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House BILL NO. *179*
Locke
INTRODUCED BY *Sen. A. Ferguson* *Adm. J. Dixon*
Mark Mathews *Locke* *Kindell* *Holmes*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE POWERS AND LIMITATIONS THEREON OF THOSE LOCAL GOVERNMENT UNITS WHICH ADOPT THE SELF-GOVERNMENT POWERS AUTHORIZED BY ARTICLE XI, SECTION 6 OF THE MONTANA CONSTITUTION AND PROVIDING FOR A DELAYED EFFECTIVE DATE."

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

Section 1. There is a new R.C.M. Title 47A, Part 7, that reads as follows:

PART 7, CHAPTER 1, POWERS OF SELF-GOVERNMENT LOCAL GOVERNMENTS.

47A-7-101. Self-government powers. As provided by Article XI, section 6 of the Montana constitution a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include, but are not limited to, the powers granted to general power governments by Title 47A, Part 5.

47A-7-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include, but

1 are not limited to, those services and functions which
2 general power government units are authorized to provide or
3 perform by Title 47A, Part 6.

4 47A-7-103. General power government limitations not
5 applicable. A local government unit with self-government
6 powers which elects to provide a service or perform a
7 function that may also be provided or performed by a general
8 power government unit is not subject to any limitation in
9 the provision of that service or performance of that
10 function, except such limitations as are contained in its
11 charter or in state law specifically applicable to
12 self-government units.

13 47A-7-104. Legislative power vested in legislative
14 bodies. The powers of a self-government unit unless
15 otherwise specifically provided are vested in the local
16 government legislative body and may be exercised only by
17 ordinance or resolution.

18 47A-7-105. State law applicable. All state statutes
19 shall be applicable to self-government local units until
20 superseded by ordinance or resolution in the manner and
21 subject to the limitations provided in this Title.

22 47A-7-106. Construction of self-government
23 powers. The powers and authority of a local government unit
24 with self-government powers shall be liberally construed.
25 Every reasonable doubt as to the existence of a local

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1 government power or authority shall be resolved in favor of
 2 the existence of that power or authority.

3 PART 7, CHAPTER 2, LIMITATIONS ON SELF-GOVERNMENT
 4 LOCAL GOVERNMENTS.

5 47A-7-201. Powers denied. A local government unit
 6 with self-government powers is prohibited the exercise of
 7 the following:

8 (1) Any power that applies to or affects any private
 9 or civil relationship, except as an incident to the exercise
 10 of an independent self-government power;

11 (2) Any power that applies to or affects the
 12 provisions of Title 41 (labor), chapter 16 of Title 59
 13 (collective bargaining for public employees), Title 87
 14 (unemployment compensation), or Title 92 (workmen's
 15 compensation) except that subject to the provisions of those
 16 titles it may exercise any power with regard to its
 17 employees;

18 (3) Any power that applies to or affects the public
 19 school system except that a local unit may impose an
 20 assessment reasonably related to the cost of any service or
 21 special benefit provided by the unit and shall exercise any
 22 power which it is required by law to exercise regarding the
 23 public school system;

24 (4) Any power that applies to or affects any
 25 determination by a state agency with regard to the grant or

1 denial of a certificate of public convenience and necessity
 2 or which establishes any rate or price;

3 (5) Any power that applies to or affects any
 4 determination of the state department of lands with regard
 5 to any mining plan, permit, or contract;

6 (6) Any power that applies to or affects any
 7 determination by the department of natural resources and
 8 conservation with regard to a certificate of environmental
 9 compatibility and public need;

10 (7) Any power that defines as an offense conduct made
 11 criminal by state statute, or which defines an offense as a
 12 felony, or which fixes the penalty or sentence for a
 13 misdemeanor in excess of a fine of five hundred dollars
 14 (\$500) or six (6) months imprisonment or both such fine and
 15 imprisonment, except as specifically authorized by statute;

16 (8) Any power that applies to or affects the right to
 17 keep or bear arms, except that it has the power to regulate
 18 the carrying of concealed weapons;

19 (9) Any power that applies to or affects a public
 20 employee's pension or retirement rights as established by
 21 state law, except that a local government may establish
 22 additional pension or retirement systems;

23 (10) Any power that applies to or affects the
 24 standards of professional or occupational competence
 25 established pursuant to Title 66, (professions and

1 occupations) as prerequisites to the carrying on of a
2 profession or occupation.

3 47A-7-202. Powers requiring delegation. A local
4 government unit operating with self-government powers is
5 prohibited the exercise of the following powers unless the
6 power is specifically delegated by law:

7 (1) The power to authorize a tax on income or the sale
8 of goods or services. This section shall not be construed
9 to limit the authority of a local government to levy any
10 other tax or establish the rate of any other tax or to
11 impose an assessment reasonably related to the cost of any
12 service or special benefit provided by the local government;

13 (2) The power to regulate private activity beyond its
14 geographic limits;

15 (3) The power to impose a duty on another unit of
16 local government, except that nothing in this limitation
17 shall affect the right of a self-government unit to enter
18 into and enforce an agreement on inter-local cooperation;

19 (4) The power to exercise any judicial function,
20 except as an incident to the exercise of an independent
21 self-government administrative power.

22 47A-7-203. Consistency with state regulation
23 required. (1) A local government with self-government
24 powers is prohibited the exercise of any power in a manner
25 inconsistent with state law or administrative regulation in

1 any area affirmatively subjected by law to state regulation
2 or control.

3 (2) The exercise of a power is inconsistent with state
4 law or regulation if it establishes standards or
5 requirements which are lower or less stringent than those
6 imposed by state law or regulation.

7 (3) An area is affirmatively subjected to state
8 control if a state agency or officer is directed to
9 establish administrative rules and regulations governing the
10 matter or if enforcement of standards or requirements
11 established by statute is vested in a state officer or
12 agency.

13 47A-7-204. Mandatory provisions. A local government
14 unit with self-government powers is subject to the following
15 provisions. These provisions are a prohibition on the
16 self-government unit acting other than as provided:

17 (1) Part 2 of Title 47A, (Local Government Formation).

18 (2) Part 3 of Title 47A, Chapter 1, (Government Study
19 Commissions).

20 (3) Part 3 of Title 47A, Chapter 3, (Commission
21 Organization and Procedures).

22 (4) Part 3 of Title 47A, Chapter 6, (Election Code).

23 (5) Part 4 of Title 47A, Chapter 2, (Community
24 Planning, Land Use Control Services).

25 (6) Part 8 of Title 47A, (Duties of Local Governments

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1 As Agent of the State).

2 (7) Part 9 of Title 47A, (Local Government Finances).

3 (8) Chapter 99 of Title 93, (Eminent Domain).

4 Section 1. Severability clause. If any part of this
5 act is invalid, all valid parts that are severable from the
6 invalid part remain in effect. If a part of this act is
7 invalid in one or more of its applications, the part remains
8 in effect in all valid applications that are severable from
9 the invalid applications.

10 Section 2. Effective date. This act is effective May
11 2, 1977.

-End-

Approved by Comm.
on Local Government

HOUSE BILL NO. 179

INTRODUCED BY SOUTH, GWYNN, MELOY, DRISCOLL, GERKE, MARKS,
MCKITTRICK, LOCKREM, KENDALL, HOLMES

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE POWERS
AND LIMITATIONS THEREON OF THOSE LOCAL GOVERNMENT UNITS
WHICH ADOPT THE SELF-GOVERNMENT POWERS AUTHORIZED BY ARTICLE
XI, SECTION 6 OF THE MONTANA CONSTITUTION AND PROVIDING FOR
A DELAYED EFFECTIVE DATE."

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

Section 1. There is a new R.C.M. Title, 47A, Part 7,
that reads as follows:

PART 7, CHAPTER 1, POWERS OF SELF-GOVERNMENT LOCAL
GOVERNMENTS.

47A-7-101. Self-government powers. As provided by
Article XI, section 6 of the Montana constitution a local
government unit with self-government powers may exercise any
power not prohibited by the constitution, law, or charter.
These powers include, but are not limited to, the powers
granted to general power governments by Title 47A, Part 5.

47A-7-102. Authorization for self-government services
and functions. A local government with self-government
powers may provide any services or perform any functions not
expressly prohibited by the Montana constitution, state law,

or its charter. These services and functions include, but
are not limited to, those services and functions which
general power government units are authorized to provide or
perform by Title 47A, Part 6.

47A-7-103. General power government limitations not
applicable. A local government unit with self-government
powers which elects to provide a service or perform a
function that may also be provided or performed by a general
power government unit is not subject to any limitation in
the provision of that service or performance of that
function, except such limitations as are contained in its
charter or in state law specifically applicable to
self-government units.

47A-7-104. Legislative power vested in legislative
bodies. The powers of a self-government unit unless
otherwise specifically provided are vested in the local
government legislative body and may be exercised only by
ordinance or resolution.

47A-7-105. State law applicable. All state statutes
shall be applicable to self-government local units until
superseded by ordinance or resolution in the manner and
subject to the limitations provided in this Title.

47A-7-106. Construction of self-government
powers. The powers and authority of a local government unit
with self-government powers shall be liberally construed.

1 Every reasonable doubt as to the existence of a local
2 government power or authority shall be resolved in favor of
3 the existence of that power or authority.

4 PART 7, CHAPTER 2, LIMITATIONS ON SELF-GOVERNMENT
5 LOCAL GOVERNMENTS.

6 47A-7-201. Powers denied. A local government unit
7 with self-government powers is prohibited the exercise of
8 the following:

9 (1) Any power that applies to or affects any private
10 or civil relationship, except as an incident to the exercise
11 of an independent self-government power;

12 (2) Any power that applies to or affects the
13 provisions of Title 41 (labor), chapter 16 of Title 59
14 (collective bargaining for public employees), Title 87
15 (unemployment compensation), or Title 92 (workmen's
16 compensation) except that subject to the provisions of ~~these~~
17 ~~titles~~ STATE LAW it may exercise any power OF A PUBLIC
18 EMPLOYER with regard to its employees;

19 (3) Any power that applies to or affects the public
20 school system except that a local unit may impose an
21 assessment reasonably related to the cost of any service or
22 special benefit provided by the unit and shall exercise any
23 power which it is required by law to exercise regarding the
24 public school system;

25 (4) Any power that applies to or affects any

1 determination by a state agency with regard to the grant or
2 denial of a certificate of public convenience and necessity
3 or which establishes any rate or price;

4 (5) Any power that applies to or affects any
5 determination of the state department of lands with regard
6 to any mining plan, permit, or contract;

7 (6) Any power that applies to or affects any
8 determination by the department of natural resources and
9 conservation with regard to a certificate of environmental
10 compatibility and public need;

11 (7) Any power that defines as an offense conduct made
12 criminal by state statute, or which defines an offense as a
13 felony, or which fixes the penalty or sentence for a
14 misdemeanor in excess of a fine of five hundred dollars
15 (\$500) or six (6) months imprisonment or both such fine and
16 imprisonment, except as specifically authorized by statute;

17 (8) Any power that applies to or affects the right to
18 keep or bear arms, except that it has the power to regulate
19 the carrying of concealed weapons;

20 (9) Any power that applies to or affects a public
21 employee's pension or retirement rights as established by
22 state law, except that a local government may establish
23 additional pension or retirement systems;

24 (10) Any power that applies to or affects the
25 standards of professional or occupational competence

1 established pursuant to Title 66, (professions and
2 occupations) as prerequisites to the carrying on of a
3 profession or occupation.

4 (11) ANY POWER THAT APPLIES TO OR AFFECTS TITLE 26
5 (FISH AND GAME).

6 47A-7-202. Powers requiring delegation. A local
7 government unit ~~operating~~ with self-government powers is
8 prohibited the exercise of the following powers unless the
9 power is specifically delegated by law:

10 (1) The power to authorize a tax on income or the sale
11 of goods or services. This section shall not be construed
12 to limit the authority of a local government to levy any
13 other tax or establish the rate of any other tax ~~or to~~
14 ~~impose an assessment reasonably related to the cost of any~~
15 ~~service or special benefit provided by the local government;~~

16 (2) The power to regulate private activity beyond its
17 geographic limits;

18 (3) The power to impose a duty on another unit of
19 local government, except that nothing in this limitation
20 shall affect the right of a self-government unit to enter
21 into and enforce an agreement on inter-local cooperation;

22 (4) The power to exercise any judicial function,
23 except as an incident to the exercise of an independent
24 self-government administrative power.

25 47A-7-203. Consistency with state regulation

1 required. (1) A local government with self-government powers
2 is prohibited the exercise of any power in a manner
3 inconsistent with state law or administrative regulation in
4 any area affirmatively subjected by law to state regulation
5 or control.

6 (2) The exercise of a power is inconsistent with state
7 law or regulation if it establishes standards or
8 requirements which are lower or less stringent than those
9 imposed by state law or regulation.

10 (3) An area is affirmatively subjected to state
11 control if a state agency or officer is directed to
12 establish administrative rules and regulations governing the
13 matter or if enforcement of standards or requirements
14 established by statute is vested in a state officer or
15 agency.

16 47A-7-204. Mandatory provisions. A local government
17 unit with self-government powers is subject to the following
18 provisions. These provisions are a prohibition on the
19 self-government unit acting other than as provided:

20 ~~{1}--Part-2-of-Title-47A-(Local-Government-Formation)-~~

21 ~~{2}--Part--3-of-Title-47A-Chapter-17-(Government-Study~~
22 ~~Commissions)-~~

23 ~~{3}--Part--3--of--Title--47A--Chapter--37--(Commission~~
24 ~~Organization-and-Procedures)-~~

25 ~~{4}--Part-3-of-Title-47A-Chapter-67-(Election-Code)-~~

1 ~~(5) Part 4 of Title 47A, Chapter 2, (Community~~
2 ~~Planning and Use Control Services);~~
3 ~~(6) Part 8 of Title 47A, (Duties of Local Governments~~
4 ~~As Agent of the State);~~
5 ~~(7) Part 9 of Title 47A, (Local Government Finances);~~
6 ~~(8) Chapter 99 of Title 93, (Eminent Domain);~~
7 (1) ALL STATE LAWS PROVIDING FOR THE INCORPORATION OR
8 DISINCORPORATION OF CITIES AND TOWNS, FOR THE ANNEXATION,
9 DISANNEXATION OR EXCLUSION OF TERRITORY FROM A CITY OR TOWN,
10 FOR THE CREATION, ABANDONMENT OR BOUNDARY ALTERATION OF
11 COUNTIES AND FOR CITY-COUNTY CONSOLIDATION;
12 (2) TITLE 16, CHAPTER 51;
13 (3) ALL LAWS ESTABLISHING LEGISLATIVE PROCEDURES OR
14 REQUIREMENTS FOR UNITS OF LOCAL GOVERNMENT;
15 (4) ALL LAWS REGULATING THE ELECTION OF LOCAL
16 OFFICIALS;
17 (5) ALL LAWS WHICH REQUIRE OR REGULATE PLANNING OR
18 ZONING;
19 (6) ANY LAW DIRECTING OR REQUIRING A LOCAL GOVERNMENT
20 OR ANY OFFICER OR EMPLOYEE OF A LOCAL GOVERNMENT TO CARRY
21 OUT ANY FUNCTION OR PROVIDE ANY SERVICE;
22 (7) ANY LAW REGULATING THE BUDGET, FINANCE OR
23 BORROWING PROCEDURES AND POWERS OF LOCAL GOVERNMENTS, EXCEPT
24 THAT THE MILL LEVY LIMITS ESTABLISHED BY STATE LAW SHALL NOT
25 APPLY;

1 (8) TITLE 93, CHAPTER 99.
2 Section 2. Severability clause. If any part of this
3 act is invalid, all valid parts that are severable from the
4 invalid part remain in effect. If a part of this act is
5 invalid in one or more of its applications, the part remains
6 in effect in all valid applications that are severable from
7 the invalid applications.
8 Section 3. Effective date. This act is effective May
9 2, 1977.

-End-

1 HOUSE BILL NO. 179

2 INTRODUCED BY SOUTH, GWYNN, MELOY, DRISCOLL, GERKE, MARKS,
3 MCKITTRICK, LOCKREM, KENDALL, HOLMES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE POWERS
6 AND LIMITATIONS THEREON OF THOSE LOCAL GOVERNMENT UNITS
7 WHICH ADOPT THE SELF-GOVERNMENT POWERS AUTHORIZED BY ARTICLE
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23 and functions. A local government with self-government
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4 perform by Title 47A, Part 6.

5 47A-7-103. General power government limitations not
6 applicable. A local government unit with self-government
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8 function that may also be provided or performed by a general
9 power government unit is not subject to any limitation in
10 the provision of that service or performance of that
11 function, except such limitations as are contained in its
12 charter or in state law specifically applicable to
13 self-government units.

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15 bodies. The powers of a self-government unit unless
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17 government legislative body and may be exercised only by
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20 shall be applicable to self-government local units until
21 superseded by ordinance or resolution in the manner and
22 subject to the limitations provided in this Title.

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 16 compensation) except that subject to the provisions of ~~these~~
 17 ~~titles~~ STATE LAW it may exercise any power OF A PUBLIC
 18 EMPLOYER with regard to its employees;

19 (3) Any power that applies to or affects the public
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 21 assessment reasonably related to the cost of any service or
 22 special benefit provided by the unit and shall exercise any
 23 power which it is required by law to exercise regarding the
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 3 or which establishes any rate or price;

4 (5) Any power that applies to or affects any
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 6 to any mining plan, permit, or contract;

7 (6) Any power that applies to or affects any
 8 determination by the department of natural resources and
 9 conservation with regard to a certificate of environmental
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11 (7) Any power that defines as an offense conduct made
 12 criminal by state statute, or which defines an offense as a
 13 felony, or which fixes the penalty or sentence for a
 14 misdemeanor in excess of a fine of five hundred dollars
 15 (\$500) or six (6) months imprisonment or both such fine and
 16 imprisonment, except as specifically authorized by statute;

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 18 keep or bear arms, except that it has the power to regulate
 19 the carrying of concealed weapons;

20 (9) Any power that applies to or affects a public
 21 employee's pension or retirement rights as established by
 22 state law, except that a local government may establish
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 14 ~~impose--an--assessment-reasonably-related-to-the-cost-of-any~~
 15 ~~service-or-special-benefit-provided-by-the-local-government;~~

16 (2) The power to regulate private activity beyond its
 17 geographic limits;

18 (3) The power to impose a duty on another unit of
 19 local government, except that nothing in this limitation
 20 shall affect the right of a self-government unit to enter
 21 into and enforce an agreement on inter-local cooperation;

22 (4) The power to exercise any judicial function,
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 24 self-government administrative power.

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 2 is prohibited the exercise of any power in a manner
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 5 or control.

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 15 agency.

16 47A-7-204. Mandatory provisions. A local government
 17 unit with self-government powers is subject to the following
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20 ~~{1--Part-2-of-Title-47A7--{Local-Government-Formation};~~

21 ~~{2--Part--3-of-Title-47A7--Chapter-17--{Government-Study~~
 22 ~~Commissions};~~

23 ~~{3--Part--3--of--Title--47A7--Chapter--37--{Commission~~
 24 ~~Organization-and-Procedures};~~

25 ~~{4--Part-3-of-Title-47A7--Chapter-67--{Election-Code};~~

1 ~~(5) Part 4 of Title 47A, Chapter 2 (Community~~
2 ~~Planning, Land Use Control Services)~~

3 ~~(6) Part 8 of Title 47A (Duties of Local Governments~~
4 ~~As Agent of the State)~~

5 ~~(7) Part 9 of Title 47A (Local Government Finances)~~

6 ~~(8) Chapter 99 of Title 93 (Eminent Domain)~~

7 (1) ALL STATE LAWS PROVIDING FOR THE INCORPORATION OR
8 DISINCORPORATION OF CITIES AND TOWNS, FOR THE ANNEXATION,
9 DISANNEXATION OR EXCLUSION OF TERRITORY FROM A CITY OR TOWN,
10 FOR THE CREATION, ABANDONMENT OR BOUNDARY ALTERATION OF
11 COUNTIES AND FOR CITY-COUNTY CONSOLIDATION;

12 (2) TITLE 16, CHAPTER 51;

13 (3) ALL LAWS ESTABLISHING LEGISLATIVE PROCEDURES OR
14 REQUIREMENTS FOR UNITS OF LOCAL GOVERNMENT;

15 (4) ALL LAWS REGULATING THE ELECTION OF LOCAL
16 OFFICIALS;

17 (5) ALL LAWS WHICH REQUIRE OR REGULATE PLANNING OR
18 ZONING;

19 (6) ANY LAW DIRECTING OR REQUIRING A LOCAL GOVERNMENT
20 OR ANY OFFICER OR EMPLOYEE OF A LOCAL GOVERNMENT TO CARRY
21 OUT ANY FUNCTION OR PROVIDE ANY SERVICE;

22 (7) ANY LAW REGULATING THE BUDGET, FINANCE OR
23 BORROWING PROCEDURES AND POWERS OF LOCAL GOVERNMENTS, EXCEPT
24 THAT THE MILL LEVY LIMITS ESTABLISHED BY STATE LAW SHALL NOT
25 APPLY;

1 (8) TITLE 93, CHAPTER 99.

2 Section 2. Severability clause. If any part of this
3 act is invalid, all valid parts that are severable from the
4 invalid part remain in effect. If a part of this act is
5 invalid in one or more of its applications, the part remains
6 in effect in all valid applications that are severable from
7 the invalid applications.

8 Section 3. Effective date. This act is effective May
9 2, 1977.

-End-

March 20, 1975

SENATE COMMITTEE ON LOCAL GOVERNMENT

AMENDMENTS TO HOUSE BILL NO. 179

That House Bill No. 179, third reading, be amended as follows:

1. Amend page 3, section 1, line 17.
Following: "titles"
Strike: "STATE LAW"
Insert: "those titles"
2. Amend page 3, section 1, line 25 and line 1 on page 4.
Following: "that"
Strike: "applies to or affects any determination by a state agency
with regard to"
Insert: "prohibits"
3. Amend page 4, section 1, line 3.
Following: line 2
Strike: "or which establishes any rate or price"
4. Amend page 4, section 1, line 3.
Following: line 3
Insert: "(5) Any power that establishes a rate or price otherwise
determined by a state agency;"

Renumber: All subsequent subsections
5. Amend page 5, section 1, line 24.
Following: "power"
Strike: "."
Insert: ";"
6. Amend page 5, section 1, line 24.
Following: line 24
Insert: "(5) The power to regulate any form of gambling,
lotteries, or gift enterprises."

1 HOUSE BILL NO. 179
 2 INTRODUCED BY SOUTH, GWYNN, MELOY, DRISCOLL, GERKE, MARKS,
 3 MCKITTRICK, LOCKREM, KENDALL, HOLMES
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE POWERS
 6 AND LIMITATIONS THEREON OF THOSE LOCAL GOVERNMENT UNITS
 7 WHICH ADOPT THE SELF-GOVERNMENT POWERS AUTHORIZED BY ARTICLE
 8 XI, SECTION 6 OF THE MONTANA CONSTITUTION AND PROVIDING FOR
 9 A DELAYED EFFECTIVE DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. There is a new R.C.M. Title 47A, Part 7,
 13 that reads as follows:

14 PART 7, CHAPTER 1

15 POWERS OF SELF-GOVERNMENT LOCAL GOVERNMENTS

16 47A-7-101. Self-government powers. As provided by
 17 Article XI, section 6 of the Montana constitution a local
 18 government unit with self-government powers may exercise any
 19 power not prohibited by the constitution, law, or charter.
 20 These powers include, but are not limited to, the powers
 21 granted to general power governments by Title 47A, Part 5.

22 47A-7-102. Authorization for self-government services
 23 and functions. A local government with self-government
 24 powers may provide any services or perform any functions not
 25 expressly prohibited by the Montana constitution, state law,

1 or its charter. These services and functions include, but
 2 are not limited to, those services and functions which
 3 general power government units are authorized to provide or
 4 perform by Title 47A, Part 6.

5 47A-7-103. General power government limitations not
 6 applicable. A local government unit with self-government
 7 powers which elects to provide a service or perform a
 8 function that may also be provided or performed by a general
 9 power government unit is not subject to any limitation in
 10 the provision of that service or performance of that
 11 function, except such limitations as are contained in its
 12 charter or in state law specifically applicable to
 13 self-government units.

14 47A-7-104. Legislative power vested in legislative
 15 bodies. The powers of a self-government unit unless
 16 otherwise specifically provided are vested in the local
 17 government legislative body and may be exercised only by
 18 ordinance or resolution.

19 47A-7-105. State law applicable. All state statutes
 20 shall be applicable to self-government local units until
 21 superseded by ordinance or resolution in the manner and
 22 subject to the limitations provided in this Title.

23 47A-7-106. Construction of self-government powers. The
 24 powers and authority of a local government unit with
 25 self-government powers shall be liberally construed. Every

1 reasonable doubt as to the existence of a local government
2 power or authority shall be resolved in favor of the
3 existence of that power or authority.

4 PART 7, CHAPTER 2

5 LIMITATIONS ON SELF-GOVERNMENT LOCAL GOVERNMENTS

6 47A-7-201. Powers denied. A local government unit with
7 self-government powers is prohibited the exercise of the
8 following:

9 (1) Any power that applies to or affects any private
10 or civil relationship, except as an incident to the exercise
11 of an independent self-government power;

12 (2) Any power that applies to or affects the
13 provisions of Title 41 (labor), chapter 16 of Title 59
14 (collective bargaining for public employees), Title 87
15 (unemployment compensation), or Title 92 (workmen's
16 compensation) except that subject to the provisions of ~~these~~
17 ~~titles~~ STATE-LAW THOSE TITLES it may exercise any power OF A
18 PUBLIC EMPLOYER with regard to its employees;

19 (3) Any power that applies to or affects the public
20 school system except that a local unit may impose an
21 assessment reasonably related to the cost of any service or
22 special benefit provided by the unit and shall exercise any
23 power which it is required by law to exercise regarding the
24 public school system;

25 (4) Any power that ~~applies--to--or--affects--any~~

1 ~~determination-by-a-state-agency-with-regard-to~~ PROHIBITS the
2 grant or denial of a certificate of public convenience and
3 necessity ~~or-which-establishes-any-rate-or-price;~~

4 (5) ANY POWER THAT ESTABLISHES A RATE OR PRICE
5 OTHERWISE DETERMINED BY A STATE AGENCY;

6 ~~(5)~~ (6) Any power that applies to or affects any
7 determination of the state department of lands with regard
8 to any mining plan, permit, or contract;

9 ~~(6)~~ (7) Any power that applies to or affects any
10 determination by the department of natural resources and
11 conservation with regard to a certificate of environmental
12 compatibility and public need;

13 ~~(7)~~ (8) Any power that defines as an offense conduct
14 made criminal by state statute, or which defines an offense
15 as a felony, or which fixes the penalty or sentence for a
16 misdemeanor in excess of a fine of five hundred dollars
17 (\$500) or six (6) months imprisonment or both such fine and
18 imprisonment, except as specifically authorized by statute;

19 ~~(8)~~ (9) Any power that applies to or affects the right
20 to keep or bear arms, except that it has the power to
21 regulate the carrying of concealed weapons;

22 ~~(9)~~ (10) Any power that applies to or affects a public
23 employee's pension or retirement rights as established by
24 state law, except that a local government may establish
25 additional pension or retirement systems;

1 ~~{10}~~ (11) Any power that applies to or affects the
2 standards of professional or occupational competence
3 established pursuant to Title 66, (professions and
4 occupations) as prerequisites to the carrying on of a
5 profession or occupation.

6 ~~{11}~~ (12) ANY POWER THAT APPLIES TO OR AFFECTS TITLE 26
7 (FISH AND GAME).

8 47A-7-202. Powers requiring delegation. A local
9 government unit ~~operating~~ with self-government powers is
10 prohibited the exercise of the following powers unless the
11 power is specifically delegated by law:

12 (1) The power to authorize a tax on income or the sale
13 of goods or services. This section shall not be construed
14 to limit the authority of a local government to levy any
15 other tax or establish the rate of any other tax ~~or--to~~
16 ~~impose--an--assessment--reasonably--related--to--the--cost--of--any~~
17 ~~service--or--special--benefit--provided--by--the--local--government;~~

18 (2) The power to regulate private activity beyond its
19 geographic limits;

20 (3) The power to impose a duty on another unit of
21 local government, except that nothing in this limitation
22 shall affect the right of a self-government unit to enter
23 into and enforce an agreement on inter-local cooperation;

24 (4) The power to exercise any judicial function,
25 except as an incident to the exercise of an independent

1 self-government administrative power;

2 (5) THE POWER TO REGULATE ANY FORM OF GAMBLING,
3 LOTTERIES, OR GIFT ENTERPRISES.

4 47A-7-203. Consistency with state regulation required.

5 (1) A local government with self-government powers is
6 prohibited the exercise of any power in a manner
7 inconsistent with state law or administrative regulation in
8 any area affirmatively subjected by law to state regulation
9 or control.

10 (2) The exercise of a power is inconsistent with state
11 law or regulation if it establishes standards or
12 requirements which are lower or less stringent than those
13 imposed by state law or regulation.

14 (3) An area is affirmatively subjected to state
15 control if a state agency or officer is directed to
16 establish administrative rules and regulations governing the
17 matter or if enforcement of standards or requirements
18 established by statute is vested in a state officer or
19 agency.

20 47A-7-204. Mandatory provisions. A local government
21 unit with self-government powers is subject to the following
22 provisions. These provisions are a prohibition on the
23 self-government unit acting other than as provided:

24 ~~{1}--Part-2-of-Title-47A7--(Local-Government-Formation)--~~

25 ~~{2}--Part-3-of-Title-47A7-Chapter-17--(Government--Study~~

1 ~~Commissions};~~
2 ~~{3}--Part--3--of--Title--47A,--Chapter--3,--(Commission~~
3 ~~Organization-and-Procedures};~~
4 ~~{4}--Part--3--of--Title--47A,--Chapter--6,--(Election-Codes};~~
5 ~~{5}--Part--4--of--Title--47A,--Chapter--2,--(Community~~
6 ~~Planning,--and--Hae--Control--Services};~~
7 ~~{6}--Part--8--of--Title--47A,--(Duties--of--Local--Governments~~
8 ~~As-Agent--of--the--State};~~
9 ~~{7}--Part--9--of--Title--47A,--(Local--Government--Finances};~~
10 ~~{8}--Chapter--99--of--Title--93,--(Eminent-Domain};~~
11 (1) ALL STATE LAWS PROVIDING FOR THE INCORPORATION OR
12 DISINCORPORATION OF CITIES AND TOWNS, FOR THE ANNEXATION,
13 DISANNEXATION OR EXCLUSION OF TERRITORY FROM A CITY OR TOWN,
14 FOR THE CREATION, ABANDONMENT OR BOUNDARY ALTERATION OF
15 COUNTIES AND FOR CITY-COUNTY CONSOLIDATION;
16 (2) TITLE 16, CHAPTER 51;
17 (3) ALL LAWS ESTABLISHING LEGISLATIVE PROCEDURES OR
18 REQUIREMENTS FOR UNITS OF LOCAL GOVERNMENT;
19 (4) ALL LAWS REGULATING THE ELECTION OF LOCAL
20 OFFICIALS;
21 (5) ALL LAWS WHICH REQUIRE OR REGULATE PLANNING OR
22 ZONING;
23 (6) ANY LAW DIRECTING OR REQUIRING A LOCAL GOVERNMENT
24 OR ANY OFFICER OR EMPLOYEE OF A LOCAL GOVERNMENT TO CARRY
25 OUT ANY FUNCTION OR PROVIDE ANY SERVICE;

1 (7) ANY LAW REGULATING THE BUDGET, FINANCE OR
2 BORROWING PROCEDURES AND POWERS OF LOCAL GOVERNMENTS, EXCEPT
3 THAT THE MILL LEVY LIMITS ESTABLISHED BY STATE LAW SHALL NOT
4 APPLY;
5 (8) TITLE 93, CHAPTER 99.
6 Section 2. Severability clause. If any part of this
7 act is invalid, all valid parts that are severable from the
8 invalid part remain in effect. If a part of this act is
9 invalid in one or more of its applications, the part remains
10 in effect in all valid applications that are severable from
11 the invalid applications.
12 Section 3. Effective date. This act is effective May
13 2, 1977.

-End-