~ interlocal
23 agreement shall have the custody of the funds of the
24 federation, and the participating governments concerned
25 shall transfer ~~semi-annually~~ semiannually to him all moneys

1 ~~collected for the "free library fund" appropriated for~~
 2 libraries in their respective jurisdiction. A participating
 3 entity may withdraw from a federation according to the terms
 4 for withdrawal provided in the ~~contract~~ interlocal agreement
 5 by the action of its governing body or by a ~~majority of its~~
 6 ~~qualified voters voting at a general or special election~~
 7 initiative or referendum.

8 (2) Library networks. A library network is an
 9 agreement between individual libraries or library systems,
 10 which may be ~~inter-city interlocal government, intra-state~~
 11 intrastate, or ~~inter-state interstate~~, for the exchange of
 12 information or to provide specific library services not
 13 provided in existing library federations."

14 Section 63. Section 44-213, R.C.M. 1947, is amended to
 15 read as follows:

16 "44-213. Participation of other governmental units.
 17 (1) When a library federation ~~shall have~~ has been
 18 established, the ~~legislative governing~~ body of any
 19 government unit in the designated library federation area
 20 may decide, with the concurrence of ~~the board of trustees of~~
 21 its library, board if it is maintaining a library, to
 22 participate in the library federation. Each local entity may
 23 determine the amount of services it wishes to supply to
 24 fulfill the needs of its unit. After the necessary ~~contract~~
 25 interlocal agreement has been executed and beginning with

1 the next fiscal year, the said governmental unit shall
 2 participate in the library federation and its residents
 3 shall be entitled to the benefits of the library federation,
 4 and property within its boundaries shall be subject to
 5 taxation for library federation purposes.

6 (2) The state board of regents may contract with ~~the~~
 7 ~~government of any city or county, or the governments of both~~
 8 ~~the city and the county, local governments~~ in which a unit
 9 of the university of Montana is located for the
 10 establishment and operation of joint library services. Any
 11 such contract which proposes the erection of a building
 12 shall be subject to the approval of the legislature. Any
 13 joint library services established pursuant to this section
 14 shall be operated and supported as provided in such contract
 15 and under this chapter."

16 Section 64. Section 44-214, R.C.M. 1947, is amended to
 17 read as follows:

18 "44-214. Board ~~of trustees~~ -- appointment. In a
 19 library federation there shall be a board ~~of trustees~~ with
 20 advisory powers only, the operation of the library
 21 federation having been specified by ~~contract~~ interlocal
 22 agreement. The board ~~of trustees~~ of each participating
 23 library shall name one of their members to the federation
 24 advisory board, ~~of trustees~~ and each participating entity
 25 without a duly appointed library board shall name a layman

1 to represent that entity on the library federation board of
2 trustees."

3 Section 65. Section 44-214.1, R.C.M. 1947, is amended
4 to read as follows:

5 "44-214.1. ~~Boards of trustees library federation board~~
6 ~~— powers. The board of trustees of a library federation~~
7 ~~shall act as an advisor to the participating libraries and~~
8 ~~their boards of trustees. Any disagreement among~~
9 ~~participants in a library federation regarding the~~
10 ~~apportionment of funds or grants received from the state~~
11 ~~library commission shall be resolved by the state library~~
12 ~~commission. Control over the budgets and administrative~~
13 ~~policies of participating libraries shall remain in their~~
14 ~~boards of trustees as provided in section 44-222 be in~~
15 ~~accordance with 47A-6-5001."~~

16 Section 66. Section 44-215, R.C.M. 1947, is amended to
17 read as follows:

18 "44-215. Appropriations for support of library
19 federations. After a library federation ~~shall have~~ has been
20 established or library service contracted for, the
21 ~~legislative governing~~ body of the governmental unit for
22 which the library was established or the service engaged,
23 shall appropriate money annually for the support of the
24 library or library services, and so far as possible, the
25 taxes levied and collected for this purpose shall be levied

1 and collected within the territory to be served."

2 Section 67. Section 44-304, R.C.M. 1947, is amended to
3 read as follows:

4 "44-304. Purpose. It is the purpose of this act to
5 establish a program whereby state funds appropriated to the
6 Montana state library commission may be allocated ~~among~~
7 ~~three different~~ through grant programs. Such program of
8 state funding is intended to provide the benefits of quality
9 public library service to all residents of Montana by
10 developing and strengthening local public libraries ~~through~~
11 ~~and library federations as defined in section 44-212."~~

12 Section 68. Section 44-305, R.C.M. 1947, is amended to
13 read as follows:

14 "44-305. Administration by Montana state library
15 commission. The Montana state library commission shall
16 receive and administer the appropriation for state funding
17 to local public libraries and to public library federations.
18 ~~The commission shall allocate such appropriation to three~~
19 ~~types of grant programs according to section 44-307 and~~
20 ~~shall make grants to local public libraries and~~ duly
21 constituted library federations according to program
22 applications submitted to and approved by the commission.
23 ~~No library shall be denied funding or receive a~~
24 ~~disproportionate share of grant funds solely because of its~~
25 ~~membership or participation, or lack of same, in any library~~

~~system defined in 44-212 or in any other organization.~~
 Federations receiving grant monies shall report semiannually to the commission concerning the progress of the various projects for which state funding grants have been received, which report shall contain an accounting for all grant funds received."

Section 69. Section 44-308, R.C.M. 1947, is amended to read as follows:

"44-308. ~~Formulae~~ Formula for distribution of grants.

(1) ~~The formula for distribution of basic grants among federations will be determined by multiplying population times area times percentage of local support shall be developed and administered by the Montana state library commission. The population figure shall be the population of the area served by the federation as of the latest published federal census. The area figure shall be the number of square miles of the area served by the federation. The local support figure shall be the average of the percentage of the maximum allowable mill levy for public library services of each governmental unit participating in the federation actually expended for public library purposes by each such governmental unit from all sources. In computing the percentage of local support the amount actually expended for public library services shall not include building construction and remodeling funds, but it~~

~~shall include federal or state revenue sharing monies, all purpose levies, library fund levies, local general fund monies, in-kind services, or any other local public monies expended for public library services. In computing the percentage of local support for a federation no participating governmental unit shall be included at more than one hundred percent (100%) of local support, and in computing the basic grant no federation as a whole shall be included at more than one hundred percent (100%) of local support. The formula shall be based upon the following factors and upon other factors considered pertinent by the commission:~~

~~(a) population of the area served;~~

~~(b) land area and/or miles of state and federal primary highways within the area served; and~~

~~(c) amount of local tax-base support for library services, excluding construction and remodeling funds, within the area served.~~

~~Applications for basic grants for the following fiscal year must be submitted to the Montana state library commission by April 30 preceding the fiscal year.~~

~~(2) Establishment grants may be applied for any time during the biennium until January 1, of the last year of the biennium. Any funds not granted by January 1 of the last year of the biennium will be allocated to special project~~

~~grants and distributed by the Montana state library
commission according to the special project grant plans
approved.~~

~~(3) Applications and plans for special project grants
shall be submitted no later than March 1 of the second year
of the biennium. Any moneys not granted by April 1 of the
second year of the biennium will be allocated to the basic
grant fund and distributed according to the basic grant
formula for the following fiscal year."~~

Section 70. Section 46-1201, R.C.M. 1947, is amended
to read as follows:

"46-1201. County ~~assessor~~ to collect names of owners
of purebred stock. ~~The county assessor in each~~ Each county
~~shall, during the odd-numbered years shall, in the regular~~
~~routine of his duties,~~ collect the names and addresses of
all owners or breeders of purebred horses, cattle, sheep,
swine, and poultry in the county, and in each case secure
the name of the breed."

Section 71. Section 46-1202, R.C.M. 1947, is amended
to read as follows:

"46-1202. Delivery of information to experiment
station. On or before ~~the first day of~~ November 1, the
~~assessor county~~ shall compile the information secured, and
deliver same to the director of the Montana agricultural
experiment station, located at Bozeman."

Section 72. Section 46-1203, R.C.M. 1947, is amended
to read as follows:

"46-1203. Official books of breed association.
Purebred animals are those recorded in the official books of
the various breed associations. A list of these books shall
be furnished to ~~the assessor of~~ each county by the director
of the Montana agricultural experiment station, and the
~~assessor county~~ shall accept as purebreds only such breeds
as are given in this list as shown by certificates of
registration in the possession of the owner."

Section 73. Section 46-1204, R.C.M. 1947, is amended
to read as follows:

"46-1204. Publication of names of owners of purebreds
— bulletins. On or before ~~the first day of~~ January 1 of the
even-numbered years, the director of the experiment station
shall prepare for publication and cause to be printed a
bulletin giving the names and addresses of all owners and
breeders of purebred livestock in the state of Montana, as
reported the previous year by the ~~county assessors~~ counties.
This bulletin shall be for free distribution in the state of
Montana, and, on request, to breeders and farmers outside
the state."

Section 74. Section 46-2001, R.C.M. 1947, is amended
to read as follows:

"46-2001. Impounding animals — duties of ~~cities and~~

~~towns~~ local governments. Hereafter, when any livestock or domestic animals of any kind are impounded, seized, restrained, or held by any ~~city or town~~, local government or its officers or agents, it shall be the duty of such ~~city or town~~, local government or its officers or agents, to give notice to the owner of such livestock or domestic animals so impounded, seized, restrained, or held by such ~~city or town~~ local government, if the owner is known, in the manner hereinafter provided."

Section 75. Section 46-2006, R.C.M. 1947, is amended to read as follows:

"46-2006. Duty of officers to ascertain brands. It shall be the duty of such ~~city or town~~ local government and its officers or agents to use reasonable diligence to ascertain any and all marks and brands on such stock, and in case such animals are not branded or marked, or the brand or marks are mutilated or undeterminable, such facts shall be noted in ~~said~~ the notice."

Section 76. Section 46-2007, R.C.M. 1947, is amended to read as follows:

"46-2007. Department to ascertain owner -- notice. When the notice is served, the department shall ascertain the owner of the stock, if possible, and when the owner is ascertained, immediately furnish the owner with the information contained in the notice, and notify the ~~city or~~

~~town~~ local government, its officers or agents, of the name and post-office address of the owner."

Section 77. Section 47A-3-201, R.C.M. 1947, is amended to read as follows:

"47A-3-201. Declaration of purpose. (1) The purpose of this ~~chapter~~ part is to comply with Article XI, section 3(1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) This ~~chapter~~ part establishes the alternative forms of government for cities, towns, counties, and consolidated governments. This ~~chapter~~ part shall be liberally construed to facilitate the adoption of a form of local government. The procedure to adopt, amend, or abandon these forms is provided in ~~sections 16-5101 et seq~~ chapter 3, part 1."

Section 78. Section 47A-3-208, R.C.M. 1947, is amended to read as follows:

"47A-3-208. Charter form. (1) The purpose of this section is to comply with Article XI, section 5(1), of the Montana constitution, which provides: "(1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or

1 abandon a self-government charter with the approval of a
2 majority of those voting on the question. The procedures
3 shall not require approval of a charter by a legislative
4 body."

5 (2) Charter provisions establishing executive,
6 legislative, and administrative structure and organization
7 are superior to statutory provisions.

8 (3) A charter form of government shall possess
9 self-government powers.

10 (4) Charter form of government shall be established by
11 a charter which is a written document defining the powers,
12 structures, privileges, rights, and duties of the unit of
13 local government and limitations thereon.

14 (5) The charter shall provide for an elected
15 legislative body, called a commission or council, or shall
16 provide for a legislative body comprised of all qualified
17 electors. For elected legislative bodies, the charter shall
18 specify the number of members thereof, their term of office,
19 election on a partisan or nonpartisan basis, the grounds for
20 their removal, and the method for filling vacancies.

21 (6) The charter shall provide for the nomination and
22 election of commissions at-large, or by districts in which
23 candidates must reside and which are apportioned by
24 population, or by a combination of districts in which
25 candidates must reside and which are apportioned by

1 population and at-large.

2 (7) The charter shall specify which official of the
3 local government will be the chief administrative and
4 executive officer, the method of his selection, his term of
5 office, [except that it may be at the pleasure of the
6 selecting authority if such officer is not elected by
7 popular vote], the grounds for his removal, and his powers
8 and duties. Notwithstanding the foregoing, the charter may
9 allocate the chief executive and the chief administrative
10 functions among two or more officials specified as above, or
11 the charter may provide that chief executive and
12 administrative functions of the local government will be
13 performed by one or more members of the legislative body.

14 (8) The charter may establish other legislative,
15 administrative, and organizational structures.

16 (9) A charter form of government shall have such
17 officers, departments, boards, commissions, and agencies as
18 are established in the charter, by local ordinance, or
19 required by state law.

20 (10) Charter provisions may not conflict with the
21 provisions of Title 47A, ~~Part~~ Chapter 7, which establish
22 statutory limitations on the powers of self-government
23 units.

24 (11) Charter forms are subject to state laws
25 establishing election, initiative, and referendum

1 procedures, and charters shall not contain provisions
2 establishing election, initiative, and referendum
3 procedures.

4 (12) The charter shall not contain provisions
5 establishing or modifying local court systems.

6 (13) The enumeration of powers in a charter shall not
7 be construed as a limitation or prohibition on the residual
8 or self-governing powers granted by the constitution.

9 (14) The charter may contain prohibitions on the
10 exercise of power by a unit of local government.

11 (15) The charter may include such provisions as may be
12 necessary to permit an orderly transition to the new form of
13 government.

14 (16) The charter shall specify the date on which the
15 charter will take effect, except that provisions may be made
16 for temporary partial effectiveness consistent with an
17 orderly transition of government.

18 (17) The listing of charter provisions in this section
19 shall not be construed to prevent the inclusion of
20 additional provisions in charters.

21 (18) A charter may be amended ~~only~~ as provided by state
22 law or charter."

23 Section 79. Section 47A-7-101, R.C.M. 1947, is amended
24 to read as follows:

25 "47A-7-101. Self-government powers. As provided by

1 Article XI, section 6, of the Montana constitution, a local
2 government unit with self-government powers may exercise any
3 power not prohibited by the constitution, law, or charter.
4 These powers include, but are not limited to, the powers
5 granted to general power governments by Title 47A, ~~Part~~
6 chapter 5."

7 Section 80. Section 47A-7-102, R.C.M. 1947, is amended
8 to read as follows:

9 "47A-7-102. Authorization for self-government services
10 and functions. A local government with self-government
11 powers may provide any services or perform any functions not
12 expressly prohibited by the Montana constitution, state law,
13 or its charter. These services and functions include, but
14 are not limited to, those services and functions which
15 general power government units are authorized to provide or
16 perform by Title 47A, ~~Part~~ chapter 6."

17 Section 81. Section 47A-7-202, R.C.M. 1947, is amended
18 to read as follows:

19 "47A-7-202. Powers requiring delegation. A local
20 government unit with self-government powers is prohibited
21 the exercise of the following powers unless the power is
22 specifically delegated by law:

23 (1) ~~The~~ the power to authorize a tax on income or the
24 sale of goods or services. This section shall not be
25 construed to limit the authority of a local government to

1 levy any other tax or establish the rate of any other tax.

2 (2) ~~The~~ the power to regulate private activity beyond
3 its geographic limits;

4 (3) ~~The~~ the power to impose a duty on another unit of
5 local government, except that nothing in this limitation
6 shall affect the right of a self-government unit to enter
7 into and enforce an agreement on ~~inter-local~~ interlocal
8 cooperation;

9 (4) ~~The~~ the power to exercise any judicial function,
10 except as an incident to the exercise of an independent
11 self-government administrative power;

12 (5) ~~The~~ the power to regulate any form of gambling,
13 lotteries, or gift enterprises;

14 (6) the power to acquire, open, vacate, or change the
15 grade of trafficways;

16 (7) the power to create authorities."

17 Section 82. Section 47A-7-203, R.C.M. 1947, is amended
18 to read as follows:

19 "47A-7-203. Consistency with state regulation
20 required. (1) A local government with self-government powers
21 is prohibited the exercise of any power in a manner
22 inconsistent with state law or administrative regulation in
23 any area affirmatively subjected by law to state regulation
24 or control.

25 (2) The exercise of a power is inconsistent with state

1 law or regulation if it establishes standards or
2 requirements which are lower or less stringent than those
3 imposed by state law or regulation.

4 (3) An area is affirmatively subjected to state
5 control if a state agency or officer is directed by law to
6 establish administrative rules and regulations governing the
7 matter or if enforcement of standards or requirements
8 established by statute is vested in a state officer or
9 agency."

10 Section 83. Section 47A-7-204, R.C.M. 1947, is amended
11 to read as follows:

12 "47A-7-204. Mandatory provisions. A local government
13 unit with self-government powers is subject to the following
14 provisions, ~~and these~~ these provisions are a prohibition on
15 the self-government unit acting other than as provided:

16 ~~(1) All state laws providing for the incorporation or~~
17 ~~disincorporation of cities and towns, for the annexation,~~
18 ~~disannexation or exclusion of territory from a city or town,~~
19 ~~for the creation, abandonment or boundary alteration of~~
20 ~~counties and for city-county consolidation;~~

21 ~~(2) Title 16, chapter 51;~~

22 ~~(3) All laws establishing legislative procedures or~~
23 ~~requirements for units of local government;~~

24 ~~(4) All laws regulating the election of local~~
25 ~~officials;~~

1 (1) Title 47A, chapter 1, part 1 — general
 2 provisions;
 3 (2) Title 47A, chapter 1, part 2 — definitions and
 4 construction;
 5 (3) Title 47A, chapter 1, part 3 — provisions common
 6 to all forms of local government;
 7 (4) Title 47A, chapter 2 — local government
 8 formation;
 9 (5) Title 47A, chapter 3, part 1 — review, amendment,
 10 and adoption of local government form;
 11 (6) Title 47A, chapter 3, part 3 — legislative
 12 organization and procedure;
 13 (7) Title 47A, chapter 3, part 5 — elections;
 14 (8) Title 47A, chapter 6, part 2 — establishment and
 15 allocation of services;
 16 ~~(5)(9) All laws which require or regulate land-use~~
 17 ~~planning, or zoning, or subdivision of land;~~
 18 ~~(6) Any law directing or requiring a local government~~
 19 ~~or any officer or employee of a local government to carry~~
 20 ~~out any function or provide any service;~~
 21 ~~(7) Any law regulating the budget, finance or~~
 22 ~~borrowing procedures and powers of local governments, except~~
 23 ~~that the mill levy limits established by state law shall not~~
 24 ~~apply;~~
 25 (10) Title 47A, chapter 8 — duties of local

1 governments as agents of the state;
 2 (11) Title 47A, chapter 9, part 1 — general
 3 provisions; Title 47A, chapter 9, part 2 — budget and
 4 appropriation; Title 47A, chapter 9, part 3 — local
 5 government financial administration; Title 47A, chapter 9,
 6 part 5 — debt management; Title 47A, chapter 9, part 6 —
 7 fiscal emergencies;
 8 ~~(9)(12) Title 93, chapter 99 — eminent domain;~~
 9 (13) 47A-6-926 — trafficway records system;
 10 (14) Title 47A, chapter 6, part 3 — the power to
 11 manage agricultural and other pests;
 12 (15) 47A-6-6134 — establishing minimum physical and
 13 age requirements for firefighters; 47A-6-6220 —
 14 establishing minimum physical and age requirements for law
 15 enforcement officers;
 16 (16) 47A-4-105 — hours of labor."
 17 Section 84. Section 59-303, R.C.M. 1947, is amended to
 18 read as follows:
 19 ~~"59-303. County officers not to act as deputies of~~
 20 ~~other officers, except when. Not applicable to local~~
 21 ~~government. No county officer, under salary, must be~~
 22 ~~appointed or act as deputy of another officer of the same~~
 23 ~~county except in cases where the officer so appointed agrees~~
 24 ~~to act and serve as such deputy without additional~~
 25 ~~compensation. Unless specifically provided, this title does~~

1 not apply to local government officials and employees."

2 Section 85. Section 59-417, R.C.M. 1947, is amended to
3 read as follows:

4 "59-417. Oath of office, ~~==~~ where filed. Every oath of
5 office, must be certified by the officer before whom the
6 same was taken, ~~must be~~ and filed within the time required
7 by law, except when otherwise specially provided, as
8 follows:

9 (1) ~~The~~ the oath of all officers whose authority is
10 not limited to any particular county, in the office of the
11 secretary of state;

12 ~~(2) The oath of all officers, elected or appointed for~~
13 ~~any county, and of all officers whose duties are local, or~~
14 ~~whose residence in any particular county is prescribed by~~
15 ~~law, and of the clerks of the district courts, in the~~
16 ~~offices of the clerks of the respective counties.~~

17 ~~(2)(2)~~ Each each judge of a district court must, as
18 soon as he has taken and subscribed his official oath, file
19 the same in the office of the secretary of state."

20 Section 86. Section 59-501, R.C.M. 1947, is amended to
21 read as follows:

22 "59-501. Certain officers and employees not to be
23 ~~interested~~ have interest in contracts. ~~Members No member~~ of
24 the legislature, state, ~~county, city, town, or township~~
25 ~~officers or local government officer,~~ or any deputy or

1 employee thereof, ~~must not be interested~~ may have an
2 interest in any contract made by them in their official
3 capacity, or by any body, agency, or board of which they are
4 members or employees. In this section:

5 (1) The term "~~be interested~~ have an interest in" does
6 not include holding a minority interest in a corporation.

7 (2) The term "contract" does not include:

8 ~~a. (a)~~ contracts awarded to the lowest responsible
9 bidder based on competitive bidding procedures, ~~or;~~

10 ~~b. (b)~~ merchandise sold to the highest bidder at public
11 auctions, ~~or;~~

12 ~~c. (c)~~ investments or deposits in financial
13 institutions which are in the business of loaning or
14 receiving money; ~~i~~ or

15 ~~d. (d)~~ contracts for professional services."

16 Section 87. Section 59-502, R.C.M. 1947, is amended to
17 read as follows:

18 "59-502. Interest in certain sales. State, ~~county,~~
19 ~~town, township, and city and local government~~ officers and
20 ~~employees~~ must ~~may~~ not be purchasers at any sale, nor
21 vendors at any purchase made by them, in their official
22 capacity."

23 Section 88. Section 59-504, R.C.M. 1947, is amended to
24 read as follows:

25 "59-504. Dealings in warrants, scrip, etc.,

1 prohibited. The state officers, ~~the several county, city,~~
 2 ~~town, and township and local government~~ officers of this
 3 state, their deputies and clerks, are prohibited from
 4 purchasing or selling, or in any manner receiving to their
 5 own use or benefit, or to the use or benefit of any person
 6 or persons whatever, any state, ~~county, or city or local~~
 7 ~~government~~ warrants, scrip, orders, demands, claims, or
 8 other evidences of indebtedness against the state, ~~or any~~
 9 ~~county, city, town, or township thereof, or local government~~
 10 except evidences of indebtedness issued to or held by them
 11 for services rendered as such officer, deputy, clerk, and
 12 evidences of the funded indebtedness of such state, ~~county,~~
 13 ~~city, township, town, or local government~~ or corporation."

14 Section 89. Section 59-506, R.C.M. 1947, is amended to
 15 read as follows:

16 "59-506. Treasurer, -- duties of. Officers charged
 17 with the disbursement of public moneys must not pay any
 18 warrant or other evidence of indebtedness against the state,
 19 ~~county, city, town, or township, or local government~~ when
 20 the same has been purchased, sold, received, or transferred
 21 contrary to any of the provisions of this chapter."

22 Section 90. Section 59-507, R.C.M. 1947, is amended to
 23 read as follows:

24 "59-507. When settlements must be withheld. Every
 25 officer charged with the disbursement of public moneys, who

1 is informed by affidavit establishing probable cause that
 2 any officer whose account is about to be settled, audited,
 3 or paid by him, has violated any of the provisions of this
 4 chapter, must suspend such settlement or payment, and cause
 5 such officer to be prosecuted for such violation by the
 6 ~~county attorney~~ public prosecutor of the county. In case
 7 there be judgment for the defendant upon such prosecution,
 8 the proper officer may proceed to settle, audit, or pay such
 9 account as if no such affidavit had been filed."

10 Section 91. Section 59-510(2), R.C.M. 1947, is amended
 11 to read as follows:

12 "59-510(2). Office hours. Unless otherwise provided by
 13 law, every officer must keep his office open for the
 14 transaction of business continuously from ~~eight o'clock A.~~
 15 ~~M. 8 A.M.~~ until ~~five o'clock P.M. 5 P.M.~~ each day except
 16 Saturdays and legal holidays. ~~All full-time salaried county~~
 17 ~~and city employees shall work a minimum of forty (40) hours~~
 18 ~~per week.~~ Every officer shall keep his office open at such
 19 other times as the accommodation of the public or the proper
 20 transaction of business requires, excepting the state
 21 treasurer ~~and county and city treasurers, who, in their~~ his
 22 discretion, may, in the interest of the safekeeping of
 23 funds, securities, and records under ~~their~~ his control,
 24 close ~~their offices~~ his office during the period from ~~twelve~~
 25 ~~o'clock 12 noon to one o'clock P.M. 1 P.M.~~ every day."

1 Section 92. Section 59-512, R.C.M. 1947, is amended to
2 read as follows:

3 "59-512. Records open to public inspection —
4 exceptions. The public records and other matters in the
5 office of any officer are at all times, during office hours,
6 open to the inspection of any person. ~~In cases of~~
7 ~~attachment, the clerk of the court with whom the complaint~~
8 ~~is filed must not make public the fact of the filing of the~~
9 ~~complaint, or the issuing of such attachment, until after~~
10 ~~the filing of return of service of attachment.~~

11 ~~No files in the office of the clerk of district court~~
12 ~~relating to the adoption of children shall be open to~~
13 ~~examination or inspection by any person unless the person~~
14 ~~desiring to examine or inspect any such file shall first~~
15 ~~obtain written permission from the district judge, and no~~
16 ~~district judge shall grant any applicant permission to~~
17 ~~examine or inspect any such file in the office of clerk of~~
18 ~~district court unless such applicant shall set forth in his~~
19 ~~application good and sufficient cause for such examination~~
20 ~~or inspection."~~

21 Section 93. Section 59-514, R.C.M. 1947, is amended to
22 read as follows:

23 "59-514. Destruction of old county school records may
24 ~~be ordered by commissioners with approval of department of~~
25 ~~community affairs destruction of old school district~~

1 ~~records may be ordered by trustees with approval of the~~
2 ~~department of community affairs. (1) A county officer may~~
3 ~~destroy old worthless reports, papers, or records in his~~
4 ~~office that have served their purpose and that are~~
5 ~~substantiated by permanent records, upon the order of the~~
6 ~~board of county commissioners and with the approval of the~~
7 ~~department of community affairs.~~

8 (2) A school officer may destroy old, worthless
9 reports, papers, or records in his office that have served
10 their purpose and that are substantiated by permanent
11 records, upon the order of the board of trustees and with
12 the approval of the department of community affairs."

13 Section 94. Section 59-516, R.C.M. 1947, is amended to
14 read as follows:

15 "59-516. Certain records to be destroyed after
16 twenty-five (25) years. Any claim, warrant, voucher, bond,
17 or treasurer's general receipt may be destroyed by any
18 ~~county, city or town or~~ school district officer after a
19 period of twenty-five (25) years."

20 Section 95. Section 59-532, R.C.M. 1947, is amended to
21 read as follows:

22 "59-532. Attachment and warrant to enforce. The
23 execution of the order and delivery of the books and papers
24 may be enforced by attachment as for a witness, and also, at
25 the request of the plaintiff, by a warrant directed to the

~~sheriff or a constable of the county, chief law enforcement administrator~~ commanding him to search for such books and papers, and to take and deliver them to the plaintiff."

Section 96. Section 59-534, R.C.M. 1947, is amended to read as follows:

"59-534. Liability of officers for failure to make levy for sinking funds. ~~That when~~ When any officer or officers or board or body of officers of any ~~county, city~~ local government, school district, irrigation district, or other ~~municipal or~~ public corporation of the state ~~are or~~ shall be is required by law to provide, by a levy of taxes, or by certifying the amount of money required, or otherwise, a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the ~~county, city~~ local government, school ~~districts~~ district, irrigation district, or other ~~municipal or~~ public corporation which they represent, if they ~~shall~~ fail to perform any ~~such~~ duties ~~so~~ required by law, ~~as in~~ this section ~~hereby~~ specified, in an amount equal to the sum which would have been added to such fund had they performed such duty. Provided, that when any ~~such~~ board ~~shall fail~~ fails or ~~neglect~~ neglects to perform any such duty, no minority member of ~~said~~ the board who ~~shall have moved said board has made a motion for~~ or voted

in favor of a performance of such duty shall be held liable."

Section 97. Section 59-535, R.C.M. 1947, is amended to read as follows:

"59-535. Liability for misuse of sinking fund. Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the ~~county, city~~ local government, school district, irrigation district, or other ~~municipal or~~ public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated."

Section 98. Section 59-536, R.C.M. 1947, is amended to read as follows:

"59-536. Duty of ~~county attorney~~ prosecuting attorney to prosecute. It shall be the duty of the ~~county attorney~~ prosecuting attorney in each county to commence and prosecute all actions to enforce any liability hereby created. Such actions shall be tried as civil actions at law."

Section 99. Section 59-538, R.C.M. 1947, is amended to read as follows:

"59-538. Travel expense of persons in state service. Every elected state official, appointed members of boards,

commissions, councils, and department directors, and all other state employees shall be reimbursed for the cost of meals and lodging while away from the person's designated headquarters, traveling outside the employee's designated travel day and for more than ~~three~~ (3) hours, and engaged in official state business in accordance with the following provisions:

(1) ~~Travel~~ travel within the state of Montana:

(a) ~~The~~ the governor shall be authorized actual and necessary expenses not to exceed ~~sixty-dollars~~ (\$60) per a day;

(b) ~~All~~ all other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding ~~sixteen-dollars~~ (\$16) per a day plus ~~two-dollars~~ (\$2) for the morning meal, ~~three-dollars~~ (\$3) for the midday meal, and ~~five-dollars~~ (\$5) for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) ~~Travel~~ travel out of the state of Montana:

(a) ~~The~~ the governor shall be authorized actual and necessary travel expenses not to exceed ~~seventy-dollars~~ (\$70) per a day;

(b) ~~All~~ all other elected state officials, appointed

members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding ~~thirty-seven dollars~~ (\$37) per a day plus ~~three-dollars~~ (\$3) for the morning meal, ~~four-dollars~~ (\$4) for the midday meal, and ~~six dollars~~ (\$6) for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) When other than commercial, ~~non-receiptable~~ nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of ~~seven-dollars~~ (\$7) will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1) ~~(a)~~ (b) or (2) ~~(a)~~ (b) above.

(4) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(5) The provisions of this section shall not be construed as affecting the validity of ~~section~~ 43-310.

(6) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(7) All commercial air travel shall be by the least

expensive class service available."

Section 100. Section 59-539, R.C.M. 1947, is amended to read as follows:

"59-539. Computation of travel allowance. (1) To be eligible for the travel allowance provided in section 59-538, ~~as~~ a state employee must have been in a travel status for more than ~~three~~ (3) continuous hours and the travel must have commenced more than ~~one~~ (1) hour before or terminated more than ~~one~~ (1) hour after the employee's normally assigned work shift. If eligible, ~~as~~ a state employee:

(a) earns the morning meal allowance if in a travel status between the hours of 12:01 a.m. and 10 a.m.;

(b) earns the midday meal allowance if in a travel status between the hours of 10:01 a.m. and 3 p.m.; and

(c) earns the evening meal allowance if in a travel status between the hours of 3:01 p.m. and 12 midnight.

(2) For persons in state service regularly assigned to an 8 a.m. to 5 p.m. work period, the only per diem allowance may be an amount not to exceed ~~three dollars~~ (\$3) ~~per~~ a day for a midday meal when the departure is at or after 7 a.m. and the return on the same day is at or prior to 6 p.m. For persons in state service regularly assigned to work periods other than 8 a.m. to 5 p.m., the employing department may establish a per diem allowance of an amount not to exceed

~~two dollars~~ (\$2) for a morning meal and ~~five dollars~~ (\$5) for an evening meal. Only one of the three (3) allowances provided in subsection (2) may be claimed in any one (1) day. In no case shall any per diem or allowance whatsoever be paid for any absence not exceeding ~~three~~ (3) hours.

(3) The department of administration shall prescribe rules necessary to effectively administer this section for state government."

Section 101. Section 59-540, R.C.M. 1947, is amended to read as follows:

"59-540. Schedule of expenses -- form. ~~Every such~~ person so engaged The governor, all other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall periodically submit a claim containing a schedule of expenses and amounts claimed for said period. Said schedule shall show in what capacity such person was engaged each day while away from the department in which ~~said~~ the daily duties arose, and shall show expense items of each day in detail, such as the amount of per diem allowance claimed, transportation fare, mileage, and other such items."

Section 102. Section 59-542, R.C.M. 1947, is amended to read as follows:

"59-542. Existing laws relating to ~~counties and~~

1. ~~municipalities local government~~ not changed affected. This
 2 act shall not be construed to ~~change~~ apply in any manner to
 3 the existing laws of the state pertaining to the conduct of
 4 any ~~county, city or municipal local government~~ office."

5 Section 103. Section 59-601, R.C.M. 1947, is amended
 6 to read as follows:

7 "59-601. Resignations, ~~==~~ how made. Resignations must
 8 be in writing and made as follows:

9 1. ~~(1)~~ By ~~by~~ the governor and lieutenant governor, to
 10 the legislative assembly, if it is in session, ~~and or~~, if
 11 not, then to the secretary of state;

12 2. ~~(2)~~ By ~~by~~ all officers commissioned by the governor,
 13 to the governor;

14 3. ~~(3)~~ By ~~by~~ senators and members of the house of
 15 representatives, if the legislative assembly is not in
 16 session, to the governor; if it is in session, to the
 17 presiding officer of the branch to which the member belongs,
 18 who must immediately transmit the same to the governor;

19 4. ~~By all county and township officers not~~
 20 ~~commissioned by the governor, to the clerk of the board of~~
 21 ~~commissioners of their respective counties.~~

22 5. ~~(4)~~ By ~~by~~ all other appointed officers, to the body
 23 or officer that appointed them;

24 6. ~~(5)~~ In ~~in~~ all cases not otherwise provided for, by
 25 filing the resignation in the office of the secretary of

1 state."

2 Section 104. Section 59-605, R.C.M. 1947, is amended
 3 to read as follows:

4 "59-605. Vacancies, how filled when not otherwise
 5 provided for -- recess appointments. (1) When any state
 6 office becomes vacant, and no mode is provided by law for
 7 filling the vacancy, the governor shall fill the vacancy by
 8 appointing a qualified person to fill the unexpired term of
 9 the person whose office became vacant.

10 (2) If the legislature or one ~~(4)~~ house of the
 11 legislature must confirm an appointment of a person
 12 appointed by the governor to fill a vacancy, the governor
 13 may appoint the person to assume office before the
 14 legislature meets in its next regular session to consider
 15 the appointment. A person so appointed is vested with all
 16 the functions of the office upon assuming the office, and is
 17 a de jure officer, notwithstanding the fact that the
 18 legislature has not yet confirmed the appointment. If the
 19 legislature does not confirm the appointment, the governor
 20 shall make a new appointment to fill the unexpired term."

21 Section 105. Section 59-608, R.C.M. 1947, is amended
 22 to read as follows:

23 "59-608. Powers and duties of officer filling
 24 unexpired term. ~~1. A~~ A person elected or appointed to fill a
 25 vacancy in a state office after filing his official oath

1 and bond, possesses all the rights and powers, and is
2 subject to all the liabilities, duties, and obligations, as
3 if he had been elected to the office for a full term."

4 Section 106. Section 59-701, R.C.M. 1947, is amended
5 to read as follows:

6 "59-701. Fiscal year and financial reports. The fiscal
7 year for state purposes commences on ~~the first (1st) day of~~
8 July 1 of each year, and ends on ~~the last day of June 1 of~~
9 each year. ~~The fiscal year for county purposes commences on~~
10 ~~the first (1st) day of July of each year and ends on the~~
11 ~~last day of June of each year.~~ At the close of each fiscal
12 year, the fiscal records of each state office, department,
13 bureau, commission, institution, university unit, and agency
14 (hereinafter collectively referred to as state agency) shall
15 be closed ~~as of the end of the fiscal year.~~ Each state
16 agency shall prepare such financial statements and
17 reconciliations for the fiscal year as the department of
18 administration may prescribe. These financial reports are to
19 be completed and distributed not more than ~~thirty-one (31)~~
20 days following the close of each fiscal year. The department
21 of administration may extend this time limit if a state
22 agency can show necessity therefor. The reports are to be
23 distributed to the department of administration and the
24 legislative auditor and any other state agency the
25 department of administration may prescribe. It is the intent

1 of this provision that these reports accurately and
2 comprehensively present the financial activities of the
3 reporting state agency so that the reports can be
4 effectively utilized by the executive and legislative
5 branches of state government. Upon consolidation of the
6 reports, the annual financial report by the department of
7 administration will be available for other individuals and
8 organizations interested in the financial affairs of the
9 state of Montana."

10 Section 107. Section 59-801, R.C.M. 1947, is amended
11 to read as follows:

12 "59-801. Mileage of all officers. (1) ~~Automobiles,~~
13 ~~Members of the legislature, state officers, township~~
14 ~~officers, jurors, witnesses, county agents, and all other~~
15 ~~persons, except sheriffs, who may be entitled to mileage,~~
16 ~~when using their own automobiles or airplanes in the~~
17 ~~performance of official duties, shall be entitled to collect~~
18 ~~mileage for the distance actually traveled by automobile,~~
19 ~~and or for the shortest regularly traveled automobile route~~
20 ~~when travel is by private plane, and no more unless~~
21 ~~otherwise specifically provided by law; provided, however,~~
22 ~~that nothing herein contained shall be construed as~~
23 ~~affecting the validity of section 43-310.~~

24 (2) Where the individual is authorized to operate a
25 privately owned vehicle even though a ~~government-owned~~

1 ~~government-owned~~ or ~~leased~~ ~~leased~~ vehicle is available, a
2 rate of ~~three~~ 3 cents (3¢) less per a mile than the mileage
3 rate allowed by the United States internal revenue service
4 for the next preceding year shall be paid.

5 (3) Where a privately owned vehicle is used because a
6 ~~government-owned~~ ~~government-owned~~ or ~~leased~~ ~~leased~~ vehicle
7 is not available for use or it is in the best interest of
8 the governmental entity that a privately owned vehicle be
9 used, a rate equal to the mileage allotment allowed by the
10 United States internal revenue service for the next
11 preceding year shall be paid for the first ~~one thousand~~
12 ~~(1,000)~~ miles and ~~three~~ 3 cents (3¢) per a mile less for all
13 miles thereafter traveled within a given calendar month.

14 (4) ~~Private~~ ~~plane~~ Members of the legislature, state
15 officers, ~~township officers~~, jurors, witnesses, ~~county~~
16 ~~agents~~ and all other persons, ~~except sheriffs~~, who may be
17 entitled to mileage, when using their own airplanes, in the
18 performance of official duties, are entitled to collect
19 mileage for the distance actually traveled at a rate of
20 ~~twenty~~ 20 cents (20¢) per a statute mile, and no more unless
21 specifically provided by law. This section does not affect
22 the validity of ~~section~~ 43-310.

23 (5) The department of administration shall prescribe
24 rules necessary to effectively administer this section for
25 state government."

1 Section 108. Section 62-211, R.C.M. 1947, is renumbered
2 75-7310 and is amended to read as follows:

3 "62-211 75-7310. ~~Cities and school~~ School
4 ~~districts~~ -- public recreation == ~~use of park funds~~. Any
5 ~~city or town, including any board of park commissioners, may~~
6 ~~expend funds from the band fund and the park fund of said~~
7 ~~city or town, and any school district, or board thereof, may~~
8 ~~co-operate~~ cooperate with any unit of local government for
9 the purpose of operating a program of public recreation and
10 playgrounds, and may acquire, equip, and maintain land,
11 buildings, and/or other ~~recreation~~ recreational facilities."

12 Section 109. Section 62-603, R.C.M. 1947, is amended to
13 read as follows:

14 "62-603. Definitions. The following terms whenever
15 used or referred to in this act shall have the following
16 meanings unless a different meaning is clearly indicated by
17 the context:

18 ~~(a) (1)~~ "Public body" means the state, counties,
19 ~~cities, towns and other municipalities.~~

20 ~~(b) (2)~~ "Urban area" means any area which is urban in
21 character, including surrounding areas which form an
22 economic and socially related region, taking into
23 consideration such factors as present and future population
24 trends and patterns of urban growth, location of
25 transportation facilities and systems, and distribution of

1 industrial, commercial, residential, governmental,
2 institutional, and other activities.

3 ~~(e)~~ (3) "Open-space land" means any land which is
4 provided or preserved for ~~(1)~~ park or recreational purposes,
5 ~~(2)~~ conservation of land or other natural resources, ~~(3)~~
6 historic or scenic purposes, or ~~(4)~~ assisting in the shaping
7 of the character, direction, and timing of community
8 development.

9 ~~(d) "Comprehensive planning" means planning for~~
10 ~~development and shall include: (1) preparation, as a guide~~
11 ~~for long range development, of general physical plans with~~
12 ~~respect to the pattern and intensity of land use and the~~
13 ~~provision of public facilities, including transportation~~
14 ~~facilities, together with long range fiscal plans for such~~
15 ~~development; (2) programming and financing plans for capital~~
16 ~~improvements; (3) co-ordination of all related plans and~~
17 ~~planned activities at both the intragovernmental and~~
18 ~~intergovernmental levels; and (4) preparation of regulatory~~
19 ~~and administrative measures in support of the foregoing.~~

20 ~~(e)~~ (4) "Conservation easement" means an easement or
21 restriction running with the land and assignable, whereby an
22 owner of land voluntarily relinquishes to the holder of such
23 easement or restriction, any or all rights to construct
24 improvements upon the land or to substantially alter the
25 natural character of the land or to permit the construction

1 of improvements upon the land or the substantial alteration
2 of the natural character of the land, except as this right
3 is expressly reserved in the instruments evidencing the
4 easement or restriction. Conservation easements may be
5 granted either in perpetuity or for a term of years. If
6 granted for a term of years, that term may not be less than
7 ~~fifteen~~ (15) years. An easement granted for a term of years
8 may be renewed for a term of ~~fifteen~~ (15) or more years upon
9 the execution of a new granting instrument by the parties. A
10 conservation easement may be applied to urban or nonurban
11 land.

12 ~~(f)~~ (5) "Qualified private organization" means a
13 private organization:

14 ~~(1)~~ (a) competent to own interests in real property,
15 and;

16 ~~(2)~~ (b) which qualifies and holds a general tax
17 exemption under the ~~Federal~~ federal Internal Revenue Code,
18 section 501(c); and;

19 ~~(3)~~ (c) whose organizational purposes are designed to
20 further the purposes of this act."

21 Section 110. Section 62-605, R.C.M. 1947, is amended
22 to read as follows:

23 "62-605. Conversion or diversion of open-space land,
24 where prohibited -- substitution of other realty --
25 conveyance or lease of open-space land authorized. (1) No

open-space land, the title to, or interest or right in which has been acquired under this act, ~~shall~~ may be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with ~~the program of comprehensive~~ local government planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement.

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land shall be substituted within a reasonable period not exceeding ~~one~~ (1) year for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this act.

~~(2)~~ (3) A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this act. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection (1) of this section."

Section 111. Section 62-606, R.C.M. 1947, is amended to read as follows:

"62-606. Powers of public bodies. ~~(a)~~ (1) A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this act, including the following powers in addition to others granted by this act:

~~(1)~~ (a) to borrow funds and make expenditures necessary to carry out the purposes of this act;

~~(2)~~ (b) to advance or accept advances of public funds;

~~(3)~~ (c) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required and ~~to~~ enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may ~~also~~ consider reasonable and appropriate and which are not inconsistent with the purposes of this act;

~~(4)~~ (d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act;

~~(5)~~ (e) in connection with the real property acquired or designated for the purposes of this act, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency,

1 public or private, of services, privileges, works, streets,
2 roads, public utilities, or other facilities or structures
3 that may be necessary to the provision, preservation,
4 maintenance, and management of the property as open-space
5 land;

6 ~~(6)~~ (f) to insure or provide for the insurance of any
7 real or personal property or operations of the public body
8 against any risks or hazards, including the power to pay
9 premiums on the insurance;

10 ~~(7)~~ (g) to demolish or dispose of any structures or
11 facilities which may be detrimental to or inconsistent with
12 the use of real property as open-space land; and

13 ~~(8)~~ (h) to exercise any or all of its functions and
14 powers under this act jointly or ~~co-operatively~~
15 cooperatively with public bodies of one or more states, if
16 they are so authorized by state law, and with one or more
17 public bodies of this state, and to enter into agreements
18 for joint or ~~co-operative~~ cooperative action.

19 ~~(b)~~ (2) For the purposes of this act, the state, ~~or a~~
20 ~~city, town, other municipality, or county~~ may:

21 ~~(1)~~ (a) appropriate funds;

22 ~~(2)~~ ~~levy taxes and assessments according to existing~~
23 ~~codes and statutes not to exceed one (1) mill;~~

24 ~~(3)~~ (b) issue and sell its general obligation bonds in
25 the manner and within the limitations prescribed by the

1 applicable laws of the state; and

2 ~~(4)~~ (c) exercise its powers under this act through a
3 board or commission, or through such office or officers as
4 its governing body by resolution determines, or as the
5 governor determines in the case of the state.

6 (3) For the purposes of this act, municipalities and
7 counties shall proceed according to the provisions of Title
8 47A."

9 Section 112. Section 62-607, R.C.M. 1947, is amended
10 to read as follows:

11 "~~62-607. Planning requirements commission authorized~~
12 ~~funding. (1) The state, municipalities, and counties,~~
13 ~~cities, towns, or other municipalities in an urban area,~~
14 ~~acting jointly or in co-operation, cooperation are~~
15 ~~authorized to perform comprehensive planning for the urban~~
16 ~~area and to establish and maintain a planning commission~~
17 ~~agency, for this purpose and related planning activities.~~
18 ~~Funds may be appropriated and made available for the~~
19 ~~comprehensive planning, and financial or other assistance~~
20 ~~from the federal government and any other public or private~~
21 ~~sources may be accepted and utilized for the planning.~~

22 (2) The planning authorized by subsection (1) shall
23 include:

24 (a) the preparation of a long-range development
25 program which includes elements pertaining to:

1 (i) the nature and extent of the use of land;
 2 (ii) the provision of public facilities;
 3 (iii) the provision of transportation facilities; and
 4 (iv) a long-range fiscal plan for implementation of the
 5 elements;

6 (b) a capital improvements program;

7 (c) the preparation of regulatory and administrative
 8 measures necessary to implement the various elements.

9 (3) The planning required by this section shall be
 10 coordinated with any local government planning taking place
 11 in the vicinity of the urban area.

12 (4) A government conducting the planning authorized by
 13 this section may finance the planning through any moneys
 14 available to it."

15 Section 113. Section 62-610, R.C.M. 1947, is amended
 16 to read as follows:

17 "62-610. Easements -- type allowed. (1) Easement or
 18 restrictions under this act may prohibit or limit any or all
 19 of the following:

20 ~~(4)(a) Structures. Construction~~ construction or
 21 placing of buildings, camping trailers, house trailers,
 22 mobile homes, roads, signs, billboards or other advertising,
 23 utilities, or other structures on or above the ground;

24 ~~(2)(b) Landfill. Dumping~~ dumping or placing of soil
 25 or other substance or material as landfill, or dumping or

1 placing of trash, waste, or unsightly or offensive
 2 materials;

3 ~~(3)(c) Vegetation. Removal~~ removal or destruction of
 4 trees, shrubs, or other vegetation;

5 ~~(4)(d) Loan, gravel, etc. Excavation~~ excavation,
 6 dredging, or removal of loan, peat, gravel, soil, rock, or
 7 other material substance;

8 ~~(5)(e) Surface use. Surface~~ surface use except for
 9 such purposes permitting the land or water area to remain
 10 predominantly in its existing condition;

11 ~~(6)(f) Acts detrimental to conservation. Activities~~
 12 activities detrimental to drainage, flood control, water
 13 conservation, erosion control, or soil conservation, or fish
 14 and wildlife habitat and preservation;

15 ~~(7)(g) Subdivision of land. Subdivision~~ subdivision
 16 of land as defined in ~~section 11-386.~~ 47A-6-4503; and

17 ~~(8)(h) Other acts. Other~~ other acts or uses
 18 detrimental to ~~such~~ retention of land or water areas in
 19 their existing conditions.

20 ~~(9)(2)~~ The term "land" in subsections (2) and (3)
 21 above, includes land under water, ~~and~~ water, and water
 22 surface."

23 Section 114. Section 62-614, R.C.M. 1947, is amended
 24 to read as follows:

25 "62-614. Review by local planning ~~authority~~ agency. In

1 order to minimize conflict with local ~~comprehensive~~
 2 planning, all conservation easements shall be subject to
 3 review by the appropriate local planning authority for the
 4 county within which the land lies prior to recording. It
 5 shall be the responsibility of the entity acquiring the
 6 conservation easement to present the proposed conveyance of
 7 the conservation easement to the appropriate local planning
 8 ~~authority agency~~. The local planning ~~authority agency~~ shall
 9 have ~~ninety~~ ~~(90)~~ days from receipt of the proposed
 10 conveyance within which to review and to comment upon the
 11 relationship of the proposed conveyance to ~~comprehensive~~
 12 planning for the area. Such comments will not be binding on
 13 the proposed grantor or grantee, but shall be merely
 14 advisory in nature. The proposed conveyance may be recorded
 15 after comments have been received from the local planning
 16 ~~authority, agency~~ or the local planning ~~authority agency~~ has
 17 indicated in writing it will have no comments, or ~~ninety~~
 18 ~~(90)~~ days have elapsed, whichever ~~first~~ occurs first."

19 Section 115. Section 62-615, R.C.M. 1947, is amended
 20 to read as follows:

21 "62-615. Recording and description of land. All
 22 conservation easements shall be duly recorded in the county
 23 where the land lies so as to effect their titles in the
 24 manner of other conveyances of interest in land and shall
 25 describe the land subject to said conservation easement by

1 adequate legal description or by reference to a recorded
 2 plat showing its boundaries. The county ~~clerk and recorder~~
 3 records administrator shall upon recording ~~cause~~ place a
 4 copy of the conservation easement ~~to be placed~~ in a separate
 5 file within the office of the county ~~clerk and recorder~~
 6 records administrator and ~~shall cause mail~~ a copy of the
 7 conservation easement ~~to be mailed~~ to the state department
 8 of revenue."

9 Section 116. Section 69-2105, R.C.M. 1947, is amended
 10 to read as follows:

11 "69-2105. Definitions. As used in this chapter, unless
 12 the context requires otherwise:

13 (1) "~~municipality~~ municipality" means any incorporated
 14 ~~city or town~~ municipality and its jurisdictional area as
 15 defined by subsection (12) of this section;

16 (2) "~~Building building~~ regulations" means any law,
 17 rule, resolution, regulation, ordinance, or code, general or
 18 special, or compilation thereof enacted or adopted by the
 19 state or any ~~municipality~~ local government, including
 20 departments, boards, bureaus, commissions, or other agencies
 21 of the state or a ~~municipality~~ local government, relating to
 22 the design, construction, reconstruction, alteration,
 23 conversion, repair inspection, or use of buildings and
 24 installation of equipment in buildings. The term does not
 25 include zoning ordinances.

(3) "~~Department~~ department" means the department of administration provided for in Title 82A, chapter 2-;

(4) "~~Local~~ local building department" means the agency or agencies of any ~~municipality~~ local government charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents, prescribed or required by state or local building regulations-;

(5) "~~State~~ state agency" means any state officer, department, board, bureau, commission, or other agency of this state-;

(6) "~~Building~~ building" means a combination of any materials, whether mobile, portable, or fixed, used to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof-".

(7) "~~Equipment~~ equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, ~~and waiters~~ and waiters, escalators, and other mechanical additions or installations-;

(8) "~~Construction~~ construction" means the original construction, and equipment of buildings, and requirements or standards relating to or affecting materials used

including provisions for safety and sanitary conditions-;

(9) "~~Owner~~ owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation, in control of a building-;

(10) "~~Local~~ government" means a municipal, county, consolidated, or confederated unit of local government authorized by Title 47A-;

(11) "~~Local~~ local legislative body" means the council or commission charged with governing the ~~municipality~~ local government-;

(12) "~~State~~ state building code" means the state building code provided for in ~~section~~ 69-2111 or any portion of the code of limited application, and any of its modifications or amendments-;

(13) "~~Municipal~~ municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended ~~at the written request of a municipality as provided in 47A-6-213 and this subsection.~~ Upon written request by a local government, the council may approve extension of the jurisdictional area to include: (a) all or part of the area within ~~four and one-half (4 1/2)~~ 5 miles of the corporate limits of a municipality; (b) all of any platted subdivision which is

partially within ~~four and one-half (4 1/2)~~ 5 miles of the corporate limits of a municipality, and ~~(e)~~ all of any zoning district adopted pursuant to Title 46 47A, chapter 44 ~~or 47, R.C.M. 1947 6, part 4,~~ which is partially within ~~four and one-half (4 1/2)~~ 5 miles of the corporate limits of a municipality. Distances shall be measured in a straight line in a horizontal plane.

~~(13)~~ (14) "Public public place" means any place which a ~~municipality~~ local government or state maintains for the use of the public, or a place where the public has a right to go and be;

~~(14)~~ (15) "Mobile mobile home" means anything defined as a mobile home in the edition of ~~National Fire Protection Association~~ national fire protection association (NFPA) No. 501B or American ~~National Standards Institute~~ national standards institute (ANSI) A119.1 most recently adopted by the state in accordance with ~~section 69-2122~~;

~~(15)~~ (16) "Recreational recreational vehicle" means anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with ~~section 69-2122~~."

Section 117. Section 69-2107, R.C.M. 1947, is amended to read as follows:

"69-2107. Applicable to public places outside municipalities -- limitation of code. (1) Outside

municipalities and their jurisdictional ~~area~~ areas as defined by ~~section 69-2105(12), subsection (12) of this chapter,~~ this chapter applies to "public places" as defined in ~~section 69-2105(13), subsection (13) unless a county governing body has adopted a local building code.~~

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record. The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings, according to use, or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable.

~~(3) A county governing body may adopt as provided in 69-2112(a) local building codes to apply to any area of the county not regulated by a building code adopted by a municipal government."~~

Section 118. Section 69-2112, R.C.M. 1947, is amended to read as follows:

"69-2112. Municipal Local government building codes -- applicability of state code. (1) The local legislative body of a municipality local government may adopt a municipal local government building code by ordinance to apply to the municipal local government jurisdictional area. A municipal local government building code shall require standards equal to those of the state building code or higher standards. A municipal local government building code must cover all general areas included in the state building code.

(2) If a municipality local government does not adopt a municipal local government building code as provided in subsection (1) of this section, the state building code applies within the municipal local government jurisdictional area.

(3) The department shall determine whether a municipal local government building code has standards equal to those of the state building code or higher standards and notify municipalities local governments immediately if any municipal standards are below the state standards.

(4) If a municipal local government code is adopted, a copy of the code and any amendments to the code shall be filed with the department."

Section 119. Section 69-2116, R.C.M. 1947, is amended to read as follows:

"69-2116. Municipal Local government appeal

procedures. If a municipality local government adopts a municipal local government building code, it shall also establish an appeal procedure by ordinance which is acceptable to the department. If a municipality local government does not adopt a code, appeals on the application of the state building code within the municipal local government jurisdictional area shall be made to the department."

Section 120. Section 69-2117, R.C.M. 1947, is amended to read as follows:

"69-2117. Municipal Local government responsibilities and powers. The examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings and the administration and enforcement of building regulations within the municipal local jurisdictional area shall be the responsibility of the municipalities local governments of the state. Each municipality local government may:

(1) ~~Examine~~ examine and approve or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state or municipal local government building code, and direct the inspection of the buildings during and in the course of construction;

(2) ~~Require~~ require that construction of buildings be in accordance with the applicable provisions of the state or ~~municipal~~ local government building code, subject to the powers of variance or modification granted to the department.

(3) ~~Order~~ order in writing the remedying of any condition found to exist in, on, or about any building in violation of the state or ~~municipal~~ local government building code. Orders may be served upon the owner or his authorized agent personally or by sending by registered mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building. Any local building department, by action of an authorized officer, may grant in writing such time as may be reasonably necessary for achieving compliance with the order.

(4) ~~Issue~~ issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of the buildings as required. A certificate of occupancy for a building constructed in accordance with the provisions of the state or ~~municipal~~ local government building code shall certify that the building conforms to the requirements of the building regulations applicable to it. Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is

binding and conclusive upon all ~~municipal~~ local government agencies, as to all matters set forth, and no order, directive, or requirement at variance therewith may be made or issued by any other state or ~~municipal~~ local government agency.

(5) ~~Make~~ make, amend, and repeal rules for the administration and enforcement of the provisions of this section, and for the collection of reasonable fees, which shall be comparable to fees imposed or prescribed by existing local building regulations.

(6) ~~Prohibit~~ prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or ~~municipal~~ local government building code."

Section 121. Section 69-2118, R.C.M. 1947, is amended to read as follows:

"69-2118. Injunctive powers. The construction or use of the building in violation of any provision of the state or ~~municipal~~ local government building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located. This section will be governed by the Montana ~~Rules of Civil Procedure~~ rules of civil procedure."

1 Section 122. Section 69-2119, R.C.M. 1947, is amended
2 to read as follows:

3 "69-2119. Violation of order or codes a misdemeanor.
4 Any person, served with an order pursuant to the provisions
5 of this chapter, who fails to comply with the order not
6 later than ~~thirty~~ (30) days after service or within the time
7 fixed by the department or a local building department for
8 compliance, whichever is the greater, or any owner, builder,
9 architect, tenant, contractor, subcontractor, construction
10 superintendent, or their agents, or any person taking part
11 or assisting in the construction or use of any building who
12 knowingly violates any of the applicable provisions of the
13 state building code or a municipal local government building
14 code is guilty of a misdemeanor."

15 Section 123. Section 69-2702, R.C.M. 1947, is amended
16 to read as follows:

17 "69-2702. Supervised public display of fireworks.
18 Except as hereinafter provided, it shall be unlawful for any
19 person, firm, copartnership, association, or corporation to
20 possess, offer for sale, expose for sale, sell, or use or
21 explode any fireworks; provided that the state fire marshal
22 and the governing body of any ~~city, town or township~~
23 municipality or county shall have power, under reasonable
24 rules ~~and regulations~~ adopted by it, to grant permits for
25 supervised public displays of fireworks to be held therein

1 by municipalities, counties, fair associations, amusement
2 parks, and other organizations or groups of individuals.
3 Every such display shall be handled by a competent operator
4 to be approved by the state fire marshal or by the governing
5 body of the county or municipality in which the display is
6 to be held and shall be of such a character, and so located,
7 discharged, or fired as shall, in the opinion of the chief
8 of the fire department or such other officer as may be
9 designated by the governing body of the municipality or
10 county, after proper inspection, ~~shall~~ not be hazardous to
11 property or endanger any person or persons. Application for
12 permits shall be made in writing at least ~~fifteen~~ (15) days
13 in advance of the date of the display. After such privilege
14 ~~shall have~~ has been granted, sales, possession, use, and
15 distribution of fireworks for such display ~~shall be~~ are
16 lawful for that purpose only. No permit granted hereunder
17 ~~shall be~~ is transferable. ~~The term "municipalities" shall~~
18 ~~include cities, incorporated towns or townships."~~

19 Section 124. Section 69-2703, R.C.M. 1947, is amended
20 to read as follows:

21 "69-2703. Damage indemnity bond from licensee. The
22 governing body of the municipality or county shall require a
23 bond ~~deemed~~ considered adequate by the municipality or
24 county from the licensee in a sum not less than ~~five hundred~~
25 ~~dollars~~ (\$500.00), conditioned for the payment of all damages

1 which may be caused either to a person or persons or to
2 property by reason of the licensed display, and arising from
3 any acts of the licensee, his agents, employees, or
4 subcontractors."

5 Section 125. Section 69-2704, R.C.M. 1947, is amended
6 to read as follows:

7 "69-2704. ~~Where~~ When act does not apply applicable.
8 Nothing in this act shall be construed to prohibit the sale
9 of any kind of fireworks to a person holding a permit from
10 any municipality or county at the display covered by such
11 permits; or the use of fireworks by railroads or other
12 transportation agencies for signal purposes or
13 illumination; ~~or when used the use of fireworks~~ in
14 quarrying or blasting or other industrial use; or the sale
15 or use of blank cartridges for a show or theater, ~~or~~ for
16 signal or ceremonial purposes in athletics or sports, or for
17 use by military organizations, or organizations composed of
18 veterans of the United States army, navy, or marine corps."

19 Section 126. Section 69-3410, R.C.M. 1947, is amended
20 to read as follows:

21 "69-3410. Definitions. Unless the context requires
22 otherwise, as used in this act, the following definitions
23 apply:

24 (1) "Board" means the board of sanitarians provided
25 for in ~~section 3~~ [69-3412].

1 (2) "Department" means the department of professional
2 and occupational licensing provided for in ~~title~~ title 82A,
3 chapter 16.

4 (3) "Registered sanitarian" means a sanitarian
5 licensed under this act.

6 (4) "Sanitarian", within the meaning and intent of
7 this act, shall mean a person who, by reason of his special
8 knowledge of the physical, biological, and chemical
9 sciences, and the principles and methods of public health,
10 acquired by professional education and practical experience
11 through inspectional, educational, ~~and/or~~ enforcement
12 duties, is qualified to practice the profession of
13 sanitarian.

14 (5) "Practice the profession of sanitarian" means
15 planning, inspectional, educational, or enforcement duties
16 in the field of environmental sanitation.

17 (6) Persons exempt from the requirements of this act,
18 unless practicing the profession of sanitarian, are:

19 (a) any person teaching, lecturing, or engaging in
20 research in environmental sanitation but only ~~in so far~~
21 insofar as such activities are performed as part of an
22 academic position in a college or university;

23 (b) any person who is a sanitary engineer, public
24 health engineer, registered professional engineer, or
25 engineer in training;

(c) any public health officer employed pursuant to ~~section 69, R.C.M., 1947, Title 47A, chapter 8, part 3;~~ and

(d) any person employed by a federal governmental agency but only at such times as the person is carrying out the functions of his employment."

Section 127. Section 69-3919, R.C.M. 1947, is amended to read as follows:

"69-3919. Local air pollution control programs. (1) A ~~municipality or county~~ local government may establish a local air pollution control program ~~on being petitioned by fifteen per cent (15%) of the qualified electors in its jurisdiction,~~ and may thereafter administer in its jurisdiction the air pollution control program which:

(a) ~~Provides~~ provides by ordinance ~~or local law~~ for requirements compatible with, more stringent, or more extensive than those imposed by ~~sections~~ 69-3913, 69-3915, and 69-3916 and rules issued under these sections;

(b) ~~Provides~~ provides for the enforcement of these requirements by appropriate administrative and judicial process;

(c) ~~Provides~~ provides for administrative organization, staff, and financial, and other resources necessary to effectively and efficiently carry out its program; and

(d) ~~If the program~~ is consistent with this act and is approved by the board after a public hearing conducted under

~~section~~ 69-3909.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations, or any combination of these, are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates, or that the program is being administered in a manner inconsistent with this act, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates, or that it is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed ~~sixty~~ sixty days.

(5) If the jurisdiction fails to take these measures

within the time required, the department shall administer within such jurisdiction all of the provisions of this act. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that class of air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may with the approval of the board establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

~~(8) A municipality or county may administer all or part of its air pollution control program in cooperation with one (1) or more municipalities or counties of this~~

~~state or of other states."~~

Section 128. Section 69-4002, R.C.M. 1947, is amended to read as follows:

"69-4002. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Garbage" means putrescible ~~animal and vegetable wastes resulting from handling, preparation, cooking, and consumption of food~~ waste matter except sewage.

(2) "Refuse" means putrescible and nonputrescible solid wastes (except ~~body wastes~~ sewage), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(3) "Rubbish" means nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, abandoned automobiles, tin cans, wood, glass, bedding, crockery, and similar materials.

(4) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(5) "Board" means the board of health and environmental sciences, provided for in ~~section~~ 82A-605.

(6) "Solid waste" means garbage, refuse, and rubbish."

Section 129. Section 69-4007, R.C.M. 1947, is amended to read as follows:

"69-4007. Rules and regulations — inspections and

1 recommendations. (1) The state department is authorized to
 2 promulgate rules and regulations for the operation of ~~refuse~~
 3 solid waste disposal areas. ~~Said The~~ regulations shall be
 4 prepared and published and shall contain sanitary standards
 5 for disposal areas.

6 (2) The department shall cause all licensed disposal
 7 areas to be inspected and ~~recommended~~ recommend to the
 8 ~~local~~ county or district board of health action which may
 9 be taken to enforce the provisions of this act."

10 Section 130. Section 69-4008, R.C.M. 1947, is amended
 11 to read as follows:

12 "69-4008. Landowner's rights preserved — publicly
 13 operated disposal areas. (1) This act shall not be construed
 14 to prohibit any person from disposing of his own ~~garbage,~~
 15 ~~rubbish or refuse~~ solid waste upon his own land as long as
 16 such disposal does not create a nuisance. ~~Any incorporated~~
 17 ~~city, town, rural improvement district or county~~ A local
 18 government may establish a disposal area and operate same
 19 without paying the annual license fee, but must meet all
 20 other requirements of this act.

21 (2) The county or district board of health may adopt
 22 regulations controlling the disposal of garbage, rubbish, or
 23 refuse on private land to prevent development of a public
 24 nuisance."

25 Section 131. Section 69-4110, R.C.M. 1947, is amended

1 to read as follows:

2 "69-4110. Functions, powers, and duties of department.

3 The department shall:

4 (1) ~~Study~~ study conditions affecting the citizens of
 5 the state by making use of birth, death, and sickness
 6 records;

7 (2) ~~Make~~ make investigations, disseminate information,
 8 and make recommendations for control of diseases and
 9 improvement of public health to persons, groups, or the
 10 public;

11 (3) ~~At~~ at the request of the governor, administer any
 12 federal health program for which responsibilities are
 13 delegated to states;

14 (4) ~~Inspect~~ inspect and work in conjunction with
 15 custodial institutions and Montana university system units
 16 periodically as necessary, and at other times on request of
 17 the governor;

18 (5) ~~After~~ after each inspection made under subsection
 19 (4) of this section, submit a written report on sanitary
 20 conditions to the governor and to the director of
 21 institutions or executive secretary of the Montana
 22 university system and include recommendations for
 23 improvement in conditions, if necessary;

24 (6) ~~Advise~~ advise state agencies on location,
 25 drainage, water supply, disposal of excreta, heating,

1 plumbing, sewer systems, and ventilation of public
2 buildings;

3 (7) ~~Organize~~ organize laboratory services and provide
4 equipment and personnel for those services;

5 (8) ~~Develop~~ develop and administer activities for the
6 protection and improvement of dental health and supervise
7 dentists employed by the state, ~~local boards of health~~, or
8 schools;

9 (9) ~~Develop~~ develop and administer a program to
10 protect the health of mothers and children;

11 (10) ~~Conduct~~ conduct health education programs;

12 ~~(11) Supervise school and local public health nurses in~~
13 ~~the performance of their duties;~~

14 ~~(12) Consult~~ consult with the superintendent of
15 public instruction on health measures for schools;

16 ~~(13) Develop~~ develop and administer a program for
17 services to handicapped children including diagnosis,
18 medical, surgical, and corrective treatment, and after-care
19 and related services;

20 ~~(14) Supervise local boards of health;~~

21 ~~(15) Bring~~ bring actions in court for the
22 enforcement of the health laws and defend actions brought
23 against the board or department; and

24 ~~(16) evaluate programs and services provided by local~~
25 ~~health departments;~~

1 ~~(15) Accept~~ accept and expend federal funds
2 available for public health services; and

3 ~~(16) Have~~ have the power to use personnel of local
4 departments of health to assist in the administration of
5 laws relating to public health. If such personnel are
6 utilized for these purposes, however, local health
7 departments shall be reimbursed for the costs involved out
8 of moneys from any sources available to the department."

9 Section 132. Section 69-4514, R.C.M. 1947, is
10 renumbered 66-1015.1 and is amended to read as follows:

11 "69-4514 66-1015.1. Cases of communicable disease —
12 reports by practitioners of the healing arts. If a physician
13 or other practitioner of the healing arts examines or treats
14 a person whom he believes has a communicable disease, or a
15 disease declared reportable by the department of health and
16 environmental sciences, he shall immediately report the case
17 to the local health officer. The report shall be in the
18 form, and contain information, prescribed by the department
19 of health and environmental sciences."

20 Section 133. Section 69-5003, R.C.M. 1947, is amended
21 to read as follows:

22 "69-5003. Approval of plans for facilities in
23 subdivisions. (1) A person may not file a subdivision plat
24 with a county clerk and recorder, make disposition of any
25 lot within a subdivision, erect any building or shelter in a

subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction.

(2) A county clerk and recorder may not accept a subdivision plat for filing until:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and

(b) the department has indicated by stamp or certificate, that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction.

(3) When a subdivision as defined in this chapter is excluded from the provisions of ~~Title 11, chapter 20, section 11-3862, R.C.M., 1947, 47A-6-4501 and 47A-6-4504~~ except ~~section 11-3862 (8), R.C.M., 1947 47A-6-4504(8)~~, and the subdivision is otherwise subject to the provisions of this chapter, plans and specifications of the subdivisions shall be submitted to the department and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:

(a) The developer shall present to the department a preliminary plan of the proposed development and whatever information the developer feels necessary for its subsequent review. Within ~~sixty (60)~~ days of this submission, based upon its receipt by the department, the department shall notify the developer if the material submitted is satisfactory to determine if sanitary restrictions are necessary and, if not, what additional information is required for subsequent action by the department.

(b) If additional information is necessary to determine if sanitary restrictions are necessary, no further processing will be made on the request until the ~~missing~~ missing information is made available to the department by the developer.

(c) The department must notify the developer within ~~thirty (30)~~ days if his submission of additional requested material is satisfactory. If the material is not satisfactory, the provision of subsection (b) shall apply.

(d) After the department has notified the developer that ~~they have it has~~ all the necessary information required for review, the department must give final action ~~of on~~ the proposed plan within ~~sixty (60)~~ days, unless an environmental impact statement is required, at which time this deadline may be increased to ~~one hundred twenty (120)~~ days.

(4) A person may not construct or use any facilities which deviate from the plans and specifications filed with the department until the department has approved the deviation."

Section 134. Section 69-5604, R.C.M. 1947, is amended to read as follows:

"69-5604. Application for license -- form and contents -- license fee -- local health officer validation -- duration of license. (1) Application for a license ~~is~~ shall ~~be~~ made to the department on forms, and containing information, required by the department.

(2) Each application shall be accompanied by a fee of ~~twenty dollars (\$20). Licenses expire on December 31 of the year in which they are issued.~~ Fees collected by the department shall be deposited in the state general fund.

(3) No license issued under this chapter is valid until countersigned by the local health officer having jurisdiction in each county in which the business will be conducted. The department shall refer all licenses to the local health officer for his signature prior to the issuance of a license by the department. The initial license and subsequent renewals shall be invalid until the validation signature is affixed. The validation signature shall be affixed only after the local health officer is satisfied that the establishment has met sanitary conditions required

by rules of the department.

(4) Licenses expire on December 31 of the year in which they are issued.

~~(2) (5)~~ Before June 30 of each year, the department shall pay to a local ~~board of health department~~ as established under ~~section 69-4504, 69-4506, or 69-4507~~ Title 47A, Chapter 8, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this act; provided, however, that ~~there is a functioning local board of health, and that the local board of health department,~~ local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

~~(3) (6)~~ Before June 1 of each year, the local ~~board of health department~~ shall submit to the department a list of the establishments in each jurisdiction which are licensed under this section. The funds received by the local ~~board of health department~~ shall be deposited with the ~~appropriate local fiscal authority county treasurer~~ and shall be in addition to the funds appropriated under ~~section 69-4508~~ Title 47A, Chapter 8."

Section 135. Section 69-5701, R.C.M. 1947, is amended to read as follows:

"69-5701. Violations of public health laws or rules of board or department. (1) If a person refuses or neglects to

1 comply with a written order of a state or local health
 2 officer or other local public health personnel acting in the
 3 performance of their duties within a reasonable time
 4 specified in the order, the state or local health officer
 5 may:

6 (a) obtain a court order enforcing compliance with the
 7 order; or

8 (b) if the conditions indicate an imperative threat to
 9 public health, take whatever action is necessary to
 10 alleviate the conditions which prompted the order.

11 (2) The state or local health officer may initiate an
 12 action to recover any expenses incurred from the person who
 13 refused or neglected to comply with the order. The action to
 14 recover expenses shall be brought in the name of the county
 15 involved.

16 (3) No person may remove or deface any placard or
 17 notice posted by the local health officer or other local
 18 public health personnel acting in the performance of their
 19 duties or violate a quarantine regulation.

20 (4) Anyone who knowingly violates a public health law
 21 or rule adopted by the board of health and environmental
 22 sciences, or the department of health and environmental
 23 sciences, or a local health department, for which no penalty
 24 is specified, is guilty of a misdemeanor.

25 (5) Each day of violation constitutes a separate

1 offense. Fines shall be paid to the county treasurer of the
 2 county in which the violation occurs."

3 Section 136. Section 70-113, R.C.M. 1947, is amended
 4 to read as follows:

5 "70-113. Schedules of rates, tolls, and charges. (1)
 6 Every public utility shall file with the commission, within
 7 a time fixed by the commission, schedules which shall be
 8 open to public inspection, showing all rates, tolls, and
 9 charges which it has established, and which are in force at
 10 the time, for any service performed by it within the state,
 11 or for any service in connection therewith, or performed by
 12 any public utility controlled or operated by it. The rates,
 13 tolls, and charges shown on such schedules shall not exceed
 14 the rates, tolls, and charges in force at the time of
 15 passage of this act. Every public utility shall file with,
 16 and as a part of such schedule, all rules and regulations
 17 that in any manner affect the rates charged or to be charged
 18 for any service. A copy of so much of ~~said~~ the schedule as
 19 the commission shall ~~deem~~ consider necessary for the use of
 20 the public shall be printed in plain type, and kept on file
 21 in every station or office of such public utility, where
 22 payments are made by the consumers or users, open to the
 23 public, in such form and place as to be readily accessible
 24 to the public, and as can be conveniently inspected.

25 (2) When a schedule of joint rates or charges is ~~or~~

1 ~~may be~~ in force between two or more public utilities, such
 2 schedule shall in like manner be printed and filed with the
 3 commission, and so much thereof as the commission shall deem
 4 consider necessary for the use of the public shall be filed
 5 in every such station or office as prescribed in the first
 6 paragraph of this section.

7 (3) No change shall thereafter be made in any
 8 schedule, including schedules of joint rates, except as
 9 approved by the commission. Before it may approve any
 10 change increasing the rate or rates for utility service in a
 11 schedule generally affecting consumers in a utility's
 12 service area, the commission shall publish a notice of the
 13 proposed change, conforming to the requirements of ~~section~~
 14 82-4209(2) in one or more newspapers published and of
 15 general circulation within the area affected by the proposed
 16 change. This notice shall announce a hearing on the
 17 proposed change and shall inform interested persons how they
 18 may petition the commission to become parties to the
 19 hearing. The commission shall proceed to conduct the
 20 hearing under the Administrative Procedure Act. The
 21 consumer counsel may in his discretion petition to become a
 22 party to the hearing.

23 Notwithstanding any provision of this ~~Title~~ title to
 24 the contrary, the final decision of the commission in any
 25 matter decided after a hearing conducted pursuant to this

1 section shall conform to the requirements of a decision in a
 2 contested case under the Administrative Procedure Act. The
 3 commission may temporarily approve an increase pending a
 4 hearing and final decision. If the final decision is to
 5 disapprove the increase the commission shall order a rebate
 6 to all consumers for the amount collected retroactive to the
 7 date of the temporary approval.

8 (4) Rates for water and sewer supply and distribution
 9 services provided by municipalities and counties shall be
 10 established as provided in 47A-6-8209 and are not subject to
 11 this section."

12 Section 137. Section 70-301, R.C.M. 1947, is amended
 13 to read as follows:

14 "70-301. ~~Rights-of-way~~ Rights-of-way for pole lines
 15 along streets, roads, and highways. A telegraph, telephone,
 16 electric light, or electric power line, corporation, or
 17 public body or any other person owning or operating such, is
 18 hereby authorized to install its respective plants and
 19 appliances necessary for service, and to supply and
 20 distribute electricity for lighting, heating, power, and
 21 other purposes, and to that end to construct such telegraph,
 22 telephone, electric light, or electric power line or power
 23 lines, from point to point, along and upon any of the public
 24 roads, streets, and highways in the state of Montana, by the
 25 erection of necessary fixtures, including posts, piers, and

1 abutments necessary for the wires. But the same shall be so
2 constructed as not to ~~increase~~ inconvenience or endanger
3 the public in the use of said roads, streets, or highways,
4 and nothing herein shall be so construed as to restrict the
5 powers of ~~city or town councils~~ local governments."

6 Section 138. Section 71-1601, R.C.M. 1947, is amended
7 to read as follows:

8 "71-1601. Purpose and intent of act. It is the purpose
9 of this act to enable the state of Montana, ~~and the~~
10 ~~counties, cities, towns,~~ school districts, and other
11 governmental subdivisions of the state, and other
12 organizations or agencies authorized to receive federal
13 assistance under Public Law 88-452, 88th Congress, to secure
14 for the citizens of Montana the benefits offered by the
15 United States government to the several states and their
16 citizens in the law of August 20, 1964, (Public Law 88-452
17 of the 88th Congress; 78 Stats. 508) for economic betterment
18 and the relief of poverty. It is the intent of this act to
19 grant to the state and its subdivisions the widest possible
20 authority, within the limits set by law, to ~~co-operate~~
21 cooperate and combine their efforts with those of the
22 appropriate federal agencies, and to comply with any federal
23 regulations, not in conflict with the laws of the state of
24 Montana, to carry out the purposes of the congressional act
25 and secure the resulting benefits for Montana and its

1 people."

2 Section 139. Section 71-1602, R.C.M. 1947, is amended
3 to read as follows:

4 "71-1602. Agreements with federal agencies authorized.
5 The state of Montana, and all offices, agencies, departments
6 and divisions thereof, ~~and all counties, cities, towns,~~
7 school districts and other governmental subdivisions of the
8 state, and other organizations or agencies authorized to
9 receive federal assistance under Public Law 88-452, 88th
10 Congress, singly or in combination, are hereby authorized
11 and empowered, within the limits set by the respective laws
12 governing them, to enter into and carry out contracts,
13 agreements, and plans with any authorized agency of the
14 United States government for the implementation and
15 operation within the areas of their respective jurisdictions
16 of the act of ~~Congress~~ Congress of August 20, 1964, (Public
17 Law 88-452 of the 88th Congress; 78 Stats. 508)."

18 Section 140. Section 71-1603, R.C.M. 1947, is amended
19 to read as follows:

20 "71-1603. Expenditure of public funds to carry out
21 agreements. The agencies of the state ~~and local government~~
22 ~~enumerated in the preceding section~~ may, within the limits
23 of the laws governing their respective authorities to raise
24 and expend public moneys, budget for, and ~~or~~ expend public
25 moneys in order to enter into and carry out contracts,

1 agreements, and plans under this act and Public Law 88-452.
 2 Any such expenditures must be made from the budgets, budget
 3 items, or appropriations set up for the general purpose to
 4 be served by the project."

5 Section 141. Section 75-5805, R.C.M. 1947, is amended
 6 to read as follows:

7 "75-5805. Powers and duties. The county superintendent
 8 shall have general supervision of the schools of the county
 9 within the limitations prescribed by this ~~Title~~ title and
 10 shall perform the following duties or acts:

11 (1) determine, establish, and ~~re-establish~~ reestablish
 12 trustee nominating districts, and fill additional trustee
 13 position vacancies in accordance with the provisions of
 14 ~~sections~~ 75-5903, 75-5904, and 75-5905;

15 (2) administer and file the oaths of members of the
 16 trustees of the districts in his county in accordance with
 17 the provisions of ~~section~~ 75-5916;

18 (3) fill by appointment any trustee position vacancies
 19 when required under the provisions of ~~section~~ 75-5918;

20 (4) register the teacher certificate or emergency
 21 authorization of employment of any person employed in the
 22 county as a teacher, principal, or district superintendent
 23 in accordance with the provisions of ~~section~~ 75-6106;

24 (5) act on each tuition application submitted to him
 25 in accordance with the provisions of ~~sections~~ 75-6313,

1 75-6314, 75-6315, and 75-6316, and transmit the tuition
 2 information required by ~~section~~ 75-6317;

3 (6) file a copy of the audit report for a district or
 4 a school's extracurricular fund in accordance with the
 5 provisions of ~~sections~~ 75-6807 75-6323 or 75-6323 75-6807;

6 (7) classify districts in accordance with the
 7 provisions of ~~section~~ 75-6503;

8 (8) keep a transcript and reconcile the district
 9 boundaries of the county in accordance with the provisions
 10 of ~~section~~ 75-6504;

11 (9) fulfill all responsibilities assigned to him under
 12 the provisions of this ~~Title~~ title regulating the
 13 organization, alteration or abandonment of districts;

14 (10) act on any unification proposition and, if
 15 approved, establish additional trustee nominating districts
 16 in accordance with ~~sections~~ 75-6538 and 75-6539;

17 (11) estimate the average number belonging (ANB) of an
 18 opening school in accordance with the provisions of ~~sections~~
 19 75-6602, 75-6603, 75-6604, or 75-6606;

20 (12) process and, when required, act on school
 21 isolation applications in accordance with the provisions of
 22 ~~section~~ 75-6608;

23 (13) complete the budgets, compute the budgeted
 24 revenues and tax levies, give notices of the budget
 25 meetings, file final and emergency budgets, and fulfill such

1 other responsibilities assigned to him under the provisions
2 of this ~~Title title~~ regulating school budgeting systems;

3 (14) submit an annual financial report to the
4 superintendent of public instruction in accordance with the
5 provisions of ~~section~~ 75-6804;

6 (15) quarterly, unless otherwise provided by law, order
7 the county ~~treasurer~~ finance administrator to apportion
8 state moneys, county school moneys, and any other school
9 moneys subject to apportionment in accordance with the
10 provisions of ~~sections~~ 75-6805, 75-6909, 75-6914, 75-6919,
11 75-6921, 75-7022, or 75-7023, ~~or~~ 75-6905;

12 (16) act on any request to transfer average number
13 belonging (ANB) in accordance with the provisions of
14 ~~subsection (2) of section~~ 75-6903 (3);

15 (17) calculate the estimated, budgeted general fund
16 sources of revenue in accordance with the provisions of
17 ~~section~~ 75-6911 and 75-6920, and the other general fund
18 revenue provisions of the general fund chapter of this ~~Title~~
19 title;

20 (18) compute the revenues and the district and county
21 levy requirements for each fund included on each district's
22 final budget, and report such computations to the ~~board of~~
23 ~~county commissioners~~ county governing body in accordance
24 with the provisions of the general fund, transportation,
25 bonds, and other school funds chapters of this ~~Title~~ title;

1 (19) file and forward bus driver certifications,
2 transportation contracts, and state transportation
3 reimbursement claims in accordance with the provisions of
4 ~~sections~~ 75-7003, 75-7020, or 75-7022;

5 (20) for districts which do not employ a district
6 superintendent or principal, recommend library book and
7 textbook selections in accordance with the provisions of
8 ~~sections~~ 75-7519 or 75-7603;

9 (21) notify the superintendent of public instruction of
10 a textbook dealer's activities when required under the
11 provisions of ~~section~~ 75-7607, and otherwise comply with the
12 textbook dealer provisions of this ~~Title~~ title;

13 (22) act on district requests to allocate federal
14 moneys for indigent children for school food services in
15 accordance with the provisions of ~~section~~ 75-8006; and

16 (23) perform any other duty prescribed from time to
17 time by this ~~Title~~ title, any other act of the legislature,
18 an ordinance of the county governing body, the policies of
19 the board of education, or the rules and regulations of the
20 superintendent of public instruction."

21 Section 142. Section 75-5934, R.C.M. 1987, is amended
22 to read as follows:

23 "75-5934. Other powers and duties. The trustees of any
24 district shall have the power and it shall be ~~its~~ their
25 duty:

(1) to employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, ~~nurses~~, and any other personnel ~~deemed~~ considered necessary to carry out the various services of the district;

(2) to make such reports from time to time as the county superintendent, superintendent of public instruction, and board of education may require;

(3) to retain, when ~~deemed~~ considered advisable, a physician ~~or registered nurse~~ to inspect ~~the sanitary conditions of the school or~~ the general health conditions of each pupil, and upon request make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(4) to retain the services, at least part-time, of a registered professional nurse to provide a program of school nursing services. If school nursing services are provided by the local health department, this provision does not apply.

~~(4)~~ (5) for each member of the trustees, to visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs; and

~~(5)~~ (6) procure and display outside daily in suitable weather at each school of the district an American flag which shall be not less than ~~four~~ (4) feet by ~~six~~ (6) feet."

Section 143. Section 75-6717, R.C.B. 1947, is amended

to read as follows:

"75-6717. Fixing and levying tax levies by board of county commissioners. (1) On the second Monday in August when the members of the budget board meet as the board of county commissioners for the purpose of fixing tax levies for school purposes, the county superintendent, as clerk of the budget board, shall place before the board of county commissioners the final adopted budgets of all districts of the county and any emergency budget adopted by a district during the previous school fiscal year. It shall be the duty of the board of county commissioners of each county to fix and levy on all the taxable value of all the real and personal property within a district or the county, whichever is applicable, all district and county taxation required to finance, within the limitations provided by law, the final budgets and any emergency budgets of all districts of the county.

(2) The mill levies established by the board of county commissioners shall be certified to the county finance administrator for collection within 7 days of the date of the fixing."

Section 144. Section 75-6722, R.C.B. 1947, is amended to read as follows:

"75-6722. Fixing and levying tax levies for joint districts. (1) At the time of fixing levies for county and

1 school purposes on the second Monday in August, the board of
2 county commissioners of each county in which a part of a
3 joint district is located shall fix and levy taxes on that
4 portion of the joint district located in such board's
5 county, at the number of mills for each such levy
6 recommended by the joint statement of the county
7 superintendents.

8 The board of county commissioners shall include in the
9 amounts to be raised by the county levies for schools, all
10 the amounts required for the final budget of each part of a
11 joint district located in the county, in accordance with the
12 recommendations of the county superintendent.

13 (2) The mill levies established by the board of county
14 commissioners shall be certified to the county finance
15 administrator for collection within 7 days of the date of
16 the fixing."

17 Section 145. Section 75-6805, R.C.M. 1947, is amended
18 to read as follows:

19 "75-6805. Duties of county treasurer. The county
20 treasurer of each county shall:

21 (1) receive and hold all school moneys subject to
22 apportionment, and keep a separate accounting of their
23 apportionments to the several districts which are entitled
24 to a portion of such moneys according to the apportionments
25 ordered by the county superintendent. A separate accounting

1 shall be maintained for each county fund supported by a
2 ~~county-wide~~ countywide levy for a specific, authorized
3 purpose, including:

4 (a) the basic county tax in support of the elementary
5 foundation programs;

6 (b) the basic special tax for high schools in support
7 of the high school foundation programs;

8 (c) the county tax in support of the county's high
9 school transportation obligation;

10 (d) the county tax in support of the high school
11 obligations to the retirement systems of the state of
12 Montana;

13 (e) any additional county tax required by law to
14 provide for deficiency financing of the elementary
15 foundation programs;

16 (f) any additional county tax required by law to
17 provide for deficiency financing of the high school
18 foundation programs;

19 (g) the county tax for a ~~post-secondary~~ postsecondary
20 vocational-technical center when levied by the board of
21 county commissioners; and

22 (h) any other county tax for schools which may be
23 authorized by law and levied by the county commissioners;

24 (2) whenever requested, notify the county
25 superintendent of the amount of county school moneys on

1 deposit in each of the funds enumerated in subsection (1) of
2 this section and the amount of any other school moneys
3 subject to apportionment, and apportion such county and
4 other school moneys to the districts in accordance with the
5 apportionment ordered by the county superintendent;

6 (3) keep a separate accounting of the expenditures for
7 each budgeted fund included on the final budget of each
8 district;

9 (4) keep a separate accounting of the receipts,
10 expenditures, and cash balances for each budgeted fund
11 included on the final budget of each district and for each
12 nonbudgeted fund established by each district;

13 (5) except as otherwise limited by law, pay all
14 warrants properly drawn on the county or district school
15 moneys and properly endorsed by their holders;

16 (6) receive all revenue collected by and for each
17 district and deposit these receipts in the fund designated
18 by law, or by the district if no fund is designated by law.
19 Interest and penalties on delinquent school taxes shall be
20 credited to the same fund and district for which the
21 original taxes were levied;

22 (7) send all revenues received for a joint district,
23 part of which is situated in his county, to the county
24 treasurer designated as the custodian of such revenues, no
25 later than the ~~fifteenth day of~~ December 15 of each year and

1 every ~~three~~ (3) months thereafter until the end of the
2 school fiscal year;

3 (8) register district warrants drawn on a budgeted
4 fund in accordance with ~~section 16-2604, R.C.M., 1947~~ Title
5 47A, chapter 9, when there are insufficient moneys available
6 in such budgeted fund to make payment of such warrant.
7 Redemption of registered warrants shall be made in
8 accordance with ~~sections 16-2605, 16-2602, and 16-2607,~~
9 R.C.M., 1947 Title 47A, chapter 9.

10 (9) invest the moneys of any district as directed by
11 the trustees of the district; and

12 (10) give to the trustees of each district, at least
13 quarterly, an itemized report for each fund maintained by
14 the district, showing the paid warrants, outstanding
15 warrants, registered warrants, amount and types of revenue
16 received, and the cash balance."

17 Section 146. Section 75-7104, R.C.M. 1947, is amended
18 to read as follows:

19 "75-7104. Limitations on amount of bond issue. (1) The
20 maximum amount for which each school district ~~shall~~ may
21 become indebted by the issuance of bonds, including all
22 indebtedness represented by outstanding bonds of previous
23 issues and registered warrants, is ~~eight percent (8%)~~
24 assessed value of the taxable property therein as
25 ascertained by the last completed assessment for state,

1 county, and school taxes previous to the incurring of such
2 indebtedness. The ~~eight percent (8%)~~ maximum, however, shall
3 not pertain to indebtedness imposed by special improvement
4 district obligations or assessments against the school
5 district. All bonds issued in excess of such amount shall
6 be ~~null and void~~, except as provided in subsection ~~(2)~~ (4).

7 (2) When the total indebtedness of a school district
8 has reached the ~~eight percent (8%)~~ limitation prescribed in
9 this section, such school district shall have the power and
10 authority to pay all reasonable and necessary expenses of
11 the school district on a cash basis in accordance with the
12 financial administration provisions of this title.

13 (3) Whenever bonds are issued for the purpose of
14 refunding bonds, any moneys to the credit of the debt
15 service fund for the payment of the bonds to be refunded
16 shall be applied towards the payment of such bonds and the
17 refunding bond issue shall be decreased accordingly.

18 ~~(2)~~ (4) In the case of a school district within which a
19 new major industrial facility which seeks to qualify for
20 taxation as class seven ~~(7)~~ property under ~~section~~ 84-301,
21 ~~R.C.S. 1947~~, is being constructed or is about to be
22 constructed, the school district may require, as a
23 precondition of the new major industrial facility qualifying
24 as class seven ~~(7)~~ property, that the owners of the proposed
25 industrial facility enter into an agreement with the school

1 district concerning the issuing of bonds in excess of the
2 ~~eight percent (8%)~~ limitation prescribed in subsection ~~one~~
3 (1). Under such an agreement, the school district may, with
4 the approval of the voters, issue bonds which exceed the
5 limitation prescribed in subsection ~~one~~ (1) by a maximum of
6 ~~eight percent (8%)~~ of the estimated assessed value of the
7 taxable property of the new major industrial facility when
8 completed. The estimated assessed value of the taxable
9 property of the new major industrial facility shall be
10 computed by the department of revenue when requested to do
11 so by a resolution of the board of trustees of the school
12 district, and a copy of the department's statement of
13 estimated assessed value shall be printed on each ballot
14 used to vote on a bond issue proposed under this subsection.

15 (5) Pursuant to the agreement between the new major
16 industrial facility and the school district, and as a
17 precondition to qualifying as class seven ~~(7)~~ property, the
18 new major industrial facility and its owners shall, in
19 addition to such taxes as may be imposed by the school
20 district on property owners generally, pay so much of the
21 principal and interests on the bonds provided for under this
22 subsection as shall represent payment on an indebtedness in
23 excess of the limitation prescribed in subsection ~~one~~ (1).
24 After the completion of the new major industrial facility
25 and when the indebtedness of the school district no longer

exceeds the limitation prescribed in subsection ~~one~~ (1), the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than ~~twenty~~ ~~(20)~~ years which credit shall, as a total amount, be equal to the amount by which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(6) A major industrial facility is a facility, subject to the taxing power of the school district, whose construction or operation will increase the population of the district so as to impose a significant burden upon the resources of the district and to require construction of new school facilities. A significant burden is an increase in ANB of at least ~~twenty percent~~ ~~(20%)~~ in a single year.

(7) No county may issue general obligation bonds which, with all outstanding general obligation bonds for the same purpose, will exceed 2 1/2% of the assessed value of the property in the county, for the purposes of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes."

Section 147. Section 75-7124, R.C.M. 1947, is amended to read as follows:

"75-7124. Delivery of school district bonds and

disposition of moneys realized from sale. (1) After the school district bonds have been registered, the county treasurer shall:

~~(4)~~ (a) when the state board of land commissioners has purchased such bonds, forward the bonds to such state board which, in turn, shall cause the bonds to be sent to the state treasurer and shall cause the bonds to be paid for in the manner provided by law; or

~~(2)~~ (b) when the purchaser is anybody other than the state board of land commissioners, deliver the bonds to ~~such~~ the purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds, he shall be ~~deemed~~ considered guilty of a felony. If convicted, he shall be punished by imprisonment in the state prison for not less than ~~one~~ ~~(1)~~ year ~~or~~ or more than ~~ten~~ ~~(10)~~ years.

(3) All moneys realized from the sale of school district bonds shall be paid to the county treasurer, and he shall credit such moneys to the building fund of the school district issuing such bonds; except moneys realized for the purposes defined in ~~subsection~~ subsections (5) and (6) of ~~section~~ 75-7103 shall be deposited in the debt service fund for the purchase of such bonds. The moneys realized from the

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1 sale of school district bonds shall be immediately available
 2 to such school district, and the trustees may expend such
 3 moneys without budgeted authorization for the purpose or
 4 purposes, but only for such purposes, for which the bonds
 5 were authorized by the school district bond election. Under
 6 the provisions of ~~subsection (2) of section 16-2050, R.C.M.,~~
 7 ~~1947, 47A-9-306~~ the trustees may invest such moneys for
 8 which there is no immediate demand, ~~and the interest earned~~
 9 ~~by such investment shall be used in the manner provided~~
 10 ~~therein.~~ Interest earned from such investments, except
 11 interest on the sale of bonds accrued in the period between
 12 the date of issue and the time of purchase which must be
 13 credited to the sinking fund, may be credited to the sinking
 14 fund of the county high school, provided that in the event
 15 construction of the buildings is delayed for a period longer
 16 than 6 months due to court action or other causes beyond the
 17 control of the trustees, the trustees may direct that
 18 interest earned be credited to the fund from which the money
 19 was withdrawn. The trustees may authorize expenditures from
 20 interest earned, except as provided above, for furnishing
 21 and equipping the buildings for which the bonds were sold.
 22 After the full accomplishment of the purpose or purposes of
 23 a bond issue, the excess moneys realized from such bond
 24 issue shall be transferred to the debt service fund of the
 25 school district to be used for the redemption or purchase of

1 bonds of such issue."

2 Section 148. Section 76-223, R.C.M. 1947, is amended
 3 to read as follows:

4 "76-223. Issuance of bonds authorized — other
 5 financing — special elections. Whenever a board of
 6 supervisors ~~deems~~ considers it necessary, it may issue bonds
 7 payable from revenues, assessments, or both, or the district
 8 may use other financing as provided for by this act for the
 9 cost of works. The board of supervisors may call a special
 10 election to vote upon the proposition of issuing the bonds
 11 or may submit the proposition as a special question at a
 12 regular or general election. The notice of the election and
 13 the election itself shall be carried out in accordance with
 14 ~~section 76-225, of this act.~~ If from the returns of the
 15 election it appears that the majority of votes cast at such
 16 election were in favor of and assented to the incurring of
 17 the indebtedness, then the board of supervisors may, by
 18 resolution, provide for the issuance of such bonds. The
 19 authorization of such undertaking, the form, and content
 20 shall be carried out in accordance with ~~section 11-2404 of~~
 21 ~~the Municipal Revenue Bond Act of 1939 Title 47A, chapter 9.~~
 22 Validity of such bonds, use of revenue, and refunding shall
 23 be in accordance with the provisions of ~~sections 11-2406,~~
 24 ~~11-2410, and 11-2414 of the Municipal Revenue Bond Act of~~
 25 ~~1939 Title 47A, chapter 9.~~ Any bonds issued under this act

1 have the same force, value, and use as bonds issued by a
2 municipality and are exempt from taxation as property within
3 ~~the state of Montana.~~"

4 Section 149. Section 77-708, R.C.M. 1947, is amended
5 to read as follows:

6 "77-708. Absence created by military service ~~creates~~
7 ~~no~~ vacancy in office. It is specifically provided that
8 the provisions of ~~section~~ 59-305, ~~subdivisions~~ 5, 6
9 ~~subsections~~ (5), (6), and 7 (7) of ~~section~~ 59-602, and
10 ~~section~~ 16-2447, ~~47A-3-407 shall not be, and the same are~~
11 ~~declared not to be, applicable in so far insofar~~ as they
12 relate to absence or residence of any officer of the state
13 or political ~~subdivision~~ subdivision thereof caused by the
14 military service of such officer as set forth in ~~section~~
15 77-701. It is specifically declared that the absence of such
16 officer, caused by such military service, shall not create a
17 vacancy in the office to which he was elected."

18 Section 150. Section 79-1102, R.C.M. 1947, is amended
19 to read as follows:

20 "79-1102. Notice to board of investments of bond
21 sales. All officers in charge of ~~county, city, school~~
22 district, and irrigation district bond sales shall, at least
23 ~~twenty~~ (20) days before the date of the sales, furnish to
24 the board of investments a copy of the advertisement of the
25 bond sale, and shall thereafter furnish any further

1 information concerning the sale which may be requested by
2 the board."

3 Section 151. Section 79-1701, R.C.M. 1947, is amended
4 to read as follows:

5 "79-1701. Amortization bonds preferred on bonding of
6 state ~~or taxing districts.~~ Whenever the state of Montana, ~~or~~
7 ~~any county, city, town, or a~~ school district, ~~or any other~~
8 ~~taxing unit in the state of Montana~~ having the power to
9 issue and negotiate bonds, ~~does~~ hereafter ~~issue~~ issues its
10 bonds, such bonds shall be payable on the amortization plan
11 if bonds in this form can be sold and disposed of at a
12 reasonable rate of interest. If amortization bonds cannot be
13 negotiated at such reasonable rate of interest, advantageous
14 to the people for whose benefit ~~the same~~ they are issued,
15 ~~then in such case,~~ serial bonds may be issued in place of
16 amortization bonds."

17 Section 152. Section 79-1708, R.C.M. 1947, is amended
18 to read as follows:

19 "79-1708. ~~Redemption money may be deposited~~ Deposit of
20 redemption moneys with fiscal ~~agencies~~ agency. From and
21 after the passage of this act, the treasurer of the state of
22 Montana ~~or the treasurer of any county, city, town, school~~
23 district, irrigation district, or drainage district of
24 Montana may be required to remit to the state fiscal agency,
25 at least ~~fifteen~~ (15) days or such other period as may be

1 agreed upon, before the maturity of any bonds or coupons
2 payable as provided in ~~section~~ 79-1706, a sufficient sum of
3 money to cover the redemption of such bonds or coupons."

4 Section 153. Section 79-1709, R.C.M. 1947, is amended
5 to read as follows:

6 "79-1709. Cancellation of bonds and coupons on receipt
7 of redemption moneys by fiscal agencies. On the receipt of
8 any funds by such fiscal agent, it shall be the duty of ~~such~~
9 ~~the~~ fiscal agent to notify the officers from whom received
10 of the receipt thereof, and immediately upon the payment of
11 the bonds or coupons for which such funds were remitted,
12 ~~said the~~ bonds or coupons shall be canceled and shall be
13 returned to the treasurer of the state, ~~county, city, town,~~
14 school district, irrigation district, or drainage district
15 entitled to the same."

16 Section 154. Section 79-1710, R.C.M. 1947, is amended
17 to read as follows:

18 "79-1710. Auditor to be notified by bonding districts
19 of fiscal agents -- auditor to advise governor -- notice of
20 place of payment. (1) It shall be the duty of the treasurer
21 of the state of Montana, ~~or any county, city, town,~~ school
22 district, irrigation district, or drainage district of
23 Montana, which has issued bonds, to advise the state auditor
24 forthwith, giving the name and location of all banks or
25 trust companies at which said bonds or interest coupons are

1 made payable, whereupon the state auditor shall so advise
2 the governor in order that the necessary fiscal agency may
3 be designated.

4 (2) It shall be the duty of the state auditor,
5 immediately after the establishment of any fiscal agency
6 provided for in this act, to publish a notice for 2 weeks in
7 some newspaper of general circulation in any city where such
8 bonds are made payable, ~~for two weeks,~~ and thereafter all
9 bonds and coupons of the state of Montana, ~~or any county,~~
10 ~~city, town,~~ school district, irrigation district, or
11 drainage district of Montana, which are by their terms
12 payable at a certain bank in said city, shall be paid at
13 said fiscal agency."

14 Section 155. Section 79-1711, R.C.M. 1947, is amended
15 to read as follows:

16 "79-1711. Bonding district not responsible for funds
17 remitted to fiscal agents. No state, ~~county, city, town,~~
18 school district, irrigation district, or drainage district
19 treasurer shall be held responsible for funds remitted to
20 any fiscal agency in pursuance of the provisions of this
21 act, after the acknowledgment of the receipt of the same by
22 the fiscal agent."

23 Section 156. Section 79-1712, R.C.M. 1947, is amended
24 to read as follows:

25 "79-1712. Liability of treasurer neglecting to perform

1 duty under act. In case any state, ~~county, city, town,~~
 2 school district, irrigation district, or drainage district
 3 treasurer shall willfully neglect or refuse to perform the
 4 duties imposed by this act, he shall be liable to the holder
 5 of any bonds or coupons aggrieved thereby, in a sum double
 6 the amount of such bonds or coupons as shall be dishonored
 7 by the neglect or refusal of such officer to comply with the
 8 provisions of this act, provided the state or the
 9 municipality shall have funds on hand to pay such obligation
 10 herein mentioned which may be recovered in a suit at law
 11 against such treasurer."

12 Section 157. Section 79-1713, R.C.M. 1947, is amended
 13 to read as follows:

14 "79-1713. Change of fiscal agency by governor --
 15 notice. The governor of the state may at any time change any
 16 fiscal agency in case the agency theretofore designated
 17 shall neglect or refuse to act, and in case of a change
 18 being made, it shall be the duty of the state auditor to
 19 notify the state treasurer and all ~~county, city, town,~~
 20 school district, irrigation district, and drainage district
 21 treasurers within the state ~~of Montana,~~ of such change, and
 22 ~~shall to~~ publish the same as provided in ~~section~~ 79-1710."

23 Section 158. Section 79-2601, R.C.M. 1947, is amended
 24 to read as follows:

25 "79-2601. Definitions. The following terms as used in

1 this act have the following meanings:

2 (1) "Bonds" ~~include~~ includes bonds, notes, warrants,
 3 debentures, certificates of indebtedness, temporary bonds,
 4 temporary notes, interim receipts, interim certificates, and
 5 all instruments or obligations evidencing or representing
 6 indebtedness, ~~or~~ evidencing or representing the borrowing of
 7 money, or evidencing or representing a charge, lien, or
 8 encumbrance on specific revenues, special assessments,
 9 income, or property of a political subdivision, including
 10 all instruments or obligations payable from a special fund.

11 (2) "Political subdivision" includes a ~~county, city,~~
 12 ~~town,~~ school district, irrigation district, drainage
 13 district, ~~special improvement district,~~ or any other
 14 governmental subdivision of the state of Montana, but shall
 15 not include counties, municipalities, the state of Montana,
 16 the state board of examiners, the state water conservation
 17 board, the state highway commission, or any other board,
 18 agency, or commission of the state of Montana.

19 (3) "Governing body" means the board, council,
 20 commission, or other body charged with the general control
 21 of the issuance of bonds of a political subdivision."

22 Section 159. Section 79-2602, R.C.M. 1947, is amended
 23 to read as follows:

24 "79-2602. Rate of interest on bonds to be determined
 25 by governing bodies -- limitations and exceptions. Bonds of

1 a political subdivision shall bear interest at such rate or
 2 rates as its governing body shall determine, except that no
 3 such rate shall exceed ~~seven per cent (7%)~~ except revenue
 4 bonds ~~issued under the terms of sections 11-2401 through~~
 5 ~~11-2414, sections 11-2217 through 11-2221, and sections~~
 6 ~~11-4401 through 11-4410, R.C.M. 1947~~, which rate shall not
 7 exceed ~~nine per cent (9%)~~."

8 Section 160. Section 80-2804, R.C.M. 1947, is amended
 9 to read as follows:

10 "80-2804. Mental health corporations. (1) Mental
 11 health regions shall be established in the state mental
 12 health plan and shall conform to the mental health regions
 13 as established in the state mental health construction plan
 14 promulgated by the board of health and environmental
 15 sciences under the Federal Community Mental Health Centers
 16 Act.

17 (2) The mental health regions shall establish
 18 themselves under Title 15, chapter 23, ~~R.C.M. 1947~~. Upon
 19 incorporation, a mental health region may enter into
 20 contracts with the department in order to carry out the
 21 department's comprehensive plan for mental health. These
 22 nonprofit corporations shall not be considered agencies of
 23 the department or the state of Montana; however, they may
 24 retain and enter into retirement programs as established
 25 under Title 48, the Public Employees Retirement Act. Upon

1 the establishment of the mental health regions, the county
 2 commissioners in each of the various counties in the region
 3 shall designate a person from their respective county to
 4 serve as a representative of the county on the regional
 5 mental health corporation board. The board shall be
 6 established under guidelines adopted by the bylaws of the
 7 corporation. All appointments to the board shall be for
 8 terms of ~~two (2)~~ years, and the department shall be notified
 9 in writing of all appointments.

10 (3) The duties of an organized regional mental health
 11 corporation board include:

12 (a) annual review and evaluation of mental health
 13 needs and services within the region;

14 (b) preparation and submission to the department and
 15 to each of the counties in the region of plans and budget
 16 proposals to provide and support mental health services
 17 within the region;

18 (c) establishment of a recommended proportionate level
 19 of financial participation of each of the counties within
 20 the region in the provision of mental health service within
 21 the limits of this section;

22 (d) receipt and administration of moneys and other
 23 support made available for the purposes of providing mental
 24 health services by the participating agencies, including
 25 grants from the United States government and other agencies,

1 receipts for established fees for services rendered, tax
2 moneys, gifts, donations, and any other type of support or
3 income. All funds received by the board in accordance with
4 this act shall be used to carry out the purposes of this
5 act.

6 (e) supervision of appropriate administrative staff
7 personnel of the operation of community mental health
8 services within the region;

9 (f) keeping all records of the board and making
10 reports required by the department.

11 (4) Regional mental health board members shall be
12 reimbursed from funds of the board for actual and necessary
13 expenses incurred in attending meetings and in the discharge
14 of board duties, when assigned by the board.

15 (5) The board of mental health shall submit, prior to
16 June 10 of each year, to the board of county commissioners
17 of each of the counties within the constituted mental health
18 region an annual budget, specifying each county's
19 recommended proportionate share. If the board of county
20 commissioners includes in the county budget the county's
21 proportionate share of the regional boards budget, it shall
22 be designated as a participating county. Funds for each
23 participating county's proportionate share for the operation
24 of mental health services within the region shall be derived
25 from the county's general fund. ~~If the general fund is~~

1 ~~insufficient to meet the approved budget, a levy not to~~
2 ~~exceed one (1) mill may be made on the taxable valuation of~~
3 ~~the county in addition to all other taxes allowed by law to~~
4 ~~be levied on such property.~~

5 (6) The regional board of mental health with the
6 approval of the department shall establish a schedule of
7 fees for mental health services. The fees may be received
8 by the board and used to implement the budget in accordance
9 with ~~section~~ 80-2804(3)(d)."

10 Section 161. Section 81-2303, R.C.M. 1947, is amended
11 to read as follows:

12 "81-2303. Survey of lands. If the board considers it
13 necessary that any of the lands mentioned in ~~section~~ 81-2301
14 be surveyed, it shall have the lands surveyed, ~~by the county~~
15 ~~surveyor of the county in which the lands are located, if~~
16 ~~there is no county surveyor, or if the county surveyor is~~
17 ~~unable to make the survey, or if the best interests of the~~
18 ~~state require, the~~ The board shall appoint a qualified
19 surveyor to make the surveys, and the ~~county surveyor, or~~
20 ~~other~~ surveyor appointed shall make an actual survey thereof
21 establishing four (4) corners of every quarter section and
22 connecting the same with a United States survey, and within
23 ~~thirty (30)~~ days after such survey file with the county
24 clerk and recorder of that county a copy under oath of his
25 field notes and plat and a duly certified copy of his field

notes and plat with the department. ~~For the services required in connection with the survey the county surveyor or other surveyor appointed is entitled to fees as prescribed in section 25-235. Such fees shall be paid in the same manner as other expenses of the department.~~"

Section 162. Section 82-1202, R.C.M. 1947, is amended to read as follows:

"82-1202. Powers of the state fire marshal. (1) The state fire marshal shall:

~~(1)(a)~~ Make make at least one inspection during every year, of each state institution, and submit a copy of the report to the state department of institutions with recommendations in regard to fire prevention, fire protection, and to the public safety;

~~(2)(b)~~ Make make at least one inspection during every year, of each unit of the Montana university system, and submit a copy of the report to the executive secretary of the university system with recommendations in regard to fire prevention, fire protection, and to the public safety;

~~(3)(c)~~ Inspect inspect public, business, or industrial buildings and require conformance to law or rules promulgated under the provisions of this act;

~~(4)(d)~~ Do do all things necessary and convenient for carrying into effect the fire prevention laws of this state governing this act and may adopt necessary rules for

safeguarding lives and property from the hazards of fire and explosion. Rules shall be adopted as prescribed in the "Montana Administrative Procedure Act". If fire prevention rules are violated, the fire marshal may maintain an action to enjoin the use of all or a portion of a building or facility, or restrain a specific activity, until there is compliance with the rules.

~~(5)(2)~~ Rules relating to building and equipment standards covered by the state or a ~~municipal~~ local government building code are effective after approval by the department of administration and filing with the secretary of state."

Section 163. Section 82-1202.1, R.C.M. 1947, is amended to read as follows:

"82-1202.1. Rules promulgated by state fire marshal -- adoption of other standards -- providing for licensing -- providing for a penalty for violation. (1) Rules promulgated by the state fire marshal by authority of ~~section~~ 82-1202, ~~R.C.M., 1947,~~ shall be reasonable and calculated to effect the purposes of this act. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of the following: structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire

alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film; combustible fibres; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a ~~municipal~~ local government building code, the rules are effective upon approval of the department of administration and filing with the secretary of state.

(3) Standards of the ~~National Fire Protection Association~~ national fire protection association, United States ~~Bureau of Standards~~ bureau of standards, American ~~Insurance Association Standards~~ insurance association standards may be adopted in whole or in part by reference.

(4) A natural person must obtain a certificate of registration from the state fire marshal prior to servicing or installing of fire extinguishers, fire alarm systems, or fire extinguishing systems. A person or firm must obtain

from the fire marshal a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems, prior to engaging in such business.

(a) Applications for licenses, permits, or certificates, shall be made on a form prescribed by the state fire marshal. The fire marshal shall issue a license to an applicant who submits satisfactory proof that he is properly equipped and staffed to provide the services to be licensed, and who pays the required fee. The fire marshal shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the fire marshal, and who pays the required fee. The fire marshal shall issue a sales permit to an applicant who submits the information required by the fire marshal on the application form, who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the state fire marshal, and who pays the required fee.

(b) The state fire marshal may conduct inspections, examinations, or hearings prior to the issuance of licenses, permits, or certificates. The state fire marshal may revoke, suspend, or refuse to issue a license, permit, or certificate for violation of the provisions of this chapter or any rules and regulations promulgated by the fire marshal under applicable law.

(c) The state fire marshal or his representative shall charge a fee, not to exceed a total of ~~twenty-five dollars~~ ~~(\$25)~~ for the inspection and issuance of licenses, permits, and certificates.

(d) All fees collected under this section shall be paid into the general fund.

(5) Any person violating any rule made under the provisions of this section shall be guilty of a misdemeanor."

Section 164. Section 82-1209, R.C.M. 1947, is amended to read as follows:

"82-1209. Investigation of fires. (1) The cause, origin, and circumstances of each fire, by which property has been destroyed or damaged, shall be investigated to determine the exact cause and circumstances. The state fire marshal may superintend and direct the investigation if he ~~deems~~ considers it necessary.

(2) If the fire occurs within a municipality, ~~or an organized county fire department's jurisdiction, or an organized~~ fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality, ~~or an organized county fire department's jurisdiction, or an~~ organized fire district, the county sheriff shall make the investigation. If it appears that the fire was of suspicious origin, or if there was a loss of

human life, the official responsible for the investigation shall notify the state fire marshal within ~~twenty-four (24)~~ hours, and shall file a written report of the cause with the state fire marshal within ~~ten (10)~~ days.

(3) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the state fire marshal of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the state fire marshal.

(4) Each official responsible for investigating fires shall file a fire incident report on each and every fire with the state fire marshal. Reports shall be on forms, and shall contain information, prescribed by the state fire marshal. These reports shall be sent to the state fire marshal on a weekly basis."

Section 165. Section 82-1218, R.C.M. 1947, is amended to read as follows:

"82-1218. Entering of buildings for purpose of examination. The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality local government or district where a fire department is established, or the county sheriff where no fire department exists, at all reasonable hours may enter into all buildings and upon all ~~premise~~ premises within

1 their jurisdiction for the purpose of determining whether
2 the building or premise conforms to laws and rules relating
3 to fire hazards and fire safety."

4 Section 166. Section 82-1231, R.C.M. 1947, is amended
5 to read as follows:

6 "82-1231. Tax on fire insurance premiums for
7 maintenance of state fire marshal's office. Each insurer
8 authorized to effect insurance on risks enumerated in
9 ~~subsection two of section 11-1919, 11-48-127(2) and~~ doing
10 business in this state shall pay to the state auditor and
11 commissioner of insurance ex officio, during the month of
12 February or March in each year, in addition to the taxes on
13 premiums required by law to be paid by it, a tax of
14 ~~three-fourths of one per cent (3/4 of 1%)~~ on the fire
15 portion of the direct premiums on such risks received during
16 the calendar year next preceding, after deducting
17 cancellations and return premiums."

18 Section 167. Section 82-3806, R.C.M. 1947, is amended
19 to read as follows:

20 "82-3806. Provision for quorum. If, following an enemy
21 attack, the legislature or any state ~~or local government~~
22 council, board, or commission is unable to assemble a quorum
23 as defined by the constitution of Montana or by statute,
24 then those legislators or members of the council, board, or
25 commission available for duty shall constitute the

1 legislature or board, or commission, and aforesaid quorum
2 requirements shall be suspended, and, where the affirmative
3 vote of a specified proportion of members for the approval
4 of any action would otherwise be required, the same
5 proportion of those voting thereon shall be sufficient."

6 Section 168. Section 82A-222, R.C.M. 1947, is amended
7 to read as follows:

8 "82A-222. Board of trustees abolished — functions
9 transferred. The boards of trustees of police reserve funds
10 ~~in cities of the first and second class, created under~~
11 ~~section 11-1828, R.C.M. 1947, and other sections of chapter~~
12 ~~18, Title 11, R.C.M. 1947, municipalities having a~~
13 ~~population of 5,000 or more~~ are hereby abolished, and their
14 functions, except the quasi-judicial functions transferred
15 to the board of retirement by ~~section 3-[82A-223] of this~~
16 ~~act~~, are transferred to the department of administration.
17 Those boards of trustees created and existing as of the
18 effective date of this act within ~~cities other than those of~~
19 ~~the first and second class~~ municipalities having a
20 population of less than 5,000 under the provisions of
21 ~~section 11-1824, R.C.M. 1947, 11-56-202~~ are abolished as of
22 ~~such the time as such city shall elect the municipality~~
23 ~~elects~~ to come within the provisions of the within act, and,
24 at ~~such that~~ time, the functions of ~~such the~~ board of the
25 electing ~~city~~ municipality, except the quasi-judicial

functions transferred to the board of retirement by ~~section 3 [82A-223] of this act~~, are transferred to the department of administration. Notwithstanding the provisions of ~~section 11-1824, R.C.M. 1947~~ 11-46-202, any ~~city other than one in the first and second class municipality having a population of less than 5,000~~ electing after the effective date of this act to create a police ~~reserve retirement~~ fund, shall comply with the provisions of this act, and shall not create a local board of trustees, and the department of administration shall have all functions with regard to such fund as otherwise a local board of trustees would have, other than the quasi-judicial functions, which shall be exercised by the board of retirement."

Section 169. Section 82A-223, R.C.M. 1947, is amended to read as follows:

"82A-223. Quasi-judicial functions transferred. ~~The in municipalities with a population of 5,000 or more, the quasi-judicial functions of the following boards are transferred or shall originally exist, as the case may be, to or in the board of retirement created by 82A-215:~~

(1) boards of trustees of police ~~reserve retirement~~ funds ~~of cities of the first and second class;~~

(2) boards of trustees of police ~~reserve retirement~~ funds ~~of cities other than those of the first and second class,~~ presently having boards of trustees of police ~~reserve~~

~~retirement~~ funds pursuant to ~~section 11-1824, R.C.M. 1947,~~ 11-46-202 and electing to come within the provisions of this act; and

(3) boards of trustees which would, but for this act, have been created hereafter by ~~cities other than those of the first and second class municipalities with a population of less than 5,000~~ under the provisions of ~~section 11-1824, R.C.M. 1947,~~ 11-46-202 ~~are transferred or shall originally exist, as the case may be, to or in the board of retirement created by section 82A-215, R.C.M. 1947, as amended."~~

Section 170. Section 82A-901.1, R.C.M. 1947, is amended to read as follows:

"82A-901.1. Functions of department. The department and its units are responsible for administering laws pertaining to relationships between the state and local and federal governments, including, but not limited to, laws pertaining to:

- (1) Aeronautics (Title 1, chapters 1 to 9);
- (2) Highway traffic safety (Title 32, chapter 46);
- (3) Indian affairs (Title 82, chapter 27);
- (4) Planning and economic development (Title 82, chapter 37);
- (5) Examination of political subdivisions (Title 82, chapter 43);
- (6) Economic opportunity and poverty relief (Title 71,

1 chapter 16)+

2 ~~(7) County printing (Title 16, chapter 12).~~"

3 Section 171. Section 84-402, R.C.M. 1947, is amended
4 to read as follows:

5 "84-402. Department of revenue to determine and show
6 percentage basis and taxable value computed thereon and
7 county ~~assessor~~ assessors to be agents of the state
8 department of revenue. (1) The percentage basis of true and
9 full value as provided for in ~~section~~ 84-302, shall be
10 determined and assigned by the ~~state~~ department of revenue
11 or its agents, and the taxable value thereupon computed when
12 they make their annual assessments, and copies of such
13 assessments as provided for in ~~section~~ 84-411 shall show the
14 taxpayer the percentage class to which his various classes
15 of property for taxation and the taxable valuation thereof
16 have been assigned.

17 (2) The county assessors of the various counties of
18 the state of Montana are agents of the state department of
19 revenue for the purpose of locating and providing the
20 department a description of all taxable property within the
21 county together with other pertinent information, and for
22 the purpose of performing such other administrative duties
23 as are required for placing taxable property on the
24 assessment roles. The assessors shall perform such other
25 duties as are required by law, not in conflict with the

1 provisions of this subsection.

2 (3) The department of revenue shall have full charge
3 of appraising all property subject to taxation and
4 equalizing values and shall secure such personnel as is
5 necessary to properly perform their duties.

6 (4) The salaries of the county ~~assessor~~ assessors
7 shall be the ~~same~~ amount as established by the department of
8 revenue. ~~provided by law for the salary of the county clerk~~
9 ~~and recorder; deputy assessors' salaries shall be the same~~
10 ~~as paid the deputy clerk and recorder.~~

11 (5) The county commissioners of the various counties
12 shall provide existing office space in the county courthouse
13 for use by the county assessor, his deputies and staff, and
14 the state appraiser and staff, if such space is reasonably
15 available; if such space is not reasonably available in the
16 courthouse and the same must be contracted for, by the
17 department, the department shall pay the cost thereof rent
18 for the office space in the courthouse and for any space
19 contracted for by the department. Additional personal
20 property required by the department for the assessor to
21 perform his duties as agent of the department shall be
22 provided by the department."

23 Section 172. Section 84-4197, R.C.M. 1947, is amended
24 to read as follows:

25 "84-4197. Sale of lands of less than fifty dollar

valuation and other lands. That property belonging to the county of the value of less than ~~fifty dollars (\$50.00)~~ and property of the county acquired by means other than by tax deed may be sold as provided by ~~section~~ 16-1009, and except so far as it may conflict with the provisions of this act, ~~said section~~ 16-1009 shall remain in force and effect. Nothing herein contained shall be construed as repealing ~~sections~~ 16-1132, 16-1133, 16-1134, and 16-1135."

Section 173. Section 84-4199, R.C.M. 1947, is amended to read as follows:

"84-4199. Validation of certain contracts for purchase of tax title lands. All installment contracts for the purchase of tax title lands heretofore entered into between any county and the former owner of such lands to which the county has taken tax deed, which contracts provide that deferred installments shall bear interest at the rate of ~~four per cent (4%), instead of six per cent (6%) as provided by section 16-1009~~ are hereby validated and legalized, and no such contract shall be held invalid by reason of the provisions thereof relating to interest."

Section 174. Section 84-4726, R.C.M. 1947, is amended to read as follows:

"84-4726. Collection of taxes -- delinquent taxes. The county ~~treasurer~~ finance administrator of each county ~~must~~ shall collect the tax levied by all ~~cities and towns~~

municipalities in his respective county, ~~except in case of such cities of the first and second and third classes as may provide by ordinance for the city treasurer to collect the taxes from such corrected assessment book.~~ The county ~~treasurer must~~ finance administrator shall collect such ~~city or town~~ municipal taxes, including unpaid road poll taxes, at the same time as the state and county taxes, with the same penalties and interest in case of delinquency. All ~~publications~~ notices for sales for delinquent taxes shall include such ~~city or town~~ municipal taxes, there being but one sale for each piece of property, ~~such the~~ sale to cover the aggregate of ~~such city or town~~ the municipal, county, and state taxes, and with the penalties, interest, and cost of advertising provided by law. All moneys received from sales, redemptions, and from sales by the county, after deed given by the county ~~treasurer~~ finance administrator as provided by law, shall be credited to the state, county, and ~~city or town~~ municipality, pro rata, in the same proportions as provided in ~~section~~ 84-4189."

Section 175. Section 84-4905, R.C.M. 1947, is amended to read as follows:

"84-4905. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, or as that section may be labeled or

1 amended, and in addition shall include the following:

2 (a) Interest received on obligations of another state

3 or territory, or county, municipality, district, or other

4 political subdivision thereof;

5 (b) Refunds received of federal income tax, to the

6 extent the deduction of such tax resulted in a reduction of

7 Montana income tax liability.

8 (2) Adjusted gross income does not include the

9 following which are exempt from taxation under this act:

10 (a) Interest income from obligations of the United

11 States government, the state of Montana, county,

12 municipality, district, or other political subdivision

13 thereof;

14 (b) All benefits received under the Federal Employees

15 Retirement Act not in excess of ~~three thousand six hundred~~

16 ~~dollars (\$3,600)~~;

17 (c) All benefits paid under the Montana ~~Teachers~~

18 ~~Teachers'~~ Retirement Act which are specified as exempt from

19 taxation by ~~section 75-6215~~;

20 (d) All benefits paid under the Montana Public

21 Employees Act which are specified as exempt from taxation by

22 ~~section 68-1303~~;

23 (e) All benefits paid under the Montana Highway Patrol

24 Retirement Act which are specified as exempt from taxation

25 by ~~section 31-221~~;

1 (f) Montana income tax refunds or credits ~~thereof~~

2 ~~thereon~~;

3 (g) All benefits paid under ~~sections 11-1925, 11-1926,~~

4 ~~and 11-1927~~ Title 11, chapter 48 to retired and disabled

5 firemen, or their surviving spouses and orphans;

6 (h) All benefits paid ~~by first or second class cities~~

7 ~~for~~ under the policemen's retirement system provided for by

8 ~~the Metropolitan Police Law~~ Title 11, chapter 46.

9 (3) In the case of a shareholder of a corporation with

10 respect to which the election provided for under subchapter

11 S. of the Internal Revenue Code of 1954, as amended, is in

12 effect, but with respect to which the election provided for

13 under ~~section 84-1501.2~~, as amended, is not in effect,

14 adjusted gross income does not include any part of the

15 corporation's undistributed taxable income, net operating

16 loss, capital gains or other gains, profits or losses

17 required to be included in the shareholder's federal income

18 tax adjusted gross income by reason of the said election

19 under subchapter S. However, the shareholder's adjusted

20 gross income shall include actual distribution from the

21 corporation to the extent they would be treated as taxable

22 dividends if the subchapter S. election were not in effect."

23 Section 176. Section 84-7203, R.C.M. 1947, is amended

24 to read as follows:

25 "84-7203. Increase of tax revenue — advertising of

intention required. No taxing authority shall budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll, unless it ~~advertises~~ gives notice of its intention to do so at the same time that it ~~advertises~~ gives notice of its intention to fix its budget for the forthcoming fiscal year. For the purposes of this section, notice shall mean the same as provided in 47A-1-303."

Section 177. Section 84-7204, R.C.M. 1947, is amended to read as follows:

"84-7204. Resolution or ordinance for increase over certified millage. No millage in excess of the department's certified millage shall be levied until a resolution or ordinance has been approved by the governing board of the taxing authority, which resolution or ~~ordinances must~~ ordinance shall be approved by said taxing authority according to the following procedure:

(1) The taxing authority shall ~~advertise~~ give notice of its intent to exceed the department's certified millage in a newspaper of general circulation in the county, as provided in ~~section 3 [84-7203] of this act.~~ The ~~advertisement notice~~ shall state that the taxing authority will meet on a day and at a time and place fixed in the ~~advertisement, notice which shall be approximately seven (7)~~

~~days after the day that the advertisement is published,~~ for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the ~~tentative proposed~~ budget as required by law.

(2) The taxing authority, after the public hearing has been held in accordance with the above procedures, may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting said millage rate is not approved on the day of the public hearing, the day, time, and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority ~~must shall~~ be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than ~~two (2)~~ weeks from the public hearing, the taxing authority must again ~~advertise~~ give notice in the same manner as provided in ~~sections 3 [84-7203] and 4 (4) [84-7204(1)] of this act.~~

Section 178. Section 84-7207, R.C.M. 1947, is amended to read as follows:

"84-7207. Additional millage increase -- ~~readvertising~~ new notice and revoting. If, after the initial millage vote provided for in ~~section 3 [84-7203] of this act,~~ the taxing authority determines that it requires a greater millage or fails to act in the specified period, it shall ~~readvertise~~

1 give new notice and revote as required in ~~sections 3 and 4~~
2 ~~[84-7203 and 84-7204] of this act.~~"

3 Section 179. Section 89-3312, R.C.M. 1947, is amended
4 to read as follows:

5 "89-3312. Indebtedness and bonds -- bond election --
6 special assessment to pay indebtedness. Cities, towns, and
7 counties are hereby authorized to ~~contract indebtedness~~
8 issue general obligation or revenue bonds and ~~to issue~~
9 special local improvement district bonds or rural
10 ~~improvement district bonds~~ to provide funds for the payment
11 of the cost of improvements contemplated by this act by
12 following the ~~following~~ procedures prescribed in Title 47A,
13 chapter 9.

14 ~~The governing body of the city, town or county may call~~
15 ~~a special election to vote upon the proposition of issuing~~
16 ~~said bonds or may submit the proposition as a special~~
17 ~~question at a regular municipal or general election. The~~
18 ~~notice of the election and the election itself shall be~~
19 ~~carried out in accordance with sections 11-2201 through~~
20 ~~11-2208, R.C.M. 1947, as amended, as to cities, and in~~
21 ~~accordance with sections 16-1601 through 16-1628, R.C.M.~~
22 ~~1947, as amended, as to the counties.~~

23 ~~Tax assessments for the payment of said bonds shall be~~
24 ~~levied in accordance with sections 11-2201 through 11-2248~~
25 ~~and sections 16-1601 through 16-1638, R.C.M. 1947, as~~

1 ~~amended, as to cities and counties, respectively."~~

2 Section 180. Section 93-901, R.C.M. 1947, is amended
3 to read as follows:

4 "93-901. Cases in which judge may be disqualified --
5 calling in another judge. ~~If~~ No justice, judge, ~~or~~
6 justice of the peace, or municipal judge ~~must not~~ shall sit
7 or act as such in any action or proceeding:

8 1-(a) ~~To~~ to which he is a party, or in which he is
9 interested;

10 2-(b) ~~When~~ when he is related to either party by
11 consanguinity or affinity within the sixth degree, computed
12 according to the rules of law;

13 3-(c) ~~When~~ when he has been attorney or counsel for
14 either party in the action or proceeding, or when he
15 rendered or made the judgment, order, or decision appealed
16 from;

17 4-(d) ~~When~~ when either party makes and files an
18 affidavit, as hereinafter provided, that he has reason to
19 believe, and does believe, he cannot have a fair and
20 impartial hearing or trial before a judge, justice,
21 magistrate, ~~or~~ justice of the peace, or municipal judge.
22 Such affidavit may be made by any party to an action,
23 motion, or proceeding, personally, or by his attorney or
24 agent, and shall be filed with the clerk of the court in
25 which the same ~~may be~~ is pending.

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1 (2) In any district having only one judge, justice,
 2 magistrate, ~~or~~ justice of the peace, or municipal judge, the
 3 affidavit of disqualification with reference to any action
 4 or proceeding to be tried before a jury must be filed at
 5 least ~~one~~ 1 day before the day appointed or fixed by the
 6 court for setting the trial calendar, ~~provided, however~~
 7 However, this limitation shall not apply unless notice of
 8 such setting date shall be given to all parties by the clerk
 9 of the court at least ~~fifteen~~ {15} days prior thereto. In
 10 all other cases the affidavit must be filed at least ~~fifteen~~
 11 {15} days before the day appointed or fixed for the hearing
 12 or trial of any such action, motion, or proceeding (provided
 13 such party shall have had notice of the hearing of such
 14 action, motion, or proceeding for at least the period of
 15 ~~fifteen~~ {15} days, and in case he shall not have had notice
 16 for such length of time, he shall file such affidavit
 17 immediately upon receiving such notice). Upon the filing of
 18 the affidavit, the judge, justice, magistrate, ~~or~~ justice of
 19 the peace, or municipal judge as to whom said
 20 disqualification is averred shall be without authority to
 21 act further in the action, motion, or proceeding, but the
 22 provisions of this section do not apply to the arrangement
 23 of the calendar, the regulation of the order of business,
 24 the power of transferring the action or proceeding to some
 25 other court nor to the power of calling in another judge,

1 justice, magistrate, ~~or~~ justice of the peace, or municipal
 2 judge to sit and act in such action or proceeding, providing
 3 that no judge, justice, magistrate, ~~or~~ justice of the peace,
 4 or municipal judge shall so arrange the calendar as to
 5 defeat the purposes of this section. No more than two
 6 judges, justices, magistrates, ~~or~~ justices of the peace, or
 7 municipal judges can be disqualified in said action or
 8 proceeding, at the instance of the plaintiff, and no more
 9 than two at the instance of the defendant, in said action or
 10 proceeding, and this limitation shall apply however many
 11 parties or persons in interest may be plaintiffs or
 12 defendants in such action or proceeding. If there ~~be~~ is more
 13 than one judge, justice, magistrate, ~~or~~ justice of the
 14 peace, or municipal judge in any district in which said
 15 affidavit is made and filed, upon the first disqualification
 16 of a judge, justice, magistrate, ~~or~~ justice of the peace, or
 17 municipal judge in the cause, another judge, justice,
 18 magistrate, ~~or~~ justice of the peace, or municipal judge,
 19 residing in the district wherein the affidavit is made and
 20 filed, ~~must~~ shall be called in to preside in such action,
 21 motion, or proceeding; upon the second or any subsequent
 22 disqualification of a judge, justice, magistrate, ~~or~~ justice
 23 of the peace, or municipal judge in the cause, a judge,
 24 justice, magistrate, ~~or~~ justice of the peace, or municipal
 25 judge of another district of the state ~~must~~ shall be called

1 in to preside in such action, motion, or proceeding, or the
 2 action, motion, or proceeding transferred to a judge,
 3 justice, magistrate, ~~or~~ justice of the peace, or municipal
 4 judge of another district of the state; when another judge,
 5 justice, magistrate, ~~or~~ justice of the peace, or municipal
 6 judge has assumed jurisdiction of an action, motion, or
 7 proceeding, the clerk of the court in which the same was
 8 pending, shall at once notify the parties or their attorneys
 9 of record in the same, either personally or by registered
 10 mail, of the name of the judge, justice, magistrate, ~~or~~
 11 justice of the peace, or municipal judge called in, or to
 12 whom such action, motion, or proceeding was transferred.
 13 Such second or subsequent affidavit of disqualification
 14 shall be filed with the clerk of the court in which such
 15 action, motion, or proceeding may be pending within ~~three~~ 3
 16 days after the party or his attorney of record, filing such
 17 affidavit, has received notice as to the judge, justice,
 18 magistrate, ~~or~~ justice of the peace, or municipal judge
 19 assuaging jurisdiction of such action, motion, or proceeding.

20 ~~5-13~~ Nothing contained in subsection 4(1)(d) of this
 21 section shall apply to a justice of the supreme court."

22 Section 181. Section 93-1116, R.C.M. 1947, is amended
 23 to read as follows:

24 "93-1116. Contributions by the state ~~of Montana~~. The
 25 state ~~of Montana~~ shall monthly contribute to the fund a sum

1 equal to ~~six per cent (6%)~~ of the salary of each member of
 2 the Montana judiciary retirement system. In addition to the
 3 above, three-quarters ~~(3/4)~~ of the fees collected under
 4 ~~section~~ 25-232, as amended, and ~~section~~ 25-233, as amended,
 5 shall be paid into the county ~~treasurer~~ treasury on the
 6 first Monday of each month as provided in ~~section 25-203~~
 7 47A-9-305, and the other one-quarter shall be transmitted by
 8 the clerk to the secretary of the PERS board on the first
 9 Monday of each month, and by him credited to the judicial
 10 retirement fund. The fees collected under ~~section~~ 82-503, as
 11 amended, shall be paid by the clerk of the supreme court
 12 ~~paid by him~~, three-quarters ~~(3/4)~~ into the state treasury to
 13 be credited to the general fund, and one-quarter ~~(1/4)~~ ~~of~~
 14 ~~which shall be paid by him~~ to the secretary of the PERS
 15 board, which shall be credited to ~~the credit of~~ the judicial
 16 retirement fund. The full amount of such fund as created and
 17 accumulated is hereby set aside to be used exclusively for
 18 the purpose of paying the accrued retirement and expenses
 19 provided for herein."

20 Section 182. Section 93-2024, R.C.M. 1947, is amended
 21 to read as follows:

22 "93-2024. Collection of license tax from delinquent
 23 attorneys. If any practicing attorney or counselor at law
 24 shall fail, neglect, or refuse to pay to the clerk of the
 25 supreme court the license tax imposed by this act, for a

1 period of ~~thirty~~ 30 days after the same is due and payable,
 2 it shall be the duty of the clerk of the supreme court to
 3 take ~~such~~ action for the collection of the ~~same as is~~
 4 ~~required of the county treasurer in cases of nonpayment of~~
 5 ~~other licenses, as provided by section 84-2703, and the~~
 6 ~~provisions of said section and of section 84-2705 shall~~
 7 ~~control in said proceedings, so far as the same are~~
 8 ~~applicable thereto~~ license tax."

9 Section 183. Section 93.27-01-87.1, R.C.M. 1947, is
 10 amended to read as follows:

11 "93.27-01-87.1. Table A. Special statutory proceedings
 12 under Rule 81.

13 Following is a list of sections of the Revised Codes of
 14 Montana, 1947, as amended, pertaining to special proceedings
 15 which are excepted from these rules ~~in so far~~ insofar as
 16 they are inconsistent or in conflict with the procedure and
 17 practice provided by these rules:

18 Review of beer license, revocation, suspension or denial....
 19 4-342
 20 Review of liquor license revocation, suspension, or denial..
 21 4-425
 22 Closed bank proceedings.....5-1107
 23 Review of decision of superintendent of banks.....5-1108
 24 Appeal from decision of superintendent of banks.....5-1112
 25 Closed banks, procedure for disposition of assets.....5-1118

1 Appointment of trustee of cemetery association.....9-121
 2 Removal of dedication of property for cemetery..9-816, 9-817
 3 Proceedings re dependent and neglected children.....
 4 Title 10, Ch. 5
 5 Juvenile courts.....Title 10, Ch. 6
 6 ~~Appeal from city approval of emergency expenditures...~~1-1409
 7 Appeal from appraisal of damage to landowner caused by
 8 change of grade of street or sidewalk..11-2604, 11-2605
 9 47A-6-9271
 10 Review of decision of municipal board of adjustment re
 11 zoning regulations11-2707 47A-6-4338 through 47A-6-4339
 12 Determination of title to lots in entry townsites.....
 13 11-3014, 11-3026 47A-6-4519
 14 Formation of agricultural or ~~co-operative~~ cooperative
 15 corporations or districts 14-302 to 14-304
 16 Creation of indebtedness of same.....14-319, 14-320
 17 Lost or destroyed stock certificates.....15-644
 18 Dissolution of corporations.....15-1108 to 15-1114
 19 Assignments for benefit of creditors.....18-314 to 18-326
 20 Contesting nominations.....23-926 to 23-928
 21 Recount of votes.....23-2301 to 23-2304
 22 Appeal from revocation of oleomargarine license.....27-517
 23 Appeal from revocation of driver's license.....31-152
 24 Appraisal of homestead subject to execution.....
 25 33-109 to 33-123

1	Insane, examination and commitment.....	38-201 to 38-214
2	Same, voluntary.....	38-401 to 38-412
3	Eugenical sterilization law.....	38-606
4	Inebriates, commitment.....	38-701 to 38-711
5	State training school, commitment to.....	38-801 to 38-819
6	Senile aged, commitment.....	38-1101 to 38-1112
7	Insurance Code effective January 1, 1961:	
8	Appeals from commissioner of insurance.....	40-2725
9	Service of process.....	40-2818, 40-2819
10	Unauthorized insurers — service of process, defense of	
11	actions, attorneys' fees.....	40-3403 to 40-3408
12	Surplus lines, service of process.....	40-3423, 40-3424
13	Prohibited or undefined trade practices — injunction	
14	proceedings, and appeals from commissioner's	
15	report.....	40-3514, 40-3515
16	Appeals from decisions of commissioner of insurance	
17	respecting rates and rating organizations.....	40-3633
18	Delinquency proceedings against insurance companies....	
19		40-5101 to
20		40-5133
21	Fraternal benefit societies, service of process.....	40-5352
22	Fraternal benefit societies, injunction and quo	
23	warranto proceedings	40-5356, 40-5357
24	Grazing district appeal procedure.....	46-2303
25	State mine inspector, procedure for investigation of charges	

1	of neglect of duty.....	50-410
2	Review of order of Montana trade commission.....	51-113
3	Appeal from decision of highway patrol supervisor.....	53-419
4	Review of orders of oil and gas conservation commission.....	
5		60-135
6	Uniform Adoption Act.....	61-201 to 61-217
7	Appeal from decision of board of medical examiners....	66-1004
8	Review of order of board of pharmacy.....	66-1509
9	Commitment to state tuberculosis hospital.....	
10		69-307 to 69-310 and 69-313
11	Establishing birth.....	69-522
12	Review of decision of board of health or water pollution	
13	council	69-1335
14	Review of actions of public service commission.....	70-128
15	Review of action of board of railroad commissioners...	72-125
16	Review of school trustees' resolution to sell school	
17	property.....	75-1634
18	Compulsory attendance at school.....	75-2901
19	State industrial school, commitment.....	75-3001, 75-3002
20	State industrial school.....	80-810 and 80-815 to 80-817
21	State vocational school, commitment.....	80-918 to 80-921
22	Female reformatories, commitment.....	80-1002, 80-1003
23	Proceedings to abate fire hazards.....	82-1219 to 82-1222
24	Appeal from decision of commissioner of agriculture.....	
25		84-3410 to 84-3412

1	Action to confirm tax deed.....	84-4144 to 84-4150
2	Action to quiet title to tax deed property.....	84-4158
3	Action to procure tax deed.....	84-4162 to 84-4169
4	Complaint in action to collect taxes by suit.....	84-4302
5	Cigarette tax appeal.....	84-5617
6	Administration of trusts.....	86-315 to 86-326
7	Review of order of unemployment compensation commission.....	
8		87-108
9	Insecure laws.....	89-702 to 89-714
10	Creation of irrigation districts.....	89-1201 to 89-1204
11	Irrigation districts — changing boundaries, correcting	
12	errors, fixing taxable acreage, etc....	Title 89, Ch. 14
13	Confirmation of resolution authorizing bonds for irrigation	
14	district	89-1704
15	Dissolution of irrigation districts.....	89-2001 to 89-2008
16	Irrigation districts, appeals.....	89-2101, 89-2102
17	Drainage districts, creation.....	Title 89, Ch. 22
18	Drainage districts, commissioners.....	Title 89, Ch. 23
19	Proceedings to alter or add to drainage district.....	
20		Title 89, Ch. 27
21	Miscellaneous provisions respecting drainage districts.....	
22		Title 89, Ch. 28
23	Escheated estate proceedings.....	91-515 to 91-518
24	Procedure to obtain authority to mortgage, lease, or sell	
25	part of estate	Title 91, Ch. 11

1	Determination of heirship.....	91-3801 to 91-3803
2	Termination of life estate or joint tenancy.....	91-4321
3	Appointment of guardians of minors.....	91-4601
4	Appointment of guardians of insane and incompetent persons..	
5		91-4701, 91-4702
6	Restoration to capacity.....	91-4704
7	Uniform Veterans' Guardianship Act.....	Title 91, Ch. 48
8	Procedure to mortgage or lease by guardians.....	91-4911
9	Property sale by guardians.....	91-5005 to 91-5013
10	Guardians of nonresidents.....	Title 91, Ch. 51
11	Examination and removal of guardians, etc....	91-5201, 91-5202
12	Proceedings supplementary to execution....	93-5901 to 93-5913
13	Actions to establish title to property granted to heirs of	
14	deceased's entrymen.....	93-6225 to 93-6239
15	Partition of property.....	93-6301 to 93-6360
16	Certiorari.....	93-9001 to 93-9011
17	Mandamus.....	93-9101 to 93-9114
18	Prohibition.....	93-9201 to 93-9204
19	Provisions applicable to certiorari, mandamus, and	
20	prohibition.....	93-9301 to 93-9303
21	Eminent domain.....	93-9901 to 93-9926
22	Change of name.....	93-100-1 to 93-100-9
23	Judicial determination of birth.....	93-101-1 to 93-101-6
24	Arbitration.....	93-201-1 to 93-201-10
25	Bastardy proceedings.....	94-9901 to 94-9908

Habeas corpus.....94-101-1 to 94-101-33

Uniform Reciprocal Enforcement of Support Act.....

.....94-901-1 to 94-901-18"

Section 184. Section 94-8-110, R.C.M. 1947, is amended to read as follows:

"94-8-110. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) ~~Sells~~ sells, delivers, or provides, or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of ~~eighteen~~(18); or

(b) ~~Presents~~ presents or directs an obscene play, dance, or other performance or participates in that portion thereof which makes it obscene to anyone under the age of ~~eighteen~~(18); or

(c) ~~Publishes~~ publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of ~~eighteen~~(18); or

(d) ~~Performs~~ performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of ~~eighteen~~(18); or

(e) ~~Creates~~ creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of ~~eighteen~~(18); or

(f) ~~Advertises~~ advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) it is a representation or description of perverted ultimate sexual acts, actual or simulated; or

(b) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(c) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(d) taken as a whole the material:

(i) applying contemporary Montana standards, appeals to the prurient interest in sex; or

(ii) portrays conduct described in (a), (b), or (c) above in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) ~~The~~ the predominant appeal of the material, and what effect, if any, it would probably have on the behavior of people;

(b) ~~The~~ the artistic, literary, scientific,

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1 educational, or other merits of the material;

2 (c) ~~The~~ the degree of public acceptance of the
3 material in this state;

4 (d) ~~Appeal~~ appeal to prurient interest, or absence
5 thereof, in advertising or other promotion of the material;
6 or

7 (e) ~~Purpose~~ purpose of the author, creator, publisher,
8 or disseminator.

9 (4) A person convicted of obscenity shall be fined at
10 least ~~five hundred dollars~~ (\$500) but not more than ~~one~~
11 ~~thousand dollars~~ (\$1,000), or imprisoned in the county jail
12 for a term not to exceed ~~six~~ (6) months, or both.

13 (5) ~~No city or~~ municipal or county ordinance may be
14 adopted which is more restrictive as to obscenity than the
15 provisions of this section and ~~section~~ 94-8-110.1."

16 Section 185. Section 95-302, R.C.M. 1947, is amended
17 to read as follows:

18 "95-302. Jurisdiction of the justice of the peace
19 courts. The ~~justices~~ justice of the peace courts have
20 jurisdiction as provided in 11-5102 and 11-5103.

21 ~~(a) Jurisdiction of all misdemeanors punishable by a~~
22 ~~fine not exceeding five hundred dollars (\$500.00) or~~
23 ~~imprisonment not exceeding six (6) months, or both such fine~~
24 ~~and imprisonment, excluding jurisdiction in cases commenced~~
25 ~~under the Montana Dangerous Drug Act except to act as~~

1 ~~examining and committing courts and to conduct preliminary~~
2 ~~hearings as provided in subsection (c).~~

3 ~~(b) Concurrent jurisdiction, with district courts, of~~
4 ~~all misdemeanors punishable by a fine only, not exceeding~~
5 ~~fifteen hundred dollars (\$1,500.00); and~~

6 ~~(c) Jurisdiction to act as examining and committing~~
7 ~~courts and for such purpose to conduct preliminary~~
8 ~~hearings."~~

9 Section 186. Section 95-303, R.C.M. 1947, is amended
10 to read as follows:

11 "95-303. Jurisdiction of ~~police and~~ municipal courts.
12 ~~(a) The police~~ municipal courts have ~~criminal~~ jurisdiction
13 as authorized by ~~sections 11-1602 and 11-1603~~ 11-5002.

14 ~~(b) Municipal courts have criminal jurisdiction as~~
15 ~~authorized by section 11-1702."~~

16 Section 187. Section 95-603, R.C.M. 1947, is amended
17 to read as follows:

18 "95-603. Issuance and service of arrest warrant upon
19 complaint. ~~(a)(1)~~ A complaint, as the basis of an arrest
20 warrant, shall be in writing.

21 ~~(b)(2)~~ When a complaint is presented to a court
22 charging a person with the commission of an offense, the
23 court shall examine upon oath the complainant and may also
24 examine any witnesses.

25 ~~(c)(3)~~ If it appears from the contents of the

complaint and the examination of the complainant and other witnesses, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. In the discretion of the court or upon the request of the county attorney, a summons instead of a warrant shall issue. More than one ~~+~~ warrant or summons may issue on the same complaint.

~~(4)~~(4) A warrant of arrest shall:

~~(1)~~(a) Be be in writing in the name of the state ~~of Montana~~ or in the name of a municipality if a violation of a municipal ordinance is charged;

~~(2)~~(b) ~~Set~~ set forth the nature of the offense;

~~(3)~~(c) ~~Command~~ command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant, or if he is absent or unable to act, before the nearest or most accessible court in the same county. If an arrest is made in a county other than the one in which the warrant was issued the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made;

~~(4)~~(d) ~~Specify~~ specify the name of the person to be arrested or, if his name is unknown, ~~shall~~ designate such person by any name or description by which he can be

identified with reasonable certainty;

~~(5)~~(e) State state the date when issued and the municipality or county where issued, and

~~(6)~~(f) Be be signed by the judge of the court with the title of his office.

~~(7)~~(5) The warrant of arrest may specify the amount of bail.

~~(8)~~(6) The warrant shall be directed to all peace officers in the state. It shall be executed by a peace officer and may be executed in any county of the state. However, warrants issued for the violation of ~~city~~ municipal or county ordinances cannot be executed outside the ~~city~~ municipal or county limits, except as otherwise provided by ~~sections 11-927 and 11-960~~ §7A-6-213 for municipalities."

Section 188. Section 95-2010, R.C.M. 1947, is amended to read as follows:

"95-2010. Disqualification of justice, magistrate, ~~or~~ justice of the peace, or municipal judge. (1) The defendant or the prosecution may move the court in writing for the disqualification of a justice, magistrate, ~~or~~ justice of the peace, or municipal judge on the ground that he cannot have a fair and impartial hearing or trial before the justice, magistrate, ~~or~~ justice of the peace, or municipal judge. The motion shall be made at least ~~fifteen~~ 15 days prior to the trial of the case, or any retrial thereof after appeal,

except for good cause shown. Upon the filing of such a motion the justice, magistrate, ~~or~~ justice of the peace, ~~or~~ municipal judge against whom the motion is filed shall be without authority to act further in the criminal action, motion or proceeding but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or proceeding to some other court, ~~or~~ or to the power of calling in another justice, magistrate, ~~or~~ justice of the peace, ~~or~~ municipal judge to sit and act in such criminal action or proceeding, providing that no justice, magistrate, ~~or~~ justice of the peace, ~~or~~ municipal judge shall so arrange the calendar as to defeat the purposes of this section. Not more than one ~~(1)~~ justice, magistrate, ~~or~~ justice of the peace, ~~or~~ municipal judge can be disqualified in the criminal action or proceeding, at the instance of the prosecution and not more than one ~~(1)~~ justice, magistrate, ~~or~~ justice of the peace, ~~or~~ municipal judge at the instance of the defendant or defendants.

(2) If either party in any matter above mentioned shall file the motion as herein provided, such party may not complain of any reasonable delay as the result thereof.

(3) The provision of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

~~(2)(4)~~ In addition to the provision of subsection (1), any defendant may move at any time for the disqualification of a justice, magistrate, ~~or~~ justice of the peace, ~~or~~ municipal judge for cause, supported by affidavit. Upon the filing of such motion, the court shall conduct a hearing and determine the merits of the motion."

Section 189. Section 2 of Chapter 106, Laws of Montana, 1975, is amended to read as follows:

"Section 2. Title 47A, R.C.M. 1947, consists of nine ~~(4)~~ parts ~~chapters~~ which are entitled:

Part Chapter 1. General Provisions provisions and Definitions definitions.

Part Chapter 2. Local Government government formation formation.

Part Chapter 3. Local Government government Structure, structure and Organization, organization and Operation.

Part Chapter 4. Rules for Construction of Powers and Duties of Local Governments Administrative powers.

Part Chapter 5. Powers of General Power Local Governments general power local governments.

Part Chapter 6. Services of General Power Local Governments general power local governments.

Part Chapter 7. Powers and Limitations services of Self-Government Local Governments self-government local governments.

~~Part Chapter~~ 8. Duties of ~~Local Governments~~ local governments as ~~Agents~~ agents of the State state.

~~Part Chapter~~ 9. Local Government--~~Finances~~ government finances.

Section 190. All references to "part" shall be changed to "chapter" and all references to "chapter" shall be changed to "part", where appropriate, in:

(1) part 3, chapter 2, Title 47A, R.C.M. 1947;

(2) part 7, chapters 1 and 2, Title 47A, R.C.M. 1947.

Section 8. Renumbered sections. The following R.C.M. sections are renumbered as follows:

11-3859 is renumbered 47A-6-4501;

11-3860 is renumbered 47A-6-4502;

11-3862 is renumbered 47A-6-4504;

11-3863 is renumbered 47A-6-4505;

11-3864 is renumbered 47A-6-4506;

11-3865 is renumbered 47A-6-4507;

11-3867 is renumbered 47A-6-4509;

11-3868 is renumbered 47A-6-4510;

11-3869 is renumbered 47A-6-4511;

11-3870 is renumbered 47A-6-4512;

11-3871 is renumbered 47A-6-4513;

11-3872 is renumbered 47A-6-4514;

11-3873 is renumbered 47A-6-4515;

11-3874 is renumbered 47A-6-4516;

11-3875 is renumbered 47A-6-4517;

11-3876 is renumbered 47A-6-4518;

16-4614 is renumbered 46-1918;

16-4615 is renumbered 46-1919;

25-234 is renumbered 84-4157.1;

62-215 is renumbered 75-7311;

69-4515 is renumbered 69-4112.1;

69-4518 is renumbered 69-4003.1.

Section 192. Standardization of terminology. (1) To facilitate the use of common terminology for local government purposes, the code commissioner shall, where appropriate, change all statutory references to comply with the following rules:

(a) Every reference to "city", "town", "city and town", "city or town", "incorporated city and town", or "incorporated city or town" shall be changed to "municipality".

(b) Every reference to "city, town, and county" or "city and county" or "municipality and county" shall be changed to "local government".

(c) Every reference to "county treasurer", "city treasurer", or "town treasurer" shall be changed to "finance administrator".

(d) Every reference to "board of county commissioners", "county commissioner", "county board", or

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1 "county legislative body" shall be changed to "county
2 governing body".

3 (e) Every reference to "council", "alderman",
4 "municipal or city or town commissioner", or "municipal or
5 city or town legislative body" shall be changed to
6 "municipal governing body".

7 (f) Every reference to "mayor" or "manager" shall be
8 changed to "chief executive officer".

9 (g) Every reference to city, town, or county road or
10 street shall be changed to "trafficway".

11 (h) Every reference to "county attorney" shall be
12 changed to "prosecuting attorney".

13 (i) Every reference to townships as political
14 subdivisions of the state created by counties shall be
15 eliminated and not replaced. Every reference to township
16 officers shall be eliminated and not replaced.

17 (j) Every reference to "police court" or "city court"
18 shall be changed to "municipal court".

19 (k) Every reference to "police judge" or "city court
20 judge" shall be changed to "municipal court judge".

21 (l) Every reference to "city, city-county, county, or
22 district board of health" shall be changed to "local health
23 department".

24 (m) Every reference to "county clerk and recorder"
25 where the function is an elections function shall be changed

1 to "county elections administrator".

2 (n) Every reference to "county clerk and recorder"
3 where the function is a recording or filing function shall
4 be changed to "county records administrator".

5 (o) Every reference to "county clerk and recorder"
6 where the function is a financial administration function
7 shall be changed to "county finance administrator".

8 (p) Every reference to "village" or "hamlet" shall be
9 changed to "unincorporated town".

10 (q) The same rules shall apply if the reference is to
11 the plural; i.e., cities, towns, counties, treasurers,
12 aldermen, councils, or commissions.

13 (2) To facilitate the use of common terminology for
14 local government purposes, the code commissioner shall
15 change all statutory references in Title 1 to be consistent
16 with the following change to 1-102(19):

17 "~~(19) "municipality" or "political subdivision"~~ "Local
18 government" means a county, ~~or city municipality village, or~~
19 ~~town~~ of this state and any other political subdivision,
20 public corporation, authority, or district in this state
21 authorized by law to acquire, establish, construct,
22 maintain, improve, and operate airports and other air
23 navigation facilities."

24 (3) The code commissioner shall recommend to the
25 legislature other changes in terminology that are consistent

1 with the definitions established by this title.

2 Section 193. Repealer. (1) The following chapters and
3 sections in Title 11, R.C.M. 1947, are repealed:

4 (a) chapters 1 through 5, 7 through 20, 22 through 35,
5 37, and 39 through 45;

6 (b) sections 11-3801 through 11-3857.

7 (2) The following chapters and sections in Title 16,
8 R.C.M. 1947, are repealed:

9 (a) chapters 1, 3 through 12, 14 through 16, 18
10 through 21, 23 through 39, 40 through 42, 44, and 47 through
11 51;

12 (b) sections 16-1701 through 16-1707, 16-1709 through
13 16-1723, and 16-4601 through 16-4613.

14 (3) Sections 1-801 through 1-832, 1-1001 through
15 1-1005, 3-2601 through 3-2606, 6-203 through 6-209, 6-601
16 through 6-608, 9-201 through 9-231, 9-232, 9-301 through
17 9-307, 9-401, 10-802.1, 23-2901, 23-3102, 25-201 through
18 25-208, 25-210 through 25-217, 25-221 through 25-226, 25-229
19 through 25-231, 25-235, 25-237, 25-601 through 25-605,
20 25-608 through 25-611.1, 28-501 through 28-507, 28-621
21 through 28-604, 32-1501 through 32-1518, 32-1627, 32-1628,
22 32-2801 through 32-2803, 32-2805 through 32-2820, 32-2902
23 through 32-2907, 32-3001 through 32-3007, 32-3101 through
24 32-3131, 32-3601 through 32-3605, 32-3701 through 32-3703,
25 32-3706, 32-3801 through 32-3806, 32-4001 through 32-4017,

1 32-4201 through 32-4207, 32-4403 through 32-4409, 35-101
2 through 35-146, 35-201 through 35-203, 35-301 through
3 35-307, 35-401 through 35-414, 37-301 through 37-311,
4 41-1106, 41-1901 through 41-1907, 42-2201, 42-2202, 69-3601
5 through 69-3603, 69-4118, 69-4501 through 69-4513, 69-4516,
6 69-4517, 69-4519, 69-6001 through 69-6013, 70-408 through
7 70-427, 70-601 through 70-635, 71-1604, 71-1701, 71-2408,
8 75-5802 through 75-5804, 77-2006, 79-1901 through 79-1916,
9 79-2101, 79-2102, 80-2804, 82-3803 through 82-3805, 82-3808,
10 82A-904, 84-3805, 84-3806, 84-4104, 84-4197, 84-4213,
11 84-4701, 84-5216 through 84-5221, 89-3701 through 89-3711,
12 93-401 through 93-405, 93-408, 93-410 through 93-412,
13 93-414, and 93-704, R.C.M. 1947, are repealed.

14 Section 194. Delayed repealer. Sections 84-2701
15 through 84-2708, 84-2901 through 84-2907, 84-3101 through
16 84-3109, 84-3201 through 84-3209, and 84-3701 through
17 84-3708, R.C.M. 1947, are repealed effective July 1, 1978.

18 Section 195. Severability. If a part of this act is
19 invalid, all valid parts that are severable from the invalid
20 part remain in effect. If a part of this act is invalid in
21 one or more of its applications, the part remains in effect
22 in all valid applications that are severable from the
23 invalid applications.

24 Section 196. Effective date. (1) This act is effective
25 July 1, 1977, except for chapter 3, part 3, and chapter 5,

1 part 1, of Title 47A and the delayed repealer section
2 [section 194] of this act.

3 (2) Chapter 3, part 3, and chapter 5, part 1, are
4 effective May 2, 1977, and from May 2, 1977, to June 30,
5 1977, a local government governing body may enact any
6 ordinance or resolution or take any other action authorized
7 by this act for the purpose of implementing the provisions
8 of this act, but the ordinance or action may not become
9 effective until July 1, 1977.

10 (3) The delayed repealer section [section 194] of this
11 act is effective July 1, 1978.

-End-



State Commission On Local Government

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1977 Legislature
Bill - Summary

House Bill No. 122

TO SUBSTANTIALLY REVISE LOCAL GOVERNMENT LAWS AS REQUIRED BY 16-5118, R.C.M. 1947 IN ORDER TO CREATE A COHERENT, INTERRELATED SYSTEM OF LOCAL GOVERNMENT LAW AND TO IMPLEMENT THE 1972 CONSTITUTIONAL GRANT OF LEGISLATIVE POWERS TO COUNTIES, ITS PROVISION FOR ALL LOCAL GOVERNMENTS TO OPERATE WITH GENERAL GOVERNMENT OR TO ADOPT SELF-GOVERNMENT POWERS, AND ITS INSTRUCTION THAT THE POWERS OF ALL LOCAL GOVERNMENTS ARE TO "LIBERALLY CONSTRUED."

THIS BILL PROPOSES TO ENACT 701 SECTIONS, TO AMEND 181 SECTIONS OF CURRENT LAW, AND TO REPEAL 2,554 SECTIONS OF CURRENT LAW.

ADDITIONAL INFORMATIONAL MATERIALS WILL BE MADE AVAILABLE TO EACH LEGISLATOR BY THE STATE COMMISSION ON LOCAL GOVERNMENT.

Section 1. Repealer. (1) The following chapters and sections in Title 11, R.C.M. 1947, are repealed:

(a) chapters 1 through 5, 7 through 20, 22 through 35, 37, and 39 through 45;

(b) sections 11-3801 through 11-3857.

(2) The following chapters and sections in Title 16, R.C.M. 1947, are repealed:

(a) chapters 1, 3 through 12, 14 through 16, 18 through 21, 23 through 38, 40 through 42, 44, and 47 through 51;

(b) sections 16-1701 through 16-1707, 16-1709 through 16-1723, and 16-4601 through 16-4613.

(3) Sections 1-801 through 1-832, 1-1001 through 1-1005, 3-2601 through 3-2606, 6-203 through 6-209, 6-601 through 6-608, 9-201 through 9-231, 9-301 through 9-307, 9-401, 9-232, 10-802.1, 23-2801, 23-3102, 25-601 through 25-605, 25-608 through 25-611.1, 25-201 through 25-208, 25-210 through 25-217, 25-221 through 25-226, 25-229 through 25-231, 25-235, 25-237, 28-501 through 28-507, 28-601 through 28-604, 32-1501 through 32-1518, 32-1627, 32-1628, 32-2801 through 32-2803, 32-2805 through 32-2820, 32-2902 through 32-2907, 32-3001 through 32-3007, 32-3101 through 32-3131, 32-3601 through 32-3605, 32-3701 through 32-3703, 32-3706, 32-3801 through 32-3806, 32-4001 through 32-4017, 32-4201 through 32-4207, 32-4403



through 32-4409, 35-101 through 35-146, 35-201 through 35-203, 35-301 through 35-307, 35-401 through 35-414, 37-301 through 37-311, 41-1106, 41-1901 through 41-1907, 42-2201, 42-2202, 69-3601 through 69-3603, 69-4118, 69-4501 through 69-4513, 69-4516, 69-4517, 69-4519, 69-6001 through 69-6013, 70-408 through 70-427, 70-601 through 70-635, 71-1604, 71-1701, 71-2408, 75-5802 through 75-5804, 77-2006, 79-1901 through 79-1916, 79-2101, 79-2102, 80-2804, 82-3803 through 82-3805, 82-3808, 82A-904, 84-3805, 84-3806, 84-4104, 84-4197, 84-4213, 84-4701, 84-5216 through 84-5221, 89-3701 through 89-3711, 93-401 through 93-405, 93-408, 93-410 through 93-412, 93-414, and 94-704, R.C.M. 1947, are repealed.

Section 2. Delayed repealer. Sections 84-2701 through 84-2708, 84-2901 through 84-2907, 84-3101 through 84-3109, 84-3201 through 84-3209, and 84-3701 through 84-3708, R.C.M. 1947, are repealed effective July 1, 1978.

Section 3. Effective date. (1) This act is effective July 1, 1977, except for those sections comprising chapter 3, part 3, and chapter 5, part 1, of Title 47A and the delayed repealer section.

(2) Chapter 3, part 3, and chapter 5, part 1, are effective May 2, 1977, and from May 2, 1977, to June 30, 1977, a local government governing body may enact any ordinance or resolution or take any other action authorized by this act for the purpose of implementing the provisions of this act, but the ordinance or action may not become effective until July 1, 1977.

(3) The delayed repealer section of this act is effective July 1, 1978.

STATE OF MONTANA

REQUEST NO. 310-77
AMENDED

FISCAL NOTE

Form BD-15

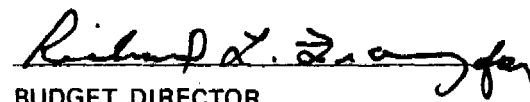
In compliance with a written request received February 21, 19 77, there is hereby submitted a Fiscal Note for House Bill 122 - Amended pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act for the general revision of laws relating to county and municipal government, and enacting a local government code.

FISCAL IMPACT:

The amendments to House Bill 122 do not significantly alter the fiscal impact from what is reflected on the original fiscal note. Statements from the Commission on Local Government concerning selected amendments are attached.


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-25-77

FISCAL NOTE ON HOUSE COMMITTEE AMENDMENTS

The following House Committee amendments to HB 122 will have minor effects on the expenditures of the state and local governments. The costs created by these amendments are anticipated by the 1978-1979 Executive Budget, are current expense of local governments, or can be absorbed without increased expenditures by state or local governments.

(Amendment 12.) Requirement that Department of Community Affairs in cooperation with the Secretary of State shall prepare and provide each county and municipality with model petition forms.

IMPACT: Costs will be minimal and can be financed from existing appropriation levels.

(Amendment 120.) Retain current law establishing minimum wage for police and firemen (\$750 per month plus 1% of that amount for each year of service).

IMPACT: No increased cost to local government because this is not a change from current law.

(Amendment 258.) Local option taxes may be adopted only after an election on the use of the tax.

IMPACT: Costs for such elections would be minimal if conducted with other general, municipal, county or special elections. Election is only necessary if local government decides to submit question on use of an optional tax to the voters.

(Amendment 126.) Retain current law requiring municipalities to provide insurance for dependents of firefighter and law enforcement officers.

IMPACT: No increased costs to local governments because this is not a change from current law.

(Amendment 237.) Combined state and federal non-categorical public health financial assistance distributed by the State Department of Health shall not constitute more than 50% of the total annual budget of a local health department.

IMPACT: This amendment may result in a minor decrease in the amount of state aid that is distributed to local health departments.

(Amendment 246.) The state County Printing Board is retained.

IMPACT: No increased costs because this Executive Budget contains funds for operation of this current state agency.

(Amendment 253.) Retains existing mill levy authority of 4 mills to pay group insurance premiums for police and firemen. Creates new mill levy authority of 8 mills for libraries, museums, art centers, theaters, etc.

IMPACT: Both mill levies are permissive, not mandatory property tax mill levies. Fiscal impact will depend on their utilization by local governments.

(Amendments 259 and 260.) Replaced requirement that the Department of Community Affairs distribute state aid to local governments on a quarterly basis with requirement that the department "coordinate" the distribution of state aid.

IMPACT: The Department coordination of the distribution of state aid to local governments can be financed from existing appropriation levels.

STATE OF MONTANA

REQUEST NO. 310-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 31, 19 77, there is hereby submitted a Fiscal Note for House Bill 122 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act for the general revision of laws relating to county and municipal government, and enacting a local government code.

FISCAL IMPACT - STATE:

<u>Revenue Items</u>	<u>FY78</u>	<u>FY79</u>	<u>Total</u>
Local option income tax (Attachment 10)	\$ 246,000 ¹	\$ 282,000 ¹	\$ 528,000 ¹
County license fee increase (Attachment 14)	0	(41,500)	(41,500)
PL 94-63 Public Health Funds (Attachment 3)	(90,700)	(90,700)	(181,400)
Net revenue increase to state due to proposed legislation	<u>\$ 155,300</u>	<u>\$ 149,800</u>	<u>\$ 305,100</u>
<u>Expenditure Items</u>			
Technical assistance to local government (Attachment 1)	\$ 214,165 ²	\$ 225,684 ²	\$ 439,849 ²
Local government finance advisory council (Attachment 2)	1,884	1,884	3,768
PL 94-63 Public Health Funds (Attachment 3)	140,000 ³	140,000 ³	280,000 ³
State share public health funds with local government (Attachment 4)	Unknown	Unknown	Unknown
Salary of county attorneys (Attachment 5)	624,780 ⁴	764,780 ⁴	1,389,560 ⁴
Local government accounting system (Attachment 6)	0	0	0
Report on local government finances (Attachment 7)	5,742	5,742	11,484
Financing of state mandates (Attachment 8)	0	0	0
All-purpose mill levy (Attachment 9)	0	0	0
Additional cost to state due to proposed legislation	<u>\$ 986,571</u>	<u>\$1,138,090</u>	<u>\$2,124,661</u>

- ¹ Represents maximum possible revenue to the state. The monies are to be used to defray the related costs to the Department of Revenue.
- ² HB 233 has been introduced to provide \$228,330 in FY78 and \$251,369 in FY79 for technical assistance to local government. It is estimated that, even though HB 122 could be implemented without additional monies, one-half of the amount requested in HB 233 is needed to facilitate implementation. In addition, the Department of Health indicates a need for an additional \$100,000 per year to implement the requirements of Part 3, Chapter 8.
- ³ HB 503 has been introduced to provide the Department of Health with General Fund monies of \$140,000 per year to replace federal funds routed to local governments. If both HB 122 and HB 503 are enacted, the amount of funds available to the Department of Health will decrease by \$90,700 per year. If HB 122 is enacted but HB 503 is not enacted, the Department of Health would lose funds amounting to \$230,700 per year.
- ⁴ HB 145 provides for an appropriation for County Attorneys. Should HB 122 be enacted, HB 145 would have to be amended to reflect the increased cost.

CONTINUED ON PAGE 2

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

STATE OF MONTANA

REQUEST NO. 310-77

PAGE 2

FISCAL NOTE

Form BD-15

In compliance with a written request received January 31, 19 77, there is hereby submitted a Fiscal Note for House Bill 122 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

LOCAL IMPACT:

Revenue Items

	FY78	FY79	Total
Guaranteed additional revenue			
PL 94-63 Public Health Funds (Attachment 3)	\$ 230,700 ^a	\$ 230,700 ^a	\$ 461,400 ^a
State share public health funds with local government (Attachment 4)	Unknown	Unknown	Unknown
Total guaranteed additional revenue	230,700	230,700	461,400
Optional additional revenue			
All-purpose mill levy (Attachment 9)	0	0	0
Local option income tax (Attachment 10)	24,000,000 ^b	28,000,000 ^b	52,000,000 ^b
Local option motor vehicle license fee (Attachment 11)	3,000,000 ^b	3,000,000 ^b	6,000,000 ^b
Local option hotel and/or motel tax (Attachment 12)	2,700,000 ^{b,c}	2,700,000 ^{b,c}	5,400,000 ^{b,c}
Local option fuel tax (Attachment 13)	9,700,000 ^b	9,700,000 ^b	19,400,000 ^b
County license fees (Attachment 14)	0	41,500 ^b	41,500 ^b
Total optional additional revenues	39,400,000	43,441,500	82,841,500
Total increase in local revenues due to proposed legislation	\$39,630,700	\$43,672,200	\$83,302,900

Expenditure Items

Technical assistance to local government (Attachment 1)	\$Unknown	\$Unknown	\$Unknown
Salary of county attorneys (Attachment 5)	(624,780) ^c	(784,780) ^c	(1,389,560) ^c
Total decrease in local government expenditures under proposed legislation	(\$ 624,780)	(\$ 784,780)	(\$1,389,560)

- ^a Local governments would receive an increased amount of federal revenue; however, increased expenditures due to the additional monies should approximately equal the increased revenues.
- ^b The revenue from the local option taxes could vary from no additional revenue to the figures listed, which assume that all governments will use the local option taxes at the maximum rate. Estimates of optional taxes for individual counties and municipalities are available from the Commission on Local Government.
- ^c Figures are projections for the 6 major cities reflected on Attachment 12.
- ^d County property taxes would be reduced by the amount of increased state expenditures.

Richard L. Drury for
 BUDGET DIRECTOR
 Office of Budget and Program Planning
 Date: 2-11-77

DESCRIPTION OF PROPOSED SECTION:

Section 47A-1-109 and several other sections in the bill authorize state agencies to provide technical assistance to local governments.

ASSUMPTIONS:

1. State agencies are currently providing a broad range of technical assistance.
2. State agencies will provide technical assistance to local government within existing appropriations for existing programs.
3. No increased appropriation is necessary for ordinary technical assistance.
4. A separate bill, House Bill 233, has been introduced to provide increased technical assistance to implement this bill.

REVENUE AND EXPENDITURE IMPACT:

House Bill 233 has been introduced to provide \$228,330 in FY78 and \$251,369 in FY79 for technical assistance to local government. It is estimated that, even though HB 122 could be implemented without additional monies, one-half of the amount requested in HB 233 is needed to facilitate implementation. In addition, the Department of Health indicates a need for an additional \$100,000 per year to implement the requirements of Part 3, Chapter 8.

LOCAL IMPACT:

State assistance may in some cases reduce the need for local expenditures.

DESCRIPTION OF PROPOSED SECTION:

Section 47A-9-102 requires the establishment by the Department of Community Affairs of a Local Government Finance Advisory Council to review all state rules pertaining to local government financing, budgeting and accounting prior to their adoption.

ASSUMPTIONS:

1. 9 member council to meet quarterly.
2. 3 municipal representatives, 3 county representatives, 3 state representatives.
3. 3 members travel 500 miles round trip.
3 members travel 200 miles round trip.
4. All expenses of Council, except travel and per diem, could be absorbed by the Department of Community Affairs.

REVENUE AND EXPENDITURE IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Expenditures for Local Government Finance Advisory Council		
Total increased expenditures under proposed law	<u>\$1,884</u>	<u>\$1,884</u>

LOCAL IMPACT:

No effect.

DESCRIPTION OF PROPOSED SECTION:

47A-8-309 (3) of HB 122 proposes a revision in the formula currently utilized to distribute to local health departments federal funds appropriated to Montana under PL 94-63. The state department of health and environmental sciences (SDHES) has devised a formula (by administrative regulation) of 10¢ per capita, plus \$5,000 for local health departments with full-time health officers and \$500 for all other health departments. The proposal is that the state department be required to use a formula of 45¢ per capita with no lump sum amounts in the future. HB 503, which is effective only on the passage of HB 122, proposes a general fund appropriation to the Laboratory Division of the SDHES to replace that portion of these federal funds currently utilized by the state laboratory.

ASSUMPTIONS:

	<u>FY 78</u>	<u>FY 79</u>
Total federal appropriation to Montana*	\$470,400	\$470,400
45¢ X 746,000**	<u>335,700</u>	<u>335,700</u>
Amount of federal funds to be retained by SDHES	134,700	134,700
Amount being requested for state laboratory	<u>140,000</u>	<u>140,000</u>
Total Amount to be retained by SDHES	<u>\$274,700</u>	<u>\$274,700</u>
Total Amount retained currently by SDHES	\$365,400	\$365,400
Amount to be retained if proposal passes	<u>274,700</u>	<u>274,700</u>
Decrease in funds retained by SDHES	<u>\$ 90,700</u>	<u>\$ 90,700</u>

REVENUE AND EXPENDITURE IMPACT:

This section would require that the SDHES distribute to local health departments for their expenses \$335,700 in federal funds that are now used for SDHES expenses. If HB 122 and HB 503 are both passed by the legislature, it would reduce the amount of money available to the SDHES by a total of \$181,400 per biennium. The amount of state general fund monies being requested in HB 503 to replace the federal funds in the budget of the state laboratory is \$280,000 for the 78-79 biennium. If HB 503 is not passed, HB 122 would reduce the SDHES budget by a total of \$461,400 for the biennium.

LOCAL IMPACT:

Passage of HB 122 would increase the amount of federal monies available as grants to local health departments to \$671,400 for the 78-79 biennium. Currently, the SDHES budgets \$210,000 per biennium for these grants (although only approximately \$169,000 of this amount was actually allocated to local departments in the two year period ending June 30, 1976). This provision would increase the federal contribution to the total amount expended by local government for basic public health programs.

DESCRIPTION OF PROPOSED SECTION:

47A-8-309 (1) of HB 122 proposes that the state department of health and environmental sciences (SDHES) share available monies with local health departments for programs the local departments have the capabilities to provide. 47A-8-309 (7) of HB 122 proposes that the SDHES share with local health departments available monies collected for licenses, permits, etc., if the local department has assisted with administration of the program from which the fee resulted.

ASSUMPTIONS:

No dollar estimate can be made of the impact these provisions might have on revenues available to the state department or amounts of monies the state department might share with local health departments.

REVENUE AND EXPENDITURE IMPACT:

Cannot be calculated.

LOCAL IMPACT:

Cannot be calculated.

CONCLUSION:

The financial impact will depend on the extent of implementation by the SDHES, the various capabilities of local health departments to provide the various programs which are now state-provided, and the extent of local health department involvement in programs which result in fees paid to the SDHES. It is possible these provisions, if fully implemented, may eventually involve significant enough amounts of monies that block grants to local health departments of state and federal monies may be deemed unnecessary at some point in the future.

DESCRIPTION OF PROPOSED SECTION:

Section 47A-9-403 is a section requiring the state to appropriate monies for distribution to the office of each county attorney in the state. The proposed formula would require the state to annually provide \$10,000 per county plus \$1.00 per capita; maximum state share to any county not to exceed one-half of budgeted expenses and not to exceed \$50,000 annually, except where a separate office of prosecuting attorney is established. The proposed formula would replace the existing formula found in 25-601, which provides for state funding at one-half of the salaries of county attorneys.

ASSUMPTIONS:

1. There are 56 county attorneys.
2. Depending on the population of a county, the office of county attorney employs varying sizes of legal staff.
3. The office of county attorney performs civil and prosecutorial functions.
4. Prosecutorial functions are performed on behalf of the state.
5. State appropriation for county attorney salaries amounted to \$665,716 for the 1977 Biennium.

REVENUE AND EXPENDITURE IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Total expenditures under proposed law	\$1,040,000	\$1,180,000
Total expenditures under current law	<u>415,220</u>	<u>415,220</u>
Increased expenditures under proposed law	<u>\$ 624,780</u>	<u>\$ 764,780</u>

LOCAL IMPACT:

County property taxes could be reduced by a total equal to increased state expenditures for each fiscal year.

CONCLUSION:

House Bill 145 of 1977 Session contains appropriation for funding county attorney salaries. In order to fund proposed formula, that bill will need to be amended so that \$1,040,000 is appropriated for FY 78 and \$1,180,000 for FY 79. These totals represent an increase over the Executive Budget of \$624,780 for FY 78 and \$764,780 for FY 79.

DESCRIPTION OF PROPOSED SECTION:

Section 47A-9-104 requires the Department of Community Affairs to adopt rules and forms for local government financial accounting, budgeting and reporting procedures. This continues the Department's current authority authorized by Section 11-1411, R.C.M. 1947.

ASSUMPTIONS:

The 1975 legislature funded a new program in the Department of Community Affairs to upgrade and replace the existing city and county budgeting, accounting and reporting systems. The 1978-79 Executive Budget requests \$211,615 in FY 78 and \$214,439 in FY 79 to continue this program. No additional funds are necessary.

REVENUE AND EXPENDITURE IMPACT:

None.

LOCAL IMPACT:

No direct impact.

CONCLUSION:

No increased appropriation is necessary since the Department of Community Affairs receives an appropriation for this purpose.

Attachment 7
F.N. 310-77
House Bill 122

Attachment 8
F.N. 310-77
House Bill 122

DESCRIPTION OF PROPOSED SECTION:

Section 47A-9-106 requires the Department of Community Affairs to publish an annual compilation of local government budgets, appropriations, mill levies and annual financial reports.

ASSUMPTIONS:

1. Report on annual financial reports of 56 counties and 126 municipalities.
2. 400 copies published.
3. 500 pages of data (based on similar publications from the State of Washington).

REVENUE AND EXPENDITURE IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Expenditures for Annual Fiscal Report		
Total increased expenditures under proposed law	<u>\$5,742</u>	<u>\$5,742</u>

LOCAL IMPACT:

No financial effect, but comparative financial data on local government expenditures would be available.

CONCLUSION:

The Executive Budget for the Department of Community Affairs did not include the \$11,484 necessary for the publication of this report.

DESCRIPTION OF PROPOSED SECTION:

Section 47A-9-402 requires that any law enacted by the legislature after January 1, 1979, which imposes an additional cost on a local government, provide a specific means to finance the service. The additional revenue can be provided by increasing the all-purpose mill levy, a special mill levy, or a state-aid program. This section replaces and strengthens Section 43-847, R.C.M. 1947, and also provides that a law that does not include funding does not become effective until funded by the legislature.

ASSUMPTIONS:

No estimates prepared because impact depends on future legislative implementation.

REVENUE AND EXPENDITURE IMPACT:

No impact in this biennium.

LOCAL IMPACT:

Strengthened language would prevent legislature from imposing new programs or responsibilities on local governments without providing adequate financing.

CONCLUSION:

This section would require legislature to carefully consider the fiscal impact of local government legislation and provide adequate financing in order to prevent laws from being declared in violation of this section and therefore not effective.

DESCRIPTION OF PROPOSED SECTION:

Section 47A--9--404 authorizes a 65 all-purpose tax mill levy for municipalities and a 55 all-purpose mill levy for counties. Welfare, Roads, Police and Fire Pensions, Emergency, Comprehensive Insurance, Voted Levy, Debt Service, LID Revolving, and Judgment Levies will continue to be exceptions to the all-purpose mill levy.

ASSUMPTIONS:

1. Statistics on use of mill levies in 1978 were considered.
2. County and municipal mill levies have been relatively constant in recent years.
3. Estimates on potential increases in mill levies cannot be calculated because of high number of variables.

REVENUE AND EXPENDITURE IMPACT:

No state impact on revenues or expenditures.

LOCAL IMPACT:

No change in municipal all-purpose mill levy, but eliminates existing single purpose options that could produce 79 to 83 mills, depending on size of municipality.

Creates 55 all-purpose county mill levy limit to replace existing single purpose mill levies that could produce 66 to 72 mills, depending on size of county.

CONCLUSION:

Section reduces maximum mill levies for both municipalities and counties, but does not reduce mill levy authority below levies currently being used by local governments.

DESCRIPTION OF PROPOSED SECTION:

Section 47A--9--405 authorizes a local option income tax that can be used only after a vote of the electors of a county. This tax is shared between the municipality and county under a statutory formula unless another formula is established by interlocal agreement. The maximum rate is 20% of the state income tax.

ASSUMPTIONS:

1. All calculations are based on a total utilization of local option income tax by all 56 counties at the maximum 20% rate.
2. Actual impact would be much less because counties may use tax only after a vote of the people and tax rate may vary from 1 to 20% of the state income collection.

REVENUE AND EXPENDITURE IMPACT:

State Department of Revenue would administer tax under a 1% service charge on local income tax collections. Maximum possible revenue to State Department of Revenue in FY 78 would be \$246,000* and \$282,000* in FY 79.

LOCAL IMPACT:

The impact would depend on the number of counties that would utilize the tax and the rate of surcharge. Maximum tax collections for all counties would be: FY 78 -- \$24,000,000 and FY 79 -- \$28,000,000.

CONCLUSION:

Impact will depend on number of local governments that use the tax and the rate of tax that is authorized. The impact could vary from zero to \$24,000,000 in FY 78 and \$28,000,000 in FY 79. The income tax collections could be used to replace property taxes or to supplement property tax collections. The \$24 million in 1978 would be about one-fourth of total property tax collections for cities and counties and could be used to reduce or supplement property taxes.

* The Department of Revenue points out that the allowance to the Department for administering the "piggyback" income tax is sufficient only in case highly populated local government units which contribute substantial portions of state income tax revenue are involved. It is a problem of the economics of scale: if only small jurisdictions which have relatively small portions of the total personal income of the state adopt a local income tax then the fraction of collections allowed for administration is clearly too little.

DESCRIPTION OF PROPOSED SECTION:

Section 47A-9-406 authorizes local governments to impose at local option an additional motor vehicle license fee of up to 50% of the state imposed motor vehicle license fee. The use of the fee is optional.

ASSUMPTIONS:

1. Fiscal year 1976 vehicle registration and collections were used.
2. Additional fee was calculated as 50% of state fee.
3. Calculations were made for all local governments.

REVENUE AND EXPENDITURE IMPACT:

There would be no impact on state revenue or expenditures.

LOCAL IMPACT:

The local impact would depend on the number of local governments that would utilize the license and the local rate of the fee. Maximum revenue for all counties if the fee had been used in FY 76 would have been \$3,000,000.

CONCLUSION:

There is no state impact and the local impact would depend on the utilization of the authority by local governments.

DESCRIPTION OF PROPOSED SECTION:

Section 47A-9-407 authorizes local governments to impose a local option tax on the use of hotel or motel rooms. The tax may not exceed 10% of the room rental.

ASSUMPTIONS:

1. There are no statewide estimates available because there is no means of determining how many motel or hotel rooms are available statewide.
2. There is no way of determining how many local governments would use the tax.
3. There is no way of knowing at what rate the tax would be imposed if it was used.
4. Selective city estimates of revenue could be obtained through the use of standard figures.

REVENUE AND EXPENDITURE IMPACT:

No impact on state revenues or expenditures.

LOCAL IMPACT:

No statewide revenue figures are available due to the wide discrepancy in hotel or motel use statewide. Some figures are available for certain cities. Revenue estimates are based on 60% room occupancy, 360 days a year and \$1.25 tax per room.

Estimates are:	Missoula — \$490,500	Bozeman — \$360,800	Great Falls — \$570,600
	Kalispell — \$360,900	Billings — \$898,650	Helena — \$316,800

CONCLUSION:

The impact for local governments would, of course, depend on the use and rate of the motel-hotel tax. However, it could provide the City of Billings, for example, an additional \$898,650 it does not receive at present.

DESCRIPTION OF PROPOSED SECTION:

Section 47A-9-407 authorizes local governments to impose a local option tax on the use of fuels. If imposed, it must be done on a countywide basis and distributed to the county and all municipalities within the county in a manner determined by interlocal agreement. The tax shall not exceed 2 cents for each gallon of fuel. Fuels used for agriculture, aviation, or marine use would be exempted under Title 84, Chapter 16.

ASSUMPTIONS:

1. There is no data available, at present, that indicates the total amount of fuels sold within the boundaries of a local government.
2. Montana Petroleum Association tabulates the gallonage of fuels sold within various areas.
3. The use of their figures will provide an estimate when coupled with a standard rate of taxation.

REVENUE AND EXPENDITURE IMPACT:

No state impact on revenue or expenditures.*

LOCAL IMPACT:

In FY 74 the estimated proceeds of a gasoline tax for local governments on a statewide basis, using the maximum of 2 cents per gallon and the available figures from the Montana Petroleum Association of total gasoline sold, would have been \$9,654,607.

CONCLUSION:

Revenue for local governments, through the use of a fuels tax, could vary from \$ -0- to approximately \$9,654,607 statewide, depending on its use and the rate of its use. The availability of such a source of revenue could reduce the present dependence on the local government property tax to finance local streets and roads.

* Administration of the local motor fuels tax imposed under 47A-9-407(2)(a) is assumed to be the responsibility of the local governmental unit adopting it. There is, however, nothing in the proposed legislation to indicate that this is the case. Indeed, it is just as reasonable to assume that the Department of Revenue might be called upon to collect the tax and rebate the proper amount to the county imposing the local tax. If this were the case, the Department would be put to considerable expense since the current gasoline tax is paid by the distributor rather than the individual dealer as is the case with the proposed legislation.

DESCRIPTION OF PROPOSED SECTION:

Section 194 repeals, effective July 1, 1978, the authority for 25 types of license fees that are currently collected by the counties, with 50% of the fee retained by the county and 50% remitted to the State Treasurer to deposit 45% to the general fund and 5% to an earmarked fund for the Department of Livestock.

ASSUMPTIONS:

Estimates prepared by treasurer's office and Department of Livestock were based on actual collections in previous years and 7% annual rate of increase in revenue.

REVENUE AND EXPENDITURE IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Total state revenue under existing law	\$40,700	\$41,500
Total state revenue under proposed law	<u>40,700</u>	<u>0</u>
Decrease in revenues under proposed law	<u>\$ 0</u>	<u>\$41,500</u>

LOCAL IMPACT:

If some license fees are imposed by local ordinance effective July 1, 1978, the counties would be able to retain the \$41,500 that would otherwise be remitted to the state. If the licenses are not enacted by ordinance, county revenue would decrease, but could increase if fees are increased or additional activities are licensed.

CONCLUSION:

Section would result in a decrease of \$41,500 in state revenue during '79 biennium and approximately \$85,000 in each future biennium. Counties would have the authority to collect under local ordinances an equal or greater amount or to reduce or eliminate the license fees.

STANDING COMMITTEE REPORT

February 19

19 77

Journal

MR. SPEAKER:

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 122

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF
LAWS RELATING TO COUNTY AND MUNICIPAL GOVERNMENT; ENACTING A LOCAL
GOVERNMENT CODE; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 122

introduced copy, be amended as follows:

AS AMENDED DO PASS

~~DO PASS~~

Herchel M. Robbins
Herchel M. Robbins, Chairman.

1. Amend page 4, section 1, line 22.
Following: "(3)"
Strike: "Unless otherwise provided in this title, each"
Insert: "Each"

2. Amend page 6, section 1, line 13.
Following: "through"
Strike: "ordinary"
Insert: "business"

3. Amend page 9, section 1, lines 15 and 16.
Following: "the"
Strike: "officer or officers"
Insert: "person or persons"

4. Amend page 17, section 1, line 15.
Following: "other"
Strike: "incorporated"
Insert: "incorporeal"

5. Amend page 17, section 1, lines 21 through 23.
Following: line 20
Strike: line 21 through line 23 in their entirety
Renumber: all subsequent subsections

6. Amend page 18, section 1, lines 12 through 15.
Following: line 11
Strike: line 12 through line 15 in their entirety.
Renumber: all subsequent subsections

7. Amend page 19, section 1, line 21.
Following: "circulation"
Insert: "with a second-class mailing permit"

8. Amend page 20, section 1, lines 17 and 18.
Following: "taken;"
Strike: "and"
Insert: "(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and"
Renumber: subsequent subsections

9. Amend page 21, section 1, line 13.
Following: "taken;"
Strike: "and"

10. Amend page 21, section 1, line 14.
Following: line 13
Insert: "(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and"
Renumber: subsequent subsection

11. Amend page 21, section 1, line 18.
Following: line 17
Strike: "47-1-305"
Insert: "47A-1-305"

12. Amend page 23, section 1, line 5.
Following: line 4

Insert: "(d) The department of community affairs in cooperation with the secretary of state shall prepare and provide each county and municipality with:

(a) a standard petition form;
(b) sample petition forms for initiatives, referendums, and recall elections; and
(c) sample petition forms for creation of subordinate service districts and local improvement districts.
(9) Each county and municipality shall make available to the public on request sample petition forms."

13. Amend page 27, section 1, line 4.
Following: "person"
Strike: "a."
Insert: ";"

14. Amend page 27, section 1, line 5.
Following: line 4
Insert: "(d) a statement that the waiver of notice is voluntarily and knowingly given, with knowledge of the signer's constitutional rights to notice."

15. Amend page 45, section 1, line 22.
Following: line 21
Insert: "(11) "Finding of public endangerment" means a finding, adopted in accordance with 47A-2-216(1), which states that the public health, safety, and welfare of both the inhabitants of the municipality and the area proposed to be annexed are endangered by the lack of or inadequacy of public services in the area to be annexed which could be provided by a municipality in a manner which would eliminate the public endangerment."

16. Amend page 49, section 1, line 23.
Following: "If"
Strike: "appropriated"
Insert: "appropriate"

17. Amend page 51, section 1, line 19.
Following: "lot"
Insert: "or any property of a governmental agency"

18. Amend page 52, section 1, line 17.
Following: line 16
Insert: "(3) A municipality proceeding under this section may not annex land included within a fire district originally organized under the provisions of former Title 11, chapter 20; a county subordinate service district created to provide fire protection services; or a joint county subordinate service and local improvement district created to provide fire protection services whenever the district was originally organized 10 years or more prior to the commencement of the annexation proceedings."

19. Amend page 53, section 1, lines 10 through 23.
Following: "protest."
Strike: line 10 through line 23 in their entirety
Insert: "(1) (a) A municipality may annex an area through the procedures prescribed by 47A-2-204, 47A-2-216(2) through (7), and 47A-2-217 only if a resolution granting a finding

or public endangerment has been adopted in accordance with the procedures prescribed in 47A-2-216(1).

(b) The governing body of a municipality may by resolution request the finding of public endangerment.

(c) The request shall be delivered to the governing body of the county in which the proposed area to be annexed lies and to the district court judge or judges of that county.

(d) The senior district court judge shall, within 10 days of receiving the request, set a date for a public hearing on the requested finding of public endangerment. The public hearing shall be held at least 60 but not more than 90 days following reception of the request. The municipality shall publish notice of the public hearing and shall give mailed notice to all resident freeholders in the area. The municipality shall also publish notice stating that at least 14 days before the public hearing a summary of its preliminary findings and its reasons for requesting a finding of public endangerment shall be available at the office of the municipality.

(e) During the period following reception of the request and before the public hearing, the district court judge or judges and the county and municipal governing body may conduct individual or joint informational meetings or hearings they consider necessary and may make available a summary of their preliminary findings.

(f) At the public hearing, the senior district court judge shall preside and testimony shall be taken to investigate the validity of the requested finding of public endangerment. The municipality, the county, and the district court judge or judges shall all present their preliminary findings, if any.

(g) No later than 10 days following the public hearing, a resolution must be adopted granting or denying the requested finding of public endangerment. Granting of the requested finding shall be by separate majorities of both the governing bodies of the municipality and the county and the unanimous consent of the district court judge or judges. Failure to gain any majority or the unanimous consent of the judge or judges shall be considered adoption of a resolution denying the finding of public endangerment.

(h) If the requested finding of public endangerment is granted, the municipality may proceed through the procedures prescribed by 47A-2-204, 47A-2-216(2) through (7), and 47A-2-217."

Renumber: subsequent subsections.

20. Amend page 60, section 1, lines 19 and 20.

Following: "this part"

Strike: line 19 and line 20 in their entirety.

21. Amend page 60, section 1, line 21.

Following: line 20

Strike: "fails to act"

22. Amend page 70, section 1, line 2.

Following: line 1

Insert: "47A-2-405. Merger of municipalities. (1) When a municipality desires to merge with another and contiguous municipality, the governing body of each must appoint three

commissioners to arrange and report to the municipal governing bodies respectively: the plan of government for the new municipality and the terms and conditions on which the merger can be made.

(2) If the governing bodies of the municipalities approve, they must by joint ordinance so declare and thereupon submit the question of merger and the plan of government to the electors of the respective municipalities.

(3) The election on the merger and the plan of government shall comply with the procedures in chapter 2, part 1, of this title for incorporation of municipalities. The merger is approved if a majority of the electors within each municipality vote in favor of the merger.

(4) When two or more municipalities merge, a municipality is created as a single local government.

(5) Except as provided in the merger plan, the new municipality succeeds to all rights, assets, and liabilities of the merging municipalities.

(6) The new municipality has the powers and duties of a municipality.

(7) The new municipality shall have the form of government specified in the resolutions providing for the merger. The form may be amended as provided in chapter 3, part 1, of this title."

23. Amend page 72, section 1, line 4.

Following: "established"

Strike: "only"

24. Amend page 72, section 1, line 5.

Following: "people"

Insert: "or by the procedures in subsection (3) of this section"

25. Amend page 72, section 1, line 16.

Following: line 15

Insert: "(3) If a petition, signed by at least 15% of the electors of a local government, is submitted to the governing body requesting that a study commission be established, a study commission shall be established without an election on the question and study commissioners shall be elected in the manner provided in this part."

Renumber: subsequent subsections

26. Amend page 73, section 1, line 19.

Following: "in 23-3304."

Insert: "There shall be no filing fee."

27. Amend page 74, section 1, lines 3 and 4.

Following: "shall be"

Strike: lines 3 and 4 in their entirety

Insert: "set out in the resolution or petition calling for the election on the question of establishing a study commission."

28. Amend page 74, section 1, line 20.

Following: "(1)"

Strike: "An"

Insert: "A special"

29. Amend page 74, section 1, line 25.

Following: "(2)"

Strike: "An"

Insert: "A special"

30. Amend page 75, section 1, line 3.

Following: "study commission."

Insert: "A primary election may not be held."

31. Amend page 75, section 1, lines 6 through 8.

Following: "returned"

Strike: line 6 through line 8 in their entirety

Insert: "as provided in Title 23 and this title for general elections unless the county and municipality agree by joint resolution to do so in another manner."

32. Amend page 78, section 1, line 18.

Following: "order"

Insert: "after approval of the budget by the governing body"

33. Amend page 80, section 1, line 11.

Following: line 10

Strike: "primary or general"

34. Amend page 90, section 1, line 18.

Following: "with the"

Strike: "secretary of state,"

Insert: "municipal records administrator if it is a municipal plan, the"

35. Amend page 106, section 1, line 16.

Following: "25 years"

Insert: ", except that a local government may not grant a franchise to any public utility as defined in 70-103"

36. Amend page 107, section 1, lines 4 through 22.

Following: line 3

Strike: line 4 through line 22 in their entirety.

37. Amend page 108, section 1, lines 10 and 11.

Following: "for"

Strike: "bonds authorizing ordinances"

Insert: "ordinances authorizing bonds"

38. Amend page 109, section 1, line 5.

Following: "subject;"

Strike: "and"

39. Amend page 109, section 1, line 10.

Following: "repealed"

Strike: "."

Insert: "; and"

40. Amend page 109, section 1, line 11.

Following: line 10

Insert: "(c) contain the number of signatures required by 47A-1-305."

41. Amend page 110, section 1, line 8.

Following: "published."

Insert: "All costs, including reasonable attorney's fees incurred by the defendants, concerning proof of petition validity shall be paid by the local government."

42. Amend page 113, section 1, line 21.

Following: "(d)"

Strike: "public prosecutor"

Insert: "prosecuting attorney"

43. Amend page 113, section 1, line 24.

Following: line 23

Insert: "(6) (a) In counties with a commission plan of government based on 47A-3-205, the governing body shall designate:

(i) the elected clerk and recorder as the records administrator and elections administrator;

(ii) the elected civil attorney as the civil attorney and public prosecutor;

(iii) the elected sheriff as the chief law enforcement administrator;

(iv) the elected clerk of the district court as the clerk of the district court;

(v) the elected superintendent of schools as the superintendent of schools;

(vi) the elected public administrator as the public administrator;

(vii) the elected assessor as assessor; and

(viii) the elected coroner as individual responsible for inquests.

(b) The duties of the finance administrator shall be allocated between the elected clerk and recorder, elected treasurer, and elected auditor as provided in 47A-9-301.

(c) Nothing in this section shall prevent the reassignment of duties as provided in 47A-8-102."

44. Amend page 119, section 1, line 1.

Following: line 25, page 118

Insert: "(6) In the case of the temporary absence or disability of the chief executive, as determined by the governing body, his duties shall be performed during his temporary absence or disability by an acting chief executive appointed by the governing body."

45. Amend page 120, section 1, line 6.

Following: line 5

Insert: "(n) no person is elected to the office."

46. Amend page 121, section 1, line 3.

Following: "consolidation"

Insert: ", joining, or elimination"

47. Amend page 121, section 1, line 6.

Following: line 5

Insert: "(2) The governing bodies of two or more counties may provide by ordinance for a joint office. This procedure may not be used to eliminate an elective office." Renumber: all subsequent subsections

48. Amend page 121, section 1, line 8.

Following: "governing body"

Insert: "or bodies"

49. Amend page 121, section 1, line 9.

Following: "consolidating"

Insert: ", joining, or eliminating"

50. Amend page 121, section 1, line 11.

Following: "consolidating"

Insert: ", joining, or eliminating"

51. Amend page 121, section 1, lines 14 and 15.

Following: "offices."

Strike: line 14 and line 15 in their entirety

52. Amend page 121, section 1, line 16.

Following: line 15

Insert: "(6) Offices consolidated, joined, or eliminated shall remain so until the ordinance is amended or repealed."

53. Amend page 121, section 1, line 18.

Following: "the"

Strike: "public prosecutor"

Insert: "prosecuting attorney"

54. Amend page 121, section 1, line 21.

Following: "elected"

Strike: "public prosecutor"

Insert: "prosecuting attorney"

55. Amend page 122, section 1, lines 22 and 23.

Following: "(1)"

Strike: "A local government may establish authorities"

Insert: "Authorities may be established"

56. Amend page 123, section 1, line 14

Following: ";

Strike: "and".

57. Amend page 123, section 1, line 16.

Following: "12"

Strike: ".,"

Insert: ";

58. Amend page 123, section 1, line 17.

Following: line 16

Insert: "(i) flood control and water conservation districts as provided in Title 89, chapter 33, and

(j) urban transportation districts organized as provided in former Title 11, chapter 45, before [the effective date of this act] and operating under the provisions of 47A-6-9305 through 47A-6-9313."

59. Amend page 128, section 1, line 3.

Following: line 2

Strike: line 3 in its entirety

ReNUMBER: subsequent subsections.

60. Amend page 137, section 1, line 4.

Following: "in"

Strike: "47A-9-501"

Insert: "47A-9-502"

61. Amend page 137, section 1, line 9.

Following: "of"

Strike: "property owners"

Insert: "owners of property"

62. Amend page 137, section 1, line 10.

Following: "or"

Insert: "by the"

63. Amend page 138, section 1, line 15.

Following: line 14

Strike: "47A-9-501"

Insert: "47A-9-502"

64. Amend page 138, section 1, line 21.

Following: "a"

Strike: "file of proposed special assessments"

Insert: "local improvement district file"

65. Amend page 139, section 1, line 8.

Following: "the"

Strike: "assessment"

Insert: "local improvement district"

66. Amend page 140, section 1, lines 7 and 8.

Following: "in the"

Strike: "special assessment"

Insert: "local improvement district"

67. Amend page 141, section 1, line 25.

Following: "excluding"

Strike: "streets and alleys"

Insert: "trafficways"

68. Amend page 142, section 1, lines 17 through 20.

Following: "paved"

Strike: "for a continuous distance of three blocks or more running substantially at a right angle with the single cross block proposed to be paved"

Insert: "or the extension of existing paved streets for not more than one block"

69. Amend page 143, section 1, line 4.

Following: "protest"

Strike: "at any time before"

Insert: "within the time period established by the governing body, and which time period may be no later than 2 weeks prior to the"

70. Amend page 144, section 1, line 8.

Following: "47A-8-430."

Strike: "Assessment roll"

Insert: "Assessments"

71. Amend page 145, section 1, line 3.

Following: "or"

Insert: "any"

72. Amend page 145, section 1, line 9.
Following: "district"
Strike: "abutting upon the improvement"

73. Amend page 145, section 1, line 11.
Following: line 10
Strike: "abutting"
Following: "frontage"
Strike: "on the improvement"

74. Amend page 145, section 1, line 12.
Following: "of"
Insert: "all parcels in"

75. Amend page 145, section 1, line 16.
Following: "the"
Insert: "frontage of"

76. Amend page 145, section 1, line 19.
Following: "that"
Strike: "portion"
Insert: "proportion"

77. Amend page 147, section 1, line 22.
Following: "the"
Strike: "prepaid"
Insert: "unpaid"

78. Amend page 148, section 1, line 20.
Following: "entered"
Strike: "on a"
Insert: "in the"
Following: "assessment"
Strike: "roll"
Insert: "file pursuant to 47A-3-427(6)"

79. Amend page 148, section 1, line 21.
Following: "descriptions"
Strike: ", names of the record owners,"

80. Amend page 148, section 1, line 24.
Following: "assessment"
Strike: "roll"

81. Amend page 149, section 1, line 2.
Following: "the"
Strike: "roll"
Insert: "assessment file as"

82. Amend page 149, section 1, line 3.
Following: "it"
Insert: "as"

83. Amend page 149, section 1, line 18.
Following: "special assessment"
Strike: "roll"

84. Amend page 149, section 1, line 19.
Following: "be"
Strike: "named"

Insert: "filed"

85. Amend page 149, section 1, line 20.
Following: "filing of"
Strike: "the"
Insert: "an"
Following: "appeal"
Strike: "as to"

86. Amend page 149, section 1, line 21.
Following: "assessment"
Insert: "on any parcel"

87. Amend page 149, section 1, line 22.
Following: "whether"
Strike: "such"
Insert: "the"

88. Amend page 149, section 1, line 23.
Following: line 22
Strike: "levied"
Insert: "assessed"

89. Amend page 150, section 1, line 6.
Following: "the"
Strike: "remaining"
Following: "assessments"
Insert: "on the remaining parcels"

90. Amend page 150, section 1, line 14.
Following: line 13
Strike: "assessments"
Insert: "assessment installments"

91. Amend page 150, section 1, line 16.
Following: "special"
Strike: "assessments"
Insert: "assessment installments"

92. Amend page 150, section 1, line 18.
Following: "special"
Strike: "assessments"
Insert: "assessment installments"

93. Amend page 150, section 1, line 19.
Following: "special"
Strike: "assessments"
Insert: "assessment installments"

94. Amend page 151, section 1, line 25, through page 152, line 16.
Following: line 24
Strike: 47A-3-435 in its entirety

95. Amend page 154, section 1, line 21.
Following: "Apportionment."
Insert: "(1)"
Following: "if"
Strike: "the plan of government"
Insert: "an"

96. Amend page 154, section 1, line 22.

Following: "adopted"

Strike: "by a"

Insert: "plan of"

Following: "requires"

Strike: "the nomination or"

97. Amend page 155, section 1, line 6.

Following: "administrator."

Insert: "Boundaries of all county commissioner districts shall coincide with legislative district boundaries as much as practical. One or more county commissioner districts may be within a legislative district, and one or more legislative districts may be within a county commissioner district."

98. Amend page 155, section 1, line 7.

Following: line 6

Insert: "(2) (a) If an adopted plan of local government provides for the election of all members of the governing body at large and also provides that some or all members be nominated by district, the governing body shall by ordinance after each official state, local, or federal census and may at any time make any or any combination of the changes or adjustments provided by this section. Changes or adjustments must insure that the plan of nomination does not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the governing body from persons residing in the district or districts where the majority of the electors reside.

(b) Permitted changes or adjustments allowed under this section are:

(i) changing the boundaries of commissioner districts, except that in the case of county district changes, one urban area shall not be included in more than one district;

(ii) changing the plan of nomination of one or more members of the governing body from district to at large or from at large to district, provided that the majority of the governing body be nominated by district;

(iii) changing the number of districts to the extent necessary to accomplish subsection (ii).

(c) The ordinance may be adopted only after notice has been given and a public hearing held. A copy of the ordinance shall be filed with the elections administrator."

99. Amend page 156, section 1, line 1.

Strike: line 1 in its entirety

Insert: "same day as the regular statewide primary election is held."

100. Amend page 157, section 1, line 2.

Following: line 1

Strike: "officials"

Insert: "officers"

101. Amend page 157, section 1, line 7.

Following: "(2)"

Insert: "(a)"

102. Amend page 157, section 1, line 11.

Following: line 10

Insert: "(b) A nonresident of the county may be appointed as prosecuting attorney if there is no licensed attorney residing in the county. Whenever a licensed attorney establishes residence in a county where a nonresident attorney serves as prosecuting attorney and becomes eligible to hold the office of prosecuting attorney, the governing body may appoint such attorney as prosecuting attorney and terminate the employment of the nonresident attorney."

103. Amend page 158, section 1, line 11.

Following: "for the election."

Insert: "A precinct polling place may be located outside the precinct boundaries."

104. Amend page 159, section 1, line 12.

Following: "required by"

Insert: "23-3313 and"

105. Amend page 159, section 1, lines 21 through 25.

Following: "(3)"

Strike: line 21 through line 25 in their entirety

Insert: "If no more than the number of candidates to be elected to each of the offices to be filled file as candidates for all of the party tickets for the primary election, a primary election shall not be held in that year and all candidates who have filed shall be"

106. Amend page 160, section 1, lines 3 through 8.

Following: line 2

Strike: line 3 through line 8 in their entirety

Renumber: all subsequent subsections

107. Amend page 160, section 1, line 16.

Following: line 15

Insert: "(5) In municipalities with a population of 3,500 or less, a primary election is not required and candidates shall have their names entered on the general election ballot by filing a declaration or certificate of nomination not later than 5 p.m. 40 days prior to the date of the election."

108. Amend page 160, section 1, line 20.

Following: "office"

Insert: "not later than 5 p.m. 40 days prior to the date of the primary election"

109. Amend page 161, section 1, line 9.

Following: "may vote for"

Strike: "one candidate for"

Insert: "the number of candidates to be elected to"

110. Amend page 161, section 1, line 17.

Following: "ballot."

Insert: "If the number of candidates to be entered on the nonpartisan primary ballot for any particular office does exceed twice the number of persons to be elected to that office, a primary election shall be held for all offices to be voted on at the general election."

111. Amend page 161, section 1, line 25.
Following: line 24
Insert: "(6) In municipalities with a population of 3,500 or less, a primary election is not required and candidates shall have their names entered on the general election ballot by filing a declaration of nomination not later than 5 p.m. 40 days before the date of the election."

112. Amend page 163, section 1, line 11.
Following: "place."
Insert: "A precinct polling place may be located outside the precinct boundaries."

113. Amend page 164, section 1, line 22.
Following: "contain"
Insert: "the text of the ordinance and"

114. Amend page 166, section 1, lines 19 and 20.
Following: "at least"
Strike: "25% of the electors of the local government; and"
Insert: ":",

115. Amend page 166, section 1, line 21.
Following: line 20
Insert: "(i) 15% of the electors for county officers; or
(ii) 20% of the electors for municipal offices; and"

116. Amend page 169, section 1, line 4.
Following: "related"
Insert: "or connected"
Following: "him"
Strike: "or connected of"
Insert: "or any member"
Following: "consanguinity"
Strike: ":",

117. Amend page 170, section 1, line 7.
Following: "provisions of"
Strike: "and subject to the restrictions of"

118. Amend page 170, section 1, lines 12 through 14.
Following: line 11
Strike: line 12 through line 14 in their entirety
Renumber: subsequent subsection.

119. Amend page 171, section 1, line 22.
Following: "to"
Strike: "supervision by"
Insert: "the jurisdiction of"

120. Amend page 177, section 1, line 14.
Following: line 13
Insert: "(7) Each confirmed firefighter or law enforcement officer of a municipality having a population of 7,500 or more is entitled to a minimum monthly wage of \$750 plus 1% of that amount for each year of service."

121. Amend page 178, section 1, line 7.
Following: "government"
Insert: "which provides for coverage by the federal Social

Security Act for its employees"

122. Amend page 178, section 1, lines 8 through 10.
Following: "11"
Strike: line 3 through line 10 in their entirety
Insert: ":",

123. Amend page 179, section 1, line 21.
Following: "chapter"
Strike: "46"
Insert: "18"

124. Amend page 180, section 1, line 2.
Following: "chapter"
Strike: "48"
Insert: "19"

125. Amend page 180, section 1, line 5.
Following: "chapter"
Strike: "49"
Insert: "20"

126. Amend page 180, section 1, line 20.
Following: line 19
Insert:

"(4) Municipalities, if they provide insurance for other municipal employees under subsection (1), shall:
(a) provide the same insurance to their firefighters and law enforcement officers; and
(b) pay the full premium of each firefighter's and law enforcement officer's insurance, including the premium for coverage of dependents."

127. Amend page 182, section 1, line 25.
Following: "government"
Strike: "legal advisor"
Insert: "civil attorney"

128. Amend page 190, section 1, line 12.
Following: "(ii)"
Strike: "punish"
Insert: "cite for"

129. Amend page 190, section 1, line 22.
Following: "title."
Strike: "The"
Insert: "An"

130. Amend page 190, section 1, line 23.
Following: "property"
Insert: "by a municipality"

131. Amend page 191, section 1, line 16.
Following: "(1)"
Strike: "If"
Insert: "Except as provided in subsection (5), if"

132. Amend page 192, section 1, line 9.
Following: line 8
Insert:

"(5) A local government unit may not regulate a public utility, as defined in 70-103, in any area or activity which is subject to regulation by any state agency."

133. Amend page 194, section 1, lines 23 and 24.

Following: "protection"

Strike: "as provided in Title 89, chapter 37"

134. Amend page 231, section 1, line 15.

Following: "program"

Strike: ". Unless"

Insert: ", unless"

Following: "ordinance"

Strike: ", the"

Insert: ". The"

135. Amend page 263, section 1, line 8.

Following: "A mortgage"

Insert: "agreement"

136. Amend page 266, section 1, line 18.

Following: "administer"

Strike: "and"

Insert: "or"

137. Amend page 290, section 1, line 8.

Following: "generally"

Strike: "attached to"

Insert: "imposed on"

138. Amend page 292, section 1, line 21.

Following: "findings"

Insert: "and conclusions"

139. Amend page 292, section 1, line 25, through page 293, line 1.

Following: "conclusions"

Strike: "on each request for a special exception or a dimensional zoning variance"

Insert: "as they pertain to each of its decisions"

140. Amend page 293, section 1, line 4.

Following: line 3

Insert: "(4) A governing body may hear appeals of board of adjustment decisions. However, the governing body may not overrule a decision of the board unless it finds that the board's decision exceeds the authority granted to it by the zoning ordinance."

141. Amend page 296, section 1, line 2.

Following: "ordinance"

Strike: "may be continued"

Insert: "shall be permitted to continue"

142. Amend page 296, section 1, lines 4 through 7.

Following: "(2)"

Strike: line 4 through line 7 in their entirety

Insert: "Upon the discontinuance of a nonconforming use for a period of time designated by the governing body in its zoning ordinance or the destruction of the nonconforming use

or structure, the governing body may require any further use or structure to conform with the zoning ordinance. The time period established in the zoning ordinance shall be no less than 6 months.

(3) A governing body may include in a zoning ordinance provisions for the regulation of nonconforming uses and structures."

143. Amend page 308, section 1, line 1.

Following: page 307

Strike: line 1

144. Amend page 308, section 1, line 25.

Following: "underground"

Insert: "service facilities;"

145. Amend page 338, section 1, line 4.

Following: "This"

Strike: "title and"

Following: "section"

Strike: "do"

Insert: "does"

146. Amend page 339, section 1, line 18, through page 340, line 17.

Following: line 17

Strike: line 18, page 339, through line 17, page 340, in their entirety

147. Amend page 340, section 1, line 18.

Following: line 17

Insert:

"Cultural Services

47A-6-5701. Policy and purpose. It is the policy of the state of Montana that:

(1) local governments be encouraged and assisted in providing a broad range of cultural services in order to enrich the quality of life in Montana and satisfy the intellectual and creative needs of the people;

(2) cultural services include historical, scientific, arts, archaeological, recreational, and scenic sites, facilities, activities, and events; and

(3) the maintenance and improvement of cultural services and the conservation of cultural resources is a constitutional responsibility of the legislature.

47A-6-5702. General provisions apply. A local government providing cultural services shall proceed under the provisions of this title except that the specific powers, procedures, and instructions contained in this part shall be considered to be additional powers and additional requirements or to supersede other provisions of this title."

148. Amend page 341, section 1, line 15.

Following: "this"

Strike: "chapter"

Insert: "part"

149. Amend page 342, section 1, line 13.

Following: line 12

Insert: "(2) Fire protection services may be provided by any of the methods prescribed in 47A-6-102, except that a municipality having a population of 7,500 or more shall have a paid fire service."
Renummer: subsequent subsection

150. Amend page 345, section 1, line 17.

Following: line 16

Insert: "(3) A municipality may not reduce the authorized number of paid firefighters through the appointment or utilization of volunteer firefighters."

151. Amend page 350, section 1, line 2. Following:
"personnel of"

Insert: "nonprofit"

152. Amend page 356, section 1, line 15.

Following: "who"

Strike: "may"

Insert: "shall"

153. Amend page 357, section 1, lines 16 and 17.

Following: "so, the"

Strike: "law enforcement administrator"

Insert: "sheriff"

154. Amend page 357, section 1, lines 21 and 22.

Following: "the"

Strike: "county chief law enforcement administrative officer"

Insert: "sheriff"

155. Amend page 359, section 1, line 12.

Following: "officers"

Insert: ", not including the sheriff or assistant sheriff,"

156. Amend page 362, section 1, line 15.

Following: line 14

Insert:

"(10) (a) If the local government does not have a law enforcement board, the elected sheriff or, if there is no elected sheriff, the chief executive may appoint qualified persons as law enforcement officers for a probationary term not to exceed 1 year.

(b) A probationary appointment may be terminated without cause.

(c) Confirmation shall follow the procedures specified in subsections (6), (8), and (9).

(d) If the appointment is confirmed, the applicant shall become a member of the law enforcement agency of the local government and shall hold that position during good behavior, unless suspended or discharged as provided by law."

157. Amend page 366, section 1, line 21.

Following: "government"

Insert: ", except the office of sheriff"

158. Amend page 369, section 1, line 3.

Following: "executive,"

Insert: "one copy shall be given to the chief law enforcement administrator,"

159. Amend page 369, section 1, line 10.

Following: "by a"

Strike: "priority"

Insert: "majority"

160. Amend page 369, section 1, lines 15 and 16.

Following: "officer,"

Strike: "the elected sheriff or"

161. Amend page 369, section 1, line 19.

Following: "administrator"

Insert: "and given to the chief law enforcement administrator and the accused officer"

162. Amend page 369, section 1, line 21.

Following: "vetoed by"

Strike: "the elected sheriff or"

163. Amend page 370, section 1, line 7.

Following: line 6

Strike: "Only an"

Insert: "An"

Following: "officer"

Insert: ", the chief law enforcement administrator, or the claimant who brought the charges"

164. Amend page 377, section 1, line 1.

Following: "serving"

Strike: "two"

Insert: "10"

165. Amend page 377, section 1, line 2.

Following: "or more"

Strike: "individual lots"

Insert: "families or supplying an industry employing 10 or more persons"

166. Amend page 377, section 1, lines 11 and 12.

Following: "supply"

Strike: "only a single lot"

Insert: "less than 10 families or to supply an industry employing less than 10 persons"

167. Amend page 378, section 1, line 15.

Following: "water"

Strike: "and"

Insert: "or"

168. Amend page 378, section 1, line 16.

Following: "water"

Strike: "and"

Insert: "or"

169. Amend page 378, section 1, line 19, through page 379, line 5.

Following: "(2)"

Strike: line 19, page 378, through line 5, page 379, in

their entirety

Insert: "Any person provided water or sewer service by a local government may file a complaint with the public service commission as provided in 70-119."

170. Amend page 386, section 1, line 15.

Following: line 14

Insert: "and maintenance"

Following: "the"

Strike: "subsequent 3 years"

Insert: "following year"

171. Amend page 386, section 1, lines 16 and 17.

Following: "jurisdiction"

Strike: ", and maintenance priorities for the following year"

172. Amend page 390, section 1, line 18.

Following: "interest"

Insert: ", but such vacation shall not affect the right of any public utility to continue to maintain its plant and equipment in any such right-of-way"

173. Amend page 390, section 1, line 21.

Following: "owners"

Insert: "within the same townsite or subdivision"

174. Amend page 403, section 1, line 12.

Following: "within"

Strike: "60"

Insert: "10"

175. Amend page 405, section 1, line 1.

Following: page 404, line 25

Insert: "(4) Once a project has been approved by the local government, prior protest shall not prohibit eminent domain proceedings from being brought pursuant to Title 93, chapter 99."

176. Amend page 406, section 1, line 3.

Following: "agencies."

Insert: "{1}"

177. Amend page 406, section 1, lines 10 through 13.

Following: "ends."

Strike: line 10 through line 13 in their entirety

Insert: "(2) Contracts related to local improvement districts, sidewalks, curbing, and other public works projects on right-of-way controlled by the department of highways are subject to the approval of the department of highways.

(3) The contracts referred to in subsection (2) of this section may be let by the local government."

178. Amend page 406, section 1, line 20.

Following: "section."

Insert: "Such an interlocal agreement may not be made a prerequisite for the approval of construction or the letting of contracts by the department of highways."

179. Amend page 408, section 1, line 19.

Following: line 18

Insert: "(4) Auto passas do not deprive a fence of the character of a legal fence under state law."

180. Amend page 409, section 1, line 11.

Following: "maintenance"

Insert: "and necessary to restore the trafficway"

181. Amend page 409, section 1, line 25 through page 410, line 2.

Following: "district"

Strike: "; the resolution creating the district is not subject to petition or protest"

182. Amend page 418, section 1, lines 3 and 4.

Following: "chapter 21"

Strike: ", unless expressly authorized herein"

183. Amend page 421, section 1, line 15.

Following: line 14

Insert: "47A-6-9305. Purpose. This subpart authorizes the establishment of urban transportation districts to supply transportation services and facilities to district residents and other persons.

47A-6-9306. Applicability of subpart. This subpart applies only to urban transportation districts organized before [the effective date of this act].

47A-6-9307. Transportation board -- selection -- composition. (1) The district shall be governed by a transportation board. The transportation board shall consist of three members.

(2) The board members shall be elected on a nonpartisan basis and shall serve 4-year terms. Any elector in the district may file a declaration of nomination as provided in 47A-3-510 with the county elections administrator of the county where the district is located. No filing fee shall be required. The nonpartisan election of board members shall be conducted as provide in 47A-3-511.

(3) The board members shall serve without pay except for necessary transportation expenses.

47A-6-9308. Powers of transportation board. (1) The board shall have all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the transportation district. The district shall primarily serve the residents within the district boundaries but may authorize service outside the district boundaries where deemed appropriate.

(2) The board shall employ a qualified administrative officer for the district. The board shall give public notice of its solicitation of applications for a qualified administrative officer.

47A-6-9309. Budget -- mill levy authorized. The board shall annually present its budget to the county finance administrator and certify the amount of money necessary and proper for the ensuing year. The county governing body shall annually at the time of levying county taxes fix and levy a tax in mills upon all property within the transportation district clearly sufficient to raise the amount certified by the board. The tax so levied for all

transportation district purposes other than payment of bonded indebtedness shall not in any year exceed 12 mills on each dollar of taxable valuation of property within the district.

47A-6-9310. Duties of county finance administrator -- warrants issued by board. The procedure for the collection of the tax shall be in accordance with the existing laws of the state of Montana. The funds collected under the tax levy shall be held by the county finance administrator, the ex officio treasurer for the transportation district, who shall keep a detailed account of all tax moneys paid into the fund, all other moneys from any source received by the district, and all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board and signed by a majority of its membership.

47A-6-9311. Bond issues authorized. A transportation district may borrow money by the issuance of general obligation or revenue bonds or a combination thereof to provide funds for the district, but the amount of bonds issued for such purpose and outstanding at any time shall not exceed 5% of taxable property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

47A-6-9312. Enlargement of district -- procedures. The boundaries of any transportation district may be enlarged if at least 51% of the electors of the area to be added to the existing district sign a petition requesting addition to the district; however, each addition must be approved by a majority vote of the transportation board. All property within any addition to the transportation district shall be subject to all existing indebtedness of the district.

47A-6-9313. Procedure for dissolving district. (1) Any transportation district may be dissolved upon presentation to the county elections administrator of a petition signed by at least 51% of the electors of such district. If it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the county governing body shall by resolution call for a public hearing on the dissolution of the transportation district. If such petition is found to be lacking in the number of signatures, the county elections administrator shall declare the petition void.

(2) A notice of such hearing shall be published once each week for at least 2 weeks in a newspaper having general circulation in the district, the last publication to be at least 2 weeks before the hearing. If there is no newspaper having general circulation in the district, the notice of the hearing shall be posted in at least three public places in the district for 2 weeks before the hearing. The notice shall state the time, date, place, and purpose of the hearing.

(3) If upon such hearing the county governing body finds that the district is not indebted beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the governing body shall enter upon their minutes an order dissolving such district. Such order shall be filed of record and the dissolution shall be effective for all purposes 6 months after the date of filing

the order of dissolution, provided that at or before such time the board of the district certifies to the county governing body that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled shall be evenly divided between the county and any municipalities within or partially within the dissolved district."

184. Amend page 434, section 1, line 23.

Following: "and"

Strike: "sanitation"

Insert: "environmental health"

185. Amend page 435, section 1, lines 15 and 16.

Following: line 14

Strike: "services"

Insert: "programs"

Following: "agency"

Strike: "by means of sanitarian services"

186. Amend page 435, section 1, line 19.

Following: line 18

Insert: "(4) "Individual sewage treatment installer" means a person who places, constructs, or alters all or part of an individual sewage treatment system."

Renumber: subsequent subsections

187. Amend page 436, section 1, line 2.

Following: line 1

Insert: "(7) "Noncategorical" means not designated for a specific program or service."

Renumber: subsequent subsections

188. Amend page 436, section 1, line 2.

Following: "health"

Strike: "services"

Insert: "programs"

Following: "those"

Strike: "services"

Insert: "programs"

189. Amend page 436, section 1, lines 3 and 4.

Following: "agency"

Strike: "by means of public health nursing and other professional and ancillary services"

190. Amend page 436, section 1, line 16.

Following: "services"

Strike: "at least part-time"

191. Amend page 437, section 1, lines 10 and 11.

Following: "one"

Strike: "member of the county governing body"

Insert: "county commissioner"

192. Amend page 438, section 1, lines 7 and 8.

Following: "obtain"

Strike: ", at least part-time,"

193. Amend page 438, section 1, line 8.
Following: "of"
Strike: ":",

194. Amend page 438, section 1, line 9.
Following: line 8
Strike: "(a)"
Following: "officer"
Strike: ":",
Insert: "and may obtain the services of"
Renumber: subsequent subsections

195. Amend page 438, section 1, lines 21 through 22.
Following: "shall"
Strike: line 21 through line 22 in their entirety
Insert: "be contracted with"

196. Amend page 438, section 1, line 23.
Following: line 22
Strike: "another"
Insert: "a"
Following: "montana"
Insert: "and may be obtained from a physician employee of
the department"

197. Amend page 439, section 1, lines 3 and 4.
Following: "(6)"
Strike: lines 3 and 4 in their entirety

198. Amend page 439, section 1, line 5.
Following: line 4
Strike: "5934, school"
Insert: "School"
Following: "services"
Strike: "shall"
Insert: "may"

199. Amend page 439, section 1, line 9.
Following: "diseases"
Insert: "designated reportable by the department"

200. Amend page 440, section 1, line 8.
Following: "those"
Strike: "required"
Insert: "authorized"

201. Amend page 440, section 1, line 24.
Following: line 23
Insert: "(i) the certification of individual sewage
treatment installers;"
Renumber: subsequent subsections

202. Amend page 441, section 1, line 5.
Following: "with"
Insert: "and are at least as stringent as"

203. Amend page 441, section 1, line 6.
Following: "department"
Insert: "or the state board of health and environmental
sciences"

204. Amend page 444, section 1, lines 16 through 21.
Following: "action."
Strike: line 16 through line 21 in their entirety
Insert: "The proprietor of the establishment may submit a
plan for correction of the conditions which caused the
closure. If the plan is acceptable and the violations are
corrected, the order for closure may be rescinded within the
72-hour period. In no event may a closure under this
subsection exceed 72 hours unless there has been no
significant effort to correct the violations."

205. Amend page 445, section 1, line 3.
Following: "develop"
Strike: "manuals and handbooks"
Insert: "reference materials"

206. Amend page 445, section 1, line 5.
Following: "the"
Strike: "manuals and handbooks"
Insert: "reference materials"

207. Amend page 445, section 1, line 8.
Following: "(a)"
Strike: "an appropriate local public health program"
Insert: "a description of the optimal practices for each
program or service the local health department wishes to
provide,"

208. Amend page 445, section 1, line 14.
Following: "state"
Strike: ":",
Insert: "This description shall provide the basis upon
which evaluations required in subsection (3) shall be
conducted."

209. Amend page 445, section 1, lines 15 through 17.
Following: line 14
Strike: line 15 through line 17 in their entirety
Renumber: subsequent subsections

210. Amend page 445, section 1, line 19.
Following: "receiving"
Insert: "noncategorical"

211. Amend page 445, section 1, line 21.
Following: "content"
Insert: "and availability"

212. Amend page 445, section 1, line 22.
Following: "programs"
Strike: "which the department shall conduct"
Insert: "conducted"

213. Amend page 445, section 1, line 24.
Following: "content"
Insert: "and due dates"

214. Amend page 446, section 1, line 1.
Following: "of the"
Strike: "manuals or"

215. Amend page 446, section 1, line 2.

Following: line 1

Strike: "handbooks"

Insert: "reference materials"

Following: "any"

Strike: "rules"

Insert: "proposed rule potentially"

216. Amend page 446, section 1, line 3.

Following: "department"

Insert: "or the state board of health and environmental sciences"

217. Amend page 446, section 1, line 6.

Following: "shall"

Insert: ", within the limits of available resources,"

218. Amend page 446, section 1, line 10.

Following: "provided by"

Strike: "other"

Insert: "nongovernmental"

219. Amend page 446, section 1, line 14.

Following: "body"

Insert: "and to the public upon request"

220. Amend page 446, section 1, line 16.

Following: "required"

Insert: "and authorized"

221. Amend page 446, section 1, line 18.

Following: "county"

Strike: "or school district"

222. Amend page 446, section 1, lines 20 and 21.

Following: "county"

Strike: "or school district"

223. Amend page 446, section 1, lines 21 and 22.

Following: "county"

Strike: "or school district"

224. Amend page 446, section 1, line 23.

Following: line 22

Insert: "The county shall pay the bill received from the department."

225. Amend page 446, section 1, line 24.

Following: "providing"

Strike: "supportative"

Insert: "supportive"

226. Amend page 446, section 1, line 25.

Following: "shall"

Insert: ", within the limits of available resources"

227. Amend page 447, section 1, line 1.

Following: "consultative"

Strike: "and legal"

228. Amend page 447, section 1, lines 5 and 6.

Following: "(b)"

Strike: "coordinate between all bureaus of the department all contracts with and visits and communications"

Insert: "provide adequate advance notice of visits by all personnel"

229. Amend page 447, section 1, line 9.

Following: "(c)"

Strike: "actively and continuously"

230. Amend page 447, section 1, lines 19 through 22.

Following: "47A-8-306(7)."

Strike: line 19 through line 22 in their entirety

231. Amend page 448, section 1, line 12.

Following: line 11

Insert: "(f) inspection of state institutions for sanitary conditions;

(g) occupational health programs;

(h) radiological health programs;"

Renumber: subsequent sections

232. Amend page 448, section 1, line 13.

Following: line 12

Insert: "(j) state-level subdivision plan approval;"

Renumber: subsequent subsections

233. Amend page 448, section 1, line 18.

Following: line 17

Insert: "(3) Nothing in subsections (1) and (2) shall be construed to mean that the department is prohibited from offering the above programs to local health departments and boards if it so desires."

Renumber: subsequent subsections

234. Amend page 448, section 1, line 22.

Following: "year"

Insert: "using the latest official population estimate"

235. Amend page 449, section 1, line 14.

Following: "for"

Insert: "noncategorical"

236. Amend page 449, section 1, line 20.

Following: "receive"

Insert: "noncategorical"

237. Amend page 449, section 1, line 21.

Following: "revenues."

Insert: "Combined state and federal noncategorical revenues disbursed by the department shall not constitute more than 50% of the total annual budget of a local health department."

238. Amend page 450, section 1, lines 8 through 11.

Following: line 7

Strike: line 8 through line 11 in their entirety

239. Amend page 450, section 1, line 17.

Following: "required by"
Strike: "47A-6-6216"
Insert: "47A-6-6316"

240. Amend page 453, section 1, line 1.
Following: "The"
Strike: "public prosecutor"
Insert: "prosecuting attorney"

241. Amend page 490, section 1, lines 9 and 10.
Following: "administrator shall"
Strike: "issue a statement of governmental goals and objectives and"

242. Amend page 490, section 1, lines 12 and 13.
Following: "year"
Strike: "a departmental statement of goals and objectives,"

243. Amend page 510, section 1, line 18.
Following: line 17
Insert: "(12) The governing body may approve an agreement with a contractor to modify or change the specification of a contract. The agreement shall describe the modifications or alterations and the price to be paid for the same and shall be signed by the contractor."
(13) No contractor may be paid for extra work caused by an alteration or modification unless a resolution is made and an agreement signed as provided in the preceding subsection. In any case, no contractor may be paid more for the alteration than the price fixed by the agreement."
Renumber: subsequent subsections

244. Amend page 510, section 1, line 25.
Following: "Title"
Strike: "4"
Insert: "41"

245. Amend page 512, section 1, line 8.
Following: "may"
Strike: "reflect"
Insert: "reject"

246. Amend page 513, section 1, line 9.
Following: line 8
Insert: "47A-9-316. County printing board. (1) The purpose of this section is to require the board of county printing to set maximum prices which may be charged for county printing and legal advertising."
(2) Unless the context requires otherwise, in this section "board" means the board of county printing provided for in 82A-904.
(3) The members of the board shall be compensated and reimbursed as are members of advisory councils in 82A-110.
(4) The board shall:
(a) meet annually;
(b) adopt and publish a schedule of maximum prices to be charged for county printing and legal advertising. The prices shall be the full prices to be charged and shall include the paper stock specified, completion of all

printing and other work, and delivery to the county courthouse.

(c) adopt necessary standards for sizes, weights, and grades of paper stock, which shall conform to the uniform scale of sizes, weights, and grades used by paper manufacturers, and for sizes and types of printing, ruling, and binding, which shall conform as nearly as possible to the ordinary standards in use in the printing industry. For this purpose, reference may be made to established standards or publications used in this state, and the board may provide for the adoption of a standard list for those items not covered by the prices, regulations, or standards published by the board.

(d) conduct hearings when required to determine maximum rates for county printing. Notice of intention to hold a hearing shall be published at least 30 days before the date set for the hearing in a newspaper published in Helena and a copy mailed to each county governing body.

(e) deliver free of charge to each county governing body a copy of every schedule of maximum prices adopted by the board within 30 days of its publication, together with a notice of the date fixed by the board when the prices will be effective.

47A-9-316. County printing contract. (1) Each county governing board shall contract with one newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board. The newspaper shall be as provided in 47A-1-302.

(2) Nothing in this section shall limit or restrict the power of a county governing body to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this section or to let contracts at prices less than the maximum fixed by the board of county printing.

(3) (a) In any county in which no newspaper owns or operates a commercial printing establishment, the county governing body shall separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper, and the other contract shall provide for all printed forms, materials, and supplies required by the county, which contract shall be let to a commercial printing establishment which has been in business in the county for at least 1 year; provided, however, that in no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

(b) The contract shall be let to the printing establishment that, in the judgment of the county governing body, is most suitable for performing the work; provided that the county governing body shall require of any contractor doing such county printing a good and sufficient deposit in such sum as the governing body may consider advisable, signed by at least two sufficient sureties, conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this act and the terms of such such contract; provided that nothing in this section shall be construed so as to compel the acceptance of unsatisfactory

work; also provide that this requirement shall not affect any contract made prior to the passage of this section. Such contract for printing shall extend for a period of not more than 2 years. All printing establishments which receive any contract for printing under this section and which are unable to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available or, if not, within the state, which shall do the work under the contract so sublet entirely within the state and with Montana labor.

(4) The county governing body shall call for competitive bids from persons or firms qualified to bid on county printing under the terms of this section.

(5) None of the provisions of this section apply to any printing or advertising that may be required in connection with the holding of county fairs and expositions."

247. Amend page 515, section 1, line 4.

Following: "(a)"

Strike: "(h)"

Insert: "Except as provided in subsection (2)(d), the"

248. Amend page 515, section 1, line 17.

Following: line 16

Insert: "(d) A governing body may not license a public utility as defined in 70-103."

249. Amend page 516, section 1, line 2.

Following: "with"

Strike: "other"

250. Amend page 516, section 1, lines 18 through 20.

Following: "(d)"

Strike: lines 18 through 20 in their entirety

Insert: "The governing body may charge any public or private tax-exempt entity for the following essential services provided the service directly benefits the tax-exempt entity:

- (i) fire prevention and protection;
- (ii) law enforcement protection;
- (iii) water, sewage, and utility services; or
- (iv) solid waste collection, treatment, and disposal services, including recycling and resource recovery services.

251. Amend page 516, section 1, line 25.

Following: "year."

Insert: "Notwithstanding the provisions of this subsection, the failure of a public or private tax-exempt entity to pay charges imposed under this subsection shall not give rise to a lien on the tax-exempt property. A local government may cease to provide a service, except fire and law enforcement services, to a tax-exempt entity if charges for the service imposed under this subsection remain unpaid."

252. Amend page 520, section 1, line 9.

Following: "65 mills"

Strike: "[75 mills]"

253. Amend page 522, section 1, line 8.

Following: "47A-9-215"

Strike: "a"

Insert: "i"

Following: line 8

Insert: "(l) for municipalities, a tax not exceeding 4 mills to pay group insurance premiums for firefighters and law enforcement officers as authorized in 47A-4-209(4);

(m) for counties and municipalities, a tax not exceeding 8 mills for cultural and educational services if there are insufficient moneys available from the all-purpose levy to fund the services. Educational and cultural services may include but need not be limited to libraries, museums, art centers, theaters, civic center auditoriums, and other educational, historic, scientific, or cultural services. This tax may not be for the purpose of supporting any free public education system except where the services purchased or provided by this tax are made available to the general public."

254. Amend page 522, section 1, line 9.

Following: "(l)"

Strike: "(a)"

255. Amend page 522, section 1, line 15, through page 523, line 9.

Following: line 14

Strike: line 15, page 522, through line 9, page 523, in their entirety

256. Amend page 528, section 1, line 10.

Following: line 9

Insert: "administration, collection, and"

257. Amend page 528, section 1, line 15.

Following: "tax"

Insert: "and may be subsequently modified by agreement of the governing bodies"

258. Amend page 528, section 1, line 19.

Following: line 18

Insert: "47A-9-408. Election required to impose certain taxes. (1) A local government may impose or repeal a tax authorized by 47A-9-405, 47A-9-406, or 47A-9-407 only after an affirmative vote of the electors of the local government who are residents of the jurisdiction which is or will be subject to the tax.

(2) The question may be presented to the electors of the local government by:

(a) a petition of the electors of the local government; or

(b) a resolution of the governing body of the local government.

(3) Upon the receipt of a petition or a resolution requesting an election, the question on the local tax shall be placed on the ballot at the next regularly scheduled election of the local government.

(4) The question shall be presented substantially in the form:

FOR the local government (insert name of tax).

AGAINST the local government (insert name of tax).
(5) The question of imposition of a local tax may not be placed before the electors more than one time in any one fiscal year."

Renumber: subsequent section

259. Amend page 528, section 1, lines 20 and 21.

Following: "shall"

Strike: "distribute to a local government on a quarterly basis"

Insert: "coordinate the distribution to local governments of"

260. Amend page 529, section 1, line 1.

Following: "that the"

Strike: "revenue may be distributed"

Insert: "distribution of revenue may be coordinated"

261. Amend page 530, section 1, line 17.

Following: "levied"

Strike: "for"

Insert: "on property within"

Following: "district"

Insert: ", together with any revenues pledged thereof as provided in 47A-9-511"

262. Amend page 532, section 1, lines 18 through 22.

Following: line 17

Strike: Subsection (5) in its entirety

Renumber: subsequent subsection

263. Amend page 532, section 1, line 24.

Following: "revenues"

Strike: "of a project"

Insert: "from charges from a service"

264. Amend page 534, section 1, lines 5 through 9.

Following: line 4

Strike: 47A-9-504 in its entirety

265. Amend page 534, section 1, line 17.

Following: "contract"

Insert: "or lease-purchase agreement"

266. Amend page 534, section 1, lines 24 and 25.

Following: "into"

Strike: "a conditional sale contract"

Insert: "an installment contract"

267. Amend page 535, section 1, line 2.

Following: "thereunder,"

Insert: "without obligation to provide such payment in its annual budget,"

268. Amend page 535, section 1, line 11.

Following: "services"

Insert: "to be"

269. Amend page 535, section 1, lines 14 through 15.

Following: "affairs"

Strike: "shall by rule prescribe bond signature requirements, the manner of execution and the form of"
Insert: "prepare suggested forms for"

270. Amend page 535, section 1, line 16.

Following: "notices"

Insert: "and suggested procedures for execution of bonds"

271. Amend page 537, section 1, line 4, through page 538, line 24.

Following: "(a)"

Strike: line 4, page 537, through line 24, page 538

Insert: "Except as provided below, no county may issue general obligation bonds which would cause the total amount of its outstanding general obligation bonds less funds held and appropriated for their payment to exceed 2 1/2% of the assessed value of all taxable property in the county."

(b) The governing body may issue general obligation bonds which would cause its outstanding general obligation bonds less funds held and appropriated for their payment to exceed 2 1/2% but not 5% of the assessed value of all taxable property in the county, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by accident or catastrophe.

(c) The governing body may issue additional general obligation bonds for the purposes of a county water distribution and supply system, sewage collection and treatment system, or public transportation system, in an amount which will at no time cause the total amount of bonds issued for these purposes less funds held and appropriated for their payment to exceed 10% of the assessed value of the taxable property in the county.

(2) (a) Except as provided below, no municipality may issue general obligation bonds which would cause the total amount of its general obligation bonds less funds held and appropriated for their payment to exceed 5% of the assessed value of all taxable property in the municipality.

(b) The governing body may issue additional general obligation bonds for the purposes of a municipal water distribution and supply system, a sewage collection and treatment system, or public transportation system, in an amount which will at no time cause the total amount of general obligation bonds issued for these purposes less funds held and appropriated for their payment to exceed 10% of the assessed value of the taxable property in the municipality.

(3) (a) Except as provided below, no consolidated local government may issue general obligation bonds which would cause the total amount of its general obligation bonds less funds held and appropriated for their payment to exceed 7 1/2% of the assessed value of all taxable property in the consolidated local government.

(b) The governing body may issue additional general obligation bonds for the purpose of a local government water distribution and supply system, sewage collection and treatment system, or public transportation system, in an amount which will at no time cause the total amount of general obligation bonds issued for the purposes less funds held and appropriated for their payment to exceed 10% of the

assessed value of the taxable property in consolidated local government."

272. Amend page 538, section 1, line 24.

Following: line 24

Insert: "(4) general obligation-revenue bonds issued under the provisions of 47A-9-511(3) shall not be included in applying any of the limitations on general obligation bonds provided in this section."

Renumber: subsequent subsections

273. Amend page 539, section 1, line 14.

Following: "finance"

Insert: "the project costs of"

274. Amend page 539, section 1, line 15.

Following: line 14

Strike: "provide"

Insert: "perform"

Following: "or"

Strike: "facility"

Insert: "function"

275. Amend page 539, section 1, line 16.

Following: "in"

Strike: "47A-9-513"

Insert: "47A-9-512"

276. Amend page 539, section 1, line 19.

Following: "ordinance"

Strike: "may"

Insert: "shall"

277. Amend page 539, section 1, line 20.

Following: "purposes"

Insert: "of the bonds"

Following: "amounts"

Strike: ", for which the bonds will be used"

Insert: "of proceeds to be expended for each purpose"

278. Amend page 540, section 1, line 8.

Following: "election"

Strike: "of"

Insert: "on"

Following: "obligation"

Strike: "bond"

Insert: "bonds"

279. Amend page 541, section 1, line 17.

Following: "respect to"

Insert: "revenue"

280. Amend page 541, section 1, line 19.

Following: "facility,"

Strike: "providing"

Insert: "needed for the furnishing of one or more governmental services provided that"

281. Amend page 541, section 1, line 21.

Following: "for"

Strike: "the"

Insert: "such"

Following: "service"

Strike: "of the facility"

Insert: "or services,"

282. Amend page 541, section 1, line 24.

Following: "maintenance"

Strike: "of the facility"

283. Amend page 542, section 1, line 4.

Following: "in"

Strike: "47A-9-526"

Insert: "47A-9-525"

284. Amend page 542, section 1, line 6.

Following: "bonds"

Strike: ", they"

Insert: "and"

285. Amend page 543, section 1, line 15 through page 544, line 2.

Following: "(4)"

Strike: subsection (4) in its entirety

Insert: "for the purpose of refunding bonds as provided in 47A-9-517."

286. Amend page 544, section 1, line 5.

Following: "finance"

Strike: "a project to provide"

Insert: "the project costs for"

Following: "facility"

Insert: "needed for the furnishing of one or more services"

287. Amend page 544, section 1, line 15.

Following: "adoption."

Insert: "A revenue bond authorization ordinance initiated or referred to the electors and not approved by the required majority may not be reinitiated or referred or adopted by the governing body within the same fiscal year."

288. Amend page 544, section 1, line 23.

Following: "execution of"

Insert: "an"

289. Amend page 545, section 1, line 5.

Following: "thereof"

Insert: ", including the establishment of a bond reserve"

290. Amend page 545, section 1, lines 6 and 7.

Following: "revenue"

Strike: "of the facility"

Insert: "from the service"

Following: "which"

Strike: "the bonds are to be issued"

Insert: "a facility is needed"

291. Amend page 545, section 1, line 9.

Following: "the"

Strike: "transfer"

Insert: "payment"

292. Amend page 545, section 1, line 10.
Following: "government"
Strike: "to the facility an amount"
Insert: "of amounts"
Following: "the"
Insert: "annual"

293. Amend page 545, section 1, line 14.
Following: "revenue"
Strike: "of the facility"
Insert: "from the same service"

294. Amend page 545, section 1, line 22.
Following: "of"
Insert: "a"

295. Amend page 546, section 1, line 3.
Following: "court"
Strike: "The district court"
Insert: "which"

296. Amend page 546, section 1, line 6.
Following: "charges"
Strike: "subject to the approval of the public service commission"

297. Amend page 546, section 1, line 9.
Following: "do"
Strike: "a"
Insert: ";

298. Amend page 546, section 1, lines 17 through 18.
Following: "from"
Strike: "the facility in the following manner"
Insert: "charges for the services which are needed in order"

299. Amend page 546, section 1, line 23.
Following: line 22
Strike: "of the facility"

300. Amend page 547, section 1, line 1.
Following: "revenue"
Strike: "of the facility"

301. Amend page 548, section 1, line 15.
Following: "the"
Insert: "project"

302. Amend page 549, section 1, line 5.
Following: "sanitary,"
Strike: "or"
Following: "storm sewer"
Insert: "parking, or other revenue producing system"

303. Amend page 549, section 1, line 6.
Following: "on"
Strike: "the"
Following: "bonds"

Insert: "for facilities included in the systems"

304. Amend page 550, section 1, line 23.
Following: "revolving"
Strike: "account"
Insert: "fund"

305. Amend page 551, section 1, lines 20 through 23.
Following: "(3)"
Strike: line 20 through line 23 in their entirety
Insert: "Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension, and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates."

306. Amend page 552, section 1, line 17.
Following: line 16
Strike: "indebtedness"
Insert: "obligation"

307. Amend page 552, section 1, line 18.
Following: "outstanding"
Strike: "indebtedness"
Insert: "obligation"

308. Amend page 552, section 1, line 19.
Following: line 18
Insert: "(8) In any case where refunding bonds are issued and sold 6 months or more before the date on which all bonds refunded thereby mature or have been called for prepayment in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than \$1 million and shall, with other funds of the local government available and appropriated by the governing body for this purpose, be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the prior date upon which such bond has been called for redemption and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at the date upon which it has

been called for redemption and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all bonds which have been called for prepayment in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association.

(9) Revenues and other moneys on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the local government for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (8) hereof to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds."

309. Amend page 552, section 1, line 22.

Following: "if"

Insert: "the governing body has applied for a grant or loan of state or federal funds to aid in payment of the project costs and"

310. Amend page 553, section 1, line 6.

Following: "exceed"

Strike: "1 year"

Insert: "3 years"

311. Amend page 553, section 1, lines 12 through 24.

Following: "(3)"

Strike: line 12 through line 24 in their entirety

Insert: "In this event the proceeds of the grant or loan received shall be irrevocably appropriated to the debt service account for the bond anticipation notes. Any amount of bond anticipation notes which cannot be paid at maturity from the proceeds of the grant or loan or from any other moneys appropriated by the governing body for this purpose shall be paid from the proceeds of definitive bonds to be issued and sold before the maturity date; or if sufficient moneys are not available for payment in full of the temporary bonds at maturity, the holders thereof shall have the right to require the issuance in exchange therefor of definitive bonds secured in the manner provided by law and agreed to by the local government."

312. Amend page 555, section 1, line 6.

Following: "(1)"

Strike: "the"

Insert: "Except as provided in this title, the"

313. Amend page 555, section 1, line 7.

Following: "bonds"

Insert: ", except that bonds may be sold at a private sale to an agency or subdivision of the state or federal government"

314. Amend page 555, section 1, line 24.

Following: "be"

Strike: "fully"

Following: "negotiable"

Insert: "investment securities as provided in chapter 8 of Title 87A"

315. Amend page 556, section 1, lines 10 through 11.

Following: "bidder of"

Strike: "an indemnity bond"

Insert: "security"

316. Amend page 556, section 1, line 20.

Following: "obligation"

Strike: "and revenue"

317. Amend page 557, section 1, line 6.

Following: "bonds"

Strike: "shall"

Insert: "may"

318. Amend page 557, section 1, line 7.

Following: "provided"

Strike: "in Title 79, chapter 20."

Insert: "by law."

319. Amend page 557, section 1, line 17.

Following: "bond"

Strike: "register"

Insert: "record"

320. Amend page 557, section 1, line 20, through page 559, line 8.

Following: line 19

Strike: 47A-9-523 in its entirety

321. Amend page 559, section 1, lines 18 through 19.

Following: "of"

Strike: "an interested party of 10 or more registered voters of the local government"

Insert: "any one citizen filing with the district court"

322. Amend page 559, section 1, line 23 through page 560, line 3.

Following: "(b)"

Strike: "If no petition is filed within the period, compliance with all procedures required by this title and the validity of the manner in which the bond authorizing ordinance was approved shall be conclusively presumed. It

shall be presumed that proper procedure was followed and all procedural requirements were met."
Insert: "No action shall be brought or maintained after the expiration of 60 days from the date of the approval of the bond authorizing ordinance, in which an issue is raised as to the validity of the bond authorization therein."

323. Amend page 560, section 1, line 18.
Following: "47A-9-525."
Strike: "Liability of members of governing body"
Insert: "Insufficient levy of taxes, service charges and special assessments by the governing body"

324. Amend page 561, section 1, line 3.
Following: "levy"
Insert: "of service charges"

325. Amend page 561, section 1, line 7.
Following: "has"
Strike: "willfully"

326. Amend page 561, section 1, line 8.
Following: "levy"
Insert: "of service charges"

327. Amend page 561, section 1, line 9.
Following: "levy"
Insert: "of service charges"

328. Amend page 561, section 1, line 13.
Following: "levies"
Insert: "of service charges"

329. Amend page 561, section 1, line 15.
Following: "levy"
Insert: "of service charge"

330. Amend page 561, section 1, line 21.
Following: "government"
Strike: "that fails"
Insert: "who willfully fail"

331. Amend page 563, section 1, lines 11 through 12.
Following: "expended"
Strike: "during the balance of the fiscal period and"
Insert: "pursuant to the budget"

332. Amend page 563, section 1, line 14.
Following: "liquidating"
Strike: "current debt"
Insert: "warrants for the payment of current expenses"

333. Amend page 567, section 2, lines 6 and 7.
Following: "ordinance"
Strike: "if no question is raised as to the legality of the ordinance"

334. Amend page 567, section 2, line 25.
Following: ";"
Insert: "and"

335. Amend page 568, section 2, line 2.
Following: ";"
Strike: "and"

336. Amend page 568, section 2, line 3.
Following: line 2
Strike: line 3 in its entirety
Insert: "(3) concurrent jurisdiction with district courts in actions of forcible entry and unlawful detainer regardless of the amount in controversy;"
Renumber: subsequent subsection

337. Amend page 568, section 2, lines 12 through 14.
Following: "Drug Act"
Strike: ", except to act as examining and committing courts and to conduct preliminary hearings as provided in subsection (4)"
Insert: "and the Montana Youth Court Act"

338. Amend page 568, section 2, line 22.
Following: "punishable"
Insert: "only"

339. Amend page 570, section 2, line 7.
Following: "reports"
Strike: ","
Following: "writing"
Strike: "and under oath,"

340. Amend page 571, section 2, line 14.
Following: "municipality"
Strike: ":"

341. Amend page 571, section 2, lines 15 and 16.
Following: line 14
Strike: lines 15 and 16 in their entirety

342. Amend page 571, section 2, line 17.
Following: line 16
Strike: "(b)"

343. Amend page 571, section 2, line 19.
Following: line 18
Insert: "(2) concurrent jurisdiction with district courts and justice courts in proceedings for violation of state law within the municipality punishable by a fine not exceeding \$500 or by imprisonment not exceeding 6 months or by both fine and imprisonment. The proceedings are to be brought in the name of the state of Montana."
Renumber: subsequent subsections

344. Amend page 571, section 2, line 19.
Following: "jurisdiction"
Insert: "with district courts and justice courts"

345. Amend page 572, section 2, line 13.
Following: ";"
Insert: "and"

346. Amend page 572, section 2, lines 16 through 21.

Following: ";"

Strike: lines 16 through 21 in their entirety

347. Amend page 573, section 2, line 22.

Following: line 21

Insert: "11-50-204. Municipal courts of record. (1) A municipality having a population of 10,000 or more may by ordinance provide that the municipal court be a court of record."

(2) A municipal court of record shall be governed by the provisions of this chapter, except:

(a) the judge of a municipal court of record shall be elected;

(b) the judge of a municipal court of record must possess the same qualifications as a district court judge except that the judge of a municipal court of record need only be admitted to the practice of law in Montana at least 2 years prior to the date of his election or appointment;

(c) the jurisdiction of municipal courts of record is the same as justice courts and municipal courts.

(d) The municipal court shall have and use a seal which shall be similar to the seal of the district court except as to the name of the court.

(3) The municipal court of record shall have in matters within its jurisdiction all the powers of the district court in like cases.

(4) A party may appeal to district court from a judgment of a municipal court of record.

(5) The appeal shall be confined to the record. Stenographic or other official records of proceedings in municipal court may be waived by the written consent of all parties in contested cases, in accordance with the rules of the court. An appeal on stipulated issues or agreed facts by the written consent of both parties may be made to the district court where such issues or facts may be considered by the district judge with or without additional testimony.

(6) Appeal from a municipal court of record may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed \$200, be met before the district court has jurisdiction to hear the appeal, except:

(a) if the judgment of the municipal court of record includes incarceration, no minimum amount in controversy shall be required for appeal; and

(b) upon petition by an aggrieved party, the district court may in the interest of justice accept appeal jurisdiction notwithstanding the amount in controversy.

(7) The municipal court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority."

348. Amend page 574, section 2, line 13.

Following: "of the"

Strike: "county."

Insert: "State. When a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the records administrator of the county in which it was issued, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons."

349. Amend page 574, section 2, line 17 through page 576, line 3.

Following: "Every"

Strike: line 17, page 574 through line 3, page 576 in their entirety

Insert: "judge shall keep a docket according to the rules promulgated by the supreme court."

Renumber: subsequent subsection

350. Amend page 576, section 2, line 10 through page 577, line 3.

Following: "(1)"

Strike: line 10, page 576 through line 8, page 577 in their entirety

Insert: "Disqualification of judges and holding court by other than the judge of that court shall be governed by rules promulgated by the supreme court."

Renumber: subsequent subsections

351. Amend page 577, section 2, lines 12 through 14.

Following: line 11

Strike: lines 12 through 14 in their entirety

352. Amend page 578, section 2, line 4.

Following: line 3

Insert: "each candidate shall specify"

353. Amend page 578, section 2, line 10.

Following: "on a"

Strike: "partisan or"

354. Amend page 578, section 2, line 11.

Following: "nonpartisan"

Insert: "judicial"

355. Amend page 578, section 2, line 15.

Following: line 14

Insert: "(3) An appointed municipal judge may be removed from office only for cause."

356. Amend page 578, section 2, line 17.

Following: "begin"

Strike: line 17 in its entirety

Insert: "on the same day as terms begin for county officers as provided in 47A-3-504."

357. Amend page 578, section 2, line 19.

Following: line 18

Strike: "set by ordinance"

Insert: "4 years"

358. Amend page 579, section 2, line 13.

Following: line 12

Strike: "do so"

Insert: "take the course"

359. Amend page 579, section 2, line 20.

Following: "the"

Strike: "vacancy"

Insert: "vacant office"

360. Amend page 580, section 2, line 6.

Following: "Hours."

Strike: "(1)"

361. Amend page 580, section 2, lines 9 and 10.

Following: line 8

Strike: lines 9 and 10 in their entirety.

362. Amend page 580, section 2, lines 11 through 17.

Following: "The"

Strike: lines 11 through 17 in their entirety

Insert: "salary of a justice of the peace shall be set by ordinance or by interlocal agreement."

363. Amend page 580, section 2, line 23.

Following: "of a"

Strike: "county"

Insert: "local government"

364. Amend page 581, section 2, line 15.

Following: "and"

Strike: "the annual"

Following: "sessions"

Insert: "authorized by the supreme court"

365. Amend page 581, section 2, line 23.

Following: "cases"

Strike: "shall"

Insert: "may"

366. Amend page 581, section 2, line 24.

Following: "court"

Strike: "shall"

Insert: "may"

367. Amend page 582, section 2, line 8.

Following: "of the"

Strike: "municipal"

368. Amend page 583, section 2, line 8.

Following: ";

Insert: "and"

369. Amend page 583, section 2, line 10.

Following: "license"

Strike: ";

Insert: "."

370. Amend page 583, section 2, lines 11 through 13.

Following: line 10

Strike: lines 11 through 13 in their entirety

371. Amend page 584, section 2, line 13.

Following: ";

Insert: "and"

372. Amend page 584, section 2, lines 15 through 17.

Following: "as a"

Strike: lines 15 through 17 in their entirety

Insert: "conviction."

373. Amend page 592, section 6, line 1.

Following: "~~municipality~~"

Strike: "county"

Insert: "municipality"

374. Amend page 592, section 6, line 2.

Following: "to"

Strike: "provisions of law authorizing"

Following: "~~subdivisions~~"

Strike: "~~counties~~ of this state to levy taxes for airport purposes"

Insert: "1-917"

375. Amend page 592, section 6, line 5.

Following: "by"

Strike: "the laws of this state for airport purposes"

Insert: "1-917"

376. Amend page 592, section 6, line 9.

Following: "~~municipality~~"

Strike: "county shall collect the"

377. Amend page 592, section 6, line 10.

Following: "authority"

Insert: "shall be collected"

378. Amend page 592, section 6, line 11.

Following: line 10

Strike: "levied and"

Following: "and"

Strike: "make"

Following: "payment"

Insert: "shall be made"

379. Amend page 593, section 7, line 1.

Following: "1-917"

Strike: "County"

Insert: "Municipality"

380. Amend page 593, section 7, line 2.

Following: "in"

Strike: "counties"

Insert: "municipalities"

Following: "a"

Strike: "levy"

Insert: "tax"

381. Amend page 593, section 7, line 3.

Following: "be"

Strike: "made"

Insert: "levied"

382. Amend page 593, section 7, line 4.

Following: "purposes"

Strike: ". The levy shall not exceed the equivalent of 2 mills."

Insert: ". against the taxable property therein in an amount not to exceed 2 mills on the value thereof, and such tax shall be in addition to all other taxes authorized to be levied by the municipality."

383. Amend page 611, section 29, lines 8 and 9.

Following: line 7

Strike: lines 8 and 9

Insert: "held on a date other than the date of a school, primary, general, or other election regularly scheduled by law; or an election on one or more particular issues held in conjunction with but not required by law to coincide with a regularly scheduled election;"

384. Amend page 619, section 28, line 7, through page 620, line 14.

Following: line 6

Strike: line 7, page 619, through line 14, page 620, in their entirety

385. Amend page 629, section 35, line 10.

Following: "department."

Insert: "The local health officer shall, within 30 days after the department has made a decision to issue a license under this chapter, make a final decision on whether the license will be validated. If the local health officer refuses to validate the license, he shall notify the applicant, the department, and any other interested person in writing. The applicant may appeal the decision to the state board of health and environmental sciences within 30 days after receiving written notice of the local health officer's decision. The hearing before the state board of health and environmental sciences shall be held pursuant to the contested case procedures of the Montana Administrative Procedure Act."

386. Amend page 653, section 54, line 20.

Following: "department."

Insert: "The local health officer shall, within 30 days after the department has made a decision to issue a license under this chapter, make a final decision on whether the license will be validated. If the local health officer refuses to validate the license, he shall notify the applicant, the department, and any other interested person in writing. The applicant may appeal the decision to the state board of health and environmental sciences within 30 days after receiving written notice of the local health officer's decision. The hearing before the state board of health and environmental sciences shall be held pursuant to the contested case procedures of the Montana Administrative Procedure Act."

387. Amend page 661, section 60, line 15, through page 671, line 9.

Following: line 14

Strike: line 15, page 661, through line 9, page 671

388. Amend page 682, section 83, line 12.

Following: "(15)"

Strike: "47A-6-6134"

Insert: "47A-6-6234"

389. Amend page 682, section 83, line 13.

Following: "for firefighters;"

Strike: "47A-6-6220"

Insert: "47A-6-6320"

390. Amend page 697, section 106, line 8.

Following: "June"

Strike: "1"

Insert: "30"

391. Amend page 714, section 117, line 21.

Following: "69-2112"

Strike: "{a}"

Insert: "{1}"

392. Amend page 730, section 132, line 10.

Following: "renumbered"

Strike: "66-1015.1"

Insert: "66-1050.1"

393. Amend page 730, section 132, line 11.

Following: "69-4514"

Strike: "66-1015.1"

Insert: "66-1050.1"

394. Amend page 734, section 134, line 1.

Following: "department."

Insert: "The local health officer shall, within 30 days after the department has made a decision to issue a license under this chapter, make a final decision on whether the license will be validated. If the local health officer refuses to validate the license, he shall notify the applicant, the department, and any other interested person in writing. The applicant may appeal the decision to the state board of health and environmental sciences within 30 days after receiving written notice of the local health officer's decision. The hearing before the state board of health and environmental sciences shall be held pursuant to the contested case procedures of the Montana Administrative Procedure Act."

395. Amend page 738, section 136, line 8.

Following: "water"

Strike: "and"

Insert: "or"

396. Amend page 738, section 136, line 10.

Following: "as provided in"

Strike: "47A-6-8209"

Insert: "47A-6-8207"

397. Amend page 738, section 137, line 15.

Following: line 14

Insert: "and natural gas lines"

Following: "along"

Insert: "and under"

398. Amend page 738, section 137, line 16.

Following: line 15

Insert: "natural gas,"

399. Amend page 738, section 137, line 20.

Following: "electricity"

Insert: "or natural gas"

400. Amend page 738, section 137, line 22.
Following: "telephone,"
Insert: "natural gas,"

401. Amend page 738, section 137, line 23.
Following: "along"
Strike: "and"
Insert: ", under, or"

402. Amend page 739, section 137, line 1.
Following: "wires"
Insert: "or lines"

403. Amend page 739, section 137, line 2.
Following: "incommoder"
Strike: "inconvenience"
Insert: "impede"

404. Amend page 744, section 142, line 21 through page 745, line 24.
Following: line 20
Strike: line 21, page 744, through line 24, page 745, in their entirety
Renumber: subsequent sections

405. Amend page 773, section 166, lines 4 through 17.
Following: line 3
Strike: line 4 through line 17 in their entirety
Renumber: all subsequent sections.

406. Amend page 774, section 168, line 21.
Following: "1947"
Strike: "11-46-202"
Insert: "11-1824"

407. Amend page 775, section 168, line 4.
Following: "1947"
Strike: "11-46-202"
Insert: "11-1824"

408. Amend page 776, section 169, line 2.
Following: "1947"
Strike: "11-46-202"
Insert: "11-1824"

409. Amend page 776, section 169, line 8.
Following: "1947"
Strike: "11-46-202"
Insert: "11-1824"

410. Amend page 776, section 170, line 11, through page 777, line 2.
Following: line 10
Strike: line 11, page 776, through line 2, page 777, in their entirety
Renumber: all subsequent sections.

411. Amend page 776, section 172, line 23, through page

779, line 8.

Following: line 22

Strike: line 23, page 778, through line 8, page 779, in their entirety

412. Amend page 782, section 175, line 4.
Following: line 3
Strike: "Title 11, chapter 48"
Insert: "11-1925, 11-1926, and 11-1927"

413. Amend page 782, section 175, line 8.
Following: "chapter"
Strike: "46"
Insert: "18"

414. Amend page 786, section 179, line 2.
Following: line 1
Insert: "Section 180. Section 93-102, R.C.M. 1947, is amended to read as follows:
"93-102. Courts of record. ~~The courts enumerated in the first three subdivisions of the last preceding section and only those courts. The court of impeachment, the supreme courts, the district courts, and municipal courts of record~~ are courts of record."
Renumber: subsequent sections

415. Amend page 799, section 185, line 20.
Following: "in"
Strike: "11-5102 and 11-5103"
Insert: "11-50-102 and 11-50-103"

416. Amend page 800, section 186, line 13.
Following: "by"
Strike: "11-5002"
Insert: "11-50-202"

417. Amend page 804, section 189, line 23.
Following: "limitations"
Strike: "services"
Insert: "Limitations"

418. Amend page 806, section 190, line 7.
Following: line 6
Strike: line 7 in its entirety

419. Amend page 809, line 2.
Following: line 1
Insert: Section 193. Section 11-1809, R.C.M. 1947, is amended to read as follows:
"11-1809. Rights upon reinstatement. ~~An applicant for reinstatement under the provisions of section 11-1808 may be reinstated and passed into a police officer who has retired from a police department and who subsequently rejoins the police department may later pass to~~ the reserve list of police officers so as to enjoy all the benefits, pensions and rights which accrue to police officers placed on the reserve list in said city or town; and provided further that the pension benefits to be allowed to such reinstated officer shall be computed upon the basis of his last full year of active service on said police force."

Section 194. Section 11-2007, R.C.M. 1947, is amended to read as follows:

"11-2007. Duties of chief. The chief of every fire department ~~must inquire into the cause of every fire occurring in the town of which he is the chief and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted; examine buildings in process of erection; report violations of ordinances relating to prevention or extinguishment of fires; and when directed by the proper authorities, institute prosecutions therefor; and perform such other duties as may be by proper authority imposed upon him.~~ His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires with his badge of office conspicuously displayed; must prevent injury to, take charge of, and preserve all property rescued from fires; and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same; the amount thereof when not agreed to be fixed by any justice of the peace.

He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than thirty (30) hours of instruction per year in matters pertaining to fire fighting, and he must supervise the operation of such plan or program. On or before the first day of September of each year, he must prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, stating whether or not his volunteer fire company qualified under the provisions of subparagraph two (2) A of section 11-2023 during the preceding fiscal year, and setting forth the full name and residence address of each member of his department who satisfactorily completed such thirty (30) hours of instruction during said preceding fiscal year, under the provisions of subparagraph two (2) C of section 11-2023. Such verified certificate must be maintained in a permanent file by said public employees' retirement system for the purpose of establishing eligibility for participation in the volunteer firemen's pension plan, and must be open for inspection as a public record."

Section 195. Section 11-3524, R.C.M. 1947, is amended to read as follows:

"11-3524. Firemen's tenure--~~firemen's~~ disability and pension funds -- how continued -- protection of rights in. Any firemen employed by any fire department or departments, established as required by law in any city or town of the a county prior to the election and qualification of ~~a~~ a commission under this act, or other acts of consolidation or disincorporation, shall have the same job tenure rights as though no such election and qualification had taken place. Any ~~such~~ firemen who has vested rights in any disability or pension fund shall maintain prior vested rights to such funds upon their transfer to a consolidated county municipality. Any disability or pension fund, or funds, of the fire department or departments, established as required by law in any city or town of the a county prior to the election and qualification of a commission under this act, or other acts of consolidation or disincorporation, shall be continued as one such fund for the fire department of the

municipality, subject, however, to the prior vested rights of any firemen employed by any fire department or departments, established as required by law in any city or town of the a county prior to the election and qualification of ~~a~~ a commission under this act, or other acts of consolidation or disincorporation. The board of trustees of such disability or pension fund shall continue as set forth in sections 11-1913 and 11-1922, R.C.M. 1947. Except as provided in this section, the disability or pension fund of the fire department shall be continued and administered in the manner prescribed by law for such funds established in cities and towns."

Section 196. Section 47A-3-205, R.C.M. 1947, is amended to read as follows:

"47A-3-205. Commission form. (1) The commission form consists of an elected commission (which may also be called the "council") and other elected officers as provided in this section. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

(2) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

- (a) The commission shall be:
 - (i) elected at large; or
 - (ii) elected by districts in which candidates must reside and which are apportioned by population; or
 - (iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or
 - (iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.
- (b) Local government elections shall be conducted on a:
 - (i) partisan basis as provided in this title; or
 - (ii) nonpartisan basis as provided in this title.

(c) The chairman of the commission, who may be referred to as the "mayor", shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and may vote as other members of the commission. The chairman shall be:

- (i) elected by the members of the commission from their own number for a term established by ordinance; or
- (ii) selected as provided by ordinance; or
- (iii) elected directly by the voters for a term established by ordinance.

- (d) The commission:
 - (i) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(ii) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

(e) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3 (2), of the Montana constitution, may not exceed ~~six--(6)~~ $\frac{1}{2}$ years. Terms of office shall be established when the form is adopted by the voters.

(3) In county and consolidated local governments, the plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

(a) A legal officer (who may be called the "county attorney"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(b) A law enforcement officer (who may be called the "sheriff"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(c) A clerk and recorder:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local

government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(d) A clerk of district court:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(e) A treasurer:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(f) A surveyor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(g) A superintendent of schools:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(h) An assessor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate

office.

(i) A coroner:
(i) shall be elected; or
(ii) shall be appointed by the local government commission; or
(iii) shall be appointed by the chairman of the local government commission; or
(iv) shall be selected as provided by ordinance; or
(v) may at the discretion of the commission be selected as provided by ordinance; or
(vi) shall not be included in this form as a separate office.

(j) A public administrator:
(i) shall be elected; or
(ii) shall be appointed by the local government commission; or
(iii) shall be appointed by the chairman of the local government commission; or
(iv) shall be selected as provided by ordinance; or
(v) may at the discretion of the commission be selected as provided by ordinance; or
(vi) shall not be included in this form as a separate office.

(k) An auditor:
(i) shall be elected; or
(ii) shall be appointed by the local government commission; or
(iii) shall be appointed by the chairman of the local government commission; or
(iv) shall be selected as provided by ordinance; or
(v) may at the discretion of the commission be selected as provided by ordinance; or
(vi) shall not be included in this form as a separate office.

(4) Local governments that adopt this form shall have general government powers."

"Section 197. Section 70-119, R.C.M. 1947, is amended to read as follows:

70-119. Complaints against public utility or local government -- hearing. Upon a complaint made against any public utility or local government providing water or sewer service by any mercantile, agricultural, or manufacturing society or club, or by any body politic or municipal organization, or association or associations, the same being interested, or by any person or persons, firm or firms, corporation or corporations, provided such persons, firms, or corporations are directly affected thereby that any of the rates, tolls, charges, or schedule, or any joint rate or rates, are in any way unreasonable or unjustly discriminatory, or that any regulations, measurements, practices, or act whatsoever affecting or relating to the production, transmission, or delivery or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting such rates, tolls, charges, schedules,

regulations, measurements, practice or act complained of, shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility or local government, providing that the hearing is held within twenty (20) days unless further delayed by consent of all parties.

The commission shall give the public utility or the local government and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility or local government shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim."

Renumber: subsequent sections

420. Amend page 809, section 193, line 4.

Following: "7 through"

Strike: "20"

Insert: "17"

Following: "22 through"

Strike: "35"

Insert: "34"

421. Amend page 809, section 193, line 6.

Following: "sections"

Insert: "11-1801 through 11-1808, 11-1810 through 11-1817, 11-1831, 11-1832, 11-1901 through 11-1909, 11-1931 through 11-1941, 11-2001 through 11-2006, 11-2008 through 11-2010, 11-3501 through 11-3523, 11-3525 through 11-3560, and"

422. Amend page 809, section 193, line 9.

Following: "chapters"

Strike: "1,"

Following: "3"

Insert: "1, 4, 6"

Following: "through"

Insert: "10,"

423. Amend page 809, section 193, line 12.

Following: "sections"

Insert: "16-101, 16-1102 through 16-1120, 16-1123 through 16-1149,"

424. Amend page 809, section 193, line 17.

Following: "23-3102"

Insert: "23-3302"

425. Amend page 809, section 193, line 18.

Following: 25-208"

Strike: "25-210 through 25-217"

Insert: "25-211, 25-212, 25-213, 25-216, 25-217,"

426. Amend page 810, section 193, line 4.

Following: "42-2202,"

Insert: "43-517, 43-518, 43-711.4, 46-2101 through 46-2104,
46-2201, 46-2202, 59-307, 59-515, 62-101 through 62-214,"

427. Amend page 810, section 193, line 5.

Following: "69-4513,"

Insert: "69-4515,"

428. Amend page 810, section 193, line 9.

Following: "79-2102"

Strike: "80-2804,"

429. Amend page 810, section 193, line 10.

Following: line 9

Strike: "82A-904,"

430. Amend page 810, section 193, line 12.

Following: "93-401 through"

Strike: "93-405, 93-408, 93-410 through 93-412,"