CHAPTER NO. 21ele\_\_\_\_

# HOUSE BILL NO. 48

## INTRODUCED BY MANUEL

# BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

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January	4,	1979	Introduced and referred to Committee on Natural Resources.
January	6,	1979	On motion, joint rule 6-6 suspended and sponsor's signature allowed to be added to prefiled bill.
January	17,	1979	Committee recommend bill do pass as amended. Report adopted.
January	18,	1979	Printed and placed on members' desks.
January	19,	1979	Second reading, do pass. Segregated from the Committee of the Whole report.
			On motion taken from second reading and referred to Committee on Natural Resources.
January	20,	1979	On motion taken from Natural Resources Committee and referred to second reading.
			Second reading, do pass.
January	22,	1979	Considered correctly engrossed.
January	23,	1979	Third reading, passed. Transmitted to second house.

IN	THE	SENATE
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January 24, 1979	Introduced and referred to Committee on Local Government.
March 2, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 5, 1979	Second reading, concurred in.
March 7, 1979	Third reading, concurred in as amended.
IN THE HOUST	E
March 8, 1979	Returned from second house. Concurred in as amended.
March 14, 1979	Second reading, amendments adopted.
March 15, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

1	HOUSE BILL NO. 48	1	county planning board or a joint city-county planning board.
2	INTRODUCED BY	2	(8) "Plat" means a subdivision of land into lots,
3	BY REQUEST OF THE CODE COMMISSIONER	3	streets, and areas, marked upon the earth and represented on
4		4	paper+ and includes <del>re-plats <u>replats</u> or amended plats.</del>
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND	5	(9) "Public place" means any tract owned by the state
6	CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE."	6	or its subdivisions.
1		7	{10} "Streets" includes streets, avenues, boulevards,
8	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	8	roads, lanes, alleys, and all public ways.
9	Section 1. Section 76-1-103, NCA, is amended to read:	9	(11) "Units of government" means any federal, state, <u>or</u>
10	#76-1-103. Definitions. As used in this Chapter, the	10	regionaly unit of government or any county, city, or town.
11	following definitions apply:	11	{12} "Utility" means any facility used in rendering
12	(1) "City" includes incorporated cities and towns.	12	service which the public nas a right to demand."
13	{2} "City council" means the chief legislative body of	13	Section 2. Section 76-1-202, MCA, is amended to read:
14	a city or incorporated town.	14	"76-1-202. Qualifications of citizen members of
15	(3) "Governing body" or "governing bodies" means the	15	city-county planning board. (1) The citizen members of the
16	governing body of any governmental unit represented on a	16	city-county planning board shall be <del>resident-freeholders-in</del>
17	planning board.	17	residents of the area over which the planning board has
18	(4) "Master plan" means a comprehensive development	18	jurisdiction; provided, nowever, that at least two of such
19	plan`or any of its parts such as a plan of land use and	19	members shall be <del>resident-freeholders-in</del> <u>residents_of</u> the
20	zoning, of thoroughfares, of sanitation, of recreation, and	20	area, if any, outside the City limits over which the
21	of other related matters.	21	planning board has jurisdiction and the two members
22	(5) "Mayor" means mayor of a city.	22	appointed by the county commissioners shall reside outside
23	(6) "Person" means any individual, firm, or	23	the city limits but within the jurisdictional area of the
24	corporation.	24	planning board.
25	(7) "Planning board" means a city planning board <u>. a</u>	25	(Z) Any citizen appointee may be removed from office
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INTRODUCED BILL

by a majority vote of the governing body of the governmental 1 unit represented by such appointee.\* 2 Section 3. Section 76-1-212, MCA, is amended to read: ٦ #76-1-212. Citizen members of county planning board. 4 (1) The citizen members of the county planning board shall 5 be resident-freeholders-in residents of the area over which 6 7 the planning board has jurisdiction. (2) Any citizen appointee may be removed from office R by a majority vote of the governing body of the governmental ç 10 unit represented by such appointee." Section 4. Section 76-1-221, MCA, is amended to read: 11 12 #76-1-221. Membership of city planning board.: (1) A city planning board small consist of not less than seven 13 members to be appointed as follows: 14 (a) one member to be appointed by the city council 15 from its membership; 16 (b) one member to be appointed by the city council, 17 who may in the discretion of the city council be an employee 18 or hold public office in the city or county in which the 19 20 city is located; (c) one mother to be appointed by the mayor upon the 21 22 designation by the county commissioners of the county in

23 which the city is located;

24 (a) four citizen members to be appointed by the mayor.
 25 two of whom shall be resident-freeholders-within <u>residents</u>.

of the urban area; if any; outside of the city limits over
 which the planning board has jurisdiction under this chapter
 and two of whom shall be resident-freeholders residents
 within the city limits.

5 (2) The clerk of the city council shall certify 6 members appointed by its budy. The certificates shall be 7 sent to and become a part of the records of the planning 8 board. The mayor shall make similar certification for the 9 appointment of citizen aemours.\*

10 Section 5. Section /6-1-223, MCA, is amended to read: 11 \*76-1-223. County representative for city planning 12 board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county 13 14 commissioners of the county wherein the city is located shall within 45 days designate a representative of the 15 16 county to the mayor of the city for appointment of to the 17 city planning board. This representative may be a memoer of 1.8 the board of county consissioners or an officenolder or 19 employee of the county. In the event of the failure of the 20 county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a 21 22 representative of the county." 23 Section o. Section 76-1-224, MCA, is amended to read: 24 #76-1-224. Uitizen Dembers of city planning board. (1)

25 The citizen members small:

(a) be qualified by knowledge and experience in 1 2 matters pertaining to the development of the city; and (b) hold no other office in the city government+-ond 3 te}--be--resident---freeholders---of---such---city---or 4 jurisdictional-area-as-defined-in-76-1-584-through-76-1-587. 5 (2) Any citizen appointee may be removed from office 6 by a majority vote of the governing body of the governmented 7 unit-represented-by-such-sppointes city.\* 8 Section 7. Section 76-1-403, MCA, is amended to read: 9 "76-1-403. Tax levy by county for certain county 10 planning districts authorized. When a county planning board 11

12 has been established, the board of county commissioners may create a planning district which shall include that property 13 which lies outside the limits of the jurisdictional area as 14 established pursuant to 76-1-504 through 76-1-507 or as 15 modified pursuant to 76-1-501 through 76-1-503 in counties 16 where a city-county planning board has been established as 17 well as that property which lies outside the limits of any 18 incorporated cities and towns. The board of county 19 commissioners may levy on all property located within such 20 planning district a tax not to exceed 2-mills the maximum 21 levy authorized by 76-1-405 for planning board purposes. 22 under procedures set forth in Title 7, chapter 6, part 23.\* 23 Section 8. Section 76-1-406, MCA, is amended to read: 24 #76-1-406. Tax levy by municipalities authorized. The 25

1 governing body of any city or town represented upon a 2 planning board may levy a tax upon the property located 3 within such city or town not-to-exceed-2-mills for planning 4 board purposes, under procedures set forth in Title 7, 5 chapter 6, part 42, provided such tax shall not exceed the 6 maximum levy authorized in To-1-407."

Section 9. Section 76-1-409, MCA, is amended to read: 7 8 #76-1-409. Acceptance and administration of government funds and services. upon approval of the governing bodies 9 10 represented on the board, a planning board may accept. receive, and expend funds, grants, and services from the 11 federal government or its agencies and instrumentalities, 12 13 from of state or local government--of--its governments or 14 their agencies and instrumentalities, of--state-or-local 15 government or from civic sources: may end contract with 16 respect thereto: and may provide such information and 17 reports as may be necessary to secure such financial aid." 18 Section 10. Section 76-2-211, HCA, is amended to read: 19 #76-2-211. Violations and penalties. A violation of 20 this party--except--fo-2-2064 or any resolution adopted 21 pursuant thereto is nereby-declared-to-be a misdemeanor and 22 shall be punishable by a fine not exceeding \$500 or 23 imprisonment in the county jail not exceeding 6 months or 24 both."

25 Section 11. Section 76-2-308, MCA, is amended to read:

1 **"76-2-308.** Enforcement of zoning regulations and 2 ordinances. (1) The city or town council or other 3 legislative body may provide by ordinance for the 4 enforcement of this part--except--76-2-306y and of any 5 regulation or ordinance made thereunder.

(2) In case any building or structure is erected, 6 constructed, reconstructed, altered, repaired, converted, or 7 maintained or any building, structure, or land is used in 8 9 violation of this part or of any ordinance or other 10 regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other 11 12 remedies, may institute any appropriate action or 13 proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, 14 or use: to restrain, correct, or abate such violation; to 15 prevent the occupancy of such building, structure, or land; 16 17 or to prevent any illegal act, conduct, business, or use in 18 or about such premises."

19 Section 12. Section 76-2-315, MCA, is amended to read: 20 \*76-2-315. Violations and panalties. (1) A violation 21 of this party--except--76-2-306y or of such ordinance or 22 regulation made pursuant to 76-2-308(1) is hereby--declared 23 to--be a misdemeanor, and such city or town council or other 24 legislative body may provide for the punishment thereof by 25 fine or imprisonment or both. 1 (2) It is also empowered to provide civil penalties 2 for such violation."

Section 13. Section 76-3-202, MCA, is amended to read: ъ #76-3-202. Exemption for structures on complying 4 subdivided lands. Where required by this chapter, when the 5 and upon which an improvement is situated has been 6 subdivided in compliance with this chapter, the sale, rent, 7 lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or Q 10 more parcels of land is not a division of land and is not subject to the terms of this chapter." 11

12 Section 14. Section 76-3-405, MCA, is amended to read: 13 "76-3-405. Administration of oaths by registered land 14 surveyor. {1} Every registered land surveyor may administer 15 and certify oaths when:

16 (a) it becomes necessary to take testimony for the 17 identification of old corners or reestablishment of lost or 18 obliterated corners;

(b) a corner or monument is found in a deteriorating
 condition and it is desirable that evidence concerning it be
 perpetuated;

(c) the importance of the survey makes it desirable to
administer an oath to his assistants for the faithful
performance of their duty.

25 (2) A record of oaths shall be preserved as part of

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1	the field notes of the survey and noted on the certificate
2	of survey filed under <del>this-section</del> <u>76-3-404</u> ."
3	Section 15. Section 76-4-1115, MCA, is amended to
4	read:
5	"76-4-1115. Misdemeanors enumerated. The following
6	acts are misdemeanors:
7	(1) the willful violation of or failure to comply with
8	any of the provisions of this part;
9	{2} the willful violation, failure, omission, or
10	neglect to obey, observe, or comply with any order, permit,
11	decision, demand, or requirement of the board;
12	(3) the offering for sale or lease as an agent,
13	salesman, or broker for a subdivider, developer, or owner of
14	subdivided lands or a subdivision, wherever situated, which
15	is being offered for sale outside the state of Montana
16	without first complying with the provisions of this party
17	<del>(4)the-</del> ad <del>vertising</del> -for-sa <del>le-or-lease-in-this-state-of</del>
18	<del>eparcelinanout-ot-statesubdivision-or-in-any-other</del>
19	monner-aiding-anownerysubdivideryordeveloperofan
20	out-of-statesubdivisionwhohasnotcompliedwith-the
21	<del>provisionsofthisparttoofferwithinthisstate</del>
22	subdivided-lends."
Z3	Section 16. Section 76-4-1117, MCA, is amended to

24 read:

25 #76-4-1117. Accrual of cause of action. (1) For the

1 purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or 2 criminal, involving any violation of this part, the cause of 3 action shall be deemed considered to have accrued not 4 5 earlier than the time of recording with the county clerk and recorder of the county in which the property was sold or 6 7 leased in violation of this parts and which recording 8 describes a lot or parcel so wrongfully sold or leased. 9 (2) This section does not prohibit the maintenance of such action at any time during the recording of such 10 instruments.\* 11 Section 17. Section 76-4-1245, MCA, is amended to 12 13 read: "76-4-1245. Penalties. Any person who violates any 14 provision of this part or who willfully violates any rule 15 adopted under it or any person who willfully in an 16 17 application for registration makes any untrue statement of a 18 material fact or omits to state a material fact is-quitty-of 19 a-felony-and may be fined not less than \$1,000 or more than 20 \$5,000 or may be imprisoned for not more than 2 years, or 21 both." Section 18. Section 76-5-1117. MCA: is amended to 22

24 "76-5-1117. donds authorized -- procedure. Cities.
25 towns, and counties are nereby authorized to contract

23

read:

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indebtedness and to issue special improvement district or
 rural improvement district bonds to provide funds for the
 payment of the cost of improvements contemplated by this
 part by following the following procedures:

5 (1) The governing body of the city, town, or county may call a special election to vote upon the proposition of ó 7 issuing said bonds or may submit the proposition as a 8 special question at a regular municipal or general election. 9 (2) The notice of the election and the election itself 10 shall be carried out in accordance with fithe-fy-chapter-12y 11 ports--41--and-42 1-1-4221 through 1-1-4234 as to cities and 12 in accordance with Fitle-Ty-chapter-i2y--part--21 1-7-2229 13 through 7-7-2236 as to the counties.

14 (3) Tax assessments for the payment of said the bonds
15 shall be levied in accordance with Title 7, chapter 12,
16 parts 41 and 42, and Title 7, chapter 12, part 21 as to
17 cities and counties, respectively."

18 Section 19. Section 76-o-203: MCA, is amended to read: 19 "76-o-203. Types of permissible easements. ft 20 Easements or restrictions under this chapter may prohibit or 21 limit any or all of the following:

tay(1) structures--construction or placing of
buildings, camping trailers, housetrailers, mobile homes,
roads, signs, billboards or other advertising, utilities, or
other structures on or above the ground;

tb;121 landfill--dumping or placing of soil or other 1 substance or material as landfill or dumping or placing of 2 trash, waste, or unsightly or offensive materials; 3 tet[3) vegetation-removal or destruction of trees. 4 shrubs, or other vegetation; 5 toj14) loam, gravel, etc.--excavation, dredging, or 6 removal of loam, peat, gravel, soil, rock, or other material 7 substance: 8 9 tet(5) surface use--surface use except for such 10 purposes permitting the land or water area to remain predominantly in its existing condition; 11 12 +f+161 acts detrimental to conservation+-activities detrimental to drainage, flood control, water conservation, 13 erosion control, soil conservation, or fish and wildlife 14 habitat and preservation: 15 total subdivision of land--subdivision of land as 16 17 defined in 16-3-103, 76-3-104, and 76-3-202; 18 thildl other acts-other acts or uses detrimental to 19 such retention of land or water areas in their existing 20 conditions. t2;--The--term--"tond"-in-subsections-f1;tb;-and-f1;tc; 21 22 above-includes-land-under-watery-watery-and-water--surfaces" 23 Section 20. Section 76-15-311, MCA, is amended to 24 read: 25 "76-15-311. Governing body of district. (1) If there

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read:

are no incorporated municipalities within the boundaries of
 the district, the governing body of said the district shall
 consist of five or-seven-supervisors elected <u>supervisors</u> or
 oppointed as-provided-herein.

5 [2] If there are incorporated multipalities within
6 the boundaries of the district, the governing body of the
7 district shall consist of saven supervisors as follows:

(2)(a) in-oll--cases--where--the--boundaries--of--such 8 9 conservation--district-include-any-incorporated-municipality or-municipalitiesy-the The board of supervisors, in addition 10 to the five elected supervisors, shall consist of two 11 appointed supervisors, making a total of seven supervisors 12 in such districts. The two appointed supervisors must be 13 resigents of the municipalities within the district. The 14 legislative bodies of the incorporated municipalities within 15 the district shall appoint the two additional supervisors 16 after consultation with the elected supervisors. The term 17 18 of office of the appointed supervisors shall be 3 years.

19 (3)(b) Where there are more than two incorporated 20 municipalities within a district, the two appointed 21 supervisors shall represent all the municipalities and urban 22 interests in the district and no municipality shall have 23 more than one appointed supervisor residing therein.\*

24 Section 21. Section 76-15-321, MCA, is amended to 25 read:

\*76-15-321. Rulemaking authority. A conservation
 district and the supervisors thereof shall have the power to
 make and from time to time amend and repeal rules not
 consistent-with-this-chapter to carry into effect its the
 purposes and powers of this chapter.\*
 Section 22. Section 76-15-528, MCA, is amended to

8 #76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses 9 of any of the work enumerated in this chapter. together with 10 any percentages imposed for delinguency and for cost of 11 collection, shall constitute a lien against the property 12 13 upon which such assessment is leviedy-ofter from the date terring on which such assessmenty-which is levied. This lien 14 15 can only be extinguished by payment of such assessment with 16 all penalties, costs, and interest."

17 Section 23. Section 76-15-611, MCA; is amended to 18 read:

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section part to aid but not to interfere with the government of the United States or of any department, bureau, or agency thereof in any undertaking over which such federal authority

4 desires to exercise full supervision and control.

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2

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(2) The provisions of this section-shall part may not 5 6 be construed to impair, limit, or repeal any right 7 whatsoever which the government of the United States or any 6 department, bureau, or agency thereof has to full and 9 complete jurisdiction, management, or control over projects 10 over which such federal authority desires to exercise such 11 rightsy-it-being-the. It is a purpose of this section part 12 expressly to subordinate any power of jurisdiction and to 13 never interfere directly with such federal authority."

14 Section 24. Section 76-15-722, MCA, is amended to 15 read:

16 "76-15-722. Operation of board of adjustment. (1) The 17 board of adjustment shall adopt rules to govern its 18 procedures, which rules shall be in accordance with this 19 chapter and with ony the ordinance adopted--pursuant--to 20 <del>76-15-721---through--76-15-727</del> <u>establishing\_the\_board\_of</u> 21 adjustment.

(2) The board shall annually elect a chairman from
among its members. Meetings of the board shall be held at
the call of the chairman and at such other times as the
board may determine. Any two members of the board constitute

a guorum. The chairman or in his absence such other member 1 of the board as he may designate to serve as acting chairman 2 may administer oaths and cumpel the attendance of witnesses. 4 4 (3) All meetings of the board shall be open to the 5 public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all 6 orders entered, which shall be filed in the office of the 7 board and shall be a public record." o,

Section 25+ Section 76-15-725+ MCA+ is amended to
 read:

#76-15-725. Board decision. (1) If: upon the facts 11 presented at the hearing, the board determines that there 12 are great practical difficulties or unnecessary hardship in 13 the way of applying the strict letter of any of the land use 14 regulations upon the lands of the petitioner, it shall make 15 16 and record that getermination and shall make and record 17 findings of fact as to the specific conditions which 18 establish the great practical difficulties or unnecessary 19 hardship.

20 (2) Upon the basis of the findings and determination, 21 the board may order a variance from the terms of the land 22 use regulations in their application to the lands of the 23 petitioner that will relieve the great practical 24 difficulties or unnecessary hardship: and will not be 25 contrary to the public interest; and will be such that the

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spirit of the land use regulations is observed, the public
 health, safety, and welfare is secured, and substantial
 justice is done."

4 Section 26. Section 75-16-305, MCA, is amended to 5 read:

6 #76-16-306. Management of grazing lands. A state 7 district may:

8 (1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power 9 includes the right to determine the size of preferences and 10 permit according to a fixed method which shall be stated in 11 the bylaws and which shall take into consideration the 12 13 rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, 14 15 regulations, and limitations under the terms of agreements between the state district and any agency of the United 16 States. The state district may also allot range to members 17 or nonmembers and decrease or increase the size of permits 18 if the range carrying capacity changes. 19

20 (2) undertake reserving and other approved 21 conservation and improvement practices of depleted range 22 areas or abandon <u>abandoned</u> farm lands and enter into 23 cooperative agreements with the federal government or any 24 other person for the reserving or conservation and 25 improvement practices; (3) employ and discharge employees, riders, and other
 persons necessary to properly manage the state district."

3 Section 27. Section 76-16-406, MCA, is amended to 4 read:

5 \*76-16-406. Transfer of preferences. (1) Upon application by a permittee, the state district with the . approval of the department may allow a preference based on 7 8 ownership or control of dependent commensurate or commensurate property to be transferred to other property of Q 10 sufficient commensurability; nowever, in any transfer of preference from dependent commensurate or commensurate 11 12 property controlled but not owned by the applicant, the 13 applicant sust have had control and use of the dependent 14 commensurate or commensurate property and the preference 15 appurtenant thereto for 5 consecutive years and must have 16 established and maintained the livestock operation upon 17 which the dependency was established by use or priority 18 ismediately prior to the application for transfer.

19 (2) In addition, the transfer may not interfere with 20 the stability of livestock operations or with proper range 21 management and may not affect adversely the established 22 local economy. A transfer may not be allowed without the 23 written consent of the owner or owners and any-encumbrances 24 of the dependent commensurate or commensurate property from 25 which the transfer is to be madew and a the owner or owners

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1 of any encumbrances on the property. A transfer is not

- 2 effective until approved by the department.
- 3 (3) All expenses involved under the application shall
- 4 be borne by the applicant.\*

-End-

SENATE MEMBERS

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LC 0029

1979 Legislature Code Commissioner Bill - Summary

HOUSE Bill No. 48

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 76-1-103. In subsection (7), "a county planning board" is added to update the definition. In subsection (11), the definition is rewritten for clarity.

Sections 2, 3, and 4. <u>76-1-202</u>, <u>76-1-212</u>, and <u>76-1-221</u>. In these sections, requirements that citizen members of boards be "resident freeholders" are changed to requirements that they be "residents" to reflect the holding of the Montana Supreme Court in Sadler v. Connolly, 35 St. Rep. 160 (1978).

Section 5.  $\underline{76-1-223}$ . "Of" is changed to "to" for grammar.

Section 6. <u>76-1-224</u>. In subsection (1), subsection (1) (c) is deleted as redundant with 76-1-221. In subsection (2), "governmental unit represented by such appointee" is changed to "city" because of rearrangement.

Section 7. <u>76-1-403</u>. This section is amended to provide consistency with the maximum mill levies provided by 76-1-405.

Section 8. <u>76-1-406</u>. This section is amended to provide consistency with the maximum mill levies provided by 76-1-407.

Section 9. <u>76-1-409</u>. This section is rewritten for clarity.

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Sections 10, 11, and 12. <u>76-2-211, 76-2-308, and 76-2-315</u>. The phrase "except 76-2-206" is deleted. The term was added in recodification when "this act" was changed to "this part". It would seem to be the intent of the legislature that violations of 76-2-206 also be subject to the same penalty. "Hereby declared to be" is deleted as redundant in 76-2-211 and 76-2-315.

Section 13. 76-3-202. "When" is added for clarity.

Section 14. 76-3-405. In subsection (2), "this section" is changed to "76-3-404" to correct an erroneous internal reference.

Section 15. <u>76-4-1115</u>. Subsection (4) is deleted as redundant. The part deals with out-of-state sales of in-state subdivisions while the deleted material talks of in-state sales of out-of-state subdivisions, which is covered by a later law codified in part 12 of the same chapter.

Section 16. <u>76-4-1117</u>. Subsection (1) is rewritten for clarity.

Section 17. <u>76-4-1245</u>. The phrase "is guilty of a felony and" is deleted for consistency with the criminal code.

Section 18. <u>76-5-1117</u>. In subsection (2), references to material in Title 7 are made more precise.

Section 19. 76-6-203. Subsection (2) is deleted as redundant since there is no reference to "land" in either (1)(b) or (1)(c).

Section 20. <u>76-15-311</u>. This section is rewritten for clarity.

Section 21. <u>76-15-321</u>. This section is rewritten for clarity.

Section 22. <u>76-15-528</u>. This section is rewritten for clarity.

Section 23. <u>76-15-611</u>. "Section" is changed to "part" to provide the proper reference to reflect the apparent legislative intent. A reference to "section" is meaningless.

Section 24. <u>76-15-722</u>. In subsection (1), "any ordinance adopted pursuant to 76-15-721 through 76-15-727" is changed to "the ordinance establishing the board of adjustment" for clarity and to provide a more precise reference. LC 0029

Section 25.  $\frac{76-15-725}{5}$ . Subsection (2) is rewritten for clarity.

Section 26. 76-16-306. In subsection (2), "abandon" is changed to "abandoned" to reflect the intent of the legislature.

Section 27. <u>76-16-406</u>. Subsection (2) is rewritten for clarity.

### 46th Legislature

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HB 0048/02

# Approved by Committee on <u>Natural Resources</u>

1	HOUSE BILL NO. 48	1	county planni
2	INTRODUCED BY MANUEL	2	(8) *P
3	BY REQUEST OF THE CODE COMMISSIONER	3	streets, and
4		4	paper, and in
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND	5	(9) #PL
6	CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE."	6	or its subdiv
7		۲	(10) #51
8	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	8	roads, lanes,
9	Section 1. Section 76-1-103; MCA; is amended to read:	9	(11) "Ur
10	"76-1-103。 Definitions。 As used in this chapter, the	10	regionaly <u>un</u> i
11	following definitions apply:	11	(12) "Ut
12	<ol> <li>"City" includes incorporated cities and towns.</li> </ol>	12	service which
13	(2) "City council" means the chief legislative body of	13	Section-
14	a city or incorporated town.	14	*76-1-20
15	(3) "Governing body" or "governing bodies" means the	15	<del>city-county-</del> ;
16	governing body of any governmental unit represented on a	16	etty-county
17	planning board.	17	residents-of
18	(4) "Master plan" means a comprehensive development	18	jurisdiction(
19	plan or any of its parts such as a plan of land use and	19	members-shoti
20	zoning, of thoroughfares, of sanitation, of recreation, and	20	oreovitor
21	of other related matters.	21	ptanningbox
22	(5) "Mayor" means mayor of a city.	22	appointedby
23	(6) "Person" means any individual, firm, or	23	the-city-limi
24	corporation.	24	ptonning-boor
25	(7) "Planning board" means a city planning board <u>essa</u>	25	t2}Any

ı	county planning board or a joint city-county planning board.
2	(8) "Plat" means a subdivision of land into lots.
3	streets, and areas, marked upon the earth and represented on
4	paper, and includes re-plets <u>replats</u> or amended plats.
5	(9) "Public place" means any tract owned by the state
6	or its subdivisions.
7	(10) "Streets" includes streets. avenues. boulevards.
8	roads, lanes, alleys, and all public ways.
9	(11) "Units of government" means any federal+ state+ or
10	regionaly <u>unit of government or any</u> county, city, or town.
11	(12) "Utility" means any facility used in rendering
12	service which the public has a right to demand."
13	Section-2+Section-76-1-202+-MEA+-is-amended-toread+
14	#76~1~202uQuolificotionsofcitizonmembersof
15	city-county-planning-boardsfil-The-citizen-members-ofthe
16	city-countyplanning-board-shall-be-resident-freeholders-in
17	<u>residents-of</u> the-area-overwhichtheplanningboardhas
18	jurisdiction;providedyhowevery-that-st-leest-two-of-such
19	members-sholl-be-resident-freeholders-in <u>residents-of</u> the
20	ores,itany,outsi <del>dethecityìimitsove</del> rwhich-the
21	planningboardhasjurisdictionandthetwomembers
22	appointedbythe-county-commissioners-shall-reside-outside
23	the-city-limits-but-within-the-jurisdictionalareaofthe
24	płanning-boardz
25	t2}Anycitizenappointee-may-be-removed-from-office

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1	by-o-mojority-vote-of-the-governing-body-of-the-governmental
Z	unit-represented-by-such-appointeew"
3	Section-3+Section-76-1-212+-MEA+-+s-Amended-toread+
4	₹76-1-212sCitizenmembersof-county-planning-boords
5	{±}-The-citizen-members-of-the-county-planningboardshall
6	beresident-freeholders-in <u>residents-of</u> the-ares-over-which
7	the-planning-board-hes-jurisdiction.
8	{2}*ny-citizen-appointee-way-be-removedfromoffice
9	by-8-majority-vote-of-the-governing-body-of-the-governmental
10	unit-represented-by-such-appointeer"
11	Section-4=Section76-1-221y-HEAy-is-amended-to-read*
12	"76-1-221wMembership-of-city-pisnning-boardw{1}A
13	cityplanningboardshallconsist-of-not-less-than-seven
14	members-to-be-appointed-as-follows+
15	tojone-member-to-be-appointedbythecitycouncil
16	from-its-membershipt
17	{b}onemembertobe-sppointed-by-the-city-councily
18	who-may-in-the-discretion-of-the-city-council-be-an-employee
19	or-hold-public-office-in-the-city-orcountyinwhichthe
20	city-is-located;
21	{c}onememberto-be-appointed-by-the-mayor-upon-the
22	designation-by-the-county-commissioners-ofthecountyin
23	which-the-city-is-located;
24	{d}four-citizen-members-to-be-appeinted-by-the-meyorv
25	twoofwhom-sha <del>ll-bo</del> -resident-freeholders-with <del>in <u>residents</u></del>

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<u>of</u> the-uphan-areas-if-anys-outside-of-the-city--limits--over which-the-planning-board-has-jurisdiction-under-this-chapter and--two--of--whom--shall--be-resident-freeholders <u>residents</u> within-the-city-limits\*

5 t2t--The--cterk--of--the--city--councit--shalt--certify
6 members--appointed--by--its-body--The-certificates-shalt-be
7 sent-to-and-become-a-part-of-the--records--of--the--planning
8 board---The--mayor-shalt-make-similar-certification-for-the
9 appointment-of-citizen-members-

10 Section 2. Section 76-1-223. MCA. is amended to read: \*76-1-223. County representative for city planning 11 12 board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county 13 commissioners of the county wherein the city is located 14 15 shall within 45 days designate a representative of the county to the mayor of the city for appointment of to the 16 17 city planning board. This representative may be a member of the board of county commissioners or an officeholder or 18 employee of the county. In the event of the failure of the 19 county to so designate such member, the mayor may appoint a 20 21 person of his own choosing and at his sole discretion as a 22 representative of the county." 23 Section 3. Section 76-1-224, MCA, is amended to read:

24 "76-1~224. Citizen members of city planning board. (1)
 25 The citizen members shall:

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(a) be qualified by knowledge and experience in 1 matters pertaining to the development of the city; and 2 3 (b) hold no other office in the city government+-and 4 fc+--be--resident---freeholders---of---such---city---or iurisdictional-area-as-defined-in-76-1-504-through-76-1-507. 5 (2) Any citizen appointee may be removed from office 6 7 by a majority vote of the governing body of the governmental unit-represented-by-such-appointee city." A

Section 4. Section 76-1-403, MCA, is amended to read: 9 #76-1-403. Tax levy by county for certain county 10 planning districts authorized. When a county planning board 11 has been established, the board of county commissioners may 12 create a planning district which shall include that property 13 which lies outside the limits of the jurisdictional area as 14 established pursuant to 76-1-504 through 76-1-507 or as 15 16 modified pursuant to 76-1-501 through 76-1-503 in counties 17 where a city-county planning board has been established as well as that property which lies outside the limits of any 18 incorporated cities and towns. The board of county 19 commissioners may levy on all property located within such 20 planning district a tax not to exceed 2-mills the maximum 21 levy authorized by 76-1-405 for planning board purposess 22 under procedures set forth in Title 7, chapter 6, part 23.\* 23 24 Section 5. Section 75-1-406, MCA, is amended to read: 25 "76-1-406. Tax levy by municipalities authorized. The 1 governing body of any city or town represented upon a 2 planning board may levy a tax upon the property located 3 within such city or town not-to-exceed-2-mills for planning 4 board purposes, under procedures set forth in Title 7, 5 chapter 6, part 42, provided such tax shall not exceed the 6 maximum levy authorized in 76-1-407.\*\*

7 Section 6. Section 76-1-409, MCA, is amended to read: #76-1-409. Acceptance and administration of government я funds and services. Upon approval of the governing bodies 9 10 represented on the board, a planning board may accept. 11 receives and expend funds, grants, and services from the federal government or its agencies and instrumentalities. 12 13 from of state or local government--or--its governments or 14 their agencies and instrumentalities, of--state-or-local 15 government or from civic sources: may and contract with 16 respect thereto: and may provide such information and 17 reports as may be necessary to secure such financial aid." Section 7. Section 76-2-211, MCA, is amended to read: 18 \*76-2-211. Violations and penalties. A violation of 19 20 this party--except--76-2-206y or any resolution adopted 21 pursuant thereto is hereby-declared-to-be a misdemeanor and 22 shall be punishable by a fine not exceeding \$500 or imprisonment in the county jail not exceeding 6 months or 23 24 both."

Section 8. Section 76-2-308, MCA, is amended to read:

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1 "76-2-308. Enforcement of zoning regulations and 2 ordinances. (1) The city or town council or other 3 legislative body may provide by ordinance for the 4 enforcement of this party--scept--76-2-306v and of any 5 regulation or ordinance made thereunder.

6 (2) in case any building or structure is erected. constructed, reconstructed, altered, repaired, converted, or 7 8 maintained or any building, structure, or land is used in violation of this part or of any ordinance or other 9 regulation made under authority conferred hereby, the proper 10 11 local authorities of the municipality, in addition to other 12 remedies, may institute any appropriate action or 13 proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, 14 15 or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; 16 or to prevent any illegal act, conduct, business, or use in 17 18 or about such premises."

(2) It is also empowered to provide civil benalties for such violation."

3 Section 10. Section 76-3-202, MCA, is amended to read: 4 \*76-3-202. Exemption for structures on complying 5 subdivided lands. Where required by this chapter, when the land upon which an improvement is situated has been . subdivided in compliance with this chapter, the sale, rent, 7 8 lease, or other conveyance of one or more parts of a 9 building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not 10 subject to the terms of this chapter." 11

Section 11. Section 76-3-405, MCA. is amended to read:
 "76-3-405. Administration of oaths by registered land
 surveyor. (1) Every registered land surveyor may administer
 and certify oaths when:

16 (a) it becomes necessary to take testimony for the
17 identification of old corners or reestablishment of lost or
18 obliterated corners;

(b) a corner or monument is found in a deteriorating
condition and it is desirable that evidence concerning it be
perpetuated;

(c) the importance of the survey makes it desirable to
administer an oath to his assistants for the faithful
performance of their duty.

25 (2) A record of oaths shall be preserved as part of

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the field notes of the survey and noted on the certificate 1 2 of survey filed under this-section 76-3-404." 3 Section 12. Section 76-4-1115, MCA, is amended to read: 4 5 #76-4-1115. Misdemeanors enumerated. The following ۴ acts are misdemeanors: 7 (i) the willful violation of or failure to comply with 8 any of the provisions of this part; 9 (2) the willful violation, fallure, omission, or 10 neglect to obey, observe, or comply with any order, permit, 11 decision, demand, or requirement of the board; 12 (3) the offering for sale or lease as an agent, 13 salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which 14 15 is being offered for sale outside the state of Montana without first complying with the provisions of this party 16 17 +4}--the-advertising-for-seie-or-lease-in-this-state-of a-parcel-in-an-out-of-state--subdivision--or--in--ony--other 18 19 manner--aiding--an--ownery--subdividery--or--daveloper-of-an 20 out-of-state-subdivision--who--has--not--complied--with--the 21 provisions---of---this--part--to--offer--within--this--state subdivided-lands." 22 23 Section 13. Section 76-4-1117, MCA, is amended to

24 read:

25 **#76-4-1117.** Accrual of cause of action. (1) For the

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1 purpose of calculating the period of any applicable statute 2 of limitations in any action or proceeding, either civil or 3 criminal, involving any violation of this part, the cause of 4 action shall be deemed considered to have accrued not 5 earlier than the time of recording with the county clerk and recorder of the county in which the property was sold or ٨ 7 leased in violation of this parts and which recording describes a lot or parcel so wrongfully sold or leased. 8 9 (2) This section does not prohibit the maintenance of 10 such action at any time during the recording of such instruments." 11 12 Section 14. Section 76-4-1245, MCA, is amended to 13 read: 14 \*76-4-1245. Penalties. Any person who violates any 15 provision of this part or who willfully violates any rule 16 adopted under it or any person who willfully in an

17 application for registration makes any untrue statement of a 18 material fact or omits to state a material fact is-guilty-of 19 a--felony-end may be fined not less than \$1,000 or more than 20 \$5,000 or may be imprisoned for not more than 2 years, or 21 both."
22 Section 15. Section 76-5-1117, MCA, is amended to

22 Section IS+ Section re-S-1117; MCA; is amended to 23 read:

24 \*76-5-1117. Bonds authorized -- procedure. Cities.
25 towns, and counties are hereby authorized to contract

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indebtedness and to issue special improvement district or
 rural improvement district bonds to provide funds for the
 payment of the cost of improvements contemplated by this
 part by following the following procedures:

(1) The governing body of the city, town, or county 5 6 may call a special election to vote upon the proposition of 7 issuing said bonds or may submit the proposition as a 8 special question at a regular municipal or general election. (2) The notice of the election and the election itself 9 10 shall be carried out in accordance with Fitle-Ty-chopter-12y 11 parts-41-and-42 <u>1-1-4227 through 7-7-4234</u> as to cities and in accordance with Title--Ty-chapter-12y-port-21 7-7-2229 15 13 through\_7=7=2236 as to the counties.

14 (3) Tax assessments for the payment of said the bonds
15 shall be levied in accordance with Title 7, chapter 12,
16 parts 41 and 42, and Title 7, chapter 12, part 21 as to
17 cities and counties, respectively."

18 Section 16. Section 76-6-203. MCA: is amended to read: 19 "76-6-203. Types of permissible easements. (1) 20 Éasements or restrictions under this chapter may prohibit or 21 limit any or all of the following:

tatil structures--construction or placing of
buildings, camping trailers, housetrailers, mobile homes,
roads, signs, billboards or other advertising, utilities, or
other structures on or above the ground;

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(b)(2) landfill--dumping or placing of soil or other -1 substance or material as landfill or dumping or placing of 2 trash, waste, or unsightly or offensive materials; 3 fet13) vegetation--removal or destruction of trees, 4 shrubs, or other vegetation; 5 fdf[6] loam, gravel, etc.--excavation, dredging, or 6 removal of loam, peat, gravel, soil, rock, or other material 7 8 substance: 9 tet(5) surface use--surface use except for such purposes permitting the land or water area to remain 10 predominantly in its existing condition; 11 (f)(6) acts detrimental to conservation--activities 12 detrimental to drainage, flood control, water conservation, 13 14 erosion control, soil conservation, or fish and wildlife habitat and preservation; 15 tgt[] subdivision of land--subdivision of land as 16 17 defined in 76-3-103, 76-3-104, and 76-3-202; tht[8] other acts--other acts or uses detrimental to 18 such retention of land or water areas in their existing 19

25 \*76-15-311. Governing body of district. (1) If the main statement of the second statement of the se

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are no incorporated municipalities within the boundaries of
 the district, the governing body of said the district shall
 consist of five or-seven-supervisors elected <u>supervisors</u> or
 appointed-as-provided-herein.

5 <u>121 If there are incorporated municipalities within</u>
6 <u>the boundaries of the districts the governing body of the</u>
7 <u>district shall consist of seven supervisors as follows:</u>

8 (2)(a) In--all--cases--where--the--boundaries--of-such conservation-district-include-any-incorporated--municipality 0 or-municipalitiesy-the The board of supervisors, in addition 10 to the five elected supervisors, shall consist of two 11 appointed supervisors, making a total of seven supervisors 12 in such districts. The two appointed supervisors must be 13 residents of the municipalities within the district. The 14 15 legislative bodies of the incorporated municipalities within 16 the district shall appoint the two additional supervisors 17 after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years. 18

19 (3)(b) Where there are more than two incorporated 20 municipalities within a district, the two appointed 21 supervisors shall represent all the municipalities and urban 22 interests in the district and no municipality shall have 23 more than one appointed supervisor residing therein."

24 Section 18. Section 76-15-321. MCA, is amended to 25 read: "76-15-321. Rulemaking authority. A conservation
 district and the supervisors thereof shall have the power to
 make and from time to time amend and repeal rules not
 consistent--with--this--chapter to carry into effect its the
 purposes and powers of this chapter."

6 Section 19. Section 76-15-528, MCA, is amended to 7 read:

8 "76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses 9 of any of the work enumerated in this chapter, together with 10 any percentages imposed for delinquency and for cost of 11 collection, shall constitute a lien against the property 12 13 upon which such assessment is leviedy-after from the date 14 terving on which such assessmenty-which is levied. This lien can only be extinguished by payment of such assessment with 15 16 all penalties, costs, and interest."

17 Section 20. Section 76-15-611, MCA, is amended to 18 read:

19 "76-15-611. Federal authority unaffected. (1) The 20 provisions of this section-shell part\_do not apply to the 21 government of the United States or any department. bureau. 22 or agency thereof. except to such extent as the government 23 of the United States or any department. bureau. or agency 24 thereof may desire to take advantage of its provisions-it 25 being-the\_It\_is\_an express purpose and intent of this

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section part to aid but not to interfere with the government
 of the United States or of any department, bureau, or agency
 thereof in any undertaking over which such federal authority
 desires to exercise full supervision and control.

5 (2) The provisions of this section-shall part may not ٨ be construed to impair. limit, or repeal any right 7 whatsoever which the government of the United States or any 8 department, bureau, or agency thereof has to full and 9 complete jurisdiction, management, or control over projects 10 over which such federal authority desires to exercise such 11 rightsy--it--being-the. It is a purpose of this section part expressly to subordinate any power of jurisdiction and to 12 13 never interfere directly with such federal authority."

14 Section 21. Section 76-15-722, MCA, is amended to 15 read:

16 "76-15-722. Operation of board of adjustment. (1) The 17 board of adjustment shall adopt rules to govern its 18 procedures, which rules shall be in accordance with this 19 chapter and with env the ordinance adopted-pursuant-to 20 <del>76-15-721-through--76-15-727</del> establishing the board of 21 adjustment.

(2) The board shall annually elect a chairman from
among its wembers. Meetings of the board shall be held at
the call of the chairman and at such other times as the
board may determine. Any two members of the board constitute

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1 a quorum. The chairman or in his absence such other member of the board as he may designate to serve as acting chairman 2 may administer ouths and compel the attendance of witnesses. 3 4 (3) All meetings of the board shall be open to the public. The board shall keep a full and accurate record of 5 6 all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the 7 8 board and shall be a public record."

9 Section 22. Section 76-15-725, MCA, is amended to 10 read:

"76-15-725. Board decision. (1) If, upon the facts 11 12 presented at the hearing, the board determines that there are great practical difficulties or unnecessary hardship in 13 14 the way of applying the strict letter of any of the land use 15 regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record 16 findings of fact as to the specific conditions which 17 establish the great practical difficulties or unnecessary 18 19 hardship.

20 (2) Upon the basis of the findings and determination: 21 the board may order a variance from the terms of the land 22 use regulations in their application to the lands of the 23 petitioner that will relieve the great practical 24 difficulties or unnecessary hardship: and will not be 25 contrary to the public interest: and will be such that the

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spirit of the land use regulations is observed, the public
 health, safety, and welfare is secured, and substantial
 justice is done."

4 Section 23. Section 76-16-306, MCA, is amended to 5 read:

6 #76-16-306. Management of grazing lands. A state
7 district may:

8 (1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power 9 10 includes the right to determine the size of preferences and 11 permit according to a fixed method which shall be stated in 12 the bylaws and which shall take into consideration the 13 rating of dependent commensurate property and the carrying 14 capacity of the range and may be subject to reservations, 15 regulations, and limitations under the terms of agreements between the state district and any agency of the United 16 17 States. The state district may also allot range to members 18 or nonmembers and decrease or increase the size of permits 19 if the range carrying capacity changes.

20 (2) undertake reseading and other approved 21 conservation and improvement practices of depleted range 22 areas or obendon <u>abandoned</u> farm lands and enter into 23 cooperative agreements with the federal government or any 24 other person for the reseeding or conservation and 25 improvement practices; (3) employ and discharge employees+ riders+ and other
 persons necessary to properly manage the state district+\*

3 Section 24. Section 76-16-406. MCA, is amended to 4 read:

#76-16-406. Transfer 5 of preferences. (1) Upon 6 application by a permittee, the state district with the approval of the department may allow a preference based on 7 8 ownership or control of dependent commensurate or 9 commensurate property to be transferred to other property of 10 sufficient commensurability; however, in any transfer of 11 preference from dependent commensurate or commensurate 12 property controlled but not owned by the applicant, the 13 applicant must have had control and use of the dependent 14 commensurate or commensurate property and the preference appurtenant thereto for 5 consecutive years and must have 15 16 established and maintained the livestock operation upon 17 which the dependency was established by use or priority 18 immediately prior to the application for transfer-

19 (2) In addition, the transfer may not interfere with 20 the stability of livestock operations or with proper range 21 management and may not affect adversely the established 22 local economy. A transfer may not be allowed without the 23 written consent of the owner or owners and-ony-encumbrances 24 of the dependent commensurate or commensurate property from 25 which the transfer is to be mader and a the owner or owners

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- 1 of any encuebrances on the property. A transfer is not
- 2 effective until approved by the department.
- 3 (3) All expenses involved under the application shall
- 4 be borne by the applicant."

-End-

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1	HOUSE BILL NO. 48	1	county planning board or a joint city-county planning board.
2	INTRODUCED BY MANUEL	Z	(3) "Plat" means a subdivision of land into lots.
3	BY REQUEST OF THE CODE COMMISSIONER	3	streets, and areas, marked upon the earth and represented on
4		4	paper, and includes re-plats replats or amended plats.
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND	5	(9) "Public place" means any tract owned by the state
6	CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE."	6	or its subdivisions.
7		7	(10) "Streets" includes streets, avenues, boulevards,
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	8	roads, lanes, alleys, and all public ways.
9	Section 1. Section 76-1-103, MCA, is amended to read:	9	(11) "Units of government" means any federal, state, or
10	"76-1-103. Definitions. As used in this chapter: the	10	regional <u>y unit of government or any</u> county, city, or town.
11	following definitions apply:	11	(12) "Utility" means any facility used in rendering
12	<ol> <li>"City" includes incorporated cities and towns.</li> </ol>	12	service which the public has a right to demand."
13	(2) "City council" means the chief legislative body of	13	5ection-2w-~Section-76-1-282w-MEAw-is-emended-toread+
14	a city or incorporated town.	14	#76-1-202+Qualificationsofcitizenmembersof
15	(3) "Governing body" or "governing bodies" means the	15	city-county-planning-boards{ij-The-citizen-members-ofthe
16	governing body of any governmental unit represented on a	16	city-countyplanning-board-shall-be-resident-freeholders-in
17	planning board.	17	<u>residents:of</u> the-orea-overwhichtheplanningboardhas
18	(4) "Master plan" means a comprehensive development	18	jurisdictiontprovidedyhowevery-that-st-least-two-of-such
19	plan or any of its parts such as a plan of land use and	19	members-shall-be-resident-freeholders-in <u>residents-of</u> the
20	zoning, of thoroughfares, of sanitation, of recreation, and	20	preasifanysoutsidethecitylimitsoverwhich-the
21	of other related matters.	21	płanningboardhasjurisdictionandthetwomembers
22	(5) "Mayor" means mayor of a city.	22	oppointedbythe-county-commissioners-shall-reside-outside
23	(6) "Person" means any individual, firm, or	23	the-city-limits-but-within-the-jurisdictionsloresofthe
24	corporation.	24	płanning-boardw
25	(7) "Planning board" means a city planning boarda	25	{2}Anycitizenappointee-may-be-removed-from-office
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> -2- нв 48 THIRD READING

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1	by-a-majority-vote-of-the-governing-body-of-the-governmental
2	unit-represented-by-such-appointee."
3	Section-3wSection-76-1-212w-MCAy-is-amended-toread+
4	#76-1-212*fitizenmembersof-county-planning-board*
5	tl}-The-citizen-members-of-the-county-planningboardshall
6	beresident-freeholders-in <u>residents-of</u> the-area-over-which
7	the-planning-board-has-jurisdictions
8	{2}*ny-citizen-appointme-may-be-removedfromoffice
9	by-a-majority-vote-of-the-governing-body-of-the-governmentał
10	unit-represented-by-such-appointees"
11	Section-4wSection76-1-221w-MEAv-is-omended-to-read+
12	#76-1-221vHembership-of-city-planning-boardw{l}A
13	cityplanningboardshellconsist-of-not-less-than-seven
14	members-to-be-appointed-as-follows+
14 15	
	members-to-be-appointed-as-follows+
15	members-to-be-appointed-as-follows+ {a}one-member-to-be-appointedbythecitycouncil
15 16	members-to-be-appointed-as-follows+ talone-member-to-be-appointedbythecitycouncil from-its-membershipt
15 16 17	members-to-be-appointed-as-follows+ {a}one-member-to-be-appointedbythecitycouncil from-its-membershipt {b}onemembertobe-appointed-by-the-city-councily
15 16 17 18	members-to-be-appointed-as-follows+ talane-member-to-be-appointedbythecitycouncil from-its-membershipt tblanemembertabe-appointed-by-the-city-council+ wha-may-in-the-discretion-of-the-city-council-be-an-employee
15 16 17 18 19	<pre>members-to-be-appointed-as-follows+</pre>
15 16 17 18 19 20	<pre>members-to-be-appointed-as-follows+</pre>
15 16 17 18 19 20 21	<pre>members-to-be-appointed-as-follows+</pre>
15 16 17 18 19 20 21 22	members-to-be-appointed-as-follows+ {a}one-member-to-be-appointedbythecitycouncil from-its-membershipt {b}onemembertobe-appointed-by-the-city-councily who-may-in-the-discretion-of-the-city-council-be-on-employee or-hold-public-office-in-the-city-orcountyinwhichthe city-is-located; {c}onememberto-be-appointed-by-the-mayor-upon-the designation-by-the-county-commissioners-ofthecountyin
15 16 17 18 19 20 21 22 23	<pre>members-to-be-appointed-as-follows+</pre>

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2	which-the-planning-boord-hos-jurisdiction-under-this-chapter
3	andtwoofwhomshallbe-resident-freeholders <u>residents</u>
4	within-the-city-limits.
5	f2 <b>}Thecierkofthecitycouncii</b> shailcertify
6	membersappointedbyits-bodywThe-certificates-shail-be
7	sent-to-and-become-a-part-of-therecordsofthepłanning
8	board=Themayor-shall-make-similar-certification-for-the
9	sppointment-of-citizen-members*
10	Section 2. Section 76-1-223, MCA, is amended to read:
11	<b>*76-1-223. County representative for city</b> planning
12	board. As soon as a city council has enacted an ordinance
13	creating a city planning board, the board of county
14	commissioners of the county wherein the city is located
15	shall within 45 days designate a representative of the
16	county to the mayor of the city for appointment of <u>to</u> the
17	city planning board. This representative may be a member of
18	the board of county commissioners or an officeholder or
19	employee of the county. In the event of the failure of the
20	county to so designate such member, the mayor may appoint a
21	person of his own choosing and at his sole discretion as a
22	representative of the county."
23	Section 3. Section 76-1-224, MCA, is amended to read:
24	"76-1-224. Citizen members of city planning board. (1)
25	The citizen members shall:

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(a) be qualified by knowledge and experience in Ł 2 matters pertaining to the development of the city; and 3 (b) hold no other office in the city government+-and 4 fct--be--resident---freeholders---of---such---city---or 5 turisdictional-area-as-defined-in-76-1-504-through-76-1-507. 5 (2) Any citizen appointee may be removed from office 7 by a majority vote of the governing body of the governmental 8 unit-represented-by-such-appointee city." Section 4. Section 76-1-403, MCA, is amended to read: 9 "76-1-403. Tax levy by county for certain county 10 11 planning districts authorized. When a county planning board has been established, the board of county commissioners may 12 13 create a planning district which shall include that property which lies outside the limits of the jurisdictional area as 14 15 established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties 16 17 where a city-county planning board has been established as 13 well as that property which lies outside the limits of any 19 incorporated cities and towns. The board of county ٤0 commissioners may levy on all property located within such alanning district a tax not to exceed 2-mills the maximum 21 levy\_authorized\_by\_76-1-405 for planning\_board\_purposes\_ 22 under procedures set forth in Title 7, chapter 6, part 23." 23 24 Section 5. Section 76-1-406, MCA, is amended to read: 25 #76-1-406. Tax levy by municipalities authorized. The

1 governing body of any city or town represented upon a 2 plunning board may levy a tax upon the property located 3 within such city or town not-to-exceed-2-mills for planning 4 board purposes, under procedures set forth in Title 7, 5 chapter 6, part 42, provided such tax shall not exceed the 6 maximum levy authorized in 76-1-407."

7 Section 6. Section 76-1-409, MCA, is amended to read: A #76-1-409. Acceptance and administration of government 9 funds and services. Upon approval of the governing bodies 10 represented on the board, a planning board may accept, 11 receive, and expend funds, grants, and services from the 12 federal government or its agencies and instrumentalities. 13 from of state or local government--or--its governments\_or 14 their agencies and instrumentalities, of--state-or-local 15 government or from civic sources: may end contract with 16 respect thereto; and may provide such information and 17 reports as may be necessary to secure such financial aid." 18 Section 7. Section 76-2-211, MCA, is amended to read: 19 #76-2-211. Violations and penalties. A violation of 20 this party--except+-76-2-286y or any resolution adopted pursuant thereto is hereby-declared-to-be a misdemeanor and 23 shall be punishable by a fine not exceeding \$500 or 22 23 imprisonment in the county jail not exceeding 6 months or both." 24

Section 8. Section 76-2-308, MCA, is amended to read:

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1 #75-2-308. Enforcement of zoning regulations and 2 ordinances. (1) The city or town council or other 3 legislative body may provide by ordinance for the 4 enforcement of this part--except--76-2-306, and of any 5 regulation or ordinance made thereunder.

6 (2) In case any building or structure is erected. 7 constructed, reconstructed, altered, repaired, converted, or 8 maintained or any building, structure, or land is used in 9 violation of this part or of any ordinance or other 10 regulation made under authority conferred hereby, the proper 11 local authorities of the municipality, in addition to other 12 remedies, may institute any appropriate action or 13 proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, 14 or use: to restrain, correct, or abate such violation; to 15 prevent the occupancy of such building, structure, or land; 16 17 or to prevent any illegal act, conduct, business, or use in or about such premises." 18

1 (2) It is also empowered to provide civil penalties
2 for such violation.\*

Section 10. Section 76-3-202, MCA, is amended to read: 3 "76-3-202. Exemption for structures on complying 4 subdivided lands. Where required by this chapter, when the 5 land upon which an improvement is situated has been 6 7 subdivided in compliance with this chapter, the sale, rent, я lease, or other conveyance of one or more parts of a 9 building, structure, or other improvement situated on one or 10 more parcels of land is not a division of land and is not 11 subject to the terms of this chapter."

12 Section 11. Section 76-3-405, MCA, is amended to read: 13 "76-3-405. Administration of oaths by registered land 14 surveyor. (1) Every registered land surveyor may administer 15 and certify oaths when:

16 (a) it becomes necessary to take testimony for the
17 identification of old corners or reestablishment of lost or
18 obliterated corners;

(b) a corner or monument is found in a deteriorating
condition and it is desirable that evidence concerning it be
perpetuated;

22 (c) the importance of the survey makes it desirable to
23 administer an oath to his assistants for the faithful
24 performance of their duty.

25 (2) A record of oaths shall be preserved as part of

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the field notes of the survey and noted on the certificate
 of survey filed under this-section <u>76-3-604</u>."

3 Section 12. Section 76-4-1115, MCA, is amended to 4 read:

5 "76-4-1115. Hisdemeanors enumerated. The following
6 acts are misdemeanors:

7 (1) the willful violation of or failure to comply with8 any of the provisions of this part;

(2) the willful violation, failure, omission, or
 neglect to obey, observe, or comply with any order, permit,
 decision, demand, or requirement of the board;

12 (3) the offering for sale or lease as an agent,
13 salesman, or broker for a subdivider, developer, or owner of
14 subdivided lands or a subdivision, wherever situated, which
15 is being offered for sale outside the state of Montana
16 without first complying with the provisions of this part;

17 (4)--the-advertising-for-sale-or-lease-in-this-state-of a-parcel-in-on-out-of-state--subdivision--or--in--any--other manner--aiding--an--ownery--subdividery--or--devaloper-of-an 20 out-of-state-subdivision--who--has--not--complied--with--the 21 provisions---of---this--part--to--offer--within--this--state 22 subdivided-lands."

23 Section 13. Section 76-4-1117, MCA, is amended to 24 read:

25 "76-4-1117. Accrual of cause of action. (1) For the

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1 purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or 2 3 criminal, involving any violation of this part, the cause of 4 action shall be deemed considered to have accrued not earlier than the time of recording with the county clerk and 5 recorder of the county in which the property was sold or 6 leused in violation of this parts and which recording 7 describes a lot or parcel so wrongfully sold or leased. B

9 (2) This section does not prohibit the maintenance of
 10 such action at any time during the recording of such
 11 instruments."

12 Section 14. Section 76-4-1245, MCA, is amended to 13 read:

14 "75-4-1245. Penalties. Any person who violates any provision of this part or who willfully violates any rule 15 16 adopted under it or any person who willfully in an 17 application for registration makes any untrue statement of a 18 material fact or omits to state a material fact is-ouilty-of 19 a--fetony-and may be fined not less than \$1,000 or more than 20 \$5,000 or may be imprisoned for not more than 2 years, or 21 both."

22 Section 15. Section 76-5-1117, MCA, is amended to 23 read:

24 #76-5-1117. Bonds authorized -- procedure. Cities.
25 towns, and counties are hereby authorized to contract

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indebtedness and to issue special improvement district or
 rural improvement district bonds to provide funds for the
 payment of the cost of improvements contemplated by this
 part by following the following procedures:

5 (1) The governing body of the city, town, or county may call a special election to vote upon the proposition of -6 7 issuing said bonds or may submit the proposition as a 8 special question at a regular municipal or general election. 9 (2) The notice of the election and the election itself 10 shall be carried out in accordance with fitle-fy-chapter-12y 11 parts-41-and-42 I-1-4227 through 7-7-4234 as to cities and 12 in accordance with Fitle--Ty-chapter-12y-part-21 7-7-2229 13 through\_<u>7-7-2236</u> as to the counties.

14 (3) Tax assessments for the payment of seid the bonds
15 shall be levied in accordance with Title 7, chapter 12,
16 parts 41 and 42, and Title 7, chapter 12, part 21 as to
17 cities and counties, respectively."

Section 16. Section 76-6-203. MCA, is amended to read:
 \*\*76-6-203. Types of permissible easements. tt;
 Easements or restrictions under this chapter may prohibit or
 limit any or all of the following:

22 taj<u>(1)</u> structures--construction or placing of 23 buildings, camping trailers, housetrailers, mobile homes, 24 roads, signs, billboards or other advertising, utilities, or 25 other structures on or above the ground;

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(b)(2) landfill--dumping or placing of soil or other
 substance or material as landfill or dumping or placing of
 trash, waste, or unsightly or offensive materials;

4 (c)(2) vegetation--removal or destruction of trees,
5 shrubs, or other vegetation;

5 (d)(4) loam, gravel, etc.--excavation, dredging, or
7 removal of loam, peat, gravel, soil, rock, or other material
8 substance;

9 (++)(5) surface use--surface use except for such 10 purposes permitting the land or water area to remain 11 predominantly in its existing condition;

12 <u>(f)[6]</u> acts detrimental to conservation--activities
13 detrimental to drainage, flood control, water conservation,
14 erosion control, soil conservation, or fish and wildlife
15 habitat and preservation;

16 <u>fgf(71</u> subuivision of land--subdivision of land as 17 defined in 76-3-103, 76-3-104, and 76-3-202;

18 (h)(8) other acts--other acts or uses detrimental to 19 such retention of land or water areas in their existing 20 conditions.

21 <u>(2)--The-term-"land"-in-subsections-(1)(b)--and--(1)(c)</u>
22 above--includes-land-under-waterv-waterv-and-water-surfacev<sup>H</sup>
23 Section 17. Section 76-15-311, MCA, is amended to
24 read:

25 "76-15-311. Governing body of district. (1) If there

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are no incorporated municipalities within the boundaries of
 the district. the governing body of said the district shall
 consist of five or-seven-supervisors elected <u>supervisors</u> or
 appointed-as-provided-herein.

5 121\_\_If\_\_there\_\_are\_\_incorporated\_municipalities\_within
6 the\_boundaries\_of\_the\_district.\_the\_governing\_\_body\_\_of\_\_the
7 uistrict\_shall\_consist\_of\_seven\_supervisors\_as\_follows:

8 f2+1a1 In--a++--cases--where--the--boundaries--of-such 9 conservation-district-include-any-incorporated--municipality 10 or-municipalitiesy-the Ibe board of supervisors, in addition to the five elected supervisors, shall consist of two 11 appointed supervisors, making a total of seven supervisors 12 in such districts. The two appointed supervisors must be 13 residents of the municipalities within the district. The 14 legislative bodies of the incorporated municipalities within 15 the district shall appoint the two additional supervisors 16 after consultation with the elected supervisors. The term 17 18 of office of the appointed supervisors shall be 3 years.

19 (3)(b) Where there are more than two incorporated 20 municipalities within a district, the two appointed 21 addervisors shall represent all the municipalities and urban 22 interests in the district and no municipality shall have 23 more than one appointed supervisor residing therein."

24 Section 18. Section 76-15-321, MCA, is amended to 25 read: \*76-15-321\* Kulemaking authority\* A conservation
 district and the supervisors thereof shall have the power to
 make and from time to time amend and repeal rules not
 consistent--with--this--chapter to carry into effect its the
 purposes and powers of this chapter\*\*

6 Section 19. Section 76-15-528, MCA, is amended to 7 read:

B #76-15-528. Lien for special assessments. Any special 9 assessment made and levied to defray the cost and expenses 10 of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of 11 12 collection, shall constitute a lien against the property upon which such assessment is leviedy-after from the date 13 14 terring on\_which such assessmenty-which is levied. This lien can only be extinguished by payment of such assessment with 15 16 all penalties, costs, and interest."

17 Section 20+ Section 76-15-611+ MCA+ is amended to 19 read:

19 "76-15-611. Federal authority unaffected. (1) The 20 provisions of this section-shall part\_do not apply to the 21 government of the United States or any department: bureau; 22 or agency thereof, except to such extent as the government 23 of the United States or any department, bureau, or agency 24 thereof may desire to take advantage of its provisionsy-it 25 berng-the\_lt\_is\_ap express purpose and intent of this

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section part to aid but not to interfere with the government
 of the United States or of any department, bureau, or agency
 thereof in any undertaking over which such federal authority
 desires to exercise full supervision and control.

5 (2) The provisions of this section-shall part may not 6 be construed to impair, limit, or repeal any right 7 whatsoever which the government of the United States or any 9 department, bureau, or agency thereof has to full and 9 complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such 10 11 rightsv--it--being-the<u>. It is a</u> purpose of this section part 12 expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority." 13 14 Section 21. Section 76-15-722, MCA, is amended to

15 read:

16 "76-15-722. Operation of board of adjustment. (1) The 17 board of adjustment shall adopt rules to govern its 18 procedures, which rules shall be in accordance with this 19 chapter and with any the ordinance adopted-pursuant-to 20 76-15-72t--through--76-15-727 establishing\_the\_board\_of 21 adjustment.

(2) The board shall annually elect a chairman from
among its members. Meetings of the board shall be held at
the call of the chairman and at such other times as the
board may determine. Any two members of the board constitute

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a quorum. The chairman or in his absence such other member 1 г of the board as he may designate to serve as acting chairman may administer ouths and compel the attendance of witnesses. 3 4 (3) All meetings of the board shall be open to the 5 public. The board shall keep a full and accurate record of 6 all proceedings, of all documents filed with it, and of all 7 urders entered, which shall be filed in the office of the 8 board and shall be a public record."

9 Section 22. Section 76-15-725. MCA, is amended to 10 read:

11 "76-15-725. Board decision. (1) If, upon the facts 12 presented at the hearing, the board determines that there are great practical difficulties or unnecessary hardship in 13 14 the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make 15 16 and record that determination and shall make and record findings of fact as to the specific conditions which 17 establish the great practical difficulties or unnecessary 18 nardship. 19

20 (2) Upon the basis of the findings and determination; 21 the board may order a variance from the terms of the land 22 use regulations in their application to the lands of the 23 petitioner that will relieve the great practical 24 difficulties or unnecessary hardship: ond will not be 25 contrary to the public interest; and will be such that the

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spirit of the land use regulations is observed, the public
 nealth, safety, and welfare <u>is</u> secured, and substantial
 justice <u>is</u> done."

4 Section 23. Section 76-16-306, MCA, is amended to 5 read:

5 "76-16-306. Management of grazing lands. A state
7 district may:

8 (1) manage and control the use of its range and 9 agricultural lands acquired under 76-16-305(2). This power 10 includes the right to determine the size of preferences and 11 permit according to a fixed method which shall be stated in 12 the bylaws and which shall take into consideration the 13 rating of dependent commensurate property and the carrying 14 capacity of the range and may be subject to reservations, 15 regulations, and limitations under the terms of agreements 16 between the state district and any agency of the United 17 States. The state district may also allot range to members or nonmembers and decrease or increase the size of nermits 18 19 if the range carrying capacity changes.

20 (2) undertake reseeding other and approved conservation and improvement practices of depleted range 21 22 areas or abandon <u>abandoned</u> farm lands and enter into 23 cooperative agreements with the federal government or any 24 other person for the reseading or conservation and ٤5 improvement practices;

(3) employ and discharge employees, riders, and other
 persons necessary to properly manage the state district."
 Section 24. Section 76-16-406. MCA. is amended to
 read:

5 \*76-16-406. Transfer of preferences. (1) Upon 6 application by a permittee, the state district with the 7 approval of the department may allow a preference based on 8 ownership or control of dependent commensurate or commensurate property to be transferred to other property of 9 10 sufficient commensurability; however, in any transfer of 11 preference from dependent commensurate or commensurate 12 property controlled but not owned by the applicant, the 13 applicant must have had control and use of the dependent 14 commensurate or commensurate property and the preference 15 appurtemant thereto for 5 consecutive years and must have 16 established and maintained the livestock operation upon 17 which the dependency was established by use or priority 18 immediately prior to the application for transfer.

19 (2) In addition, the transfer may not interfere with 20 the stability of livestock operations or with proper range 21 management and may not affect adversely the established 22 local economy. A transfer may not be allowed without the 23 written consent of the owner or owners and-any-encumbrances 24 of the dependent commensurate or commensurate property from 25 which the transfer is to be madew and a <u>the owner or owners</u>

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### 1 of any enclumbrances on the property. A transfer is not

- 2 effective until approved by the department.
- 3 (3) All expenses involved under the application shall
- 4 be borne by the applicant."

-End-

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1	HOUSE BILL NO. 48	1	(6) "Person" means any individual, firm, or
2	INTRODUCED BY MANUEL	2	corporation.
3	BY REQUEST OF THE CODE COMMISSIONER	3	(7) "Planning board" means a city planning board <u>s a</u>
4		4	county planning board or a joint city-county planning board.
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY <u>AND</u>	5	(8) "Plat" means a subdivision of land into lots.
6	SUBSTANTIVELY REVISE AND CLARIFY THE LAWS RELATING TO LAND	6	streets, and areas, marked upon the earth and represented on
г	RESOURCES AND USE <u>: REVISING THE PROCEDURE TO ISSUE BONDS FOR</u>	7	paper, and includes re-plots <u>replats</u> or amended plats.
8	MATER_CONSERVATION_AND_FLOOD_CONTROL_PROJECTS:_PROVIDINSAN	8	(9) "Public place" means any tract owned by the state
9	EFECILVE_DAIE."	9	or its subdivisions.
10		10	(10) "Streets" includes streets, avenues, boulevards,
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	11	roads, lanes, alleys, and all public ways.
12	Section 1. Section 76-1-103, MCA, is amended to read:	12	(11) "Units of government" means any federal, state, <u>or</u>
13	P76-1-103. Definitions. As used in this chapter. the	13	regionaly <u>unit_of_government_or_any</u> county, city, or town.
14	following definitions apply:	14	(12) "Utility" means any facility used in rendering
15	(1) "City" includes incorporated cities and towns.	15	service which the public has a right to demand."
16	(2) "City council" means the chief legislative body of	16	Section-2uSection-76-1-202u-MEAu-is-amended-toread+
17	a city or incorporated town.	17	=76-1-207vQunlificationsofcitizenmembersof
18	(3) "Governing body" or "governing bodies" means the	18	city-county-planning-boardsflj-lhe-citizen-members-ofthe
19	governing body of any governmental unit represented on a	19	city-countyplanning-board-shall-be-resident-freeholders-in
20	planning board.	20	<u>residentsiof</u> the-orea-overwhichtheplanningboardhas
21	(4) "Master plan" means a comprehensive development	21	jurisdictiontprovidedhowever-thet-st-least-two-of-such
22	plan or any of its parts such as a plan of land use and	22	members-shall-be-resident-freeholders-in <u>rgsidents-rof</u> the
23	zoning, of thoroughfares, of sanitation, of recreation, and	23	areayifanyyoutsidethecitylimitsoverwhich-the
24	of other related matters.	24	planningboardhasjurisdictionandthetwomembers
25	(5) "Mayor" means mayor of a city.	25	oppointedbythe-county-commissioners-shall-reside-outside

25 sppointed--by--the-county-commissioners-shail-reside-outside

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REFERENCE BILL

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1	the-city-limits-but-within-the-jurisdictionalareaofthe
Z	płanning-boarde
3	<del>t2}Anycitizenappointee-may-be-removed-from-office</del>
4	by-a-majority-vote-of-the-governing-body-of-the-governmental
5	unit-represented-by-such-appointeew=
6	Section-3sSection-76-1-212y-MEAy-is-emended-toreed:
۲	#76-1-212*Eittrenmembersof-county-planning-board*
8	{ <del>}}-The-citizen-members-of-the-county-planningboardshall</del>
9	beresident-fracholders-in <u>residents:of</u> the-area-over-which
10	the-planning-board-has-jurisdiction.
11	{2}Any-c+t+zen-sppo+ntes-may-be-removedfromoffice
12	by-a-majority-vote-of-the-governing-body-of-the-governmentał
13	unit-represented-by-such-oppointee.
14	Section-4Section76-1-221y-MEAy-is-amended-to-read+
15	#76-1-22tsMembership-of-city-planning-boards{tjA
15	=76-1-221#Membership-of-city-plonning-board#{1jA
15 16	=76-1-22twMembership-of-city-p?onning-boardw{1;A cityp?onningboardshe??consist-of-not-?ess-thon-seven
15 16 17	#76-1-22t+Hembership-of-city-planning-board+{t}A cityplanningboardshallconsist-of-not-less-than-seven members-to-be-appointed-as-follows+
15 16 17 18	=76-1-22twMembership-of-city-p?onning-boardw(1)A cityp?onningboardshe??consist-of-not-?esg-thon-seven members-to-be-oppointed-os-fo??ows? {o}one-member-to-be-oppointedbythecitycounci?
15 16 17 18 19	<pre>#76-1-22tuHembership-of-city-planning-boardu{tjA cityplanningboardshallconsist-of-not-lass-than-seven members-to-be-appointed-as-follows+</pre>
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#### 1 which-the-city-is-located;

Z	td}four-citizen-wowbers-to-be-oppointed-by-the-weyorv
3	twoofwhom-shall-be-resident-freeholders-within <u>residents</u>
4	of the-urban-areay-if-anyy-outside-of-the-citylimitsover
5	which-the-pionning-board-has-jurisdiction-under-this-chapter
6	andtwoofwhomshallbe-resident-freeholders <u>residents</u>
۲	within-the-city-limits.
8	<del>{2}The-</del> -c <del>lerkofthecitycouncilshallcertify</del>
9	membersappointedbyits-bodywThe-certificates-shall-be
10	sent-to-and-become-a-part-of-therecordsoftheplanning
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19	county to the mayor of the city for appointment of $\underline{to}$ the
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21	the board of county commissioners or an officeholder or
22	employee of the county. In the event of the failure of the
23	county to so designate such member, the mayor may appoint a
24	person of his own choosing and at his sole discretion as a
25	representative of the county."

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Section 3. Section 76-1-224, MCA, is amended to read: 1 2 "76-1-224. Citizen members of city planning board. (1) The citizen members shall: 3 (a) be qualified by knowledge and experience in 4 matters pertaining to the development of the city; and 5 (b) hold no other office in the city government+-and 6 te}--be--resident---freeholders---of---such---city---or 7 jurisdictional-area-as-defined-in-76-1-584-through-76-1-587. 8 (2) Any citizen appointee may be removed from office 9 by a majority vote of the governing body of the governmental 10 unit-represented-by-such-appointee city.\* 11

Section 4. Section 76-1-403, MCA, is amended to read: 12 13 #76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board 14 has been established, the board of county commissioners may 15 create a planning district which shall include that property 16 which lies outside the limits of the jurisdictional area as 17 established pursuant to 76-1-504 through 76-1-507 or as 18 modified pursuant to 76-1-501 through 76-1-503 in counties 19 where a city-county planning board has been established as 20 well as that property which lies outside the limits of any 21 incorporated cities and towns. The board of county 22 23 commissioners may levy on all property located within such planning district a tax not to exceed 2-mills the maximum 24 25 levy authorized by 76-1-405 for planning board purposes

under procedures set forth in Title 7, chapter 6, part 23." 1 2 Section 5. Section 76-1-406. MCA. is amended to read: 3 \*76-1-406. Tax levy by municipalities authorized. The 4 governing body of any city or town represented upon a 5 planning board may levy a tax upon the property located ٨ within such city or town not-to-exceed-2-wills for planning 7 board purposes, under procedures set forth in Title 7. chapter 6, part 42, provided such tax shall not exceed the 8 9 maximum levy authorized in 76-1-407." 10 Section 6. Section 76-1-409, MCA, is amended to read: 11 \*76-1-409. Acceptance and administration of government 12 funds and services. Upon approval of the governing bodies 13 represented on the board, a planning board may accept. 14 receive, and expend funds, grants, and services from the 15 federal government or its agencies and instrumentalities, 16 from of state or local government--or--its governments or 17 their agencies and instrumentalities, of--state-or-local government or from civic sources i may and contract with 18 19 respect thereto; and may provide such information and 20 reports as may be necessary to secure such financial aid." 21 Section 7. Section 76-2-211, MCA, is amended to read:

22 "76-2-211. Violations and penalties. A violation of 23 this part--except--76-2-206v or any resolution adopted 24 pursuant thereto is hereby-declared-to-be a misdemeanor and 25 shall be punishable by a fine not exceeding \$500 or

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imprisonment in the county jail not exceeding 6 months or 1 2 both."

3 Section 8. Section 76-2-309+ MCA+ is amended to read: 4 "76-2-308. Enforcement of zoning regulations and 5 ordinances. (1) The city or town council or other legislative body may provide by ordinance for the 6 enforcement of this party--except--76-2-306y and of any 7 8 regulation or ordinance made thereunder.

9 (2) In case any building or structure is erected. 10 constructed, reconstructed, altered, repaired, converted, or 11 maintained or any building, structure, or land is used in violation of this part or of any ordinance or other 12 13 regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other 14 15 remedies, may institute any appropriate action or 16 proceedings to prevent such unlawful erection, construction, 17 reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to 18 19 prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in 20 21 or about such premises."

22 Section 9. Section 76-2-315, MCA, is amended to read: #76-2-315. Violations and penalties. (1) A violation 23 24 of this party-except--76-2-306 or of such ordinance or regulation made pursuant to 76-2-308(1) is hereby-declared 25

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to-be a misdemeanor, and such city or town council or other 1 2 legislative body may provide for the punishment thereof by fine or imprisonment or both. 3

4 (2) It is also empowered to provide civil penalties 5 for such violation.\*

Section 10. Section 76-3-202, MCA, is amended to read: 6 7 "76-3-202. Exemption for structures on complying subdivided lands. Where required by this chapter, when the 9 9 land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, 10 lease, or other conveyance of one or more parts of a 11 12 building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not 13 14 subject to the terms of this chapter." 15 Section 11. Section 76-3-405, MCA, is amended to read: 16 **#76-3-405.** Administration of oaths by registered land 17 surveyor. (1) Every registered land surveyor may administer 18 and certify oaths when: (a) it becomes necessary to take testimony for the 19 20 identification of old corners or reestablishment of lost or

21 obliterated corners;

(b) a corner or monument is found in a deteriorating 22 condition and it is desirable that evidence concerning it be 23 perpetuated; 24

(c) the importance of the survey makes it desirable to 25

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administer an oath to his assistants for the faithful 1 performance of their duty. 2

3 (2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate 4 of survey filed under this-section 76-3-404.\*

5

Section 12. Section 76-4-1115, MCA, is amended to 6 read: 7

"76-4-1115. Misdemeanors enumerated. The following 8 acts are misdemeanors: 9

(1) the willful violation of or failure to comply with 10 any of the provisions of this part; 11

(2) the willful violation, failure, omission, or 12 neglect to obey, observe, or comply with any order, permit. 13 decision, demand, or requirement of the board; 14

(3) the offering for sale or lease as an agent, 15 salesman, or broker for a subdivider, developer, or owner of 16 subdivided lands or a subdivision, wherever situated, which 17 18 is being offered for sale outside the state of Montana without first complying with the provisions of this parts 19

(4)--the-advertising-for-sale-or-lease-in-this-state-of 20 e-percel-in-en-out-of-state--subdivision--or--in--eny--other 21 manner--aiding--an--awnery--subdividery--or--developer-of-an 22 out-of-state-subdivision--who--has--not--complied--with--the 23 provisions---of---this--part--to--offer--within--this--state 24 subdivided-tands." 25

1 Section 13. Section 76-4-1117. MCA. is amended to 2 read:

3 \*76-4-1117. Accrual of cause of action. (1) For the purpose of calculating the period of any applicable statute 4 5 of limitations in any action or proceeding, either civil or criminal, involving any violation of this part, the cause of 6 7 action shall be deemed considered to have accrued not earlier than the time of recording with the county clerk and A 9 recorder of the county in which the property was sold or 10 leased in violation of this part, and which recording 11 describes a lot or parcel so wrongfully sold or leased.

(2) This section does not prohibit the maintenance of 12 13 such action at any time during the recording of such instruments." 14

15 Section 14. Section 76-4-1245, MCA, is amended to 16 read:

"76-4-1245. Penalties. Any person who violates any 17 provision of this part or who willfully violates any rule 18 adopted under it or any person who willfully in an 19 application for registration makes any untrue statement of a 20 21 material fact or omits to state a material fact is-guilty-of 22 a--felony-and may be fined not less than \$1,000 or more than 23 \$5,000 or may be imprisoned for not more than 2 years, or 24 both."

Section 15. Section 76-5-1117, MCA, is amended to 25

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1	readt	1	L
Z	#76-5-1117. Bonds authorized procedure. Citles.	2	DE_IH
3	towns, and counties are hereby authorized to contract	3	QE_111
4	indebtedness and to issue special improvement district or	4	LLILE.
5	rural improvement district bonds to provide funds for the	5	GOYEB
6	payment of the cost of improvements contemplated by this	6	9
7	part by following the following procedures <u>ESIABLISHED_FOR</u>	7	
8	THE_ISSUANCE_DE_SUCH_BONDS_UNDER_THE_PROVISIONS_DE_TITLE7.	8	Easeme
9	CHAPIER_12: PARI 42: AS IO CITIES AND TOWNS AND TITLE 7:	9	limit
10	CHAPIER_12. PARI_21. AS_ID_COUNTIESPAYNENI_ AND. SECURITY	10	•
11	EQBIHEBONDS_SHALL_BE_PROVIDED_BY_FOLLOWING_THE_FOLLOWING	11	buildi
12	PROCEDURES:	12	roads
13	fitFhe-governing-body-of-the-citytownorcounty	13	other
14	maycoll-a-special-election-to-vota-upon-the-proposition-of	14	1
15	issuing-soid-bondsormaysubmitthepropositionasa	15	substa
16	special-question-at-a-regular-municipal-or-general-electionv	16	trash
17	<del>{}</del>	17	•
18	shall-be-carried-out-in-accordance-with-Iitle-Iv-chapter-12v	18	shrubs
19	parts41and-42- <u>7-7-4227-through-7-7-4224</u> as-to-cities-and	19	1
20	<del>in-acc<b>ordance</b>-with-Ti</del> tle-7v-chapter12vpart21 <u>7-7-7229</u>	20	L 6 80 A 5
21	<u>through=7=3=2236</u> as-to-the-counties.	21	substa
22	<del>(3)[1]</del> Tax assessments for the payment of <del>sold the</del>	22	•
23	bonds shall be levied in accordance with Title 7, chapter	23	purpos
24	12, parts 41 and 42, and Title 7, chapter 12, part 21 as to	24	predor
25	cities and counties, respectively.	25	4

l	(2)A_REVOLVING_EUND: TO_BE_PLEOGED_EORIHESECURITY
2	DE_THE_BONDS: MUST_BE_ESTABLISHED_PURSUANT_TO_THE_PROVISIONS
3	QE_IITLE_ICHAPIER_12. PARI_42. AS_IO_CITIES_AND_IOWNS. AND
4	IIILE <u>1. CHARIER 12. PART 21. AS IO COUNTIES. BY</u> THE
5	GOVERNING_BODY_AUTHORIZING_THE_ISSUANCE_OF_THE_BONDS**
6	Section 16. Section 76-6-203, MCA, is amended to read:
7	*76-6-203. Typ <b>es</b> of permissible easements. <del>(1)</del>
8	Easements or restrictions under this chapter may prohibit or
9	limit any or all of the following:
0	<pre>fet(1) structuresconstruction or placing of</pre>
1	buildings, camping trailers, housetrailers, mobile homes,
Z	roads, signs, billboards or other advertising, utilities, or
3	other structures on or above the ground;
4	<pre>tb;[2] landfilldumping or placing of soil or other</pre>
5	substance or material as landfill or dumping or placing of
6	trash, waste, or unsightly or offensive materials;
7	<pre>tell11 vegetationremoval or destruction of trees.</pre>
8	shrubs, or other vegetation;
9	<pre>fdf(f) loam, gravel, etcexcavation, dredging, or</pre>
0	removal of loam, peat, gravel, soil, rock, or other material
t	substance;
2	<pre>tet(5) surface usesurface use except for such</pre>
3	purposes permitting the land or water area to remain
4	predominantly in its existing condition;

5 (f)(6) acts detrimental to conservation--activities

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Cotrimental to drainage, flood control, water conservation,
 erosion control, soil conservation, or fish and wildlife
 habitat and preservation;

4 <u>(g)(7)</u> subdivision of land--subdivision of land as 5 defined in 76-3-103, 76-3-104, and 76-3-202;

6 (h)(3) other acts-other acts or uses detrimental to
7 such retention of land or water areas in their existing
8 conditions.

9 f21--The--term--"land"-in-subsections-f11fb1-and-f11fc1
10 above-includes-land-under-watery-watery-and-water--surfaces"
11 Section 17. Section 76-15-311, MCA, is amended to
12 read:

13 "76-15-311. Governing body of district. (1) If there 14 are no incorporated municipalities within the boundaries of 15 the district. the governing body of soid the district shall 16 consist of five or-seven-supervisors elected <u>supervisors</u> or 17 appointed-as-provided-herein.

18 <u>121\_\_\_\_\_\_\_it\_there\_are\_\_\_incorporated\_\_\_\_\_unicipalities\_\_\_within</u> 19 <u>the\_\_\_boundaries\_\_of\_\_\_the\_\_districts\_the\_governing\_body\_of\_the</u> 20 <u>district\_shall\_consist\_of\_seven\_supervisors\_as\_follows:</u>

21 (2)(a) in-all--cates--where--the--bounderies--of--such 22 conservation--district-include-any-incorporated-municipality 23 or-municipalities--the <u>The</u> board of supervisors, in addition 24 to the five elected supervisors, shall consist of two 25 appointed supervisors, making a total of seven supervisors

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in such districts. The two appointed supervisors must be
 residents of the municipalities within the district. The
 legislative bodies of the incorporated municipalities within
 the district shall appoint the two additional supervisors
 after consultation with the elected supervisors. The term
 of office of the appointed supervisors shall be 3 years.

7 (3)(b) Where there are more than two incorporated 8 municipalities within a district, the two appointed 9 supervisors shall represent all the municipalities and urban 10 interests in the district and no municipality shall have 11 more than one appointed supervisor residing therein."

12 Section 18. Section 76-15-321. MCA+ is amended to 13 read:

14 "76-15-321. Rulemaking authority. A conservation 15 district and the supervisors thereof shall have the power to 16 make and from time to time amend and repeal rules not 17 consistent-with-this-chapter to carry into effect its the 18 purposes and powers of this chapter."

19 Section 19. Section 76-15-528, MCA; is amended to 20 read:

21 \*\*76-15-528. Lien for special assessments. Any special assessments and expenses assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter. together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property.

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upon which such assessment is leviedy-after from the date
 devying on which such assessmenty-which is levied. This lien
 can only be extinguished by payment of such assessment with
 all penalties, costs, and interest.#

5 Section 20. Section 76-15-611, MCA, is amended to 6 read:

7 #76-15-611. Federal authority unaffected. (1) The 8 provisions of this section-shall part do not apply to the government of the United States or any department, bureau, 9 or agency thereof, except to such extent as the government 10 of the United States or any department, bureau, or agency 11 thereof may desire to take advantage of its provisionsy--it 12 13 being-the It is an express purpose and intent of this section part to aid but not to interfere with the government 14 of the United States or of any department, bureau, or agency 15 16 thereof in any undertaking over which such federal authority 17 desires to exercise full supervision and control.

18 (2) The provisions of this section-shell part may not 19 construed to impair. limit. or repeal any right be whatsoever which the government of the United States or any 20 department, bureau, or agency thereof has to full and 21 complete jurisdiction, management, or control over projects 22 23 over which such federal authority desires to exercise such 24 rights-it-being-thea. It is a purpose of this section part 25 expressly to subordinate any power of jurisdiction and to

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1 never interfere directly with such federal authority."

2 Section 21. Section 76-15-722, NCA, is amended to 3 read:

4 "76-15-722. Operation of board of adjustment. (1) The 5 board of adjustment shall adopt rules to govern its 6 procedures, which rules shall be in accordance with this 7 chapter and with any the ordinance adopted--pursuant--to 8 76-15-721---through--76-15-727 establishing\_the\_board\_of 9 adjustment.

10 (2) The board shall annually elect a chairman from among its members. Neetings of the board shall be held at 11 12 the call of the chairman and at such other times as the board may determine. Any two members of the board constitute 13 14 a quorum. The chairman or in his absence such other member 15 of the board as he may designate to serve as acting chairman may administer oaths and compel the attendance of witnesses. 16 17 (3) All meetings of the board shall be open to the 18 public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all 19 20 orders entered, which shall be filed in the office of the 21 board and shall be a public record."

22 Section 22. Section 76-15-725, MCA, is amended to 23 read:

24 "76-15-725. Board decision. {1} If, upon the facts
25 presented at the hearing, the board determines that there

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are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination. 8 9 the board may order a variance from the terms of the land use regulations in their application to the lands of the 10 petitioner that will relieve the great practical 11 difficulties or unnecessary hardship: and will not be 12 contrary to the public interest; and will be such that the 13 spirit of the land use regulations is observed, the public 14 health, safety, and welfare is secured, and substantial 15 16 justice is done."

17 Section 23. Section 76-16-306. MCA. is amended to 18 read:

19 "76-16-306. Hanagement of grazing lands. A state
20 district may:

(1) manage and control the use of its range and anricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the

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rating of dependent commensurate property and the carrying 1 2 capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements ٦ between the state district and any agency of the United 4 States. The state district may also allot range to members 5 or nonmembers and decrease or increase the size of permits 6 7 if the range carrying capacity changes. (2) undertake reseeding other 8 and approved 9 conservation and improvement practices of depleted range 10 areas or abandon abandoned farm lands and enter into

11 cooperative agreements with the federal government or any 12 other person for the reseeding or conservation and 13 improvement practices;

employ and discharge employees, riders, and other
 persons necessary to properly manage the state district."

16 Section 24. Section 76-16-406, MCA, is amended to 17 read:

#76-16-406. Transfer of preferences. (1) 18 Upon 19 application by a permittee, the state district with the approval of the department may allow a preference based on 20 ownership or control of dependent commensurate or 21 22 commensurate property to be transferred to other property of 23 sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate 24 property controlled but not owned by the applicant, the 25

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applicant must have had control and use of the dependent
 commensurate or commensurate property and the preference
 appurtemant thereto for 5 consecutive years and must have
 established and maintained the livestock operation upon
 which the dependency was established by use or priority
 immediately prior to the application for transfer.

7 [2] In addition, the transfer may not interfere with 8 the stability of livestock operations or with proper range 9 management and may not affect adversely the established 10 local economy. A transfer may not be allowed without the 11 written consent of the owner or owners and-any--encumbrances 12 of the dependent commensurate or commensurate property from 13 which the transfer is to be madey and a the owner or owners 14 of any encuebrances on the property. A transfer is not effective until approved by the department. 15

16 (3) All expenses involved under the application shall
17 be borne by the applicant."

18 SECTION 25. EEFECTIVE DATE. THIS ACT IS EFFECTIVE ON

19 PASSAGE AND APPROVAL.

-End-

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SENATE STANDING COMMITTEE REPORT (Local Government)

That House Bill No. 48 be amended as follows:

1. Title, line 5. Following: "GENERALLY" Insert: "AND SUBSTANTIVELY" 2. Title, line 6. Following: "USE" Insert: "; REVISING THE PROCEDURE TO ISSUE BONDS FOR WATER CONSERVATION AND FLOOD CONTROL PROJECTS; PROVIDING AN EFFECTIVE DATE" 3. Page 11, line 4. Following: "the" Strike: "following" Following: "procedures" Insert: "established for the issuance of such bonds under the provisions of Title 7, chapter 12, part 42, as to cities and towns and Title 7, chapter 12, part 21, as to counties. Payment and security for the bonds shall be provided by following the following procedures" 4. Page 11, lines 5 through 13. Strike: Lines 5 through 13 in their entirety 5. Page 11, line 14. Following: line 13 Strike: "(3)" Insert: "(1)" 6. Page 11, line 18. Following: line 17 Insert: "(2) A revolving fund, to be pledged for the security of the bonds, must be established pursuant to the provisions of Title 7, chapter 12, part 42, as to cities and towns, and Title 7, chapter 12, part 21, as to counties, by the governing body authorizing the issuance of the bonds." 7. Page 19, line 5. Following: line 4 Insert: "Section 28. Effective date. This act is effective on passage and approval."