

CHAPTER NO. 216

HOUSE BILL NO. 48

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

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

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 HOUSE

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  
 2    INTRODUCED BY \_\_\_\_\_  
 3                    BY REQUEST OF THE CODE COMMISSIONER

4  
 5    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6    CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE."

7  
 8    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9            Section 1. Section 76-1-103, MCA, is amended to read:  
 10            "76-1-103. Definitions. As used in this chapter, the  
 11            following definitions apply:

- 12            (1) "City" includes incorporated cities and towns.
- 13            (2) "City council" means the chief legislative body of  
 14            a city or incorporated town.
- 15            (3) "Governing body" or "governing bodies" means the  
 16            governing body of any governmental unit represented on a  
 17            planning board.
- 18            (4) "Master plan" means a comprehensive development  
 19            plan or any of its parts such as a plan of land use and  
 20            zoning, of thoroughfares, of sanitation, of recreation, and  
 21            of other related matters.
- 22            (5) "Mayor" means mayor of a city.
- 23            (6) "Person" means any individual, firm, or  
 24            corporation.
- 25            (7) "Planning board" means a city planning board, a

1    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-plats~~ replats 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            regional, unit of government or any 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, MCA, is amended to read:

14            "76-1-202. Qualifications of citizen members of  
 15            city-county planning board. (1) The citizen members of the  
 16            city-county planning board shall be ~~resident-freeholders-in~~  
 17            residents of the area over which the planning board has  
 18            jurisdiction; provided, however, that at least two of such  
 19            members shall be ~~resident-freeholders-in~~ residents of the  
 20            area, if any, outside the city limits over which the  
 21            planning board has jurisdiction and the two members  
 22            appointed by the county commissioners shall reside outside  
 23            the city limits but within the jurisdictional area of the  
 24            planning board.

25            (2) Any citizen appointee may be removed from office

1 by a majority vote of the governing body of the governmental  
2 unit represented by such appointee."

3 Section 3. Section 76-1-212, MCA, is amended to read:

4 "76-1-212. Citizen members of county planning board.

5 (1) The citizen members of the county planning board shall  
6 be ~~resident-freeholders-in~~ RESIDENTS of the area over which  
7 the planning board has jurisdiction.

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."

11 Section 4. Section 76-1-221, MCA, is amended to read:

12 "76-1-221. Membership of city planning board. (1) A  
13 city planning board shall consist of not less than seven  
14 members to be appointed as follows:

15 (a) one member to be appointed by the city council  
16 from its membership;

17 (b) one member to be appointed by the city council,  
18 who may in the discretion of the city council be an employee  
19 or hold public office in the city or county in which the  
20 city is located;

21 (c) one member to be appointed by the mayor upon the  
22 designation by the county commissioners of the county in  
23 which the city is located;

24 (d) four citizen members to be appointed by the mayor,  
25 two of whom shall be ~~resident-freeholders-within~~ RESIDENTS

1 of the urban area, if any, outside of the city limits over  
2 which the planning board has jurisdiction under this chapter  
3 and two of whom shall be ~~resident-freeholders~~ RESIDENTS  
4 within the city limits.

5 (2) The clerk of the city council shall certify  
6 members appointed by its body. 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 members."

10 Section 5. Section 76-1-223, 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  
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 to the  
17 city planning board. This representative may be a member of  
18 the board of county commissioners or an officerholder 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 6. 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:

1 (a) be qualified by knowledge and experience in  
2 matters pertaining to the development of the city; and

3 (b) hold no other office in the city government; and  
4 ~~(c) be resident freeholders of such city or~~  
5 ~~jurisdictional area as defined in 76-1-504 through 76-1-507.~~

6 (2) Any citizen appointee may be removed from office  
7 by a majority vote of the governing body of the government  
8 ~~unit represented by such appointee city."~~

9 Section 7. Section 76-1-403, MCA, is amended to read:

10 "76-1-403. Tax levy by county for certain county  
11 planning districts authorized. When a county planning board  
12 has been established, the board of county commissioners may  
13 create a planning district which shall include that property  
14 which lies outside the limits of the jurisdictional area as  
15 established pursuant to 76-1-504 through 76-1-507 or as  
16 modified pursuant to 76-1-501 through 76-1-503 in counties  
17 where a city-county planning board has been established as  
18 well as that property which lies outside the limits of any  
19 incorporated cities and towns. The board of county  
20 commissioners may levy on all property located within such  
21 planning district a tax not to exceed 2-mills ~~the maximum~~  
22 ~~levy authorized by 76-1-405~~ for planning board purposes,  
23 under procedures set forth in Title 7, chapter 6, part 23."

24 Section 8. 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 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 9. Section 76-1-409, MCA, is amended to read:

8 "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 and 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, MCA, is amended to read:

19 "76-2-211. Violations and penalties. A violation of  
20 this part ~~except 76-2-206~~, 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  
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--76-2-306 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,  
14 reconstruction, alteration, repair, conversion, maintenance,  
15 or use; to restrain, correct, or abate such violation; to  
16 prevent the occupancy of such building, structure, or land;  
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 penalties. (1) A violation  
21 of this part--except--76-2-306, 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."

3       Section 13. 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  
6 land upon which an improvement is situated has been  
7 subdivided in compliance with this chapter, the sale, rent,  
8 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 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;

19       (b) a corner or monument is found in a deteriorating  
20 condition and it is desirable that evidence concerning it be  
21 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

1 the field notes of the survey and noted on the certificate  
2 of survey filed under ~~this section 76-3-404.~~"

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 part;

17 ~~(4) the advertising for sale or lease in this state of~~  
18 ~~a parcel in an out-of-state subdivision or in any other~~  
19 ~~manner aiding an owner, subdivider, or developer 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 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  
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  
6 recorder of the county in which the property ~~was~~ sold or  
7 leased in violation of this part, and which ~~recording~~  
8 describes a lot or parcel so wrongfully sold or leased.

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 17. 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~~ 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 18. 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

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

5 (1) The governing body of the city, town, or county  
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.

9 (2) The notice of the election and the election itself  
10 shall be carried out in accordance with ~~7-1-221 through 7-1-224~~  
11 ~~parts 41 and 42~~ 7-1-221 through 7-1-224 as to cities and  
12 in accordance with ~~7-1-221 through 7-1-224~~ ~~part 21~~ 7-1-222  
13 through 7-1-223 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 76-6-203, MCA, is amended to read:

19 "76-6-203. Types of permissible easements. (1)  
20 Easements or restrictions under this chapter may prohibit or  
21 limit any or all of the following:

22 (a) structures--construction or placing of  
23 buildings, camping trailers, housetrailer, mobile homes,  
24 roads, signs, billboards or other advertising, utilities, or  
25 other structures on or above the ground;

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

4 (c) ~~(3)~~ vegetation--removal or destruction of trees,  
5 shrubs, or other vegetation;

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

9 (e) ~~(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 (f) ~~(6)~~ 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 (g) ~~(7)~~ subdivision 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 (2) ~~the term "land" in subsections (1)(b) and (1)(c)~~  
22 ~~above includes land under water, water, and water surface."~~

23 Section 20. Section 76-15-311, MCA, is amended to  
24 read:

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



1 are no incorporated municipalities within the boundaries of  
 2 the district, the governing body of ~~said the~~ district shall  
 3 consist of five ~~or seven~~ supervisors elected ~~SUPERVISORS or~~  
 4 ~~appointed as provided herein.~~

5 ~~(2) If there are incorporated municipalities within~~  
 6 ~~the boundaries of the district, the governing body of the~~  
 7 ~~district shall consist of seven supervisors as follows:~~

8 ~~(2)(a) In all cases where the boundaries of such~~  
 9 ~~conservation district include any incorporated municipality~~  
 10 ~~or municipalities, the the board of supervisors, in addition~~  
 11 ~~to the five elected supervisors, shall consist of two~~  
 12 ~~appointed supervisors, making a total of seven supervisors~~  
 13 ~~in such districts. The two appointed supervisors must be~~  
 14 ~~residents of the municipalities within the district. The~~  
 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~~  
 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:

1 "76-15-321. Rulemaking authority. A conservation  
 2 district and the supervisors thereof shall have the power to  
 3 make and from time to time amend and repeal rules ~~not~~  
 4 ~~consistent with this chapter~~ to carry into effect its ~~the~~  
 5 purposes and powers of ~~this chapter.~~"

6 Section 22. Section 76-15-528, MCA, is amended to  
 7 read:

8 "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  
 11 any percentages imposed for delinquency and for cost of  
 12 collection, shall constitute a lien against the property  
 13 upon which such assessment is levied ~~after from~~ the date  
 14 ~~levying on which~~ such assessment ~~which is levied.~~ This lien  
 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:

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 provisions ~~it~~  
 25 ~~being the, it is an~~ express purpose and intent of this

1 ~~section part~~ to aid but not to interfere with the government  
2 of the United States or of any Department, bureau, or agency  
3 thereof in any undertaking over which such federal authority  
4 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  
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 ~~rights-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 ~~any the~~ ordinance adopted--pursuant--to  
20 ~~76-15-721--through--76-15-727~~ establishing the board of  
21 adjustment.

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

1 a quorum. The chairman or in his absence such other member  
2 of the board as he may designate to serve as acting chairman  
3 may administer oaths and compel the attendance of witnesses.

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 orders entered, which shall be filed in the office of the  
8 board and shall be a public record."

9 Section 25. 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  
13 are great practical difficulties or unnecessary hardship in  
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  
16 and record that determination 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

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

4 Section 26. 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  
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  
18 or nonmembers and decrease or increase the size of permits  
19 if the range carrying capacity changes.

20 (2) undertake reseeding and other approved  
21 conservation and improvement practices of depleted range  
22 areas or abandon abandoned 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;

1 (3) employ and discharge employees, riders, and other  
2 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  
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  
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  
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 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 made, and ~~the owner or owners~~

LC 0029/01

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-

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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 sub-  
section (11), the definition is rewritten for clarity.

Sections 2, 3, and 4. 76-1-202, 76-1-212, and 76-1-221.  
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. 76-1-223. "Of" is changed to "to" for  
grammar.

Section 6. 76-1-224. 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. 76-1-403. This section is amended to provide  
consistency with the maximum mill levies provided by 76-1-405.

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

Section 9. 76-1-409. This section is rewritten for  
clarity.

Sections 10, 11, and 12. 76-2-211, 76-2-308, and 76-2-315. 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. 76-4-1115. 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. 76-4-1117. Subsection (1) is rewritten for clarity.

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

Section 18. 76-5-1117. 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. 76-15-311. This section is rewritten for clarity.

Section 21. 76-15-321. This section is rewritten for clarity.

Section 22. 76-15-528. This section is rewritten for clarity.

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

Section 24. 76-15-722. 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.

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Section 25. 76-15-725. 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. 76-16-406. Subsection (2) is rewritten for clarity.

Approved by Committee  
on Natural Resources

HOUSE BILL NO. 48

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE."

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

Section 1. Section 76-1-103, MCA, is amended to read:  
"76-1-103. Definitions. As used in this chapter, the  
following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of  
a city or incorporated town.

(3) "Governing body" or "governing bodies" means the  
governing body of any governmental unit represented on a  
planning board.

(4) "Master plan" means a comprehensive development  
plan or any of its parts such as a plan of land use and  
zoning, of thoroughfares, of sanitation, of recreation, and  
of other related matters.

(5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or  
corporation.

(7) "Planning board" means a city planning board, a

county planning board or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots,  
streets, and areas, marked upon the earth and represented on  
papers, and includes ~~re-plats~~ replats or amended plats.

(9) "Public place" means any tract owned by the state  
or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards,  
roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, or  
regional, unit of government or any county, city, or town.

(12) "Utility" means any facility used in rendering  
service which the public has a right to demand."

~~Section 2. Section 76-1-202, MCA, is amended to read:~~

~~"76-1-202. Qualifications of citizen members of  
city-county planning boards. (1) The citizen members of the  
city-county planning board shall be resident freeholders in  
residents of the area over which the planning board has  
jurisdiction; provided, however, that at least two of such  
members shall be resident freeholders in residents of the  
area, if any, outside the city limits over which the  
planning board has jurisdiction and the two members  
appointed by the county commissioners shall reside outside  
the city limits but within the jurisdictional area of the  
planning boards.~~

~~(2) Any citizen appointee may be removed from office~~



1 by a majority vote of the governing body of the governmental  
2 unit represented by such appointees"

3 Section 3v--Section 76-1-212v-MCA, is amended to read:  
4 "76-1-212v--Citizen--members--of--county--planning--boards  
5 {1}--The--citizen--members--of--the--county--planning--board--shall  
6 be--resident--freeholders--in residents of the area over which  
7 the planning board has jurisdiction"

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 appointees"

11 Section 4v--Section--76-1-221v-MCA, is amended to read:  
12 "76-1-221v--Membership--of--city--planning--boards---{1}--A  
13 city--planning--board--shall--consist--of--not--less--than--seven  
14 members--to--be--appointed--as--follows:

15 {a}--one--member--to--be--appointed--by--the--city--council  
16 from--its--memberships

17 {b}--one--member--to--be--appointed--by--the--city--council  
18 who--may--in--the--discretion--of--the--city--council--be--an--employee  
19 or--hold--public--office--in--the--city--or--county--in--which--the  
20 city--is--located

21 {c}--one--member--to--be--appointed--by--the--mayor--upon--the  
22 designation--by--the--county--commissioners--of--the--county--in  
23 which--the--city--is--located

24 {d}--four--citizen--members--to--be--appointed--by--the--mayor,  
25 two--of--whom--shall--be--resident--freeholders--within residents

1 of the urban area if any, outside of the city limits over  
2 which the planning board has jurisdiction under this chapter  
3 and two of whom shall be resident freeholders residents  
4 within the city limits

5 {2}--The--clerk--of--the--city--council--shall--certify  
6 members--appointed--by--its--body--The--certificates--shall--be  
7 sent--to--and--become--a--part--of--the--records--of--the--planning  
8 boards---The--mayor--shall--make--similar--certification--for--the  
9 appointment--of--citizen--members"

10 Section 2. Section 76-1-223, 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  
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 to 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:

1 (a) be qualified by knowledge and experience in  
2 matters pertaining to the development of the city; and

3 (b) hold no other office in the city government; and  
4 ~~to be resident freeholders of such city or~~  
5 ~~jurisdictional area as defined in 76-1-504 through 76-1-507.~~

6 (2) Any citizen appointee may be removed from office  
7 by a majority vote of the governing body of the government  
8 unit represented by such appointee city."

9 Section 4. Section 76-1-403, MCA, is amended to read:

10 "76-1-403. Tax levy by county for certain county  
11 planning districts authorized. When a county planning board  
12 has been established, the board of county commissioners may  
13 create a planning district which shall include that property  
14 which lies outside the limits of the jurisdictional area as  
15 established pursuant to 76-1-504 through 76-1-507 or as  
16 modified pursuant to 76-1-501 through 76-1-503 in counties  
17 where a city-county planning board has been established as  
18 well as that property which lies outside the limits of any  
19 incorporated cities and towns. The board of county  
20 commissioners may levy on all property located within such  
21 planning district a tax not to exceed ~~2-mills~~ the maximum  
22 levy authorized by 76-1-405 for planning board purposes,  
23 under procedures set forth in Title 7, chapter 6, part 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 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:

8 "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~~ and 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 part ~~except 76-2-206~~, 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  
23 imprisonment in the county jail not exceeding 6 months or  
24 both."

25 Section 8. 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--76-2-306, 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,  
 14 reconstruction, alteration, repair, conversion, maintenance,  
 15 or use; to restrain, correct, or abate such violation; to  
 16 prevent the occupancy of such building, structure, or land;  
 17 or to prevent any illegal act, conduct, business, or use in  
 18 or about such premises."

19 Section 9. Section 76-2-315, MCA, is amended to read:  
 20 "76-2-315. Violations and penalties. (1) A violation  
 21 of this part--except--76-2-306, 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."

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  
 6 land upon which an improvement is situated has been  
 7 subdivided in compliance with this chapter, the sale, rent,  
 8 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;

19 (b) a corner or monument is found in a deteriorating  
 20 condition and it is desirable that evidence concerning it be  
 21 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

1 the field notes of the survey and noted on the certificate  
2 of survey filed under ~~this section 76-3-404.~~"

3 Section 12. 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 part;

17 ~~(4) the advertising for sale or lease in this state of~~  
18 ~~a parcel in an out-of-state subdivision or in any other~~  
19 ~~manner aiding an owner, subdivider, or developer 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

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  
6 recorder of the county in which the property ~~was~~ sold or  
7 leased in violation of this part, and which recording  
8 describes a lot or parcel so wrongfully sold or leased.

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 "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 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

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

5 (1) The governing body of the city, town, or county  
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.

9 (2) The notice of the election and the election itself  
10 shall be carried out in accordance with ~~title 7, chapter 12,~~  
11 ~~parts 41 and 42 7-1-4227 through 7-1-4234~~ as to cities and  
12 in accordance with ~~title 7, chapter 12, part 21 7-1-2229~~  
13 ~~through 7-1-2236~~ 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. ~~(f)~~  
20 Easements or restrictions under this chapter may prohibit or  
21 limit any or all of the following:

22 ~~(f)(1)~~ structures--construction or placing of  
23 buildings, camping trailers, housetrailer, mobile homes,  
24 roads, signs, billboards or other advertising, utilities, or  
25 other structures on or above the ground;

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

4 ~~(c)(3)~~ vegetation--removal or destruction of trees,  
5 shrubs, or other vegetation;

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

9 ~~(e)(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 ~~(f)(6)~~ 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 ~~(g)(7)~~ subdivision 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 ~~(2)--The term "land" in subsections (f)(b) and (f)(c)~~  
22 ~~above--includes land under water, water, and water surface."~~

23 Section 17. Section 76-15-311, MCA, is amended to  
24 read:

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

1 are no incorporated municipalities within the boundaries of  
 2 the district, the governing body of said ~~the~~ district shall  
 3 consist of five ~~or seven~~ supervisors elected supervisors or  
 4 appointed ~~as provided herein~~.

5 ~~(2) If there are incorporated municipalities within~~  
 6 ~~the boundaries of the district, the governing body of the~~  
 7 ~~district shall consist of seven supervisors as follows:~~

8 ~~(2)(a) In all cases where the boundaries of such~~  
 9 ~~conservation district include any incorporated municipality~~  
 10 ~~or municipalities, the the board of supervisors, in addition~~  
 11 to the five elected supervisors, shall consist of two  
 12 appointed supervisors, making a total of seven supervisors  
 13 in such districts. The two appointed supervisors must be  
 14 residents of the municipalities within the district. The  
 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  
 18 of office of the appointed supervisors shall be 3 years.

19 ~~(2)(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:

1 "76-15-321. Rulemaking authority. A conservation  
 2 district and the supervisors thereof shall have the power to  
 3 make and from time to time amend and repeal rules not  
 4 consistent ~~with this chapter~~ to carry into effect its ~~the~~  
 5 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  
 9 assessment made and levied to defray the cost and expenses  
 10 of any of the work enumerated in this chapter, together with  
 11 any percentages imposed for delinquency and for cost of  
 12 collection, shall constitute a lien against the property  
 13 upon which such assessment is levied ~~after from~~ the date  
 14 ~~levying on which~~ such assessment ~~which is levied~~. This lien  
 15 can only be extinguished by payment of such assessment with  
 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 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 provisions ~~it~~  
 25 ~~being the~~. It is an express purpose and intent of this

1 ~~section part~~ to aid but not to interfere with the government  
 2 of the United States or of any department, bureau, or agency  
 3 thereof in any undertaking over which such federal authority  
 4 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  
 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 rights, ~~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 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 ~~76-15-721 through 76-15-727~~ establishing the board of  
 21 adjustment.

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

1 a quorum. The chairman or in his absence such other member  
 2 of the board as he may designate to serve as acting chairman  
 3 may administer oaths and compel the attendance of witnesses.

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 orders 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  
 13 are great practical difficulties or unnecessary hardship in  
 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  
 16 and record that determination 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

1 spirit of the land use regulations is observed, the public  
2 health, safety, and welfare is secured, and substantial  
3 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  
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  
18 or nonmembers and decrease or increase the size of permits  
19 if the range carrying capacity changes.

20 (2) undertake reseeding and other approved  
21 conservation and improvement practices of depleted range  
22 areas or ~~abandon~~ abandoned 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;

1 (3) employ and discharge employees, riders, and other  
2 persons necessary to properly manage the state district."

3 Section 24. Section 76-16-406, MCA, is amended to  
4 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  
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  
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 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 made, and ~~the owner or owners~~



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-

1 HOUSE BILL NO. 48  
 2 INTRODUCED BY MANUEL  
 3 BY REQUEST OF THE CODE COMMISSIONER  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6 CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE."  
 7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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 12 (1) "City" includes incorporated cities and towns.  
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 14 a city or incorporated town.  
 15 (3) "Governing body" or "governing bodies" means the  
 16 governing body of any governmental unit represented on a  
 17 planning board.  
 18 (4) "Master plan" means a comprehensive development  
 19 plan or any of its parts such as a plan of land use and  
 20 zoning, of thoroughfares, of sanitation, of recreation, and  
 21 of other related matters.  
 22 (5) "Mayor" means mayor of a city.  
 23 (6) "Person" means any individual, firm, or  
 24 corporation.  
 25 (7) "Planning board" means a city planning board, a

1 ~~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-plats~~ replats 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 regional unit of government or any 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, MCA, is amended to read:~~  
 14 ~~"76-1-202. Qualifications of citizen members of~~  
 15 ~~city-county planning boards. (1) The citizen members of the~~  
 16 ~~city-county planning board shall be resident freeholders in~~  
 17 ~~residents of the area over which the planning board has~~  
 18 ~~jurisdiction; provided, however, that at least two of such~~  
 19 ~~members shall be resident freeholders in residents of the~~  
 20 ~~area, if any, outside the city limits over which the~~  
 21 ~~planning board has jurisdiction and the two members~~  
 22 ~~appointed by the county commissioners shall reside outside~~  
 23 ~~the city limits but within the jurisdictional area of the~~  
 24 ~~planning board.~~  
 25 (2) Any citizen appointee may be removed from office

1 by a majority vote of the governing body of the governmental  
 2 unit represented by such appointees"

3 Section 3. Section 76-1-212, MCA, is amended to read:  
 4 "76-1-212. (1) Citizen members of county planning boards  
 5 (1) The citizen members of the county planning board shall  
 6 be resident freeholders in residents of the area over which  
 7 the planning board has jurisdiction.

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 appointees"

11 Section 4. Section 76-1-221, MCA, is amended to read:  
 12 "76-1-221. Membership of city planning boards. (1) A  
 13 city planning board shall consist of not less than seven  
 14 members to be appointed as follows:

15 (a) one member to be appointed by the city council  
 16 from its membership;

17 (b) one member to be appointed by the city council  
 18 who may in the discretion of the city council be an employee  
 19 or hold public office in the city or county in which the  
 20 city is located;

21 (c) one member to be appointed by the mayor upon the  
 22 designation by the county commissioners of the county in  
 23 which the city is located;

24 (d) four citizen members to be appointed by the mayor  
 25 two of whom shall be resident freeholders within residents

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

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

10 Section 2. Section 76-1-223, 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  
 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 to 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:

1 (a) be qualified by knowledge and experience in  
2 matters pertaining to the development of the city; and

3 (b) hold no other office in the city government; and  
4 (c) ~~be resident freeholders of such city or~~  
5 ~~jurisdictional area as defined in 76-1-504 through 76-1-507.~~

6 (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."

9 Section 4. Section 76-1-403, MCA, is amended to read:

10 "76-1-403. Tax levy by county for certain county  
11 planning districts authorized. When a county planning board  
12 has been established, the board of county commissioners may  
13 create a planning district which shall include that property  
14 which lies outside the limits of the jurisdictional area as  
15 established pursuant to 76-1-504 through 76-1-507 or as  
16 modified pursuant to 76-1-501 through 76-1-503 in counties  
17 where a city-county planning board has been established as  
18 well as that property which lies outside the limits of any  
19 incorporated cities and towns. The board of county  
20 commissioners may levy on all property located within such  
21 planning district a tax not to exceed ~~2-mills~~ the maximum  
22 levy authorized by 76-1-405 for planning board purposes,  
23 under procedures set forth in Title 7, chapter 6, part 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 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:

8 "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~~ and 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 part ~~except 76-2-206~~, 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  
23 imprisonment in the county jail not exceeding 6 months or  
24 both."

25 Section 8. 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--76-2-306,~~ 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,  
 14       reconstruction, alteration, repair, conversion, maintenance,  
 15       or use; to restrain, correct, or abate such violation; to  
 16       prevent the occupancy of such building, structure, or land;  
 17       or to prevent any illegal act, conduct, business, or use in  
 18       or about such premises."

19       Section 9. Section 76-2-315, MCA, is amended to read:

20       ~~"76-2-315. Violations and penalties. (1) A violation~~  
 21       ~~of this part--except--76-2-306,~~ 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."

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~~  
 6       ~~land upon which an improvement is situated has been~~  
 7       ~~subdivided in compliance with this chapter, the sale, rent,~~  
 8       ~~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;

19       (b) a corner or monument is found in a deteriorating  
 20       condition and it is desirable that evidence concerning it be  
 21       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

1 the field notes of the survey and noted on the certificate  
 2 of survey filed under ~~this section 76-3-504.~~"

3 Section 12. 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 part;

17 ~~(4) the advertising for sale or lease in this state of~~  
 18 ~~a parcel in an out-of-state subdivision or in any other~~  
 19 ~~manner aiding an owners subdividers or developer 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

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  
 6 recorder of the county in which the property ~~was~~ sold or  
 7 leased in violation of this part, ~~and~~ which recording  
 8 describes a lot or parcel so wrongfully sold or leased.

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 "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 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

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

5 (1) The governing body of the city, town, or county  
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.

9 (2) The notice of the election and the election itself  
10 shall be carried out in accordance with ~~Title 7, chapter 12,~~  
11 ~~parts 41 and 42~~ 7-1-4227 through 7-1-4234 as to cities and  
12 in accordance with ~~Title 7, chapter 12, part 21~~ 7-1-2229  
13 through 7-1-2236 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 Easements or restrictions under this chapter may prohibit or  
21 limit any or all of the following:

22 ~~(a)(1)~~ structures--construction or placing of  
23 buildings, camping trailers, housetrailer, mobile homes,  
24 roads, signs, billboards or other advertising, utilities, or  
25 other structures on or above the ground;

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

4 ~~(c)(3)~~ vegetation--removal or destruction of trees,  
5 shrubs, or other vegetation;

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

9 ~~(e)(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 ~~(f)(6)~~ 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 ~~(g)(7)~~ subdivision 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 ~~(2)--The term "land" in subsections (1)(b) and (1)(c)~~  
22 ~~above--includes land under water, water, and water surface"~~

23 Section 17. Section 76-15-311, MCA, is amended to  
24 read:

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

1 are no incorporated municipalities within the boundaries of  
 2 the district, the governing body of said ~~the~~ district shall  
 3 consist of five ~~or seven~~ supervisors elected ~~supervisors~~ or  
 4 appointed ~~as provided herein~~.

5 ~~(2) If there are incorporated municipalities within~~  
 6 ~~the boundaries of the district, the governing body of the~~  
 7 ~~district shall consist of seven supervisors as follows:~~

8 ~~(a) In all cases where the boundaries of such~~  
 9 ~~conservation district include any incorporated municipality~~  
 10 ~~or municipalities, the~~ The board of supervisors, in addition  
 11 to the five elected supervisors, shall consist of two  
 12 appointed supervisors, making a total of seven supervisors  
 13 in such districts. The two appointed supervisors must be  
 14 residents of the municipalities within the district. The  
 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  
 18 of office of the appointed supervisors shall be 3 years.

19 ~~(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:

1 "76-15-321. rulemaking authority. A conservation  
 2 district and the supervisors thereof shall have the power to  
 3 make and from time to time amend and repeal rules not  
 4 ~~consistent with this chapter~~ to carry into effect its ~~the~~  
 5 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  
 9 assessment made and levied to defray the cost and expenses  
 10 of any of the work enumerated in this chapter, together with  
 11 any percentages imposed for delinquency and for cost of  
 12 collection, shall constitute a lien against the property  
 13 upon which such assessment is levied ~~after from~~ the date  
 14 ~~levying on which~~ such assessment ~~which is levied~~. This lien  
 15 can only be extinguished by payment of such assessment with  
 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 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 provisions ~~it~~  
 25 ~~being the~~ it is an express purpose and intent of this



1 section part to aid but not to interfere with the government  
2 of the United States or of any department, bureau, or agency  
3 thereof in any undertaking over which such federal authority  
4 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  
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 rights--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 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 76-15-721--through--76-15-727 establishing the board of  
21 adjustment.

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

1 a quorum. The chairman or in his absence such other member  
2 of the board as he may designate to serve as acting chairman  
3 may administer oaths and compel the attendance of witnesses.

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 orders 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  
13 are great practical difficulties or unnecessary hardship in  
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  
16 and record that determination 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

1 spirit of the land use regulations is observed, the public  
2 health, safety, and welfare is secured, and substantial  
3 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  
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  
18 or nonmembers and decrease or increase the size of permits  
19 if the range carrying capacity changes.

20 (2) undertake reseeding and other approved  
21 conservation and improvement practices of depleted range  
22 areas or ~~abandon~~ abandoned 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;

1 (3) employ and discharge employees, riders, and other  
2 persons necessary to properly manage the state district."

3 Section 24. Section 76-16-406, MCA, is amended to  
4 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  
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  
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 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 made ~~and the owner or owners~~

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-

HOUSE BILL NO. 48

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY AND SUBSTANTIIVELY REVISE AND CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE; REVISING THE PROCEDURE TO ISSUE BONDS FOR WATER CONSERVATION AND FLOOD CONTROL PROJECTS; PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 76-1-103, MCA, is amended to read:

"76-1-103. Definitions. As used in this chapter, the following definitions apply:

- (1) "City" includes incorporated cities and towns.
- (2) "City council" means the chief legislative body of a city or incorporated town.
- (3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.
- (4) "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.
- (5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or corporation.

(7) "Planning board" means a city planning board, a county planning board or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots, streets, and areas, marked upon the earth and represented on paper, and includes re-plats ~~replats~~ or amended plats.

(9) "Public place" means any tract owned by the state or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, or regional unit of government or any county, city, or town.

(12) "Utility" means any facility used in rendering service which the public has a right to demand."

~~Section 2. Section 76-1-202, MCA, is amended to read: "76-1-202. Qualifications of citizen members of city-county planning boards. (1) The citizen members of the city-county planning board shall be resident freeholders in residents of the area over which the planning board has jurisdiction provided, however, that at least two of such members shall be resident freeholders in residents of the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside~~

1 the-city-limits-but-within-the-jurisdictional-area-of-the  
2 planning-board.

3 {2}--Any--citizen--appointee--may--be--removed--from--office  
4 by--a--majority--vote--of--the--governing--body--of--the--governmental  
5 unit--represented--by--such--appointees."

6 Section 3--Section 76-1-212v MCA, is amended to read:  
7 "76-1-212v--Citizen--members--of--county--planning--boards  
8 {1}--The--citizen--members--of--the--county--planning--board--shall  
9 be--resident--freeholders--in--residents--of--the--area--over--which  
10 the--planning--board--has--jurisdiction."

11 {2}--Any--citizen--appointee--may--be--removed--from--office  
12 by--a--majority--vote--of--the--governing--body--of--the--governmental  
13 unit--represented--by--such--appointees."

14 Section 4--Section 76-1-221y MCA, is amended to read:  
15 "76-1-221y--Membership--of--city--planning--boards----{1}--A  
16 city--planning--board--shall--consist--of--not--less--than--seven  
17 members--to--be--appointed--as--follows:

18 (a)--one--member--to--be--appointed--by--the--city--council  
19 from--its--membership;

20 (b)--one--member--to--be--appointed--by--the--city--council,  
21 who--may--in--the--discretion--of--the--city--council--be--an--employee  
22 or--hold--public--office--in--the--city--or--county--in--which--the  
23 city--is--located;

24 (c)--one--member--to--be--appointed--by--the--mayor--upon--the  
25 designation--by--the--county--commissioners--of--the--county--in

1 which-the-city-is-located;

2 (d)--four--citizen--members--to--be--appointed--by--the--mayor,  
3 two--of--whom--shall--be--resident--freeholders--within--residents  
4 of--the--urban--area--if--any--outside--of--the--city--limits--over  
5 which--the--planning--board--has--jurisdiction--under--this--chapter  
6 and--two--of--whom--shall--be--resident--freeholders--residents  
7 within--the--city--limits.

8 {2}--The--clerk--of--the--city--council--shall--certify  
9 members--appointed--by--its--body--the--certificates--shall--be  
10 sent--to--and--become--a--part--of--the--records--of--the--planning  
11 boards--The--mayor--shall--make--similar--certification--for--the  
12 appointment--of--citizen--members."

13 Section 2. Section 76-1-223, MCA, is amended to read:

14 "76-1-223. County representative for city planning  
15 board. As soon as a city council has enacted an ordinance  
16 creating a city planning board, the board of county  
17 commissioners of the county wherein the city is located  
18 shall within 45 days designate a representative of the  
19 county to the mayor of the city for appointment of to the  
20 city planning board. This representative may be a member of  
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."

1 Section 3. Section 76-1-224, MCA, is amended to read:

2 "76-1-224. Citizen members of city planning board. (1)  
3 The citizen members shall:

4 (a) be qualified by knowledge and experience in  
5 matters pertaining to the development of the city; and

6 (b) hold no other office in the city government; and  
7 ~~(c) be resident freeholders of such city or~~  
8 ~~jurisdictional area as defined in 76-1-504 through 76-1-507.~~

9 (2) Any citizen appointee may be removed from office  
10 by a majority vote of the governing body of the government  
11 unit represented by such appointee city."

12 Section 4. Section 76-1-403, MCA, is amended to read:

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

1 under procedures set forth in Title 7, chapter 6, part 23."

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  
6 within such city or town ~~not to exceed 2-mths~~ for planning  
7 board purposes, under procedures set forth in Title 7,  
8 chapter 6, part 42, provided such tax shall not exceed the  
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 governmental or~~  
17 ~~local~~ agencies and instrumentalities, of state or local  
18 government or from civic sources; ~~may~~ and contract with  
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 76-2-206~~ 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

1 imprisonment in the county jail not exceeding 6 months or  
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  
6 legislative body may provide by ordinance for the  
7 enforcement of this part, ~~except 76-2-306~~ and of any  
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  
12 violation of this part or of any ordinance or other  
13 regulation made under authority conferred hereby, the proper  
14 local authorities of the municipality, in addition to other  
15 remedies, may institute any appropriate action or  
16 proceedings to prevent such unlawful erection, construction,  
17 reconstruction, alteration, repair, conversion, maintenance,  
18 or use; to restrain, correct, or abate such violation; to  
19 prevent the occupancy of such building, structure, or land;  
20 or to prevent any illegal act, conduct, business, or use in  
21 or about such premises."

22 Section 9. Section 76-2-315, MCA, is amended to read:

23 "76-2-315. Violations and penalties. (1) A violation  
24 of this part, ~~except 76-2-306~~ or of such ordinance or  
25 regulation made pursuant to 76-2-308(1) is hereby declared

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

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

6 Section 10. Section 76-3-202, MCA, is amended to read:

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

19 (a) it becomes necessary to take testimony for the  
20 identification of old corners or reestablishment of lost or  
21 obliterated corners;

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

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

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

3 (2) A record of oaths shall be preserved as part of  
4 the field notes of the survey and noted on the certificate  
5 of survey filed under ~~this section 76-3-504.~~"

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

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

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

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

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

20 ~~{4}--the-advertising-for-sale-or-lease-in-this-state-of  
21 a-parcel-in-an-out-of-state--subdivision--or--in--any--other  
22 manner--aiding--an--owner--subdivider--or--developer--of--an  
23 out-of-state-subdivision--who--has--not--complied--with--the  
24 provisions--of--this--part--to--offer--within--this--state  
25 subdivided-lands."~~

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  
4 purpose of calculating the period of any applicable statute  
5 of limitations in any action or proceeding, either civil or  
6 criminal, involving any violation of this part, the cause of  
7 action shall be deemed ~~considered~~ to have accrued not  
8 earlier than the time of recording with the county clerk and  
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.

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

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

17 "76-4-1245. Penalties. Any person who violates any  
18 provision of this part or who willfully violates any rule  
19 adopted under it or any person who willfully in an  
20 application for registration makes any untrue statement of a  
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."

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



1 read:

2 "76-5-1117. Bonds authorized -- procedure. Cities,  
 3 towns, and counties are hereby authorized to contract  
 4 indebtedness and to issue special improvement district or  
 5 rural improvement district bonds to provide funds for the  
 6 payment of the cost of improvements contemplated by this  
 7 part by following the following procedures ESTABLISHED FOR  
 8 THE ISSUANCE OF SUCH BONDS UNDER THE PROVISIONS OF TITLE 7,  
 9 CHAPTER 12, PART 42, AS TO CITIES AND TOWNS AND TITLE 7,  
 10 CHAPTER 12, PART 21, AS TO COUNTIES, PAYMENT AND SECURITY  
 11 FOR THE BONDS SHALL BE PROVIDED BY FOLLOWING THE FOLLOWING  
 12 PROCEDURES:

13 ~~{1}--The governing body of the city, town, or county~~  
 14 ~~may call a special election to vote upon the proposition of~~  
 15 ~~issuing said bonds or may submit the proposition as a~~  
 16 ~~special question at a regular municipal or general election.~~

17 ~~{2}--The notice of the election and the election itself~~  
 18 ~~shall be carried out in accordance with Title 7, chapter 12,~~  
 19 ~~parts 41 and 42, 7-7-4227 through 7-7-4234, as to cities and~~  
 20 ~~in accordance with Title 7, chapter 12, part 21, 7-7-2229~~  
 21 ~~through 7-7-2236, as to the counties.~~

22 {3}(1) Tax assessments for the payment of said the  
 23 bonds shall be levied in accordance with Title 7, chapter  
 24 12, parts 41 and 42, and Title 7, chapter 12, part 21 as to  
 25 cities and counties, respectively.

1 {2} A REVOLVING FUND, TO BE PLEDGED FOR THE SECURITY  
 2 OF THE BONDS, MUST BE ESTABLISHED PURSUANT TO THE PROVISIONS  
 3 OF TITLE 7, CHAPTER 12, PART 42, AS TO CITIES AND TOWNS, AND  
 4 TITLE 7, CHAPTER 12, PART 21, AS TO COUNTIES, BY 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. Types of permissible easements. {+}  
 8 Easements or restrictions under this chapter may prohibit or  
 9 limit any or all of the following:

10 {+}(1) structures--construction or placing of  
 11 buildings, camping trailers, housetrailer, mobile homes,  
 12 roads, signs, billboards or other advertising, utilities, or  
 13 other structures on or above the ground;

14 {+}(2) landfill--dumping or placing of soil or other  
 15 substance or material as landfill or dumping or placing of  
 16 trash, waste, or unsightly or offensive materials;

17 {+}(3) vegetation--removal or destruction of trees,  
 18 shrubs, or other vegetation;

19 {+}(4) loam, gravel, etc.--excavation, dredging, or  
 20 removal of loam, peat, gravel, soil, rock, or other material  
 21 substance;

22 {+}(5) surface use--surface use except for such  
 23 purposes permitting the land or water area to remain  
 24 predominantly in its existing condition;

25 {+}(6) acts detrimental to conservation--activities

1 detrimental to drainage, flood control, water conservation,  
2 erosion control, soil conservation, or fish and wildlife  
3 habitat and preservation;

4 ~~(g)(1)~~ subdivision of land--subdivision of land as  
5 defined in 76-3-103, 76-3-104, and 76-3-202;

6 ~~(h)(1)~~ other acts--other acts or uses detrimental to  
7 such retention of land or water areas in their existing  
8 conditions.

9 ~~(2)--the--term--"land"--in-subsections-(1)(b)-and-(1)(c)~~  
10 ~~above--includes--land--under--water--water--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 ~~said the~~ district shall  
16 consist of five ~~or seven supervisors~~ elected ~~supervisors~~ or  
17 appointed ~~as provided herein~~.

18 (2) If there are incorporated municipalities within  
19 the boundaries of the district, the governing body of the  
20 district shall consist of seven supervisors as follows:

21 ~~(2)(a) In all cases where the boundaries of such~~  
22 ~~conservation district include any incorporated municipality~~  
23 ~~or municipalities, the the~~ board of supervisors, in addition  
24 to the five elected supervisors, shall consist of two  
25 appointed supervisors, making a total of seven supervisors

1 in such districts. The two appointed supervisors must be  
2 residents of the municipalities within the district. The  
3 legislative bodies of the incorporated municipalities within  
4 the district shall appoint the two additional supervisors  
5 after consultation with the elected supervisors. The term  
6 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  
22 assessment made and levied to defray the cost and expenses  
23 of any of the work enumerated in this chapter, together with  
24 any percentages imposed for delinquency and for cost of  
25 collection, shall constitute a lien against the property

1 upon which such assessment is levied ~~after from~~ the date  
 2 ~~levying on which~~ such assessment, which is levied. This lien  
 3 can only be extinguished by payment of such assessment with  
 4 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  
 9 government of the United States or any department, bureau,  
 10 or agency thereof, except to such extent as the government  
 11 of the United States or any department, bureau, or agency  
 12 thereof may desire to take advantage of its provisions ~~--it~~  
 13 ~~being--the~~ it is an express purpose and intent of this  
 14 section ~~part~~ to aid but not to interfere with the government  
 15 of the United States or of any department, bureau, or agency  
 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 ~~shall part~~ may not  
 19 be construed to impair, limit, or repeal any right  
 20 whatsoever which the government of the United States or any  
 21 department, bureau, or agency thereof has to full and  
 22 complete jurisdiction, management, or control over projects  
 23 over which such federal authority desires to exercise such  
 24 rights ~~--it-being-the~~ it is a purpose of this section ~~part~~  
 25 expressly to subordinate any power of jurisdiction and to

1 never interfere directly with such federal authority."

2 Section 21. Section 76-15-722, MCA, 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  
 11 among its members. Meetings of the board shall be held at  
 12 the call of the chairman and at such other times as the  
 13 board may determine. Any two members of the board constitute  
 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  
 16 may administer oaths and compel the attendance of witnesses.

17 (3) All meetings of the board shall be open to the  
 18 public. The board shall keep a full and accurate record of  
 19 all proceedings, of all documents filed with it, and of all  
 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

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

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

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

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

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

1 rating of dependent commensurate property and the carrying  
 2 capacity of the range and may be subject to reservations,  
 3 regulations, and limitations under the terms of agreements  
 4 between the state district and any agency of the United  
 5 States. The state district may also allot range to members  
 6 or nonmembers and decrease or increase the size of permits  
 7 if the range carrying capacity changes.

8 (2) undertake reseeding and other 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;

14 (3) employ and discharge employees, riders, and other  
 15 persons necessary to properly manage the state district."

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

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

1 applicant must have had control and use of the dependent  
2 commensurate or commensurate property and the preference  
3 appurtenant thereto for 5 consecutive years and must have  
4 established and maintained the livestock operation upon  
5 which the dependency was established by use or priority  
6 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 made, and ~~the owner or owners~~  
14 ~~of any encumbrances on the property.~~ A transfer is not  
15 effective until approved by the department.

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

18 ~~SECTION 25. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON~~  
19 ~~PASSAGE AND APPROVAL.~~

-End-

March 2, 1979

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."