

1 *Senate* BILL NO. *232*
 2 INTRODUCED BY *Murray Fishbein Thomas*
 3 *Story*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT ALL
 5 FREEHOLDERS OF PROPERTY IN A TERRITORY TO PETITION FOR
 6 ANNEXATION AND TO VOTE ON QUESTIONS OF ANNEXATION OF THE
 7 TERRITORY AND TO PROVIDE ALL FREEHOLDERS WITH NOTICE OF A
 8 PROPOSED ANNEXATION; AMENDING SECTIONS 11-506, 11-507,
 9 11-516, 11-517, 11-518, 11-520, 11-522, AND 11-523, R.C.M.
 10 1947."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Section 11-506, R.C.M. 1947, is amended to
 14 read as follows:
 15 "11-506. Alteration of boundaries of cities and towns
 16 — inclusion of territory — petition and election. (1) The
 17 boundaries of any incorporated town or city, whether
 18 heretofore or hereafter formed, may be altered and new
 19 territory or territories annexed thereto, incorporated and
 20 included therein, and made a part thereof, upon proceedings
 21 being had and taken as in this act provided. The council,
 22 or other legislative body of any such municipal corporation,
 23 upon receiving a written petition therefor containing a
 24 description of the new territory or territories asked to be
 25 annexed to such corporation, and signed by not less than

1 thirty-three and one-third per cent (33 1/3%) of the
 2 ~~resident freeholder electors of freeholders of property in~~
 3 the territory proposed to be annexed must, without delay,
 4 submit to the electors of such municipal corporation and to
 5 the electors residing in and the freeholders of property in
 6 the territory or territories proposed by such petition to be
 7 annexed to such corporation, the question whether such new
 8 territory or territories shall be annexed to, incorporated
 9 in, and made a part of said municipal corporation.

10 (2) Such question may be so submitted at the next
 11 general municipal election to be held in such municipal
 12 corporation, or it may be so submitted prior to such general
 13 election, either at a special election called therein for
 14 that purpose, or at any other municipal election therein,
 15 except an election at which the submission of such question
 16 is prohibited by law; and such council or legislative body
 17 is hereby empowered to and it shall be its duty to cause
 18 notice to be given of such election by the publication of a
 19 notice thereof in a newspaper printed and published in such
 20 municipal corporation at least once a week for a period of
 21 three (3) successive weeks next preceding the date of such
 22 election, or if there is no newspaper printed in such
 23 municipal corporation, then such notice shall be published
 24 in like manner for a like period in the nearest town or city
 25 in the county in which said territory or territories to be

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1 annexed is situated, in which such newspaper is printed.
 2 Such notice shall distinctly state the proposition to be
 3 submitted, i. e., that it is proposed to annex to,
 4 incorporate in, and make a part of such municipal
 5 corporation the territory or territories sought to be
 6 annexed, specifically describing the boundaries thereof; and
 7 in said notice the qualified electors of said municipal
 8 corporation, and the qualified electors residing in said
 9 territory or territories so proposed to be annexed, shall be
 10 invited to vote upon such proposition by placing upon their
 11 ballots the words "for annexation" or "against annexation,"
 12 or words equivalent thereto.

13 (3) Such council or legislative body is hereby
 14 empowered, and it shall be its duty, to establish, and in
 15 such notice of election designate the voting precinct or
 16 precincts, the date of said election, the place or places at
 17 which, and the hours between which the polls will be opened
 18 for such election, and such other information regarding said
 19 election as the said council or legislative body may deem
 20 proper. Such place or places shall be that or those commonly
 21 used as voting places within such municipal corporation, and
 22 also that or those commonly used by the electors residing in
 23 such new territory or territories.

24 (4) The council or legislative body shall notify each
 25 freeholder of property in the territory to be annexed of the

1 election on the question of annexation and shall send each
 2 such freeholder an absentee ballot. The notice shall
 3 contain the same information as the published notice under
 4 subsection (2) and shall inform the freeholder that if he is
 5 not eligible to vote at the election required by subsection
 6 (1), he may vote by returning the ballot, properly marked
 7 and notarized, by a date not earlier than 5 days prior to
 8 the election, specified in the notice. The notice and the
 9 ballot shall be sent no later than 3 weeks prior to the
 10 election. A freeholder may vote only once in an election on
 11 the question of annexation, and all votes of a freeholder
 12 voting more than once are void."

13 Section 2. Section 11-507, R.C.M. 1947, is amended to
 14 read as follows:

15 "11-507. Submission of question of annexation —
 16 election, how conducted and returned — annexation, when
 17 complete. (1) If the question of annexation is submitted at
 18 a special election called for such purpose, the city or town
 19 council, or other legislative body, shall fix the hours
 20 through which the polls are to be kept open, which shall be
 21 not less than eight (8), and which must be stated in the
 22 notice of election, and may appoint a smaller number of
 23 judges than is required at a general city or town election,
 24 but in no case shall there be less than three (3) judges in
 25 a precinct and such judges shall act as their own clerks. If

1 the question of annexation is submitted at a general city or
 2 town election, the polls shall be kept open during the same
 3 hours as are fixed for the general election, and the judges
 4 and clerks for such general election shall act as the judges
 5 and clerks thereof.

6 (2) Whenever the question of annexation under this
 7 title is submitted at either a general city or town
 8 election, or at a special election, separate ballots, white
 9 in color and of convenient size, shall be provided therefor.
 10 The election shall be conducted, and the returns made in the
 11 same manner as other city or town elections; and all
 12 election laws governing city and town elections shall govern
 13 in so far as they are applicable, but if such question be
 14 submitted at a general city or town election, the votes
 15 thereon must be counted separately, and separate returns
 16 must be made by the judges and clerks at such election. If
 17 the said annexation election is held at the same time as a
 18 general city or town election, then the returns shall be
 19 canvassed by the city or town council at the same time as
 20 the returns for such general election; but if the question
 21 of annexation is submitted at a special election, then the
 22 city or town council shall meet within ten (10) days after
 23 the date of the holding of such special election and canvass
 24 the returns.

25 (3) If it is found that a majority of such votes were

1 cast in favor of the annexation, the city or town council,
 2 or other legislative body shall, at a regular or special
 3 meeting held within thirty (30) days thereafter, pass and
 4 adopt a resolution providing for such annexation. Such
 5 resolution shall recite that a petition has been filed with
 6 the said council or other legislative body with a sufficient
 7 number of signatures of thirty-three and one-third per cent
 8 (33 1/3%) of the ~~resident freeholder electors of~~ freshholders
 9 of property in the territory proposed to be annexed; a
 10 description of the boundaries of the territory or
 11 territories to be annexed; a copy of the resolution ordering
 12 a general or special election thereof, as the case may be; a
 13 copy of the notice of such election; the time and result of
 14 the canvass of the votes received in favor of annexation,
 15 and the number thereof cast against annexation; and that the
 16 boundaries of such city or town, by such resolution, shall
 17 be extended so as to embrace and include such territory or
 18 territories as the same are described in the petition for
 19 annexation, which said resolution shall be incorporated in
 20 the minutes of said council or legislative body.

21 (4) The clerk or other officer performing the duties
 22 of clerk of such council or legislative body, shall promptly
 23 make and certify under the seal of said municipal
 24 corporation, a copy of said record so entered upon said
 25 minutes, which document shall be filed with the clerk of the

1 county in which the city or town to which said territory or
 2 territories are sought to be annexed, is situated. From and
 3 after the date of the filing of said document in the office
 4 of the said county clerk, the annexation of such territory
 5 or territories so proposed to be annexed shall be deemed and
 6 shall be complete and thenceforth such annexed territory or
 7 territories shall be, to all intents and purposes, a part of
 8 said municipal corporation, and the said city or town to
 9 which the annexation is made, has the power to pass all
 10 necessary ordinances pertaining thereto."

11 Section 3. Section 11-516, R.C.M. 1947, is amended to
 12 read as follows:

13 "11-516. Definitions. The following terms where used
 14 in this act have the following meanings, except where the
 15 context clearly indicates a different meaning:

16 (1) "Contiguous" means any area which, at the time
 17 annexation procedures are initiated, either abuts directly
 18 on the municipal boundary or is separated from the municipal
 19 boundary by a street or street right-of-way, a creek or
 20 river, the right-of-way of a railroad or other public
 21 service corporation, lands owned by the city or some other
 22 political subdivision, or lands owned by the state.

23 (2) "Municipality" means any city or town under
 24 Montana law.

25 (3) "~~Resident freeholder~~ Freeholder" means a person

1 who ~~maintains his residence on real property in which he~~
 2 holds an estate of life or inheritance or ~~of which he~~ is the
 3 purchaser of such an estate under a contract for deed, some
 4 memorandum of which has been filed in the office of the
 5 county clerk and recorder.

6 (4) "Person" means a person, partnership, corporation,
 7 association, or other legal entity or any political
 8 subdivision or agency of the state."

9 Section 4. Section 11-517, R.C.M. 1947, is amended to
 10 read as follows:

11 "11-517. Initiation of extension of corporate limits.
 12 The governing body of any municipality may extend the
 13 corporate limits of such municipality under the procedure
 14 set forth in this act upon the initiation of the procedure
 15 by the board itself; or, whenever the ~~resident~~ freeholders
 16 of property situated outside the corporate boundaries of any
 17 municipality, but contiguous thereto, desire to have real
 18 estate annexed to the municipality, they may file with the
 19 governing body of the municipality a petition bearing the
 20 signatures of fifty-one percent (51%) of the ~~resident~~
 21 freeholders of property in the territory sought to be
 22 annexed, requesting a resolution stating the intent of the
 23 municipality to consider annexation. Upon passage of the
 24 resolution, the governing body shall follow the procedure in
 25 section 7 [11-520] of this act. If the municipal governing

1 body fails to act within sixty (60) days the petitioners may
2 appeal to the district court under the procedure set down in
3 section 9 [11-522] of this act."

4 Section 5. Section 11-518, R.C.M. 1947, is amended to
5 read as follows:

6 "11-518. Plans to provide services. A municipality
7 exercising authority under this act shall make plans for the
8 extension of services to the area proposed to be annexed and
9 shall, prior to the public hearing provided for in section 7
10 [11-520] of this act, prepare a report setting forth its
11 plans to provide services to such area. This report shall
12 include:

13 (1) A map or maps of the municipality and adjacent
14 territory to show the following information:

15 (a) the present and proposed boundaries of the
16 municipality;

17 (b) the present streets, major truck water mains,
18 sewer interceptors and outfalls and other utility lines, and
19 the proposed extension of such streets and utility lines as
20 required in subsection (3) of this section; and

21 (c) the general land-use pattern in the areas to be
22 annexed.

23 (2) A statement showing that the area to be annexed
24 meets the requirements of section 6 [11-519] of this act.

25 (3) A statement setting forth the plans of the

1 municipality for extending to the area to be annexed each
2 major municipal service performed within the municipality at
3 the time of annexation. Specifically, such plans shall:

4 (a) provide a long-range plan for extension of
5 services and the acquisition of properties outside the
6 corporate limits. This plan must show anticipated
7 development a minimum of five (5) years into the future
8 showing on a yearly basis how the municipality plans to
9 extend services, develop and add sections to the city;

10 (b) provide for extending police protection, fire
11 protection, garbage collection, and streets and street
12 maintenance services to the area to be annexed on
13 substantially the same basis and in the same manner as such
14 services are provided within the rest of the municipality
15 prior to annexation;

16 (c) provide for future extension of streets and of
17 major trunk water mains, sewer outfall lines and other
18 utility services into the area to be annexed, so that when
19 such streets and utility lines become necessary and are
20 constructed, property owners in the area to be annexed will
21 be able to secure such services, according to the policies
22 in effect in such municipality for extending such services
23 to individual lots or subdivisions;

24 (d) if extension of streets and water, sewer or other
25 utility lines into the area to be annexed is necessary, set

1 forth a proposed timetable for construction of such streets
2 and utility lines; and

3 (e) a method must be set forth by which the
4 municipality plans to finance extension of services into the
5 area to be annexed. Included within this plan must be
6 methodology whereby the area to be annexed may vote upon any
7 proposed capital improvements. This methodology shall
8 contain provisions to permit all freeholders of property in
9 the section to vote. Should a negative vote be cast by over
10 fifty percent (50%) of those ~~resident~~ freeholders of
11 property in the section or sections to be annexed in such
12 election, the area shall not be annexed. If the area is
13 serviced currently by adequate water and sewage services,
14 streets, curb and gutters, and no capital improvements are
15 needed to provide adequate services stipulated by this
16 section, the municipality must provide the area to be
17 annexed with a plan of how they plan to finance other
18 services to be included within the district—mainly police
19 protection, fire protection, garbage collection, street and
20 street maintenance services, as well as continued utility
21 service. In this annexation plan it must be clearly stated
22 that the entire municipality tends to share the tax burden
23 for these services. And if so, the area may be annexed
24 without a bond issue under the provisions of this act."

25 Section 6. Section 11-520, R.C.M. 1947, is amended to

1 read as follows:

2 "11-520. Resolution of intention to annex — public
3 hearing notice — action by governing body after hearing.

4 (1) The governing body of any municipality desiring to annex
5 territory under the provisions of this act shall first pass
6 a resolution stating the intent of the municipality to
7 consider annexation. Such resolution shall describe the
8 boundaries of the area under consideration and fix a date
9 for a public hearing on the question of annexation, the date
10 for such public hearing to be not less than thirty (30) days
11 and not more than sixty (60) days following passage of the
12 resolution.

13 (2) The notice of public hearing shall:

14 (a) fix the date, hour and place of the public
15 hearing;

16 (b) describe clearly the boundaries of the area under
17 consideration;

18 (c) state that the report required in section 5
19 [11-518] of this act will be available in the office of the
20 municipal official designated by the governing body at least
21 fourteen (14) days prior to the date of the public hearing.

22 Such notice will be given by publication in a newspaper
23 having general circulation in the municipality once a week
24 for at least four (4) successive weeks prior to the date of
25 the hearing. The date of the last publication shall not be

1 more than seven (7) days preceding the date of the public
 2 hearing. If there be no such newspaper, the municipality
 3 shall post the notice in at least five (5) public places
 4 within the municipality and at least five (5) public places
 5 in the area to be annexed for thirty (30) days prior to the
 6 date of public hearing. The notice shall be sent to each
 7 freeholder of property in the area to be annexed. Each
 8 freeholder shall be informed that he may object in writing
 9 and told of the provisions of 11-520(8) regarding
 10 disapproval of annexation by a majority of the freeholders.

11 (3) At least fourteen (14) days before the date of the
 12 public hearing, the governing body shall approve the report
 13 provided for in section 5 [11-518] of this act, and shall
 14 make it available to the public at the office of the
 15 municipal official designated by the governing body. In
 16 addition, the municipality may prepare a summary of the full
 17 report for public distribution.

18 (4) At the public hearing, a representative of the
 19 municipality as designated by the governing body shall first
 20 make an explanation of the report required in section 5
 21 [11-518] of this act. Following such explanation, all
 22 persons resident or owning property in the territory
 23 described in the notice of public hearing and all residents
 24 of the municipality shall be given an opportunity to be
 25 heard.

1 (5) The municipal governing body shall take into
 2 consideration facts presented at the public hearing and
 3 shall have authority to amend the report required by section
 4 5 [11-518] of this act and to make changes in the plans for
 5 serving the area proposed to be annexed so long as such
 6 changes meet the requirements of section 5 [11-518]. At any
 7 regular or special meeting held no sooner than seven (7)
 8 days following the public hearing and no later than sixty
 9 (60) days following such public hearing, the governing body
 10 shall have authority to adopt an ordinance extending the
 11 corporate limits of the municipality to include all, or such
 12 part, of the area described in the notice of public hearing,
 13 which meets the requirements of section 6 [11-519] of this
 14 act, and which the governing body has concluded should be
 15 annexed. The ordinance shall:

16 (a) contain specific findings showing that the area to
 17 be annexed meets the requirements of section 6 [11-519] of
 18 this act. The external boundaries of the area to be annexed
 19 shall be described by metes and bounds;

20 (b) contain a statement of the intent of the
 21 municipality to provide services to the area being annexed
 22 as set forth in the report required by section 5 [11-518] of
 23 this act; and

24 (c) fix the effective date of annexation. The
 25 effective date of annexation may be fixed for any date

1 within twelve (12) months from the date of passage of the
2 ordinance.

3 (6) From and after the effective date of the
4 annexation ordinance, the territory and its citizens and
5 property shall be subject to all debts, laws, ordinances and
6 regulations in force in such municipality and shall be
7 entitled to the same privileges and benefits as other parts
8 of such municipality. The newly annexed territory shall be
9 subject to municipal taxes levied for the fiscal year
10 following the effective date of annexation. Annexed property
11 which is part of a sanitary district or other special
12 service district which has installed water, sewer or other
13 utilities or improvements, paid for by the residents of said
14 district, shall not be subject to that part of the municipal
15 taxes levied for debt service for the first five (5) years
16 after the effective date of annexation.

17 (7) If a municipality is considering the annexation of
18 two (2) or more areas which are all adjacent to the
19 municipal boundary but are not adjacent to one another, it
20 may undertake simultaneous proceeding under authority of
21 this act for the annexation of such areas.

22 (8) For a period of twenty (20) days after the public
23 hearing provided for in section 7 [11-520] of this act the
24 governing body of the municipality shall receive expressions
25 of approval or disapproval in writing, of the proposed

1 annexation from ~~resident~~ freeholders of property in the
2 territory proposed to be annexed. If a majority of the ~~said~~
3 ~~resident~~ freeholders, in writing, disapprove the proposed
4 annexation, no further proceedings under this act shall be
5 had, relating to the territory proposed to be annexed or any
6 part thereof, for a period of one (1) year from the date of
7 such disapproval."

8 Section 7. Section 11-522, R.C.M. 1947, is amended to
9 read as follows:

10 "11-522. Right to court review when area annexed. (1)
11 Within thirty (30) days following the passage of an
12 annexation ordinance under authority of this act, either a
13 majority of the ~~resident~~ freeholders of property in the
14 territory or the owners of more than seventy-five percent
15 (75%) in assessed valuation of the real estate in the
16 territory who shall believe that he or they will suffer
17 material injury, by reason of the failure of the municipal
18 governing body to comply with the procedure set forth in
19 this act or to meet the requirements set forth in section 6
20 [11-519] of this act as they apply to his or their property,
21 may file a petition in the district court of the district in
22 which the municipality is located, seeking review of the
23 action of the governing board and serve a copy of the
24 petition on the municipality in the manner of service of
25 civil process.

1 (2) If two (2) or more petitions for review are
2 submitted to the court, the court may consolidate all such
3 petitions for review at a single hearing.

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

8 (a) that the statutory procedure was not followed;

9 (b) that the provisions of section 5 [11-518] or
10 section 6 [11-519] were not met; or

11 (c) the court may affirm the action of the governing
12 body without change, or it may:

13 (i) remand the ordinance to the municipal governing
14 body for further proceedings if procedural irregularities
15 are found to have materially prejudiced the substantive
16 rights of any of the petitioners;

17 (ii) remand the ordinance to the municipal governing
18 body for amendment of the boundaries to conform to the
19 provisions of section 6 [11-519]; but the court cannot
20 remand the ordinance to the municipal governing body with
21 directions to add an area to the municipality which was not
22 included in the notice of public hearing and not provided
23 for in plans for service; or

24 (iii) remand the report to the municipal governing
25 body for amendment of the plans for providing services to

1 the end that the provisions of section 5 [11-518] of this
2 act are satisfied.

3 If any municipality fails to take action in accordance
4 with the court's instructions upon remand within three (3)
5 months from receipt of such instructions, the court may in
6 its discretion extend the time for compliance.

7 (4) Any party to the review proceedings, including the
8 municipality, may appeal to the Montana supreme court from
9 the final judgment of the district court under rules of
10 procedure applicable in other civil cases. The appealing
11 party may apply to the lower court for a stay in its final
12 determination, or a stay of the annexation ordinance,
13 whichever shall be appropriate, pending the outcome of the
14 appeal to the higher court; provided, that the lower court
15 may, with the agreement of the municipality, permit
16 annexation to be effective with respect to any part of the
17 area concerning which no appeal is being made.

18 If part or all of the area annexed under the terms of
19 an annexation ordinance is the subject of an appeal to the
20 lower or higher court on the effective date of the
21 ordinance, then the ordinance shall be deemed amended to
22 make the effective date with respect to such area the date
23 of the final judgment of the lower or higher court,
24 whichever is appropriate, or the date the municipal
25 governing board completes action to make the ordinance

1 conform to the court's instructions in the event of remand.

2 (5) All decisions and findings of the governing body
3 of the municipality shall be presumed to be reasonable and
4 lawful, until and unless they are modified or set aside by
5 the governing body or upon review.

6 (6) No decisions of the governing body shall be
7 subject to collateral attack and may be reviewed or modified
8 only in the manner provided herein."

9 Section 8. Section 11-523, R.C.M. 1947, is amended to
10 read as follows:

11 "11-523. Right to court review when area not annexed.
12 After the ~~resident~~ freeholders have properly petitioned the
13 governing body of the municipality and the body has failed
14 to pass a resolution of intent to annex within sixty (60)
15 days, the petitioners may file a complaint and a duplicate
16 copy of the petition in the district court of the proper
17 jurisdiction stating the reason why the proposed annexation
18 should take place. The municipality shall be designated
19 party defendant in the cause and shall be required to appear
20 and answer as in other cases. The court, without a jury,
21 shall hear and determine the questions presented in the
22 petition. If the evidence establishes that:

23 (1) essential municipal services and facilities are
24 not available to the inhabitants of such territory;

25 (2) the municipality is physically and financially

1 able to provide municipal services to the area sought to be
2 annexed; and

3 (3) at least one-eighth (1/8) of the aggregate
4 external boundaries of the territory sought to be annexed is
5 contiguous to the boundaries of the municipality; the court
6 shall order the proposed annexation to take place,
7 notwithstanding the provisions of any other law of this
8 state.

9 If, however, the evidence does not establish all three
10 (3) of the foregoing factors, the court shall deny the
11 petition to annex and dismiss the proceeding."

-End-

Approved by Comm.
on Local Government

SENATE BILL NO. 232

INTRODUCED BY MURRAY, PASBENDER, THOMAS, STORY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT ALL FREEHOLDERS OF PROPERTY IN A TERRITORY TO PETITION FOR ANNEXTION AND TO VOTE ON QUESTIONS OF ANNEXTION OF THE TERRITORY AND TO PROVIDE ALL FREEHOLDERS WITH NOTICE OF A PROPOSED ANNEXTION; AMENDING SECTIONS 11-506, 11-507, 11-516, 11-517, 11-518, 11-520, 11-522, AND 11-523, R.C.M. 1947."

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

Section 1. Section 11-506, R.C.M. 1947, is amended to read as follows:

"11-506. Alteration of boundaries of cities and towns -- inclusion of territory -- petition and election. (1) The boundaries of any incorporated town or city, whether heretofore or hereafter formed, may be altered and new territory or territories annexed thereto, incorporated and included therein, and made a part thereof, upon proceedings being had and taken as in this act provided. The council, or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory or territories asked to be annexed to such corporation, and signed by not less than

thirty-three and one-third per cent (33 1/3%) of the ~~resident freeholder electors of freeholders of property in~~ the territory proposed to be annexed must, without delay, submit to the electors of such municipal corporation and to the electors residing in and the freeholders of property in the territory or territories proposed by such petition to be annexed to such corporation, the question whether such new territory or territories shall be annexed to, incorporated in, and made a part of said municipal corporation.

(2) Such question may be so submitted at the next general municipal election to be held in such municipal corporation, or it may be so submitted prior to such general election, either at a special election called therein for that purpose, or at any other municipal election therein, except an election at which the submission of such question is prohibited by law; and such council or legislative body is hereby empowered to and it shall be its duty to cause notice to be given of such election by the publication of a notice thereof in a newspaper printed and published in such municipal corporation at least once a week for a period of three (3) successive weeks next preceding the date of such election, or if there is no newspaper printed in such municipal corporation, then such notice shall be published in like manner for a like period in the nearest town or city in the county in which said territory or territories to be

1 annexed is situated, in which such newspaper is printed.
 2 Such notice shall distinctly state the proposition to be
 3 submitted, i. e., that it is proposed to annex to,
 4 incorporate in, and make a part of such municipal
 5 corporation the territory or territories sought to be
 6 annexed, specifically describing the boundaries thereof; and
 7 in said notice the qualified electors of said municipal
 8 corporation, and the qualified electors residing in said
 9 territory or territories so proposed to be annexed, shall be
 10 invited to vote upon such proposition by placing upon their
 11 ballots the words "for annexation" or "against annexation,"
 12 or words equivalent thereto.

13 (3) Such council or legislative body is hereby
 14 empowered, and it shall be its duty, to establish, and in
 15 such notice of election designate the voting precinct or
 16 precincts, the date of said election, the place or places at
 17 which, and the hours between which the polls will be opened
 18 for such election, and such other information regarding said
 19 election as the said council or legislative body may deem
 20 proper. Such place or places shall be that or those commonly
 21 used as voting places within such municipal corporation, and
 22 also that or those commonly used by the electors residing in
 23 such new territory or territories.

24 (4) The council or legislative body shall notify each
 25 freeholder of property in the territory to be annexed of the

1 election on the question of annexation and shall send each
 2 such freeholder an absentee ballot. THE COUNCIL OR
 3 LEGISLATIVE BODY SHALL SATISFY THE REQUIREMENTS OF THIS
 4 SUBSECTION IF IT MAILS ONE ABSENTEE BALLOT TO THE FREEHOLDER
 5 OR FREEHOLDERS SHOWN ON THE LAST TAX ROLL AT THE ADDRESS TO
 6 WHICH TAX NOTICES ARE SENT. The notice shall contain the
 7 same information as the published notice under subsection
 8 (2) and shall inform the freeholder that if he is not
 9 eligible to vote at the election required by subsection
 10 11-507(1), he may vote by returning the ballot, properly
 11 marked and notarized, by a date not earlier than 5 days
 12 prior to the election, specified in the notice. The notice
 13 and the ballot shall be sent no later than 3 weeks prior to
 14 the election. THE FAILURE OF THE COUNCIL OR LEGISLATIVE BODY
 15 TO COMPLY WITH THIS SUBSECTION SHALL NOT BE INVALIDATE AN
 16 ELECTION UNLESS SUCH FAILURE WAS DELIBERATE. A freeholder
 17 may vote only once in an election on the question of
 18 annexation, and all votes of a freeholder voting more than
 19 once are void."

20 Section 2. Section 11-507, R.C.M. 1947, is amended to
 21 read as follows:

22 "11-507. Submission of question of annexation --
 23 election, how conducted and returned -- annexation, when
 24 complete. (1) If the question of annexation is submitted at
 25 a special election called for such purpose, the city or town

1 council, or other legislative body, shall fix the hours
 2 through which the polls are to be kept open, which shall be
 3 not less than eight (8), and which must be stated in the
 4 notice of election, and may appoint a smaller number of
 5 judges than is required at a general city or town election,
 6 but in no case shall there be less than three (3) judges in
 7 a precinct and such judges shall act as their own clerks. If
 8 the question of annexation is submitted at a general city or
 9 town election, the polls shall be kept open during the same
 10 hours as are fixed for the general election, and the judges
 11 and clerks for such general election shall act as the judges
 12 and clerks thereof.

13 (2) Whenever the question of annexation under this
 14 title is submitted at either a general city or town
 15 election, or at a special election, separate ballots, white
 16 in color and of convenient size, shall be provided therefor.
 17 The election shall be conducted, and the returns made in the
 18 same manner as other city or town elections; and all
 19 election laws governing city and town elections shall govern
 20 in so far as they are applicable, but if such question be
 21 submitted at a general city or town election, the votes
 22 thereon must be counted separately, and separate returns
 23 must be made by the judges and clerks at such election. If
 24 the said annexation election is held at the same time as a
 25 general city or town election, then the returns shall be

1 canvassed by the city or town council at the same time as
 2 the returns for such general election; but if the question
 3 of annexation is submitted at a special election, then the
 4 city or town council shall meet within ten (10) days after
 5 the date of the holding of such special election and canvass
 6 the returns.

7 (3) If it is found that a majority of such votes were
 8 cast in favor of the annexation, the city or town council,
 9 or other legislative body shall, at a regular or special
 10 meeting held within thirty (30) days thereafter, pass and
 11 adopt a resolution providing for such annexation. Such
 12 resolution shall recite that a petition has been filed with
 13 the said council or other legislative body with a sufficient
 14 number of signatures of thirty-three and one-third per cent
 15 (33 1/3%) of the ~~resident freeholder electors of~~ freeholders
 16 of property in the territory proposed to be annexed; a
 17 description of the boundaries of the territory or
 18 territories to be annexed; a copy of the resolution ordering
 19 a general or special election thereof, as the case may be; a
 20 copy of the notice of such election; the time and result of
 21 the canvass of the votes received in favor of annexation,
 22 and the number thereof cast against annexation; and that the
 23 boundaries of such city or town, by such resolution, shall
 24 be extended so as to embrace and include such territory or
 25 territories as the same are described in the petition for

1 annexation, which said resolution shall be incorporated in
2 the minutes of said council or legislative body.

3 (4) The clerk or other officer performing the duties
4 of clerk of such council or legislative body, shall promptly
5 make and certify under the seal of said municipal
6 corporation, a copy of said record so entered upon said
7 minutes, which document shall be filed with the clerk of the
8 county in which the city or town to which said territory or
9 territories are sought to be annexed, is situated. From and
10 after the date of the filing of said document in the office
11 of the said county clerk, the annexation of such territory
12 or territories so proposed to be annexed shall be deemed and
13 shall be complete and thenceforth such annexed territory or
14 territories shall be, to all intents and purposes, a part of
15 said municipal corporation, and the said city or town to
16 which the annexation is made, has the power to pass all
17 necessary ordinances pertaining thereto.*

18 Section 3. Section 11-516, R.C.M. 1947, is amended to
19 read as follows:

20 "11-516. Definitions. The following terms were used
21 in this act have the following meanings, except where the
22 context clearly indicates a different meaning:

23 (1) "Contiguous" means any area which, at the time
24 annexation procedures are initiated, either abuts directly
25 on the municipal boundary or is separated from the municipal

1 boundary by a street or street right-of-way, a creek or
2 river, the right-of-way of a railroad or other public
3 service corporation, lands owned by the city or some other
4 political subdivision, or lands owned by the state.

5 (2) "Municipality" means any city or town under
6 Montana law.

7 (3) "~~Resident freeholder~~ Freeholder" means a person
8 who ~~maintains his residence on real property in which he~~
9 holds an estate of life or inheritance or ~~of which he~~ is the
10 purchaser of such an estate under a contract for deed, some
11 memorandum of which has been filed in the office of the
12 county clerk and recorder.

13 (4) "Person" means a person, partnership, corporation,
14 association, or other legal entity or any political
15 subdivision or agency of the state."

16 Section 4. Section 11-517, R.C.M. 1947, is amended to
17 read as follows:

18 "11-517. Initiation of extension of corporate limits.
19 The governing body of any municipality may extend the
20 corporate limits of such municipality under the procedure
21 set forth in this act upon the initiation of the procedure
22 by the board itself; or, whenever the ~~resident~~ freeholders
23 of property situated outside the corporate boundaries of any
24 municipality, but contiguous thereto, desire to have real
25 estate annexed to the municipality, they may file with the

1 governing body of the municipality a petition bearing the
 2 signatures of fifty-one percent (51%) of the ~~residents~~
 3 freeholders of property in the territory sought to be
 4 annexed, requesting a resolution stating the intent of the
 5 municipality to consider annexation. Upon passage of the
 6 resolution, the governing body shall follow the procedure in
 7 section 7 [11-520] of this act. If the municipal governing
 8 body fails to act within sixty (60) days the petitioners may
 9 appeal to the district court under the procedure set down in
 10 section 9 [11-522] of this act."

11 Section 5. Section 11-518, R.C.M. 1947, is amended to
 12 read as follows:

13 "11-518. Plans to provide services. A municipality
 14 exercising authority under this act shall make plans for the
 15 extension of services to the area proposed to be annexed and
 16 shall, prior to the public hearing provided for in section 7
 17 [11-520] of this act, prepare a report setting forth its
 18 plans to provide services to such area. This report shall
 19 include:

20 (1) A map or maps of the municipality and adjacent
 21 territory to show the following information:

22 (a) the present and proposed boundaries of the
 23 municipality;

24 (b) the present streets, major truck water mains,
 25 sewer interceptors and outfalls and other utility lines, and

1 the proposed extension of such streets and utility lines as
 2 required in subsection (3) of this section; and

3 (c) the general land-use pattern in the areas to be
 4 annexed.

5 (2) A statement showing that the area to be annexed
 6 meets the requirements of section 6 [11-519] of this act.

7 (3) A statement setting forth the plans of the
 8 municipality for extending to the area to be annexed each
 9 major municipal service performed within the municipality at
 10 the time of annexation. Specifically, such plans shall:

11 (a) provide a long-range plan for extension of
 12 services and the acquisition of properties outside the
 13 corporate limits. This plan must show anticipated
 14 development a minimum of five (5) years into the future
 15 showing on a yearly basis how the municipality plans to
 16 extend services, develop and add sections to the city;

17 (b) provide for extending police protection, fire
 18 protection, garbage collection, and streets and street
 19 maintenance services to the area to be annexed on
 20 substantially the same basis and in the same manner as such
 21 services are provided within the rest of the municipality
 22 prior to annexation;

23 (c) provide for future extension of streets and of
 24 major trunk water mains, sewer outfall lines and other
 25 utility services into the area to be annexed, so that when

1 such streets and utility lines become necessary and are
 2 constructed, property owners in the area to be annexed will
 3 be able to secure such services, according to the policies
 4 in effect in such municipality for extending such services
 5 to individual lots or subdivisions;

6 (d) if extension of streets and water, sewer or other
 7 utility lines into the area to be annexed is necessary, set
 8 forth a proposed timetable for construction of such streets
 9 and utility lines; and

10 (e) a method must be set forth by which the
 11 municipality plans to finance extension of services into the
 12 area to be annexed. Included within this plan must be
 13 methodology whereby the area to be annexed may vote upon any
 14 proposed capital improvements. This methodology shall
 15 contain provisions to permit all freeholders of property in
 16 the section to vote. Should a negative vote be cast by over
 17 fifty percent (50%) of those ~~resident~~ freeholders of
 18 property in the section or sections to be annexed in such
 19 election, the area shall not be annexed. If the area is
 20 serviced currently by adequate water and sewage services,
 21 streets, curb and gutters, and no capital improvements are
 22 needed to provide adequate services stipulated by this
 23 section, the municipality must provide the area to be
 24 annexed with a plan of how they plan to finance other
 25 services to be included within the district--mainly police

1 protection, fire protection, garbage collection, street and
 2 street maintenance services, as well as continued utility
 3 service. In this annexation plan it must be clearly stated
 4 that the entire municipality tends to share the tax burden
 5 for these services. And if so, the area may be annexed
 6 without a bond issue under the provisions of this act."

7 Section 6. Section 11-520, R.C.M. 1947, is amended to
 8 read as follows:

9 "11-520. Resolution of intention to annex — public
 10 hearing notice — action by governing body after hearing.

11 (1) The governing body of any municipality desiring to annex
 12 territory under the provisions of this act shall first pass
 13 a resolution stating the intent of the municipality to
 14 consider annexation. Such resolution shall describe the
 15 boundaries of the area under consideration and fix a date
 16 for a public hearing on the question of annexation, the date
 17 for such public hearing to be not less than thirty (30) days
 18 and not more than sixty (60) days following passage of the
 19 resolution.

20 (2) The notice of public hearing shall:

21 (a) fix the date, hour and place of the public
 22 hearing;

23 (b) describe clearly the boundaries of the area under
 24 consideration;

25 (c) state that the report required in section 5

1 [11-518] of this act will be available in the office of the
2 municipal official designated by the governing body at least
3 fourteen (14) days prior to the date of the public hearing.

4 Such notice will be given by publication in a newspaper
5 having general circulation in the municipality once a week
6 for at least four (4) successive weeks prior to the date of
7 the hearing. The date of the last publication shall not be
8 more than seven (7) days preceding the date of the public
9 hearing. If there be no such newspaper, the municipality
10 shall post the notice in at least five (5) public places
11 within the municipality and at least five (5) public places
12 in the area to be annexed for thirty (30) days prior to the
13 date of public hearing. The notice shall be sent to each
14 freeholder of property in the area to be annexed. Each
15 freeholder shall be informed that he may object in writing
16 and told of the provisions of 11-520(8) regarding
17 disapproval of annexation by a majority of the freeholders.

18 (3) At least fourteen (14) days before the date of the
19 public hearing, the governing body shall approve the report
20 provided for in section 5 [11-518] of this act, and shall
21 make it available to the public at the office of the
22 municipal official designated by the governing body. In
23 addition, the municipality may prepare a summary of the full
24 report for public distribution.

25 (4) At the public hearing, a representative of the

1 municipality as designated by the governing body shall first
2 make an explanation of the report required in section 5
3 [11-518] of this act. Following such explanation, all
4 persons resident or owning property in the territory
5 described in the notice of public hearing and all residents
6 of the municipality shall be given an opportunity to be
7 heard.

8 (5) The municipal governing body shall take into
9 consideration facts presented at the public hearing and
10 shall have authority to amend the report required by section
11 5 [11-518] of this act and to make changes in the plans for
12 serving the area proposed to be annexed so long as such
13 changes meet the requirements of section 5 [11-518]. At any
14 regular or special meeting held no sooner than seven (7)
15 days following the public hearing and no later than sixty
16 (60) days following such public hearing, the governing body
17 shall have authority to adopt an ordinance extending the
18 corporate limits of the municipality to include all, or such
19 part, of the area described in the notice of public hearing,
20 which meets the requirements of section 6 [11-519] of this
21 act, and which the governing body has concluded should be
22 annexed. The ordinance shall:

23 (a) contain specific findings showing that the area to
24 be annexed meets the requirements of section 6 [11-519] of
25 this act. The external boundaries of the area to be annexed

1 shall be described by metes and bounds;

2 (b) contain a statement of the intent of the
3 municipality to provide services to the area being annexed
4 as set forth in the report required by section 5 [11-518] of
5 this act; and

6 (c) fix the effective date of annexation. The
7 effective date of annexation may be fixed for any date
8 within twelve (12) months from the date of passage of the
9 ordinance.

10 (6) From and after the effective date of the
11 annexation ordinance, the territory and its citizens and
12 property shall be subject to all debts, laws, ordinances and
13 regulations in force in such municipality and shall be
14 entitled to the same privileges and benefits as other parts
15 of such municipality. The newly annexed territory shall be
16 subject to municipal taxes levied for the fiscal year
17 following the effective date of annexation. Annexed property
18 which is part of a sanitary district or other special
19 service district which has installed water, sewer or other
20 utilities or improvements, paid for by the residents of said
21 district, shall not be subject to that part of the municipal
22 taxes levied for debt service for the first five (5) years
23 after the effective date of annexation.

24 (7) If a municipality is considering the annexation of
25 two (2) or more areas which are all adjacent to the

1 municipal boundary but are not adjacent to one another, it
2 may undertake simultaneous proceeding under authority of
3 this act for the annexation of such areas.

4 (8) For a period of twenty (20) days after the public
5 hearing provided for in section 7 [11-520] of this act the
6 governing body of the municipality shall receive expressions
7 of approval or disapproval in writing, of the proposed
8 annexation from ~~resident~~ freeholders of property in the
9 territory proposed to be annexed. If a majority of the ~~said~~
10 ~~resident~~ freeholders, in writing, disapprove the proposed
11 annexation, no further proceedings under this act shall be
12 had, relating to the territory proposed to be annexed or any
13 part thereof, for a period of one (1) year from the date of
14 such disapproval."

15 Section 7. Section 11-522, R.C.M. 1947, is amended to
16 read as follows:

17 "11-522. Right to court review when area annexed. (1)
18 Within thirty (30) days following the passage of an
19 annexation ordinance under authority of this act, either a
20 majority of the ~~resident~~ freeholders of property in the
21 territory or the owners of more than seventy-five percent
22 (75%) in assessed valuation of the real estate in the
23 territory who shall believe that he or they will suffer
24 material injury, by reason of the failure of the municipal
25 governing body to comply with the procedure set forth in

1 this act or to meet the requirements set forth in section 6
 2 [11-519] of this act as they apply to his or their property,
 3 may file a petition in the district court of the district in
 4 which the municipality is located, seeking review of the
 5 action of the governing board and serve a copy of the
 6 petition on the municipality in the manner of service of
 7 civil process.

8 (2) If two (2) or more petitions for review are
 9 submitted to the court, the court may consolidate all such
 10 petitions for review at a single hearing.

11 (3) The review shall be conducted by the court without
 12 a jury. The court may hear oral arguments and receive
 13 written briefs, and may take evidence intended to show
 14 either:

15 (a) that the statutory procedure was not followed;

16 (b) that the provisions of section 5 [11-518] or
 17 section 6 [11-519] were not met; or

18 (c) the court may affirm the action of the governing
 19 body without change, or it may:

20 (i) remand the ordinance to the municipal governing
 21 body for further proceedings if procedural irregularities
 22 are found to have materially prejudiced the substantive
 23 rights of any of the petitioners;

24 (ii) remand the ordinance to the municipal governing
 25 body for amendment of the boundaries to conform to the

1 provisions of section 6 [11-519]; but the court cannot
 2 remand the ordinance to the municipal governing body with
 3 directions to add an area to the municipality which was not
 4 included in the notice of public hearing and not provided
 5 for in plans for service; or

6 (iii) remand the report to the municipal governing
 7 body for amendment of the plans for providing services to
 8 the end that the provisions of section 5 [11-518] of this
 9 act are satisfied.

10 If any municipality fails to take action in accordance
 11 with the court's instructions upon remand within three (3)
 12 months from receipt of such instructions, the court may in
 13 its discretion extend the time for compliance.

14 (4) Any party to the review proceedings, including the
 15 municipality, may appeal to the Montana supreme court from
 16 the final judgment of the district court under rules of
 17 procedure applicable in other civil cases. The appealing
 18 party may apply to the lower court for a stay in its final
 19 determination, or a stay of the annexation ordinance,
 20 whichever shall be appropriate, pending the outcome of the
 21 appeal to the higher court; provided, that the lower court
 22 may, with the agreement of the municipality, permit
 23 annexation to be effective with respect to any part of the
 24 area concerning which no appeal is being made.

25 If part or all of the area annexed under the terms of

1 an annexation ordinance is the subject of an appeal to the
 2 lower or higher court on the effective date of the
 3 ordinance, then the ordinance shall be deemed amended to
 4 make the effective date with respect to such area the date
 5 of the final judgment of the lower or higher court,
 6 whichever is appropriate, or the date the municipal
 7 governing board completes action to make the ordinance
 8 conform to the court's instructions in the event of remand.

9 (5) All decisions and findings of the governing body
 10 of the municipality shall be presumed to be reasonable and
 11 lawful, until and unless they are modified or set aside by
 12 the governing body or upon review.

13 (6) No decisions of the governing body shall be
 14 subject to collateral attack and may be reviewed or modified
 15 only in the manner provided herein."

16 Section 8. Section 11-523, R.C.M. 1947, is amended to
 17 read as follows:

18 "11-523. Right to court review when area not annexed.
 19 After the ~~resident~~ freeholders have properly petitioned the
 20 governing body of the municipality and the body has failed
 21 to pass a resolution of intent to annex within sixty (60)
 22 days, the petitioners may file a complaint and a duplicate
 23 copy of the petition in the district court of the proper
 24 jurisdiction stating the reason why the proposed annexation
 25 should take place. The municipality shall be designated

1 party defendant in the cause and shall be required to appear
 2 and answer as in other cases. The court, without a jury,
 3 shall hear and determine the questions presented in the
 4 petition. If the evidence establishes that:

5 (1) essential municipal services and facilities are
 6 not available to the inhabitants of such territory;

7 (2) the municipality is physically and financially
 8 able to provide municipal services to the area sought to be
 9 annexed; and

10 (3) at least one-eighth (1/8) of the aggregate
 11 external boundaries of the territory sought to be annexed is
 12 contiguous to the boundaries of the municipality; the court
 13 shall order the proposed annexation to take place,
 14 notwithstanding the provisions of any other law of this
 15 state.

16 If, however, the evidence does not establish all three
 17 (3) of the foregoing factors, the court shall deny the
 18 petition to annex and dismiss the proceeding."

-End-

1 SENATE BILL NO. 232

2 INTRODUCED BY MURRAY, FASBENDER, THOMAS, STORY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT ALL
5 FREEHOLDERS OF PROPERTY IN A TERRITORY TO PETITION FOR
6 ANNEXATION AND TO VOTE ON QUESTIONS OF ANNEXATION OF THE
7 TERRITORY AND TO PROVIDE ALL FREEHOLDERS WITH NOTICE OF A
8 PROPOSED ANNEXATION; AMENDING SECTIONS 11-506, 11-507,
9 11-516, 11-517, 11-518, 11-520, 11-522, AND 11-523, R.C.M.
10 1947."

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

13 Section 1. Section 11-506, R.C.M. 1947, is amended to
14 read as follows:

15 "11-506. Alteration of boundaries of cities and towns
16 — inclusion of territory — petition and election. (1) The
17 boundaries of any incorporated town or city, whether
18 heretofore or hereafter formed, may be altered and new
19 territory or territories annexed thereto, incorporated and
20 included therein, and made a part thereof, upon proceedings
21 being had and taken as in this act provided. The council,
22 or other legislative body of any such municipal corporation,
23 upon receiving a written petition therefor containing a
24 description of the new territory or territories asked to be
25 annexed to such corporation, and signed by not less than

1 thirty-three and one-third per cent (33 1/3%) of the
2 ~~resident freeholder electors of freeholders of property in~~
3 the territory proposed to be annexed must, without delay,
4 submit to the electors of such municipal corporation and to
5 the electors residing in and the freeholders of property in
6 the territory or territories proposed by such petition to be
7 annexed to such corporation, the question whether such new
8 territory or territories shall be annexed to, incorporated
9 in, and made a part of said municipal corporation.

10 (2) Such question may be so submitted at the next
11 general municipal election to be held in such municipal
12 corporation, or it may be so submitted prior to such general
13 election, either at a special election called therein for
14 that purpose, or at any other municipal election therein,
15 except an election at which the submission of such question
16 is prohibited by law; and such council or legislative body
17 is hereby empowered to and it shall be its duty to cause
18 notice to be given of such election by the publication of a
19 notice thereof in a newspaper printed and published in such
20 municipal corporation at least once a week for a period of
21 three (3) successive weeks next preceding the date of such
22 election, or if there is no newspaper printed in such
23 municipal corporation, then such notice shall be published
24 in like manner for a like period in the nearest town or city
25 in the county in which said territory or territories to be

1 annexed is situated, in which such newspaper is printed.
 2 Such notice shall distinctly state the proposition to be
 3 submitted, i. e., that it is proposed to annex to,
 4 incorporate in, and make a part of such municipal
 5 corporation the territory or territories sought to be
 6 annexed, specifically describing the boundaries thereof; and
 7 in said notice the qualified electors of said municipal
 8 corporation, and the qualified electors residing in said
 9 territory or territories so proposed to be annexed, shall be
 10 invited to vote upon such proposition by placing upon their
 11 ballots the words "for annexation" or "against annexation,"
 12 or words equivalent thereto.

13 (3) Such council or legislative body is hereby
 14 empowered, and it shall be its duty, to establish, and in
 15 such notice of election designate the voting precinct or
 16 precincts, the date of said election, the place or places at
 17 which, and the hours between which the polls will be opened
 18 for such election, and such other information regarding said
 19 election as the said council or legislative body may deem
 20 proper. Such place or places shall be that or those commonly
 21 used as voting places within such municipal corporation, and
 22 also that or those commonly used by the electors residing in
 23 such new territory or territories.

24 (4) The council or legislative body shall notify each
 25 freeholder of property in the territory to be annexed of the

1 election on the question of annexation and shall send each
 2 such freeholder an absentee ballot. THE COUNCIL OR
 3 LEGISLATIVE BODY SHALL SATISFY THE REQUIREMENTS OF THIS
 4 SUBSECTION IF IT MAILS ONE ABSENTEE BALLOT TO THE FREEHOLDER
 5 OR FREEHOLDERS SHOWN ON THE LAST TAX ROLL AT THE ADDRESS TO
 6 WHICH TAX NOTICES ARE SENT. The notice shall contain the
 7 same information as the published notice under subsection
 8 (2) and shall inform the freeholder that if he is not
 9 eligible to vote at the election required by subsection
 10 11-507(1), he may vote by returning the ballot, properly
 11 marked and notarized, by a date not earlier than 5 days
 12 prior to the election, specified in the notice. The notice
 13 and the ballot shall be sent no later than 3 weeks prior to
 14 the election. THE FAILURE OF THE COUNCIL OR LEGISLATIVE BODY
 15 TO COMPLY WITH THIS SUBSECTION SHALL NOT BE INVALIDATE AN
 16 ELECTION UNLESS SUCH FAILURE WAS DELIBERATE. A freeholder
 17 may vote only once in an election on the question of
 18 annexation, and all votes of a freeholder voting more than
 19 once are void."

20 Section 2. Section 11-507, B.C.M. 1947, is amended to
 21 read as follows:

22 "11-507. Submission of question of annexation —
 23 election, how conducted and returned — annexation, when
 24 complete. (1) If the question of annexation is submitted at
 25 a special election called for such purpose, the city or town

1 council, or other legislative body, shall fix the hours
 2 through which the polls are to be kept open, which shall be
 3 not less than eight (8), and which must be stated in the
 4 notice of election, and may appoint a smaller number of
 5 judges than is required at a general city or town election,
 6 but in no case shall there be less than three (3) judges in
 7 a precinct and such judges shall act as their own clerks. If
 8 the question of annexation is submitted at a general city or
 9 town election, the polls shall be kept open during the same
 10 hours as are fixed for the general election, and the judges
 11 and clerks for such general election shall act as the judges
 12 and clerks thereof.

13 (2) Whenever the question of annexation under this
 14 title is submitted at either a general city or town
 15 election, or at a special election, separate ballots, white
 16 in color and of convenient size, shall be provided therefor.
 17 The election shall be conducted, and the returns made in the
 18 same manner as other city or town elections; and all
 19 election laws governing city and town elections shall govern
 20 in so far as they are applicable, but if such question be
 21 submitted at a general city or town election, the votes
 22 thereon must be counted separately, and separate returns
 23 must be made by the judges and clerks at such election. If
 24 the said annexation election is held at the same time as a
 25 general city or town election, then the returns shall be

1 canvassed by the city or town council at the same time as
 2 the returns for such general election; but if the question
 3 of annexation is submitted at a special election, then the
 4 city or town council shall meet within ten (10) days after
 5 the date of the holding of such special election and canvass
 6 the returns.

7 (3) If it is found that a majority of such votes were
 8 cast in favor of the annexation, the city or town council,
 9 or other legislative body shall, at a regular or special
 10 meeting held within thirty (30) days thereafter, pass and
 11 adopt a resolution providing for such annexation. Such
 12 resolution shall recite that a petition has been filed with
 13 the said council or other legislative body with a sufficient
 14 number of signatures of thirty-three and one-third per cent
 15 (33 1/3%) of the ~~resident freeholder electors of~~ freeholders
 16 of property in the territory proposed to be annexed; a
 17 description of the boundaries of the territory or
 18 territories to be annexed; a copy of the resolution ordering
 19 a general or special election thereof, as the case may be; a
 20 copy of the notice of such election; the time and result of
 21 the canvass of the votes received in favor of annexation,
 22 and the number thereof cast against annexation; and that the
 23 boundaries of such city or town, by such resolution, shall
 24 be extended so as to embrace and include such territory or
 25 territories as the same are described in the petition for

1 annexation, which said resolution shall be incorporated in
2 the minutes of said council or legislative body.

3 (4) The clerk or other officer performing the duties
4 of clerk of such council or legislative body, shall promptly
5 make and certify under the seal of said municipal
6 corporation, a copy of said record so entered upon said
7 minutes, which document shall be filed with the clerk of the
8 county in which the city or town to which said territory or
9 territories are sought to be annexed, is situated. From and
10 after the date of the filing of said document in the office
11 of the said county clerk, the annexation of such territory
12 or territories so proposed to be annexed shall be deemed and
13 shall be complete and thenceforth such annexed territory or
14 territories shall be, to all intents and purposes, a part of
15 said municipal corporation, and the said city or town to
16 which the annexation is made, has the power to pass all
17 necessary ordinances pertaining thereto."

18 Section 3. Section 11-516, R.C.M. 1947, is amended to
19 read as follows:

20 "11-516. Definitions. The following terms where used
21 in this act have the following meanings, except where the
22 context clearly indicates a different meaning:

23 (1) "Contiguous" means any area which, at the time
24 annexation procedures are initiated, either abuts directly
25 on the municipal boundary or is separated from the municipal

1 boundary by a street or street right-of-way, a creek or
2 river, the right-of-way of a railroad or other public
3 service corporation, lands owned by the city or some other
4 political subdivision, or lands owned by the state.

5 (2) "Municipality" means any city or town under
6 Montana law.

7 (3) "~~Resident freeholder~~ Freeholder" means a person
8 who ~~maintains his residence on real property in which he~~
9 holds an estate of life or inheritance or ~~of which he is the~~
10 purchaser of such an estate under a contract for deed, some
11 memorandum of which has been filed in the office of the
12 county clerk and recorder.

13 (4) "Person" means a person, partnership, corporation,
14 association, or other legal entity or any political
15 subdivision or agency of the state."

16 Section 4. Section 11-517, R.C.M. 1947, is amended to
17 read as follows:

18 "11-517. Initiation of extension of corporate limits.
19 The governing body of any municipality may extend the
20 corporate limits of such municipality under the procedure
21 set forth in this act upon the initiation of the procedure
22 by the board itself; or, whenever the ~~resident~~ freeholders
23 of property situated outside the corporate boundaries of any
24 municipality, but contiguous thereto, desire to have real
25 estate annexed to the municipality, they may file with the

1 governing body of the municipality a petition bearing the
 2 signatures of fifty-one percent (51%) of the resident
 3 freeholders of property in the territory sought to be
 4 annexed, requesting a resolution stating the intent of the
 5 municipality to consider annexation. Upon passage of the
 6 resolution, the governing body shall follow the procedure in
 7 section 7 [11-520] of this act. If the municipal governing
 8 body fails to act within sixty (60) days the petitioners may
 9 appeal to the district court under the procedure set down in
 10 section 9 [11-522] of this act."

11 Section 5. Section 11-518, R.C.M. 1947, is amended to
 12 read as follows:

13 "11-518. Plans to provide services. A municipality
 14 exercising authority under this act shall make plans for the
 15 extension of services to the area proposed to be annexed and
 16 shall, prior to the public hearing provided for in section 7
 17 [11-520] of this act, prepare a report setting forth its
 18 plans to provide services to such area. This report shall
 19 include:

20 (1) A map or maps of the municipality and adjacent
 21 territory to show the following information:

22 (a) the present and proposed boundaries of the
 23 municipality;

24 (b) the present streets, major truck water mains,
 25 sewer interceptors and outfalls and other utility lines, and

1 the proposed extension of such streets and utility lines as
 2 required in subsection (3) of this section; and

3 (c) the general land-use pattern in the areas to be
 4 annexed.

5 (2) A statement showing that the area to be annexed
 6 meets the requirements of section 6 [11-519] of this act.

7 (3) A statement setting forth the plans of the
 8 municipality for extending to the area to be annexed each
 9 major municipal service performed within the municipality at
 10 the time of annexation. Specifically, such plans shall:

11 (a) provide a long-range plan for extension of
 12 services and the acquisition of properties outside the
 13 corporate limits. This plan must show anticipated
 14 development a minimum of five (5) years into the future
 15 showing on a yearly basis how the municipality plans to
 16 extend services, develop and add sections to the city;

17 (b) provide for extending police protection, fire
 18 protection, garbage collection, and streets and street
 19 maintenance services to the area to be annexed on
 20 substantially the same basis and in the same manner as such
 21 services are provided within the rest of the municipality
 22 prior to annexation;

23 (c) provide for future extension of streets and of
 24 major trunk water mains, sewer outfall lines and other
 25 utility services into the area to be annexed, so that when

1 such streets and utility lines become necessary and are
 2 constructed, property owners in the area to be annexed will
 3 be able to secure such services, according to the policies
 4 in effect in such municipality for extending such services
 5 to individual lots or subdivisions;

6 (d) if extension of streets and water, sewer or other
 7 utility lines into the area to be annexed is necessary, set
 8 forth a proposed timetable for construction of such streets
 9 and utility lines; and

10 (e) a method must be set forth by which the
 11 municipality plans to finance extension of services into the
 12 area to be annexed. Included within this plan must be
 13 methodology whereby the area to be annexed may vote upon any
 14 proposed capital improvements. This methodology shall
 15 contain provisions to permit all freeholders of property in
 16 the section to vote. Should a negative vote be cast by over
 17 fifty percent (50%) of those ~~resident~~ freeholders of
 18 property in the section or sections to be annexed in such
 19 election, the area shall not be annexed. If the area is
 20 serviced currently by adequate water and sewage services,
 21 streets, curb and gutters, and no capital improvements are
 22 needed to provide adequate services stipulated by this
 23 section, the municipality must provide the area to be
 24 annexed with a plan of how they plan to finance other
 25 services to be included within the district--mainly police

1 protection, fire protection, garbage collection, street and
 2 street maintenance services, as well as continued utility
 3 service. In this annexation plan it must be clearly stated
 4 that the entire municipality tends to share the tax burden
 5 for these services. And if so, the area may be annexed
 6 without a bond issue under the provisions of this act."

7 Section 6. Section 11-520, R.C.M. 1947, is amended to
 8 read as follows:

9 "11-520. Resolution of intention to annex — public
 10 hearing notice — action by governing body after hearing.

11 (1) The governing body of any municipality desiring to annex
 12 territory under the provisions of this act shall first pass
 13 a resolution stating the intent of the municipality to
 14 consider annexation. Such resolution shall describe the
 15 boundaries of the area under consideration and fix a date
 16 for a public hearing on the question of annexation, the date
 17 for such public hearing to be not less than thirty (30) days
 18 and not more than sixty (60) days following passage of the
 19 resolution.

20 (2) The notice of public hearing shall:

21 (a) fix the date, hour and place of the public
 22 hearing;

23 (b) describe clearly the boundaries of the area under
 24 consideration;

25 (c) state that the report required in section 5

1 [11-518] of this act will be available in the office of the
2 municipal official designated by the governing body at least
3 fourteen (14) days prior to the date of the public hearing.

4 Such notice will be given by publication in a newspaper
5 having general circulation in the municipality once a week
6 for at least four (4) successive weeks prior to the date of
7 the hearing. The date of the last publication shall not be
8 more than seven (7) days preceding the date of the public
9 hearing. If there be no such newspaper, the municipality
10 shall post the notice in at least five (5) public places
11 within the municipality and at least five (5) public places
12 in the area to be annexed for thirty (30) days prior to the
13 date of public hearing. The notice shall be sent to each
14 freeholder of property in the area to be annexed. Each
15 freeholder shall be informed that he may object in writing
16 and told of the provisions of 11-520(8) regarding
17 disapproval of annexation by a majority of the freeholders.

18 (3) At least fourteen (14) days before the date of the
19 public hearing, the governing body shall approve the report
20 provided for in section 5 [11-518] of this act, and shall
21 make it available to the public at the office of the
22 municipal official designated by the governing body. In
23 addition, the municipality may prepare a summary of the full
24 report for public distribution.

25 (4) At the public hearing, a representative of the

1 municipality as designated by the governing body shall first
2 make an explanation of the report required in section 5
3 [11-518] of this act. Following such explanation, all
4 persons resident or owning property in the territory
5 described in the notice of public hearing and all residents
6 of the municipality shall be given an opportunity to be
7 heard.

8 (5) The municipal governing body shall take into
9 consideration facts presented at the public hearing and
10 shall have authority to amend the report required by section
11 5 [11-518] of this act and to make changes in the plans for
12 serving the area proposed to be annexed so long as such
13 changes meet the requirements of section 5 [11-518]. At any
14 regular or special meeting held no sooner than seven (7)
15 days following the public hearing and no later than sixty
16 (60) days following such public hearing, the governing body
17 shall have authority to adopt an ordinance extending the
18 corporate limits of the municipality to include all, or such
19 part, of the area described in the notice of public hearing,
20 which meets the requirements of section 6 [11-519] of this
21 act, and which the governing body has concluded should be
22 annexed. The ordinance shall:

23 (a) contain specific findings showing that the area to
24 be annexed meets the requirements of section 6 [11-519] of
25 this act. The external boundaries of the area to be annexed

1 shall be described by metes and bounds;

2 (b) contain a statement of the intent of the
3 municipality to provide services to the area being annexed
4 as set forth in the report required by section 5 [11-518] of
5 this act; and

6 (c) fix the effective date of annexation. The
7 effective date of annexation may be fixed for any date
8 within twelve (12) months from the date of passage of the
9 ordinance.

10 (6) From and after the effective date of the
11 annexation ordinance, the territory and its citizens and
12 property shall be subject to all debts, laws, ordinances and
13 regulations in force in such municipality and shall be
14 entitled to the same privileges and benefits as other parts
15 of such municipality. The newly annexed territory shall be
16 subject to municipal taxes levied for the fiscal year
17 following the effective date of annexation. Annexed property
18 which is part of a sanitary district or other special
19 service district which has installed water, sewer or other
20 utilities or improvements, paid for by the residents of said
21 district, shall not be subject to that part of the municipal
22 taxes levied for debt service for the first five (5) years
23 after the effective date of annexation.

24 (7) If a municipality is considering the annexation of
25 two (2) or more areas which are all adjacent to the

1 municipal boundary but are not adjacent to one another, it
2 may undertake simultaneous proceeding under authority of
3 this act for the annexation of such areas.

4 (8) For a period of twenty (20) days after the public
5 hearing provided for in section 7 [11-520] of this act the
6 governing body of the municipality shall receive expressions
7 of approval or disapproval in writing, of the proposed
8 annexation from ~~resident~~ freeholders of property in the
9 territory proposed to be annexed. If a majority of the ~~said~~
10 ~~resident~~ freeholders, in writing, disapprove the proposed
11 annexation, no further proceedings under this act shall be
12 had, relating to the territory proposed to be annexed or any
13 part thereof, for a period of one (1) year from the date of
14 such disapproval."

15 Section 7. Section 11-522, R.C.M. 1947, is amended to
16 read as follows:

17 "11-522. Right to court review when area annexed. (1)
18 Within thirty (30) days following the passage of an
19 annexation ordinance under authority of this act, either a
20 majority of the ~~resident~~ freeholders of property in the
21 territory or the owners of more than seventy-five percent
22 (75%) in assessed valuation of the real estate in the
23 territory who shall believe that he or they will suffer
24 material injury, by reason of the failure of the municipal
25 governing body to comply with the procedure set forth in

1 this act or to meet the requirements set forth in section 6
 2 [11-519] of this act as they apply to his or their property,
 3 may file a petition in the district court of the district in
 4 which the municipality is located, seeking review of the
 5 action of the governing board and serve a copy of the
 6 petition on the municipality in the manner of service of
 7 civil process.

8 (2) If two (2) or more petitions for review are
 9 submitted to the court, the court may consolidate all such
 10 petitions for review at a single hearing.

11 (3) The review shall be conducted by the court without
 12 a jury. The court may hear oral arguments and receive
 13 written briefs, and may take evidence intended to show
 14 either:

15 (a) that the statutory procedure was not followed;

16 (b) that the provisions of section 5 [11-518] or
 17 section 6 [11-519] were not met; or

18 (c) the court may affirm the action of the governing
 19 body without change, or it may:

20 (i) remand the ordinance to the municipal governing
 21 body for further proceedings if procedural irregularities
 22 are found to have materially prejudiced the substantive
 23 rights of any of the petitioners;

24 (ii) remand the ordinance to the municipal governing
 25 body for amendment of the boundaries to conform to the

1 provisions of section 6 [11-519]; but the court cannot
 2 remand the ordinance to the municipal governing body with
 3 directions to add an area to the municipality which was not
 4 included in the notice of public hearing and not provided
 5 for in plans for service; or

6 (iii) remand the report to the municipal governing
 7 body for amendment of the plans for providing services to
 8 the end that the provisions of section 5 [11-518] of this
 9 act are satisfied.

10 If any municipality fails to take action in accordance
 11 with the court's instructions upon remand within three (3)
 12 months from receipt of such instructions, the court may in
 13 its discretion extend the time for compliance.

14 (4) Any party to the review proceedings, including the
 15 municipality, may appeal to the Montana supreme court from
 16 the final judgment of the district court under rules of
 17 procedure applicable in other civil cases. The appealing
 18 party may apply to the lower court for a stay in its final
 19 determination, or a stay of the annexation ordinance,
 20 whichever shall be appropriate, pending the outcome of the
 21 appeal to the higher court; provided, that the lower court
 22 may, with the agreement of the municipality, permit
 23 annexation to be effective with respect to any part of the
 24 area concerning which no appeal is being made.

25 If part or all of the area annexed under the terms of

1 an annexation ordinance is the subject of an appeal to the
 2 lower or higher court on the effective date of the
 3 ordinance, then the ordinance shall be deemed amended to
 4 make the effective date with respect to such area the date
 5 of the final judgment of the lower or higher court,
 6 whichever is appropriate, or the date the municipal
 7 governing board completes action to make the ordinance
 8 conform to the court's instructions in the event of remand.

9 (5) All decisions and findings of the governing body
 10 of the municipality shall be presumed to be reasonable and
 11 lawful, until and unless they are modified or set aside by
 12 the governing body or upon review.

13 (6) No decisions of the governing body shall be
 14 subject to collateral attack and may be reviewed or modified
 15 only in the manner provided herein."

16 Section 8. Section 11-523, E.C.H. 1947, is amended to
 17 read as follows:

18 "11-523. Right to court review when area not annexed.
 19 After the ~~resident~~ freeholders have properly petitioned the
 20 governing body of the municipality and the body has failed
 21 to pass a resolution of intent to annex within sixty (60)
 22 days, the petitioners may file a complaint and a duplicate
 23 copy of the petition in the district court of the proper
 24 jurisdiction stating the reason why the proposed annexation
 25 should take place. The municipality shall be designated

1 party defendant in the cause and shall be required to appear
 2 and answer as in other cases. The court, without a jury,
 3 shall hear and determine the questions presented in the
 4 petition. If the evidence establishes that:

5 (1) essential municipal services and facilities are
 6 not available to the inhabitants of such territory;

7 (2) the municipality is physically and financially
 8 able to provide municipal services to the area sought to be
 9 annexed; and

10 (3) at least one-eighth (1/8) of the aggregate
 11 external boundaries of the territory sought to be annexed is
 12 contiguous to the boundaries of the municipality; the court
 13 shall order the proposed annexation to take place,
 14 notwithstanding the provisions of any other law of this
 15 state.

16 If, however, the evidence does not establish all three
 17 (3) of the foregoing factors, the court shall deny the
 18 petition to annex and dismiss the proceeding."

-End-