

SENATE BILL 11

IN THE SENATE

January 3, 1979

Introduced and referred to
Committee on Local Government.

April 20, 1979

Died in Committee.

SENATE BILL NO. 11

INTRODUCED BY JERGESON, WATT

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO LOCAL GOVERNMENT FORMATION; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Liberal construction. The rule of law that the powers of a local government shall be strictly construed has no application to the powers of local governments in Montana. Any reasonable doubt as to the existence of a power or authority granted by law to local government shall be resolved in favor of the power or authority's existence.

Section 2. Powers vested in governing body. Unless otherwise provided or the context otherwise requires, all powers granted to local governments by law shall be vested in the governing body of the local government.

Section 3. Transition. (1) This [act] shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued prior to [the effective date of this act]. The governing body may have the power and duty to do all things required by prior law or by covenants and agreements entered into pursuant to such laws for the security of any such bond, debt, contract, or obligation.

(2) All ordinances, resolutions, regulations, and interlocal agreements in effect [at the time this act becomes effective] shall continue in effect until repealed or amended in the manner provided by law.

(3) Each officer or employee affected by the reorganization of local government under this [act] is entitled to all rights which he possessed as a local government officer or employee before [the effective date of this act], including rights to tenure in position and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contracts, rights to compensatory time earned, and any other rights under any law, ordinance, resolution, or administrative policy. This section is not intended to create any new rights for any officer or employee but to continue only those rights in effect before [the effective date of this act].

(4) All local government officers and employees holding offices or positions, whether elective or appointive, on [the effective date of this act] shall continue in the performance of the duties of their respective offices and positions until provision is made for the continued performance of the duties; the discontinuance of such duties; the discontinuance or combination of such office or position; the transfer of the officer or employee

1 to another position; or the termination of employment of the
2 employee.

3 Section 4. State technical advice and assistance. (1)
4 All state agencies are authorized and encouraged to provide
5 technical assistance to local governments.

6 (2) The technical assistance services shall not
7 include those that can be as reasonably and expeditiously
8 obtained through business channels.

9 (3) State agencies are encouraged to develop the
10 capacity to provide technical advice and assistance without
11 charge to local governments, but they are also encouraged to
12 establish service charges for special or extraordinary
13 technical advice.

14 (4) The department of community affairs shall
15 coordinate technical advice and assistance provided to local
16 governments by state agencies.

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

19 Section 5. Penalty. (1) The failure of an officer or
20 employee to perform a duty imposed by law or ordinance is
21 official misconduct as defined in 45-7-401 and may be
22 punished as such.

23 (2) Where a local government is required by state law
24 to provide information to a state agency and fails to
25 provide the required information, the department of

1 community affairs may issue an order stopping payment of any
2 state financial aid to the local government. Upon provision
3 of the information, all financial aid which was stopped
4 because of failure to provide the information shall be paid
5 to the local government.

6 Section 6. Public servants. All local government
7 officers and employees are public servants for the purpose
8 of determining the offense of obstructing a public servant
9 as provided in 45-7-302.

10 Section 7. Local government legislation. All local
11 government legislation shall be consistent with the
12 organization and terminology of state law and retain the
13 constitutional distinction between general government
14 powers, self-government powers, and duties of all local
15 governments as agents of the state.

16 Section 8. Joint procedures. If two or more local
17 governments act jointly, they may jointly perform any
18 procedures required by law or the governing body of a local
19 government may delegate to another local government the
20 responsibility for complying with administrative procedures
21 such as publication or mailing of notices, but any public
22 hearing shall be conducted by the respective governing
23 bodies in their own jurisdiction or jointly and any final
24 action shall be taken by each local government individually.

25 Section 9. General definitions. In this [act], unless

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

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

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

10 (3) "Authority" means any one of the independent
11 authorities or districts which a local government is
12 authorized to create by [section 75 of SB 12].

13 (4) "Board member" means a person appointed to an
14 administrative or advisory board as provided in [section 53
15 of SB 12].

16 (5) "Budget administrator" means the person or persons
17 designated by the governing body to perform the duties
18 prescribed in [section 41 through section 56 of SB 22].

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

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

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

10 (9) "Civil attorney" means the person designated by
11 the governing body as the legal counsel for the local
12 government as provided in [section 74 of SB 12].

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

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

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

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

24 (14) "Consolidation" means the joinder of one or more
25 municipalities with one or more counties to form a single

1 local government that is both a municipality and a county
2 for all purposes.

3 (15) "Consolidation plan" means a certificate prepared
4 by a study commission that contains the plan for
5 consolidation of existing local governments.

6 (16) "County" means an entity recognized as such by
7 Article XI, section 1, of the Montana constitution.

8 (17) "County boundary" means an imaginary line defining
9 the limits of a county.

10 (18) "County merger" means a form of local government
11 that provides for the joinder of the corporate existence and
12 government of two or more counties.

13 (19) "Elections administrator" means the person
14 designated as the registrar by the governing body as
15 provided in Title 13.

16 (20) "Elector" means a resident of the local government
17 qualified and registered to vote under state law.

18 (21) "Emergency" means an unexpected condition that
19 exists which imminently affects public health, welfare, and
20 safety.

21 (22) "Employee" means a person other than an officer
22 who is employed by a local government.

23 (23) "Executive branch" means that part of the local
24 government, including departments, offices, and boards,
25 charged with implementing actions approved and administering

1 policies adopted by the governing body of the local
2 government or performing the duties required in [section 33
3 through section 92 of SB 21].

4 (24) "Extraterritorial area" refers to the area beyond
5 the municipal limits of an incorporated municipality bounded
6 by those limits and an imaginary line paralleling the
7 municipal limits at a distance of 5 miles within which the
8 incorporated municipality may provide specified services and
9 facilities and exercise designated regulatory powers.

10 (25) "Facility" means a building, property, physical
11 improvement or system, or structural device that facilitates
12 the delivery of a service.

13 (26) "Finance administrator" means the person or
14 persons designated under [section 57 of SB 22].

15 (27) "Folio" means 100 words, counting every two
16 figures necessarily used as a word, or any portion of a
17 folio, when in the whole paper there is not a complete
18 folio; and when there is an excess over the last folio
19 exceeding one-half, it may be computed as a folio.

20 (28) "Form" means a specific and formal governmental
21 organization authorized as an alternative form of government
22 by Title 7, part 3.

23 (29) "Franchise" means an exclusive public privilege or
24 right granted by a local government to an individual,
25 corporation, or any other public or private entity in the

1 manner prescribed by [section 61 of SB 12].

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

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

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

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

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

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

24 (36) "Local improvement district" means an area within
25 a local government established as provided in [section 90 of

1 SB 12] with specific boundaries in which property is
2 specially assessed to pay for a specific capital improvement
3 benefiting the property assessed.

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

6 (38) "May" confers a power.

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

12 (40) "Metropolitan service area", which may be
13 established by agreement of municipal and county governing
14 bodies as provided in [section 60 of SB 14], refers to the
15 jurisdictional area of a municipality and any area beyond
16 the extraterritorial area within which a municipality is
17 authorized to provide any service or exercise any regulatory
18 power.

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

25 (42) "Municipal limits" means the corporate boundary of

1 an incorporated municipality.

2 (43) "Municipality" or "municipal" means an entity
3 which incorporates as provided by [section 47 through
4 section 65 of SB 11] or which was incorporated under the
5 provisions of any prior law as a city or town.

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

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

13 (46) "Ordinance" means an act adopted and approved by a
14 local government through the procedures in [section 56 of SB
15 12] and having effect only within the jurisdiction of the
16 local government.

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

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

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

24 (50) "Personal property" means tangible property other
25 than real property, such as merchandise and stock in trade,

1 machinery and equipment, furniture and fixtures, motor
2 vehicles and vehicles, boats, vessels, and aircraft.

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

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

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

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

21 (55) "Printed" means the act of reproducing a design on
22 a surface by any process as defined by 1-1-203(3).

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

24 (57) "Prosecuting attorney" means the person designated
25 by each county governing body to perform the duties

1 described in [section 53 of SB 21].

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

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

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

18 (61) "Records administrator" means the person
 19 designated by the governing body as the individual
 20 responsible for keeping the records which [section 36
 21 through section 43 of SB 21] requires be kept.

22 (62) "Reproduced" means the act of reproducing a design
 23 on any surface by any process.

24 (63) "Resolution" means a statement of policy by the
 25 governing body or an order by the governing body that a

1 specific action be taken.

2 (64) "School district" means any territory, regardless
 3 of county boundaries, organized under the provisions of
 4 Title 20 to provide public educational services under the
 5 jurisdiction of the trustees prescribed by that title.

6 (65) "Service" means an authorized function or activity
 7 performed by local government.

8 (66) "Shall" imposes a duty, is always mandatory, and
 9 is not merely directory.

10 (67) "Structure" means the entire governmental
 11 organization through which a local government carries out
 12 its duties, functions, and responsibilities.

13 (68) "Study commission" means a local government study
 14 commission established pursuant to [section 33 through
 15 section 49 of SB 12].

16 (69) "Study commissioner" means an elected or appointed
 17 member of a local government study commission.

18 (70) "Subordinate service district" means an area
 19 within a local government, established as provided in
 20 [section 81 of SB 12], with specific boundaries in which
 21 certain services are carried out and in which taxes may be
 22 levied to finance the service.

23 (71) "Tribal council" means the governing body of an
 24 Indian reservation.

25 Section 10. Administrative rules. The governing body

1 may by ordinance authorize the chief executive to adopt
2 administrative rules. All administrative rules shall be
3 entered in an administrative code that shall be available in
4 the office of the local government.

5 Section 11. Publish notice. (1) Unless otherwise
6 specifically provided, when a local government is required
7 to publish notice, publications shall be in a newspaper,
8 except that in a municipality with a population of 500 or
9 less or in which no newspaper is published, publication may
10 be made by posting in three public places in the
11 municipality which have been designated by ordinance.

12 (2) The newspaper shall be:

13 (a) of general paid circulation with a second-class
14 mailing permit;

15 (b) published at least once a week;

16 (c) published in the county;

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

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

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

25 Section 12. Notice. Unless otherwise specifically

1 provided, when notice of a hearing or other official act is
2 required, the following shall apply:

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

7 (2) The published notice shall contain:

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

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

11 (c) the address and telephone number of the person who
12 can be contacted for further information on the action to be
13 taken; and

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

16 (3) A published notice required by law may be
17 supplemented by a radio or television broadcast of the
18 notice in the manner prescribed in 20-3-105 through
19 20-3-107.

20 Section 13. Mail notice. (1) Unless otherwise
21 specifically provided, when a local government is required
22 to give notice of a hearing or other official act by mail,
23 the requirement may be met by:

24 (a) deposit of the notice properly addressed in the
25 United States mail with postage paid at the first-class

1 rate;

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

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

7 (2) The notice shall contain:

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

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

11 (c) the address and telephone number of the person who
12 can be contacted for further information on the action to be
13 taken; and

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

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

18 Section 14. Petition. (1) Whenever a petition is
19 authorized, unless the section authorizing the petition
20 establishes different criteria, it shall be valid if it is
21 signed by 15% of the electors of the local government and
22 meets the following requirements:

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

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

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

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

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

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

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

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

1 submit it to the governing body without delay.

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

5 (8) The department of community affairs in cooperation
6 with the secretary of state shall prepare and provide each
7 county and municipality with:

8 (a) a standard petition form;

9 (b) sample petition forms for initiatives,
10 referendums, and recall elections; and

11 (c) sample petition forms for creation of subordinate
12 service districts and local improvement districts.

13 (9) Each county and municipality shall make available
14 to the public on request sample petition forms.

15 Section 15. Public hearing. (1) When required, the
16 governing body shall conduct public hearings for the purpose
17 of providing reasonable opportunity for citizen
18 participation prior to final decisions.

19 (2) At a minimum, a public hearing shall provide for
20 submission of both oral and written testimony for and
21 against the action or matter at issue. If the hearing is
22 not held before the ultimate decision makers, provision
23 shall be made for the transmittal of a summary or transcript
24 of the testimony received to the ultimate decision makers
25 prior to their determination.

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

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

7 (5) Hearings may be adjourned from day to day or to a
8 date certain.

9 (6) Except for budget hearings, the governing body or
10 boards may designate a subcommittee or hearings examiner to
11 conduct public hearings.

12 (7) When a joint hearing between the governing bodies
13 of a county and a municipality is authorized, the county
14 shall be responsible for conducting the hearing.

15 Section 16. Protest. (1) Whenever a protest is
16 authorized, it is sufficient if it is in writing, signed,
17 and contains the following:

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

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

23 (c) the address of the person protesting.

24 (2) Protests shall be submitted as provided by law and
25 ordinance. The person receiving protests for a local

1 government shall note on each protest the date it was
 2 received.

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

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

9 (5) Signers are encouraged to print their names after
 10 their signatures.

11 Section 17. Signatures. (1) The signatures and
 12 addresses on petitions shall be the same as the signatures
 13 and addresses on voter registration cards and, if not
 14 registered or if not required by law to be an elector, their
 15 common signature.

16 (2) The signatures on protests and waivers shall be
 17 the accepted common signatures.

18 Section 18. Rights on behalf of government or
 19 corporation. The chief executive of a local government or
 20 political subdivision of the state, the responsible agent of
 21 a federal or state agency, or the chief executive officer of
 22 a corporation may exercise the right of petition, protest,
 23 or voting on behalf of property owned by the government or
 24 corporation.

25 Section 19. Posting. (1) The governing body shall

1 specify by resolution a public location for posting
 2 information and shall order erected a suitable posting
 3 board.

4 (2) When posting is required, a copy of the document
 5 shall be placed on the posting board, and a copy shall be
 6 available at the local government office.

7 Section 20. Oaths and marriages. The chief executive,
 8 chairman of the legislative body, municipal judges, justices
 9 of the peace, and judges of small claims court may
 10 administer oaths and solemnize marriages. The clerk of the
 11 district court and all elected local government officers,
 12 except members of the governing body, may administer oaths.

13 Section 21. Oath of office. Every elected local
 14 government official shall take the oath of office prescribed
 15 in Article III, section 4, of the Montana constitution. The
 16 oath of office, certified by the official before whom the
 17 same was taken, shall be filed with the election
 18 administrator before the officer exercises any official
 19 duties.

20 Section 22. Waiver of mail notice or protest. (1) If
 21 all persons entitled to mail notice waive in writing the
 22 mail notice requirement, the governing body may proceed
 23 without the required mail notice.

24 (2) If all persons entitled to protest an action waive
 25 in writing their right to protest, the governing body may

1 proceed without publishing notice or meeting other
2 requirements designed to permit protests to be filed.

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

5 (a) a description of the mailed notice or protest
6 right waived;

7 (b) a statement of the protester's qualifications to
8 waive the mailed notice or protest right;

9 (c) the address of the person;

10 (d) a statement that the waiver of notice is
11 voluntarily and knowingly given, with knowledge of the
12 signer's constitutional rights to notice.

13 (4) Waivers shall be submitted as provided by law and
14 ordinance. The person receiving waivers for a local
15 government shall note on each waiver the date it was
16 received.

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

20 (6) Signers are encouraged to print their names after
21 their signatures.

22 Section 23. Government in emergencies. (1) In the
23 event that no members of a county governing body are
24 available during or following an enemy attack or natural
25 disaster, the district judge or judges of the judicial

1 district in which the county is located shall appoint
2 successors to act in place of the unavailable members. If
3 the judge or judges of the judicial district in which the
4 vacancy occurs are not available to make the appointment, a
5 district judge of any other judicial district may make such
6 appointment; however, of the available judges in the state
7 of Montana, that judge who holds court in the county seat
8 closest to the county seat where the vacancy occurs shall be
9 responsible for making the appointment to fill the vacancy.

10 (2) In the event that no members of a municipal
11 governing body are available following an enemy attack or
12 natural disaster, the county governing body of the county in
13 which the municipality is located shall appoint successors
14 to act in place of the unavailable members.

15 (3) In the event that the chief executive of a local
16 government is unavailable to exercise the powers and
17 discharge the duties of his office following an enemy attack
18 or natural disaster, the members of that local government's
19 governing body available shall by majority vote choose a
20 successor to act as chief executive of the local government.

21 (4) Following an enemy attack or natural disaster in
22 which the seat of local government, in the opinion of the
23 governing body of that local government, is rendered
24 unsuitable for use in that capacity, the seat of government
25 may be moved by the governing body to another location which

1 it considers most suitable.

2 (5) If following an enemy attack or natural disaster
 3 any local government governing body or board is unable to
 4 assemble a quorum as defined by law or ordinance, those
 5 members of the governing body available for duty shall
 6 constitute a quorum. The quorum requirements shall be
 7 suspended, and where the affirmative vote of a specified
 8 proportion of members for the approval of any action would
 9 otherwise be required, the same proportion of those voting
 10 thereon shall be sufficient.

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

14 Section 24. Facsimile signature. Any officer or
 15 employee may use a facsimile signature or seal as provided
 16 in Title 2, chapter 16.

17 Section 25. Pardons. The chief executive or the
 18 chairman of the governing body, if there is no elected chief
 19 executive, may grant pardons and remit fines and forfeitures
 20 for offenses against local government ordinances when, in
 21 the chief executive's or chairman's judgment, public justice
 22 would be thereby served; but the chief executive or chairman
 23 must report all pardons granted, with the reasons therefor,
 24 to the next session of the governing body.

25 Section 26. Public meeting required. (1) All meetings

1 of local government governing bodies, boards, authorities,
 2 committees, or other entities created by or subordinate to a
 3 local government shall be open to the public except as
 4 provided in 2-3-203.

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

8 Section 27. Public participation. Each local
 9 government governing body, committee, board, authority, or
 10 entity, in accordance with Article II, section 8, of the
 11 1972 Montana constitution and Title 2, chapter 3, shall
 12 develop procedures for permitting and encouraging the public
 13 to participate in decisions that are of significant interest
 14 to the public.

15 Section 28. Participation. In any meeting required to
 16 be open to the public, the governing body, committee, board,
 17 authority, or entity shall adopt rules for conducting the
 18 meeting affording citizens a reasonable opportunity to
 19 participate prior to the final decision.

20 Section 29. Public records. (1) Except as provided in
 21 subsection (2), all records and other written materials in
 22 the possession of a local government shall be available for
 23 inspection and reproduction by any person during normal
 24 office hours. The governing body may impose reasonable fees
 25 for providing copies of public records.

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

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

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

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

1 Section 30. Destruction of old records. (1) The
2 governing body may by ordinance establish a procedure for
3 routine destruction of old worthless reports, papers, or
4 records that have served their purpose or are substantiated
5 by permanent records. The ordinance is subject to the
6 approval of the department of community affairs and the
7 historical society.

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

21 (3) Court records may be destroyed by order of the
22 district court only when the records have been reproduced.
23 The reproduction, identification, admissibility, and use of
24 the reproductions shall be in accordance with Title 3,
25 chapter 2.

1 (4) Any claim, warrants, vouchers, bonds, or general
 2 receipt may be destroyed after a period of 25 years.

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

7 Section 31. State reports. (1) Local government
 8 governing bodies, chief executives, officers, employees,
 9 departments, boards, and authorities shall file with state
 10 agencies in a timely fashion all reports and information
 11 required by state law.

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

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

20 Section 32. Reports of departments, boards, and
 21 authorities. (1) All departments, boards, and authorities
 22 shall file an annual report with the chief executive who
 23 shall compile the reports and present them to the governing
 24 body.

25 (2) The chief executive may specify the form, content,

1 and deadline for filing reports.

2 Section 33. Areas which may incorporate. (1) Any
 3 community which has a population of at least 1,000 and is at
 4 least 5 miles from a municipality may incorporate by
 5 following the procedures set out in [section 34 and section
 6 35 of SB 11].

7 (2) Any community which has a population of at least
 8 1,000 and is within 5 miles of a currently incorporated
 9 municipality may incorporate if it is shown that the
 10 community could have been annexed but was refused annexation
 11 by the municipal governing body.

12 Section 34. Petition for incorporation. (1)
 13 Proceedings for incorporation shall be initiated by
 14 petition.

15 (2) A petition requesting incorporation shall:
 16 (a) state the name of the proposed municipality and
 17 the plan of government selected from Title 7, part 3;
 18 (b) describe the municipal limits of the proposed
 19 municipality;

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

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

25 (3) The county governing body shall determine the

1 adequacy of the petition and, if adequate, shall call for
 2 and give notice of an election on the proposed
 3 incorporation.

4 Section 35. Election of incorporation. (1) The
 5 election shall be conducted as provided in [section 100
 6 through section 117 of SB 12] for questions submitted to the
 7 electors.

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

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

13 (4) A statement of incorporation including the date
 14 officers shall assume office and the plan of government
 15 shall be filed as provided in [section 44(3) of SB 12].

16 Section 36. Election of officers following
 17 incorporation. (1) Upon incorporation, the governing body of
 18 the county shall give notice of an election to elect the
 19 officers specified in the plan of government adopted by the
 20 municipality.

21 (2) Electors are those qualifying under [section 35(2)
 22 of SB 11].

23 (3) The election shall be conducted by the county in
 24 the manner prescribed by [section 100 through section 117 of
 25 SB 12] for election of local government officers and special

1 elections.

2 (4) Officers elected shall take office 30 days
 3 following their election.

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

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

9 Section 37. Methods of disincorporation. Any
 10 municipality may be disincorporated by either:

11 (1) automatic disincorporation; or
 12 (2) election.

13 Section 38. Automatic disincorporation. If the
 14 governing body of a municipality ceases to exist or fails to
 15 function or meet for a period of 2 years, the governing body
 16 of the county in which the municipality is located shall
 17 adopt a resolution disincorporating the municipality. Copies
 18 of the resolution shall be filed with the chief executive of
 19 the county, the secretary of state, and the department of
 20 community affairs. The resolution shall state an effective
 21 date no sooner than 60 days after the resolution's adoption.

22 Section 39. Disincorporation by election. (1)
 23 Residents of a municipality may petition the county
 24 governing body for an election on the question of
 25 disincorporation.

1 (2) The county governing body, upon finding the
 2 petition to be adequate, shall order, within 60 days, an
 3 election to take place in the municipality on the question
 4 of disincorporation. The election may be a special election
 5 or held with any other election.

6 (3) The election shall be conducted as provided in
 7 [section 100 through section 117 of SB 12] for questions
 8 submitted to the electors.

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

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

22 Section 40. Financial condition of municipality. (1)
 23 The director of the department of community affairs, upon
 24 receiving a copy of the disincorporation resolution, shall
 25 certify a current statement of the financial condition of

1 the disincorporating municipality to the county governing
 2 body.

3 (2) The statement shall include, but not be limited
 4 to:

5 (a) a statement of all assets of the municipality,
 6 including any warrants, delinquent accounts, and taxes
 7 receivable;

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

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

13 (3) Under supervision of the department of community
 14 affairs, the county finance administrator shall create a
 15 disincorporation fund.

16 (4) Under the supervision of the director of the
 17 department of community affairs, the finance administrator
 18 of the municipality shall draw a check for the amount of
 19 unencumbered cash in the municipality's treasury; and the
 20 check shall be made payable to the county and delivered to
 21 the chief executive of the county in which the
 22 disincorporating municipality is located. The money shall
 23 be placed in the disincorporation fund, to be drawn upon as
 24 provided in [section 42 of SB 11].

25 Section 41. Transfer of public property and municipal

1 court records. Upon disincorporation of a municipality,
 2 every officer of the municipality shall immediately turn
 3 over to the chief executive of the county in which the
 4 municipality is situated all public property in his
 5 possession; however, all court records of the municipal
 6 court, if any, shall be transferred to the nearest justice
 7 of the peace. The justice of the peace has the authority to
 8 execute and complete all unfinished business. All reports
 9 and remittances of fines and forfeitures are made in the
 10 same manner as prescribed for justices of the peace.

11 Section 42. Payment of debts and collections of
 12 receivables of municipality. (1) The disincorporation of a
 13 municipality does not invalidate or affect any right,
 14 penalty, or forfeiture accruing to the municipality, nor
 15 does it invalidate or affect any contract entered into or
 16 imposed upon the municipality. All the contracted
 17 indebtedness and obligations remain unimpaired by reason of
 18 the disincorporation of the municipality.

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

25 (3) All instruments for the repayment of indebtedness

1 shall be drawn by order of the governing body of the county
 2 on the disincorporation fund.

3 (4) All former municipal subordinate service districts
 4 and local improvement districts shall have the status of
 5 county districts for all purposes.

6 Section 43. Tax levy in the event of insolvency. (1)
 7 If, at any time after the disincorporation of a
 8 municipality, it is found that there is not sufficient money
 9 in the treasury to credit the disincorporation fund with
 10 which to pay any indebtedness of the municipality, the
 11 county governing body shall levy and collect from the
 12 territory formerly included within the municipality
 13 sufficient taxes or special assessments to pay the
 14 indebtedness of the municipality as it becomes due.

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

22 Section 44. Surplus assets. (1) If, after the payment
 23 of debts of the municipality, any surplus that remains in
 24 the disincorporation fund and any tangible assets shall be
 25 transferred to any subordinate service district that

1 encompasses the area of the disincorporated municipality.

2 (2) If no such subordinate service district exists,
3 the surplus and tangible assets shall be transferred to the
4 county and may be allocated by the county governing body.

5 Section 45. Collection of amounts due to municipality.

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

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

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

23 Section 46. State aids. (1) If a municipality
24 disincorporates, any state funds which the municipality was
25 entitled to receive shall be transferred to the

1 disincorporation fund as provided below.

2 (2) If state funds are available to a municipality
3 only after application, the governing body of the county may
4 apply for funds on behalf of the disincorporated
5 municipality.

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

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

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

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

23 (7) Any subordinate service district that is eligible
24 to receive funds under (section 44(1) or section 46 of 58
25 II] shall encompass the area of the disincorporated

1 municipality and may encompass additional area and
2 population.

3 (8) It is the intent of the legislature to not
4 penalize through loss of state aid the population of any
5 municipality that disincorporates.

6 Section 47. General definitions. In [SB 11, SB 12, SB
7 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SR 21,
8 SB 22, and SB 23], unless otherwise provided or the context
9 requires a technical or other interpretation, the following
10 definitions apply:

11 (1) "Agricultural land" as used in [section 47 through
12 section 65 of SB 11] shall meet the qualifications
13 established in 15-7-202.

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

18 (3) "Annexation" means the alteration of the
19 boundaries of a municipality to add territory to the
20 municipality.

21 (4) (a) "Contiguous" means any area which at the time
22 annexation procedures are initiated, either abuts directly
23 or converges at any point with the municipal limits of a
24 municipality or is separated from the municipal limits by a
25 trafficway or right-of-way, a strip of unplatted land too

1 narrow or too small to be platted, a creek or river, the
2 right-of-way of a railroad or other public service
3 corporation, lands owned by the municipality or other
4 political subdivision or lands owned by the state or federal
5 government.

6 (b) An area that abuts directly on a municipal
7 property annexed under the procedures of [section 56 of SB
8 11] but does not abut on other municipal limits shall not be
9 considered contiguous.

10 (5) "Detachment" means the exclusion of an area
11 included within the municipal limits from the jurisdiction
12 of the municipality.

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

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

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

25 (9) "Resolution of intent" means the municipal

1 governing body shall find by resolution that it intends to
 2 annex or detach an area and will immediately proceed with
 3 the specified annexation or detachment procedure.

4 (10) "Wholly surrounded area" means an area of land
 5 which is completely encircled by land included within the
 6 municipal limits. For purposes of annexation under [section
 7 59 of SB 11], the encircling land must have a width of at
 8 least 200 feet, or the width of a platted lot.

9 (11) "Finding of public endangerment" means a finding
 10 adopted in accordance with [section 61(1) of SB 11], which
 11 states that the public health, safety, and welfare of both
 12 the inhabitants of the municipality and the area proposed to
 13 be annexed are endangered by the lack of or inadequacy of
 14 public services in the area to be annexed which could be
 15 provided by a municipality in a manner which would eliminate
 16 the public endangerment.

17 Section 48. Methods of annexation. [Section 47 through
 18 section 65 of SB 11] provides the following six separate and
 19 distinct procedures by which areas may be annexed to a
 20 municipality:

21 (1) annexation of municipal property as authorized by
 22 [section 56 of SB 11];

23 (2) annexation of lot by request as authorized by
 24 [section 57 of SB 11];

25 (3) annexation of subdivision by request as authorized

1 by [section 58 of SB 11];
 2 (4) annexation of wholly surrounded area as authorized
 3 by [section 59 of SB 11];
 4 (5) annexation with protest as authorized by [section
 5 60 of SB 11]; and
 6 (6) annexation without protest as authorized by
 7 [section 61 of SB 11].

8 Section 49. Common procedure for annexation. Except as
 9 provided specifically in [section 57 of SB 11], all six
 10 separate and distinct procedures authorized by [section 47
 11 through section 65 of SB 11] shall include the following
 12 minimum requirements and the additional requirements
 13 specified for each separate procedure:

14 (1) The governing body shall adopt a resolution of
 15 intent which includes a finding of public interest, a clear
 16 description of the boundaries of the area under
 17 consideration, the method for annexation, and a statement
 18 that the area proposed to be annexed meets the requirements
 19 of [section 50 of SB 11].

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

22 (i) the resolution of intent; and
 23 (ii) the public hearing to consider the proposed
 24 annexation.

25 (b) The notice shall clearly describe the boundaries

1 of the area under consideration for annexation and set the
2 date and place of the public hearing.

3 (3) The governing body shall conduct a public hearing
4 on the proposed annexation which shall be held not less than
5 30 days or more than 60 days after the passage of the
6 resolution of intent except for a hearing under [section 60
7 of SB 11] which shall be held not less than 30 days or more
8 than 60 days after the deadline for receiving written
9 protests.

10 (4) At the public hearing, a representative of the
11 municipality shall explain the proposed annexation.
12 Following the explanation, any person residing or owning
13 property in the proposed area and any resident of the
14 municipality or other interested person shall be given an
15 opportunity to testify.

16 (5) Before reaching a final decision, the governing
17 body shall take into consideration all information received,
18 opinions expressed, and protests received.

19 (6) (a) The governing body may at any regular or
20 special meeting, held no sooner than 6 days following the
21 public hearing and no later than 60 days following the
22 public hearing, either adopt a resolution terminating the
23 annexation proceeding or adopt an annexation resolution
24 extending the municipal limits to include all or any part of
25 the area described in the notice of the public hearing which

1 meets the requirements of the annexation procedure used.
2 (b) The annexation resolution shall:
3 (i) contain a finding of public interest;
4 (ii) contain a statement that the area to be annexed
5 meets the requirements of [section 50 of SB 11];
6 (iii) contain any other statement required by the
7 procedure used;
8 (iv) describe the external boundaries of the area to be
9 annexed;
10 (v) contain a statement of the intent of the
11 municipality to provide services to the area being annexed
12 as required by [section 52 of SB 11] and, if annexed under
13 the procedures authorized in [section 61 of SB 11], contain
14 a statement of intent of the municipality to provide
15 services in the area being annexed as set forth in the
16 report adopted by the governing body as required by [section
17 61 and section 62 of SB 11];
18 (vi) establish the effective date of the annexation.
19 The date may be any date within 12 months from the date of
20 passage of the resolution.
21 (c) As provided in [section 86 and section 99 of SB
22 12], the annexation resolution may determine the status of
23 any county subordinate service district or county local
24 improvement district that is included in the area to be
25 annexed.

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

- 3 (a) a certified copy of the annexation resolution; and
- 4 (b) an accurate map of the annexed territory.

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

7 Section 50. Standards to be met before annexation can
8 occur. The total area to be annexed shall:

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

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

13 (3) meet any standard established by the separate
14 annexation procedures authorized by [section 47 through
15 section 65 of SB 11].

16 Section 51. Description of boundaries. (1) In
17 describing the area to be annexed and the new municipal
18 limits, a municipal governing body shall, whenever
19 practical, use natural topographic features such as ridge
20 lines, streams, and creeks as limits. A municipal governing
21 body shall include land on both sides of a trafficway
22 wherever practical.

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

1 Section 52. Provision of municipal services to annexed
2 areas. Except where services are provided in another manner,
3 after the effective date of the annexation resolution, the
4 newly annexed area and its citizens and property shall be
5 subject to all general obligation debts, ordinances, and
6 regulations in force in the municipality and shall be
7 entitled to and the municipality shall be required to
8 provide the same privileges and benefits as other parts of
9 the municipality. The newly annexed area shall be subject to
10 the municipal taxes levied for the fiscal year following the
11 effective date of annexation.

12 Section 53. Exemption from taxation for water or sewer
13 debt service. Annexed property which is part of a
14 subordinate service district or local improvement district
15 which has installed water, sewer, or other utilities or
16 improvements paid for by the residents of the subordinate
17 service district may be exempted in the annexation
18 resolution from that part of the municipal taxes levied for
19 sewer, water, or other utility debt service for an
20 appropriate period of time after the effective date of the
21 annexation resolution.

22 Section 54. Simultaneous proceedings. (1) If a
23 municipality is considering the annexation or detachment of
24 two or more areas which are all contiguous to the municipal
25 limits but are not adjacent to one another, it may undertake

1 simultaneous proceedings under authority of [section 47
2 through section 65 or SB 11] for the annexation or
3 detachment of the areas.

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

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

11 Section 55. Moratorium. If an annexation procedure is
12 terminated by protest or election, the governing body may
13 not institute any further proceedings to annex an area for a
14 period of 1 year beginning on the date of the final action
15 by the governing body on the annexation procedure.

16 Section 56. Annexation of municipal property. A
17 municipality may annex any municipal property through the
18 procedure prescribed by [section 49 of SB 11] even though
19 such property is not contiguous to the municipality.

20 Section 57. Annexation of lot by request. (1) A single
21 lot or any property of a governmental agency may be annexed
22 to a municipality through the procedures prescribed by this
23 section.

24 (2) The owner shall submit to the governing body a
25 description of the property as recorded or filed in the

1 county records administrator's office and a written request
2 that the property be annexed.

3 (3) The municipal governing body may either reject the
4 request or may annex the lot by resolution. The annexation
5 resolution shall contain the provisions required by [section
6 49(6)(b) of SB 11].

7 Section 58. Annexation of subdivision by request. (1)
8 Whenever an area is subdivided, the subdivider may, after
9 approval of final plat, submit the final plat to the
10 municipal governing body with a written request that the
11 area be annexed.

12 (2) The municipal governing body may either reject the
13 request or may proceed as provided in [section 49 of SB 11].

14 Section 59. Annexation of wholly surrounded area. (1)
15 A municipality may annex an area wholly surrounded by a
16 municipality through the procedures prescribed by [section
17 49 of SB 11].

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

21 (3) A municipality proceeding under this section may
22 not annex land included within a fire district originally
23 organized under the provisions of Title 7, chapter 33; a
24 county subordinate service district created to provide fire
25 protection services; or a joint county subordinate service

1 and local improvement district created to provide fire
2 protection services whenever the district was originally
3 organized 10 years or more prior to the commencement of the
4 annexation proceedings.

5 Section 60. Annexation with protest. (1) A
6 municipality may annex any area through the procedures
7 prescribed by [section 49 of SB 11] and this section.

8 (2) In addition to published notice, mailed notice
9 shall be given to all resident freeholders in the area. In
10 addition to other requirements, both the published and
11 mailed notice shall state that, for a period of 90 days
12 after the mailing date of the notice, written protests to
13 the proposed annexation will be received at the office of
14 the municipality.

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

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

23 (5) Property used for industrial or manufacturing
24 purposes shall not be annexed by the procedures prescribed
25 in this section without the written consent of the owner of

1 the property.

2 Section 61. Annexation without protest. (1) (a) A
3 municipality may annex an area through the procedures
4 prescribed by [section 49 of SB 11], [subsections (2)
5 through (7) of section 61 of SB 11], [section 62 of SB 11]
6 only if a resolution granting a finding of public
7 endangerment has been adopted in accordance with the
8 procedures prescribed in [section 61(1) of SB 11].

9 (b) The governing body of a municipality may by
10 resolution request the finding of public endangerment.

11 (c) The request shall be delivered to the governing
12 body of the county in which the proposed area to be annexed
13 lies and to the district court judge or judges of that
14 county.

15 (d) The senior district court judge shall, within 10
16 days of receiving the request, set a date for a public
17 hearing on the requested finding of public endangerment. The
18 public hearing shall be held at least 60 but not more than
19 90 days following reception of the request. The municipality
20 shall publish notice of the public hearing and shall give
21 mailed notice to all resident freeholders in the area. The
22 municipality shall also publish notice stating that at least
23 14 days before the public hearing a summary of its
24 preliminary findings and its reasons for requesting a
25 finding of public endangerment shall be available at the

1 office of the municipality.

2 (e) During the period following reception of the
3 request and before the public hearing, the district court
4 judge or judges and the county and municipal governing body
5 may conduct individual or joint informational meetings or
6 hearings they consider necessary and may make available a
7 summary of their preliminary findings.

8 (f) At the public hearing, the senior district court
9 judge shall preside and testimony shall be taken to
10 investigate the validity of the requested finding of public
11 endangerment. The municipality, the county, and the district
12 court judge or judges shall all present their preliminary
13 findings, if any.

14 (g) No later than 10 days following the public
15 hearing, a resolution must be adopted granting or denying
16 the requested finding of public endangerment. Granting of
17 the requested finding shall be by separate majorities of
18 both the governing bodies of the municipality and the county
19 and the unanimous consent of the district court judge or
20 judges. Failure to gain any majority or the unanimous
21 consent of the judge or judges shall be considered adoption
22 of a resolution denying the finding of public endangerment.

23 (h) If the requested finding of public endangerment is
24 granted, the municipality may proceed through the procedures
25 prescribed by [section 49 of SB 11], [subsections (2)

1 through (7) of section 61 of SB 11], and [section 62 of SB
2 11].

3 (2) In addition to other requirements, the published
4 notice shall state that the report required by [section 62
5 of SB 11] will be available in the office of a designated
6 official at least 14 days prior to the date of the public
7 hearing.

8 (3) At least 14 days before the date of the public
9 hearing, the governing body shall approve the report
10 required by [section 62 of SB 11] and make it available to
11 the public at a designated office. In addition the
12 municipality may prepare a summary of the full report for
13 public distribution.

14 (4) The public hearing shall include an explanation of
15 the report provided for in [section 62 of SB 11].

16 (5) The municipal governing body shall take into
17 consideration facts presented at the public hearing and
18 shall have authority to amend the service report required by
19 [section 62 of SB 11] and to make changes in the plans for
20 serving the area proposed to be annexed so long as such
21 changes meet the requirements of [section 62 of SB 11].

22 Section 62. Plans to provide services. (1) A
23 municipality proceeding under [section 61 of SB 11] shall
24 develop plans for the extension of services to the area
25 proposed to be annexed and shall, prior to the public

1 hearing, prepare a report adopting its plans to provide
2 services to the annexed area. This report shall include:

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

5 (i) the present and proposed municipal limits of the
6 municipality;

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

11 (iii) the general land use pattern in the areas to be
12 annexed;

13 (b) a statement showing that the area to be annexed
14 meets the requirements of [section 50 of S8 11]; and

15 (c) a statement setting forth the plans of the
16 municipality for extending to the area to be annexed each
17 major municipal service performed within the municipality at
18 the time of annexation.

19 (2) Specifically, the plans shall:

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

1 (b) provide for the status of existing county
2 subordinate service districts and local improvement
3 districts;

4 (c) provide for extending police protection, fire
5 protection, garbage collection, trafficway construction and
6 maintenance, and utility services to the area to be annexed
7 on substantially the same basis and in the same manner as
8 these services are provided within the rest of the
9 municipality prior to the annexation. In this annexation
10 plan it must be clearly stated that the entire municipality
11 intends to share the tax burden for these services.

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

20 (e) set forth a proposed timetable for construction of
21 trafficways and utility lines if extension of trafficways
22 and water, sewer, or other utility lines into the area to be
23 annexed is necessary; and

24 (f) provide a method to be set forth by which the
25 municipality plans to finance extension of services into the

1 area to be annexed. Included within this plan must be a
 2 methodology whereby the resident freeholders of the area to
 3 be annexed may vote upon any proposed capital improvements
 4 if general obligation bonds are to be issued. Should a
 5 negative vote be cast by over 50% of those resident
 6 freeholders in the area to be annexed in the election on the
 7 general obligation bonds, the area shall not be annexed. If
 8 the area is serviced currently by adequate water and sewage
 9 services, trafficways, and curbs and gutters, and no capital
 10 improvements are needed to provide adequate services, the
 11 plan shall so state. If no general obligation bond financing
 12 is anticipated within 5 years, the area may be annexed
 13 without a bond issue election. If any public works facility
 14 is to be financed by a local improvement district bonds an
 15 election is not necessary and the area may be annexed.

16 Section 63. Detachment. Any area of which any part
 17 borders on the municipal limits may be detached from that
 18 municipality in the following manner:

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

21 (2) The petition shall:

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

25 (b) adequately set out and describe the area to be

1 detached;
 2 (c) adequately set out and describe the proposed new
 3 boundaries of the municipality;
 4 (d) adequately set out and describe the trafficways
 5 and public plans, if any, in the area sought to be detached
 6 and shall distinctly specify those which are to be retained
 7 for the use of the public after detachment.
 8 (3) Upon receiving an adequate detachment petition and
 9 if it is found to be in the public interest, the governing
 10 body shall adopt a resolution of intent to detach the area.
 11 (4) Notice shall be published stating the findings and
 12 resolution of the governing body and that a public hearing
 13 will be held on the question of detachment.
 14 (5) The governing body shall hold a public hearing on
 15 the detachment proposal and receive testimony from residents
 16 and other interested persons.
 17 (6) The governing body shall take into consideration
 18 all the information received and opinions expressed.
 19 (7) The governing body may at any regular or special
 20 meeting held no sooner than 6 days following the public
 21 hearing and no later than 60 days following the public
 22 hearing either adopt a resolution terminating the detachment
 23 proceeding or adopt a detachment resolution modifying the
 24 municipal limits to exclude all or any part of the area
 25 described in the notice of the public hearing which met the

1 requirements of this section.

2 (8) The detachment resolution shall:

3 (a) contain a finding of public interest;

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

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

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

10 (e) establish the effective date of the detachment.

11 The date may be any date within 12 months from the date of
12 passage of the resolution but not sooner than 90 days after
13 passage.

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

17 (a) owners of over 50% of the value of property within
18 the area; or

19 (b) owners of over 50% of the value of property within
20 the municipal limits immediately adjacent to and contiguous
21 to the area. For the purpose of this section, "contiguous"
22 and "adjacent" mean the property on the opposite side of a
23 trafficway from the property sought to be detached.

24 (10) Detachment shall not relieve any detached area
25 from its liability on any outstanding bonded indebtedness of

1 the municipality or any indebtedness of any improvement or
2 subordinate service district of which the detached area was
3 a part at the time of the passage of the resolution.

4 (11) For the purposes of levying any tax or assessment
5 necessary for the collection on any indebtedness specified
6 in [section 63(10) of SB 11], the detached area is and shall
7 remain under the jurisdiction of the municipality.

8 (12) The chief executive shall file with the county
9 records administrator:

10 (a) a certified copy of the detachment resolution; and
11 (b) an accurate map of the detached area and an
12 accurate map of the new municipal limits.

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

15 Section 64. Status of trafficways. (1) A county
16 trafficway within an annexed area shall become a municipal
17 trafficway on the effective date of an annexation
18 resolution.

19 (2) A municipal trafficway not vacated by a resolution
20 of detachment shall become a county trafficway on the
21 effective date of a detachment resolution.

22 Section 65. Judicial review. (1) Within 30 days
23 following the passage of an annexation or detachment
24 resolution under authority of [section 47 through section 65
25 of SB 11], any person owning property in the annexed area or

1 area proposed to be annexed or detached who believes that he
2 will suffer material injury may file a petition in a
3 district court seeking review of the action of the municipal
4 governing body if:

5 (a) the municipal governing body failed to comply with
6 a procedure set forth in [section 47 through section 65 of
7 SB 11]; or

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

11 (2) The petition shall state what exceptions are taken
12 to the action of the municipal governing body and what
13 relief the petitioner seeks. The petition shall be served
14 upon the municipality in the manner provided for the service
15 of civil process.

16 (3) Within 30 days after receipt of the copy of the
17 petition for review or within such additional time as the
18 court may allow, the municipality shall transmit to the
19 reviewing court:

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

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

25 (4) If two or more petitions for review are submitted

1 to the court, the court may consolidate all the petitions
2 for review at a single hearing.

3 (5) At any time before or during the review
4 proceeding, any petitioner may apply to the reviewing court
5 for an order staying the operation of the annexation or
6 detachment resolution pending the outcome of the review. The
7 court may grant or deny the stay in its discretion upon such
8 terms as it considers proper, and it may permit annexation
9 or detachment of any part of the area described in the
10 ordinance concerning which no question for review has been
11 raised.

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

16 (a) that the statutory procedure was not followed; or
17 (b) that the requirements of the procedure used to
18 annex or detach the area have not been met.

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

21 (a) remand the resolution to the municipal governing
22 body for further proceedings if procedural irregularities
23 are found to have materially prejudiced the substantive
24 rights of any petitioner; or

25 (b) remand the resolution to the municipal governing

1 body for amendment of the boundaries of the area in question
2 to conform to the requirements of the procedure used if it
3 finds the requirements have not been met; but the court
4 cannot remand the resolution to the municipal governing body
5 with directions to add to the municipality an area which was
6 not included in the notice of public hearing.

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

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

24 (10) If part or all of the area annexed under the
25 terms of an annexation resolution is the subject of an

1 appeal to the district court or the supreme court on the
2 effective date of the resolution, then the resolution shall
3 be considered amended to make the effective date with
4 respect to the area the date of the final judgment of the
5 district or supreme court, whichever is appropriate, or the
6 date the municipal governing body completes action to make
7 the resolution conform to the court's instructions in the
8 event of remand.

9 Section 66. County boundaries. (1) As provided by
10 Article XI, section 2, of the Montana constitution, the
11 counties of this state are those that existed on June 6,
12 1972.

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

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

22 (4) The department of community affairs shall maintain
23 a record of the boundaries and county seats, and whenever a
24 county boundary or the location of a county seat is changed
25 as provided in [section 33 through section 77 of SB 11], the

1 governing body shall file with the secretary of state and
 2 the department of community affairs a document showing the
 3 changes made.

4 Section 67. Initiation of boundary alteration or
 5 change in county seat. (1) Any alteration of county
 6 boundaries, including the merger of existing counties, or
 7 any change in the location of a county seat may be initiated
 8 by a study commission, a petition of the residents, or a
 9 resolution of the governing body or bodies of the affected
 10 county or counties.

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

13 (a) a statement of purpose;

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

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

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

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

24 (3) The petition shall be filed with the elections
 25 administrator of each affected county who shall determine

1 the adequacy of the petition with regard to his respective
 2 county. If the petition is found to be adequate, the
 3 elections administrator shall certify it to the governing
 4 body of his respective county.

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

9 (5) A study commission may propose a merger as
 10 provided in [section 33 through section 49 of SB 12].

11 Section 68. Election. (1) The governing body of each
 12 affected county shall give notice of the date set for the
 13 election.

14 (2) The election shall be conducted and the results
 15 canvassed and returned as provided in [section 112 of SB 12]
 16 for other questions submitted to a vote of the electors.

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

20 Section 69. Effect of approval -- public property. (1)
 21 When an alteration of county boundaries transfers territory
 22 from one county to another, the county or counties from
 23 which the territory is removed shall transfer to the
 24 receiving county a percentage of the total assets of the
 25 transferring county equal to the percentage of the county's

1 total taxable value represented by the territory being
 2 transferred.

3 (2) The receiving county shall assume liability for a
 4 percentage of the transferring county's total debts equal to
 5 the percentage of the total taxable value of the
 6 transferring county represented by the transferred
 7 territory.

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

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

19 Section 70. Effect of transfer -- time. (1) All
 20 alterations of county boundaries shall become effective on
 21 the assessment day following approval of the alteration
 22 except as provided in this section.

23 (2) An alteration of county boundaries which results
 24 in the merger of existing counties shall not take effect
 25 until the assessment day following the election of officers

1 for the merged county. The election of new officials shall
 2 proceed as provided in [section 33 through section 49 of SB
 3 12] for the election of officials when a new form of
 4 government is adopted.

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

7 Section 71. Methods of consolidation, confederation,
 8 and merger. (1) A county and one or more municipalities may
 9 consolidate or confederate as provided in [section 33
 10 through section 49 of SB 12].

11 (2) Two or more counties may merge to form a single
 12 county as provided in [section 66 through section 70 of SB
 13 11].

14 Section 72. Effect of consolidation. (1) When a county
 15 and one or more municipalities consolidate, the consolidated
 16 local government replaces the participating county and
 17 municipality to form a single local government.

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

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

24 (4) The consolidated local government shall have the
 25 form of government specified in the consolidation plan. The

1 form may be amended as provided in [section 33 through
 2 section 49 of SB 12].

3 Section 73. Effect of confederation. (1) When a county
 4 and one or more municipalities confederate, a coordinated
 5 local government is created in which the county and the
 6 participating municipality or municipalities retain their
 7 separate identity and existence.

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

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

14 (4) The confederated local governments shall be
 15 governed as provided in the confederation charter, which may
 16 be amended as provided in [section 33 through section 49 of
 17 SB 12].

18 Section 74. Effect of county merger. (1) When two or
 19 more counties merge, a county is created as a single local
 20 government.

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

24 (3) The new county has the powers and duties of a
 25 county.

1 (4) The new county shall have the form of government
 2 specified in the petition, resolutions, or plan providing
 3 for the merger. The form may be amended as provided in
 4 [section 33 through section 49 of SB 12].

5 Section 75. Merger of municipalities. (1) When a
 6 municipality desires to merge with another and contiguous
 7 municipality, the governing body of each must appoint three
 8 commissioners to arrange and report to the municipal
 9 governing bodies respectively; the plan of government for
 10 the new municipality and the terms and conditions on which
 11 the merger can be made.

12 (2) If the governing bodies of the municipalities
 13 approves, they must by joint ordinance so declare and
 14 thereupon submit the question of merger and the plan of
 15 government to the electors of the respective municipalities.

16 (3) The election on the merger and the plan of
 17 government shall comply with the procedures in [section 33
 18 through section 46 of SB 11] for incorporation of
 19 municipalities. The merger is approved if a majority of the
 20 electors within each municipality vote in favor of the
 21 merger.

22 (4) When two or more municipalities merge, a
 23 municipality is created as a single local government.

24 (5) Except as provided in the merger plan, the new
 25 municipality succeeds to all rights, assets, and liabilities

1 of the merging municipalities.

2 (6) The new municipality has the powers and duties of
3 a municipality.

4 (7) The new municipality shall have the form of
5 government specified in the resolutions providing for the
6 merger. The form may be amended as provided in [section 38
7 through section 49 of SB 12].

8 Section 76. Severability. If a part of this act is
9 invalid, all valid parts that are severable from the invalid
10 part remain in effect. If a part of this act is invalid in
11 one or more of its applications, the part remains in effect
12 in all valid applications that are severable from the
13 invalid applications.

14 Section 77. Effective date. This act is effective on
15 July 1, 1981.

-End-