

SENATE BILL 12

IN THE SENATE

January 3, 1979

Introduced and referred to  
Committee on Local Government.

April 20, 1979

Died in Committee.

1                    SENATE BILL NO. 12  
2    INTRODUCED BY WATT, JERGESON  
3  
4    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
5    LAWS RELATING TO LOCAL GOVERNMENT ORGANIZATION; AND  
6    PROVIDING AN EFFECTIVE DATE."  
7  
8    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9        Section 1. Liberal construction. The rule of law that  
10    the powers of a local government shall be strictly construed  
11    has no application to the powers of local governments in  
12    Montana. Any reasonable doubt as to the existence of a  
13    power or authority granted by law to local government shall  
14    be resolved in favor of the power or authority's existence.  
15        Section 2. Powers vested in governing body. Unless  
16    otherwise provided or the context otherwise requires, all  
17    powers granted to local governments by law shall be vested  
18    in the governing body of the local government.  
19        Section 3. Transition. (1) This [act] shall not affect  
20    the validity of any bond, debt, contract, obligation, or  
21    cause of action accrued prior to [the effective date of this  
22    act]. The governing body may have the power and duty to do  
23    all things required by prior law or by covenants and  
24    agreements entered into pursuant to such laws for the  
25    security of any such bond, debt, contract, or obligation.

1            (2) All ordinances, resolutions, regulations, and  
2    interlocal agreements in effect [at the time this act  
3    becomes effective] shall continue in effect until repealed  
4    or amended in the manner provided by law.  
5            (3) Each officer or employee affected by the  
6    reorganization of local government under this [act] is  
7    entitled to all rights which he possessed as a local  
8    government officer or employee before [the effective date of  
9    this act], including rights to tenure in position and of  
10    rank or grade, rights to vacation and sick pay and leave,  
11    rights under any retirement or personnel plan or labor union  
12    contract, rights to compensatory time earned, and any other  
13    rights under any law, ordinance, resolution, or  
14    administrative policy. This section is not intended to  
15    create any new rights for any officer or employee but to  
16    continue only those rights in effect before [the effective  
17    date of this act].  
18            (4) All local government officers and employees  
19    holding offices or positions, whether elective or  
20    appointive, on [the effective date of this act] shall  
21    continue in the performance of the duties of their  
22    respective offices and positions until provision is made for  
23    the continued performance of the duties; the discontinuance  
24    of such duties; the discontinuance or combination of such  
25    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 (8) "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 45 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, lodging, 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 land, 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 rates;

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. Postings. (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.

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

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

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

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

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

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

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

and deadline for filing reports.

Section 33. Amendment of plan or charter. (1) A plan of government, a consolidation or confederation plan, or a charter or an amendment to a plan of government, a consolidation or confederation plan, or a charter may be proposed by:

(a) a study commission as provided in [section 40 of SB 12];

(b) a resolution of the governing body; or

(c) petition of the electors.

(2) The resolution or petition shall set out fully the plan of government, the consolidation or confederation plan, or the charter or the section or sections sought to be amended and the proposed amendment.

(3) An election on a plan of government, consolidation or confederation plan, or charter or an amendment proposed by resolution or petition shall be held at the next general election of the local government, unless the petition or resolution calls for a special election. If a special election is called for, the governing body shall set a date for the election to be held no sooner than 60 days or later than 90 days after passage of the resolution or filing of the petition.

(4) An election on a plan of government or a charter or an amendment shall be conducted and votes returned and



1 canvassed in the manner provided by law for questions  
2 submitted to the electorate as provided in [section 100  
3 through section 117 of SB 12].

4 (5) A plan of government or charter or an amendment  
5 requires the affirmative vote of a majority of those voting  
6 on the question for passage. A consolidation or  
7 confederation plan requires the affirmative vote as provided  
8 in [section 43(4) of SB 12].

9 (6) The plan of government, consolidation or  
10 confederation plan, or charter takes effect in the manner  
11 set out in [section 44 through section 48 of SB 12].

12 (7) An amendment becomes effective at the beginning of  
13 the local government's fiscal year after the election  
14 results are officially declared.

15 (8) Following the adoption of a plan of government,  
16 consolidation or confederation plan, or a charter or an  
17 amendment, the chief executive shall file a copy of the plan  
18 of government, consolidation or confederation plan, or  
19 charter or amendment with the secretary of state, department  
20 of community affairs, and county records administrator.

21 Section 34. Study commissions. (1) The purpose of a  
22 study commission is to study the existing plan, powers, and  
23 procedures for the delivery of services of a local  
24 government and to compare them with other plans, powers, and  
25 procedures available under the laws of the state of Montana.

1 (2) A study commission may be established by an  
2 affirmative vote of the people or by the procedures in  
3 subsection (3) of this section. An election on the question  
4 of establishing a study commission shall be held whenever:

5 (a) the governing body of the local government calls  
6 for an election by resolution;

7 (b) a petition calling for an election is submitted to  
8 the commission; or

9 (c) 10 years have elapsed since the electors have  
10 voted on the recommendations of a study commission or on the  
11 question of establishing a study commission. The governing  
12 body is responsible for calling for the election of a study  
13 commission within 1 year after the 10-year period.

14 (3) If a petition, signed by at least 15% of the  
15 electors of a local government, is submitted to the  
16 governing body requesting that a study commission be  
17 established, a study commission shall be established without  
18 an election on the question and study commissioners shall be  
19 elected in the manner provided in [section 33 through  
20 section 50 of SB 12].

21 (4) The number of positions, not less than five, on  
22 the study commission shall be set out in the resolution or  
23 petition calling for the election on the question of  
24 establishing a study commission. If the election is called  
25 because 10 years have elapsed, the study commission shall

1 consist of five members unless the local government  
2 commission by resolution declares that a larger number shall  
3 be elected. Every study commission shall include as ex  
4 officio voting members the chairman of the governing body  
5 and one other elected official appointed by the governing  
6 body.

7 (5) The question of establishing a study commission  
8 shall be submitted to the electors in substantially the  
9 following form:

10 Vote for one:

11 FOR the establishment of a local government study  
12 commission consisting of (insert number of members)  
13 members to examine the government of (insert name of  
14 local government) and submit recommendations thereon.

15 AGAINST the establishment of a study commission.

16 (6) The question of establishing a study commission  
17 requires an affirmative vote of a majority of those voting  
18 on the question for passage.

19 Section 35. Election of members. If the question of  
20 establishing a study commission is approved, study  
21 commission members shall be elected in the following manner:

22 (1) There shall be placed on the ballot the names of  
23 study commission candidates who have filed declarations of  
24 nomination as provided in 13-10-201. There shall be no  
25 filing fee. Candidates shall be listed without party or

1 other designation or slogan. The secretary of state shall  
2 prescribe the ballot form for study commissions.

3 (2) Candidates for study commission positions shall be  
4 electors of the local government for which the study  
5 commission has been established.

6 (3) Those candidates receiving the highest number of  
7 votes shall be declared elected.

8 (4) The term of study commission members shall be set  
9 out in the resolution or petition calling for the election  
10 on the question of establishing a study commission.

11 (5) If the number of study commissioners elected is  
12 not equal to the number required to be selected, the  
13 chairman of the governing body, with the confirmation of the  
14 governing body, shall appoint the additional study  
15 commissioner or commissioners within 20 days of the  
16 election. No elected official of the local government may be  
17 appointed. Subsequent vacancies shall be filled in the same  
18 manner.

19 (6) Within 20 days after the election, the governing  
20 body shall appoint one elected official of the local  
21 government to the study commission as a voting ex officio  
22 member.

23 Section 36. Timetable for elections. Dates for the  
24 required elections shall be set by the governing body within  
25 the following limits:

1 (1) A special election on the question of establishing  
2 a study commission shall be held no sooner than 60 days and  
3 no later than 90 days after the passage of the resolution or  
4 the certification of the petition calling for an election on  
5 the question.

6 (2) A special election to fill the positions on a  
7 local government study commission shall be held no sooner  
8 than 90 days or later than 120 days after the election  
9 establishing the study commission. A primary election may  
10 not be held.

11 (3) Votes cast on the question of establishing a study  
12 commission and for electing study commission members shall  
13 be counted, canvassed, and returned as provided in Title 23  
14 and [SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18,  
15 SB 19, SB 20, SB 21, SB 22, and SB 23] for general elections  
16 unless the county and municipality agree by joint resolution  
17 to do so in another manner.

18 (4) Except as otherwise provided in [section 33  
19 through section 117 of SB 12], each election conducted under  
20 [section 33 through section 117 of SB 12] shall be in the  
21 same manner as the election of other local officials as  
22 provided in [section 100 through section 117 of SB 12].

23 Section 37. Organization of the study commission. (1)  
24 Not later than 10 days after all study commissioners have  
25 been elected or appointed, the study commissioners shall

1 meet and organize at a time which shall be set by the  
2 chairperson of the governing body of the local government  
3 which the study commission is to examine.

4 (2) At the first meeting of the study commission, the  
5 study commission may elect a temporary chairperson who will  
6 serve until a permanent chairperson is selected.

7 (3) Meetings of the study commission shall be held  
8 upon the call of the chairperson, vice-chairperson in the  
9 absence or inability of the chairperson, or a majority of  
10 the study commissioners. The chairperson shall announce the  
11 time and place of the meetings of the study commission.

12 (4) The study commission shall maintain a written  
13 record of its proceedings and its finances which shall be  
14 open to inspection by any person at the office of the study  
15 commission during regular office hours.

16 (5) A majority of the study commissioners shall  
17 constitute a quorum for the transaction of business, but no  
18 recommendation of a study commission shall have any legal  
19 effect unless adopted by a majority of the whole number of  
20 study commissioners.

21 (6) The study commission shall have the power to adopt  
22 rules for its own organization and procedure.

23 (7) Study commissioners shall receive no compensation  
24 other than for actual and necessary expenses incurred in  
25 their official capacity.

1 Section 38. Administrative powers. A study commission  
2 shall have the following administrative powers:

3 (1) The study commission may employ and fix the  
4 compensation and duties of necessary staff. State,  
5 municipal, and county officers and employees, at the request  
6 of the study commission and with the consent of the  
7 employing agency, may be granted leave with or without pay  
8 from their agency to serve as consultants to the study  
9 commission. If leave with pay is granted, they shall receive  
10 no other compensation, except mileage and per diem from the  
11 study commission.

12 (2) The study commission may establish advisory boards  
13 and committees, including on them persons who are not study  
14 commissioners.

15 (3) The study commission may retain consultants.

16 (4) The study commission may contract and cooperate  
17 with other agencies, public or private, as it considers  
18 necessary for the rendition and affording of the services,  
19 facilities, studies, and reports to the study commission as  
20 will best assist it to carry out the purposes for which the  
21 study commission was established. Upon request of the  
22 chairperson of the study commission, state agencies,  
23 counties, other local governments, and the officers and  
24 employees thereof shall furnish the commission information  
25 as may be necessary for carrying out its function which may

1 be available to or procurable by the agencies or units of  
2 government.

3 (5) All meetings of the study commission shall be open  
4 to the public. The study commission shall hold public  
5 hearings and community forums and may use other suitable  
6 means to disseminate information and stimulate public  
7 discussion of its purpose, progress, conclusions, and  
8 recommendations.

9 (6) The study commission may do any and all other  
10 things as are consistent with and reasonably required to  
11 perform its function under [section 33 through section 117  
12 of SB 12].

13 Section 39. Financial administration. (1) The study  
14 commission shall prepare a budget for each fiscal year it is  
15 in existence and submit it to the local governing body for  
16 approval.

17 (2) For the support of the study commission, for each  
18 fiscal year the study commission is in existence, the local  
19 government shall appropriate the equivalent of at least 1  
20 mill. The local government may, in its discretion, provide  
21 additional funds, and other assistance.

22 (3) The study commission may apply for and accept  
23 available private, state, and federal moneys and may accept  
24 donations from any source.

25 (4) All moneys received by the study commission shall

1 be deposited with the county or municipal finance  
 2 administrator. The finance administrator is authorized to  
 3 disburse appropriated moneys of the study commission on its  
 4 order after approval of the budget by the governing body.  
 5 Unexpended moneys of the study commission shall not revert  
 6 to the general fund of the local government at the end of  
 7 the fiscal year, but shall carry over to the study  
 8 commission's appropriation for the following fiscal year.  
 9 Upon termination of the study commission, unexpended moneys  
 10 shall revert to the general fund of the local government.

11 Section 40. Scope of study commission's  
 12 recommendations. (1) A study commission elected to examine  
 13 the government of a municipality may:

14 (a) recommend amendments to the existing plan of  
 15 government;

16 (b) recommend any plan of government authorized by  
 17 Title 7, part 3;

18 (c) draft a charter;

19 (d) recommend disincorporation; or

20 (e) submit no recommendation.

21 (2) A study commission elected to examine the  
 22 government of a county may:

23 (a) recommend amendments to the existing plan of  
 24 government;

25 (b) recommend any plan of government authorized by

1 Title 7, part 3;

2 (c) draft a charter;

3 (d) recommend municipal-county consolidation or  
 4 amendments to an existing consolidation;

5 (e) recommend municipal-county confederation or  
 6 amendments to an existing confederation;

7 (f) in cooperation with a study commission in an  
 8 adjoining county, recommend county merger; or

9 (g) submit no recommendation.

10 Section 41. Final report. (1) Every study commission  
 11 shall adopt a final report. The final report shall contain  
 12 the following materials and documents, each signed by a  
 13 majority of the study commission members:

14 (a) a certificate containing the "plan of government"  
 15 of the existing form of local government;

16 (b) a certificate containing the "plan of government"  
 17 of the proposed new form of local government or amendments  
 18 to the existing plan;

19 (c) a certificate containing the "plan of  
 20 apportionment" of commissioner districts if districts are  
 21 contained in the "plan of government";

22 (d) a certificate establishing the date of the special  
 23 election at which the alternative form of government shall  
 24 be presented to the electors and a certificate establishing  
 25 the form of the ballot question or questions;

1 (e) a certificate establishing the dates of the first  
2 primary and general elections if the proposal is approved  
3 and establishing the effective date of the proposal if  
4 approved; and

5 (f) a comparison of the existing plan and proposed  
6 plan of local government. It may contain a statement on the  
7 strengths and weaknesses of the existing and proposed plans  
8 of local government, and it may contain information that  
9 supports the adoption of the proposed plan and information  
10 that supports retention of the present plan.

11 (2) The final report shall contain any minority report  
12 signed by members of the commission who do not support the  
13 majority proposal.

14 (3) If the study commission proposes disincorporation,  
15 municipal-county consolidation, municipal-county  
16 confederation, or county merger, the final report shall  
17 contain the following additional material and documents:

18 (a) for disincorporation:

19 (i) a certificate of disincorporation instead of a  
20 plan of government; and

21 (ii) a recommended plan of disincorporation including  
22 suggested ordinances and service districts;

23 (b) for municipal-county consolidation, a  
24 consolidation plan which shall:

25 (i) provide for adjustment of existing bonded

1 indebtedness and other obligations in a manner which will  
2 provide for a fair and equitable burden of taxation for debt  
3 service;

4 (ii) provide for establishment of subordinate service  
5 districts;

6 (iii) provide for the transfer or other disposition of  
7 property and other rights, claims, assets, and franchises of  
8 local government consolidated under its proposal;

9 (iv) provide the official name of the consolidated  
10 local government;

11 (v) provide for the transfer, reorganization,  
12 abolition, adjustment of boundaries, or absorption of all  
13 existing boards, subordinate service districts, local  
14 improvement districts, agencies, and political subdivisions  
15 of the consolidated governments. Or the plan may grant the  
16 legislative body of the consolidated government the  
17 authority to transfer, reorganize, abolish, adjust  
18 boundaries, or absorb the entities with or without  
19 referendum requirements. This section shall not apply to  
20 school districts, authorities, and excluded municipalities.

21 (vi) include other provisions which the study  
22 commission elects to include and which are consistent with  
23 state law;

24 (c) for municipal-county confederation, a charter  
25 which shall:

1 (i) provide for a confederated system of county and  
 2 municipal government;  
 3 (ii) authorize the comprehensive and simultaneous  
 4 transfer of services to a system in which the county  
 5 provides countywide and areawide services and municipalities  
 6 provide local services;  
 7 (iii) permit future transfer of responsibility for  
 8 provision of services;  
 9 (iv) establish a separate legislative body and chief  
 10 administrative office for the county and each participating  
 11 municipality in the confederated local government or the  
 12 plan may provide a single executive for the confederated  
 13 government; the plan may also provide for a joint  
 14 legislative body;  
 15 (v) provide for adjustment of existing bonded  
 16 indebtedness and other obligations in a manner which will  
 17 provide for a fair and equitable burden of taxation for debt  
 18 service;  
 19 (vi) provide for establishment of subordinate service  
 20 areas;  
 21 (vii) provide for the transfer or other disposition of  
 22 property and other rights, claims, assets, and franchises of  
 23 local governments confederated under the charter;  
 24 (viii) provide the official name of the confederated  
 25 local government;

1 (ix) provide for the transfer, reorganization,  
 2 abolition, adjustment of boundaries, or absorption of all  
 3 existing boards, subordinate service districts, local  
 4 improvement districts, agencies, and political subdivisions  
 5 of the confederated governments. Or the plan may grant the  
 6 legislative bodies of the confederated government the  
 7 authority to transfer, reorganize, abolish, adjust  
 8 boundaries, or absorb the entities with or without  
 9 referendum requirements. This section shall not apply to  
 10 school districts, authorities, and excluded municipalities.  
 11 (x) include other provisions which the study  
 12 commission elects to include and which are consistent with  
 13 state law;  
 14 (c) for county merger, a consolidation plan which  
 15 shall:  
 16 (i) provide for adjustment of existing bonded  
 17 indebtedness and other obligations in a manner which will  
 18 provide for a fair and equitable burden of taxation for debt  
 19 service;  
 20 (ii) provide for establishment of subordinate service  
 21 districts;  
 22 (iii) provide for the transfer or other disposition of  
 23 property and other rights, claims, assets, and franchises of  
 24 local governments consolidated under the alternative plan;  
 25 (iv) provide the official name of the consolidated

1 local government;

2 (v) provide for the transfer, reorganization,

3 abolition, adjustment of boundaries, or absorption of all

4 existing boards, subordinate service districts, local

5 improvement districts, agencies, and political subdivisions

6 of the consolidated governments except incorporated

7 municipalities. Or the plan may grant the legislative body

8 of the consolidated government the authority to transfer,

9 reorganize, abolish, adjust boundaries, or absorb the

10 entities with or without referendum requirements. This

11 section shall not apply to authorities, school districts,

12 and excluded municipalities.

13 (vi) include other provisions which the study

14 commissions elect to include and which are consistent with

15 state law.

16 (4) If the study commission is recommending amendments

17 to a consolidation plan, the final report shall contain a

18 certificate containing amendments to the consolidation or

19 confederation plan.

20 (5) If the study commission is not recommending any

21 changes its final report shall so indicate.

22 (6) The study commission shall file four copies of the

23 final report with the department of community affairs.

24 Section 42. Study commission timetable. Each local

25 study commission or combination of local study commissions

1 shall:

2 (1) conduct one or more public hearings within 180

3 days of its organization for the purpose of gathering

4 information regarding the current form, functions, and

5 problems of the local government or governments;

6 (2) formulate, reproduce, and distribute within 365

7 days of its organization a tentative proposed report. No

8 sooner than 30 days after the report is distributed, each

9 study commission shall conduct one or more public hearings

10 on the tentative report. The tentative report shall contain

11 the same categories of information required to be included

12 in the final report of the commission.

13 (3) adopt within 455 days of its organization the

14 final report of the commission and set the date for a

15 special election on the question of adopting a new plan of

16 government, or if the study commission is not recommending

17 any changes, its final report shall be published and

18 distributed as provided in subsection (5) within 60 days

19 after the final report is adopted;

20 (4) prepare or cause to be prepared sufficient copies

21 of its final report. The final report must be available to

22 the electors not later than 30 days prior to the election on

23 the issue of adopting the alternative plan. Copies of the

24 final report may be distributed to electors or residents of

25 the local government or governments affected.



(5) publish once for 2 successive weeks in a newspaper of general circulation throughout the local government affected a summary of its findings and recommendations, together with the address of a convenient public place where the text of its proposal may be obtained. The summary shall include a comparison of the existing and proposed plans of government.

(6) prepare separate reports in addition to its final report. These reports may recommend consolidation of services and functions and potential areas for interlocal agreements.

Section 43. Vote on alternative form. (1) The study commission shall authorize the submission of the alternative plan of government to the voters at a special election held within 120 days of the adoption of the final report. The special election may be held with a school, primary, general, or other election.

(2) A copy of the final report shall be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report. The records administrator shall prepare and print notices of the special election.

(3) Elections on the issue of adoption of a proposed plan of government by a local government shall be conducted, returned, and canvassed and the result declared in the

manner provided in [section 112 of SB 12] for questions submitted to the electors. The cost of the election shall be paid for by the local government. The affirmative vote of a simple majority of those voting on the question shall be required for adoption.

(4) In any election involving the question of consolidation or confederation, each question shall be submitted to the electors in the county and shall require an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There shall be no requirement for separate majorities in local governments voting on consolidation or confederation.

(5) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and shall require a majority of the votes cast on the questions in each affected county for adoption.

(6) (a) The question of adopting the form of government proposed by the study commission shall be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR adoption of the (self-government charter or plan of government) proposed in the report of the (insert name of local government) local government study.

1 local government;

2 (v) provide for the transfer, reorganization,  
3 abolition, adjustment of boundaries, or absorption of all  
4 existing boards, subordinate service districts, local  
5 improvement districts, agencies, and political subdivisions  
6 of the consolidated governments except incorporated  
7 municipalities. Or the plan may grant the legislative body  
8 of the consolidated government the authority to transfer,  
9 reorganize, abolish, adjust boundaries, or absorb the  
10 entities with or without referendum requirements. This  
11 section shall not apply to authorities, school districts,  
12 and excluded municipalities.

13 (vi) include other provisions which the study  
14 commissions elect to include and which are consistent with  
15 state law.

16 (4) If the study commission is recommending amendments  
17 to a consolidation plan, the final report shall contain a  
18 certificate containing amendments to the consolidation or  
19 confederation plan.

20 (5) If the study commission is not recommending any  
21 changes its final report shall so indicate.

22 (6) The study commission shall file four copies of the  
23 final report with the department of community affairs.

24 Section 42. Study commission timetable. Each local  
25 study commission or combination of local study commissions

1 shall:

2 (1) conduct one or more public hearings within 180  
3 days of its organization for the purpose of gathering  
4 information regarding the current form, functions, and  
5 problems of the local government or governments;

6 (2) formulate, reproduce, and distribute within 365  
7 days of its organization a tentative proposed report. No  
8 sooner than 30 days after the report is distributed, each  
9 study commission shall conduct one or more public hearings  
10 on the tentative report. The tentative report shall contain  
11 the same categories of information required to be included  
12 in the final report of the commission.

13 (3) adopt within 455 days of its organization the  
14 final report of the commission and set the date for a  
15 special election on the question of adopting a new plan of  
16 government, or if the study commission is not recommending  
17 any changes, its final report shall be published and  
18 distributed as provided in subsection (5) within 60 days  
19 after the final report is adopted;

20 (4) prepare or cause to be prepared sufficient copies  
21 of its final report. The final report must be available to  
22 the electors not later than 30 days prior to the election on  
23 the issue of adopting the alternative plan. Copies of the  
24 final report may be distributed to electors or residents of  
25 the local government or governments affected.

(5) publish once for 2 successive weeks in a newspaper of general circulation throughout the local government affected a summary of its findings and recommendations, together with the address of a convenient public place where the text of its proposal may be obtained. The summary shall include a comparison of the existing and proposed plans of government.

(6) prepare separate reports in addition to its final report. These reports may recommend consolidation of services and functions and potential areas for interlocal agreements.

Section 43. Vote on alternative form. (1) The study commission shall authorize the submission of the alternative plan of government to the voters at a special election held within 120 days of the adoption of the final report. The special election may be held with a school, primary, general, or other election.

(2) A copy of the final report shall be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report. The records administrator shall prepare and print notices of the special election.

(3) Elections on the issue of adoption of a proposed plan of government by a local government shall be conducted, returned, and canvassed and the result declared in the

manner provided in [section 112 of SB 12] for questions submitted to the electors. The cost of the election shall be paid for by the local government. The affirmative vote of a simple majority of those voting on the question shall be required for adoption.

(4) In any election involving the question of consolidation or confederation, each question shall be submitted to the electors in the county and shall require an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There shall be no requirement for separate majorities in local governments voting on consolidation or confederation.

(5) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and shall require a majority of the votes cast on the questions in each affected county for adoption.

(6) (a) The question of adopting the form of government proposed by the study commission shall be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR adoption of the (self-government charter or plan of government) proposed in the report of the (insert name of local government) local government study

commission.

☐ FOR the existing form of government.

(b) The whole number of ballots shall be divided into two equal sets. No more than one set shall be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

(7) A proposed plan shall be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, part 3, and the suboptions authorized in a charter may be submitted to the electors as separate questions. No study commission may submit more than three separate suboptions, and no suboption shall contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes shall be considered approved and included in the alternative form of government. The question of adopting a suboption shall be submitted to the electors

in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of 4 years.

☐ Shall be appointed for a term of 4 years by the chairperson of the local governing body.

Section 44. General transition. (1) If the electors disapprove the proposed new form of local government, amendments, or consolidation or confederation plan, the local government shall retain its existing form.

(2) (a) An alternative plan of local government approved by the electors shall take effect when the new officers take office as provided in [section 47 of SB 12], except as otherwise provided in [SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23] and any charter or consolidation or confederation plan. A consolidation, confederation, or merger plan similarly adopted by the electors shall take effect in the same manner.

(b) Provisions creating offices and establishing qualifications for office under any "apportionment plan" shall become effective immediately for the purpose of electing officials.

(3) (a) A copy of the existing or proposed plan of

1 government ratified by the voters and any apportionment plan  
2 or consolidation, confederation, or merger plan shall be  
3 certified by the chairperson of the study commission and  
4 filed by the study commission with the municipal records  
5 administrator if it is a municipal plan, the department of  
6 community affairs, and the county records administrator.

7 (b) The approved plan filed with the department of  
8 community affairs shall be the official plan and shall be a  
9 public record open to inspection by the public and  
10 judicially noticeable by all courts.

11 (4) (a) All ordinances in effect at the time the new  
12 form of government becomes effective shall continue in  
13 effect until repealed or amended in the manner provided by  
14 law.

15 (b) Within 2 years after ratification of the  
16 consolidation plan, the governing body of the consolidated  
17 local government shall revise, repeal, or reaffirm all  
18 rules, ordinances, and resolutions in force within the  
19 participating county and municipalities at the time of  
20 consolidation. Each rule, ordinance, or resolution in force  
21 at the time of consolidation shall remain in force within  
22 the former geographic jurisdiction until superseded by  
23 action of the new governing body. Ordinances and resolutions  
24 relating to public improvements to be paid for in whole or  
25 in part by special assessments may not be repealed.

1 (5) The adoption of a new plan of government shall not  
2 affect the validity of any bonds, debts, contracts, obligations,  
3 or cause of action accrued or established under the prior  
4 form of government.

5 (6) The study commission shall prepare an advisory  
6 plan for orderly transition to a new plan of local  
7 government. The transition plan may propose necessary  
8 ordinances, plans for consolidation of services and  
9 functions, and a plan for reorganizing boards, departments,  
10 and agencies.

11 (7) The governing body of a local government may enact  
12 and enforce ordinances to bring about an orderly transition  
13 to the new plan of government, including transfer of powers,  
14 records, documents, properties, assets, funds, liabilities,  
15 or personnel which are consistent with the approved plan and  
16 necessary or convenient to place it into full effect. Where  
17 any question arises concerning the transition which is not  
18 provided for, the governing body may provide for the  
19 transition by ordinance, rule, or resolution not  
20 inconsistent with law.

21 Section 45. Transition — officers and employees. (1)  
22 The members of the governing body, holding office on the  
23 date the new plan of government is adopted by the electors  
24 of the local government, shall continue in office and in the  
25 performance of their duties until the governing body

1 authorized by the plan has been elected and qualified,  
2 whereupon the prior governing body is abolished.

3 (2) All other employees holding offices or positions,  
4 whether elective or appointive, under the government of the  
5 county or municipality shall continue in the performance of  
6 the duties of their respective offices and positions until  
7 provisions shall be made for the performance or  
8 discontinuance of the duties, or the discontinuance of the  
9 offices or positions.

10 (3) Any charter or final report of a study commission  
11 may provide that existing elected officers shall continue in  
12 office until the end of the term for which they were elected  
13 or may provide that existing elected officers shall be  
14 retained as local government employees until the end of the  
15 term for which they were elected and their salaries shall  
16 not be reduced.

17 Section 46. Election of new officials. (1) Within 20  
18 days of an election at which the new plan of government is  
19 approved by the electors, the governing body of the local  
20 government shall meet and order a special primary and  
21 general election for the purpose of electing the officials  
22 required by the new form of government.

23 (2) The order shall specify the next scheduled primary  
24 and general elections or a date for the primary election not  
25 more than 60 days or less than 20 days after the election

1 approving the new form and a date for the general election  
2 60 days after the primary.

3 (3) The election shall be conducted, the vote  
4 canvassed, and the result declared in the manner provided  
5 for local government elections in [section 100 through  
6 section 117 of SB 12].

7 Section 47. Organization of the governing body. (1)  
8 The first meeting of a new governing body for the new plan  
9 of government shall be held at 10 a.m., 60 days after the  
10 election of the new officers. At that time, newly elected  
11 members shall take the oath of office prior to assuming the  
12 duties of office.

13 (2) If the terms of the commissioners are to be  
14 overlapping, they shall draw lots to establish their  
15 respective terms of office.

16 Section 48. Judicial review. Judicial review to  
17 determine the validity of the procedures whereby any charter  
18 or alternative plan of government is adopted may be had by  
19 petition of 10 or more registered voters of the local  
20 government brought within 60 days after the election at  
21 which the charter or plan of government, revision, or  
22 amendment is approved. If no petition is filed within that  
23 period, compliance with all the procedures required by  
24 [section 33 through section 117 of SB 12] and the validity  
25 of the manner in which the charter or plan of government was

approved shall be conclusively presumed. It shall be presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government shall not be considered invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

Section 49. Moratorium. The electors of any unit of local government which has adopted a new alternative form of local government, charter, or consolidation or confederation plan may not vote on the question of changing the form of local government until 3 years after the new local government becomes effective, but the electors may vote on amendments to the alternative form, charter, or consolidation or confederation plan.

Section 50. General power. The legislative power of a local government is vested in the governing body.

Section 51. Public participation. All governing bodies and their committees shall comply with [section 26 and section 27 of SB 12].

Section 52. Composition, qualification, and vacancies.

(1) The governing body shall be composed of the number of members provided for in the plan of government adopted by the electors.

(2) Any elector of the local government shall be

eligible for election or appointment to the governing body if he meets the district residence requirements imposed by the plan of government.

(3) In the event of a vacancy in the governing body, except as otherwise provided by charter, the governing body shall by majority vote of the remaining members appoint a qualified person to fill the vacancy until the next local government election, at which time the remaining term shall be filled by election.

(4) Any member of a governing body who loses eligibility for election to his seat on the governing body shall immediately forfeit his office. Any member of a governing body who, without excuse accepted by the governing body, fails to attend two consecutive regularly scheduled meetings of the governing body or who absents himself from the jurisdictional area of the local government continuously for 30 days without consent of the governing body may be removed from office by a majority vote of the whole governing body.

Section 53. Procedure. (1) The governing body shall meet at least once a month at a time and place designated by ordinance except that more frequent meetings may be required by ordinance.

(2) An emergency meeting may be called by the chief executive, the chairman of the governing body, or two

1 members of the governing body on 24-hour notice except that,  
2 if a majority of the members of the governing body waive  
3 notice in writing, an emergency meeting may be held without  
4 notice.

5 (3) A majority of the governing body constitutes a  
6 quorum and is necessary to conduct any business.

7 (4) Action by the governing body, including the  
8 adoption of ordinances and resolutions, requires a majority  
9 vote of those members present.

10 (5) All action by the governing body shall be by  
11 ordinance, resolution, or motion and the following shall  
12 apply:

13 (a) Ordinances may be amended and repealed only by  
14 ordinance.

15 (b) Resolutions may be amended and repealed only by  
16 resolution.

17 (c) All ordinances and resolutions are subject to  
18 initiative and referendum as provided in [section 62 of SB  
19 12].

20 (6) Contracts except interlocal agreements shall be  
21 entered into by resolution.

22 (7) Interlocal agreements shall be adopted by  
23 resolution or ordinance.

24 (8) The governing body shall provide for the keeping  
25 of written minutes which include the final vote on each

1 ordinance or resolution indicating the vote of each  
2 individual member on the question.

3 (9) An agenda shall be posted and made available 24  
4 hours prior to any regular meeting. The agenda may include  
5 an item entitled "other business" under which any matter may  
6 be considered by the governing body, except no matter  
7 dealing with finance or taxation shall be considered under  
8 "other business".

9 (10) The governing body may adopt by resolution  
10 additional rules not in conflict with [section 33 through  
11 section 63 of SB 12] governing its organization and  
12 procedure.

13 Section 54. Clerk and staff. (1) The governing body  
14 may appoint a person to serve as clerk of the governing  
15 body. The person appointed may be an employee of the  
16 executive branch.

17 (2) The governing body may employ additional staff.

18 Section 55. Motions. Actions previously authorized by  
19 ordinance or resolution may be approved by motion.

20 Section 56. Ordinance requirements. (1) All ordinances  
21 shall be submitted in writing in the form prescribed by  
22 resolution of the governing body.

23 (2) No ordinance passed shall contain more than one  
24 comprehensive subject which shall be clearly expressed in  
25 its title, except ordinances for codification and revision



1 of ordinances.

2 (3) An ordinance must be read and adopted by a  
3 majority vote of members present at two meetings of the  
4 governing body not less than 12 days apart. After the first  
5 adoption and reading, it must be posted and copies made  
6 available to the public.

7 (4) In the event of an emergency, the governing body  
8 may waive the second reading. An ordinance passed in  
9 response to an emergency shall recite the facts giving rise  
10 to the emergency and requires a two-thirds vote of the whole  
11 governing body for passage. An emergency ordinance shall be  
12 effective on passage and approval and shall remain effective  
13 for no more than 90 days.

14 (5) After passage and approval, all ordinances shall  
15 be signed by the chairperson of the governing body and filed  
16 with the official or employee designated by ordinance to  
17 keep the register of ordinances.

18 (6) No ordinance other than an emergency ordinance  
19 shall be effective until 30 days after second and final  
20 adoption. The ordinance may provide for a delayed effective  
21 date or may provide for the ordinance to become effective  
22 upon the fulfillment of an indicated contingency.

23 (7) If the plan of government allows the chief  
24 executive to veto an ordinance, this power must be exercised  
25 in writing prior to the next regularly scheduled meeting of

1 the governing body. Whenever the chief executive vetoes an  
2 ordinance, the governing body must act at its next regularly  
3 scheduled meeting to either override or confirm the veto.  
4 Whenever the veto is overridden or the executive fails to  
5 act, the ordinance shall take effect.

6 (8) There shall be maintained a register of ordinances  
7 in which all ordinances are entered in full after passage  
8 and approval, except when a code is adopted by reference.  
9 When a code is adopted by reference, the date and source of  
10 the code shall be entered.

11 (9) (a) No later than 1985 and at 5-year intervals  
12 thereafter appropriate ordinances shall be compiled into a  
13 uniform code and published.

14 (b) The recodification is not effective until approved  
15 by the governing body.

16 Section 57. Adoption and amendment of codes by  
17 reference. (1) Any local government may adopt or repeal an  
18 ordinance which incorporates by reference the provisions of  
19 any code or portions of any code, or any amendment thereof,  
20 properly identified as to date and source, without setting  
21 forth the provisions of the code in full. Notice of the  
22 intent to adopt a code by reference shall be published after  
23 first reading and prior to final adoption of the code. At  
24 least one copy of the code, portion, or amendment which is  
25 incorporated or adopted by reference shall be filed in the

1 office of the clerk of the governing body and there kept  
 2 available for public use, inspection, and examination. The  
 3 filing requirements herein prescribed shall not be considered  
 4 to be complied with unless the required copies of the codes,  
 5 portion, amendment, or public record are filed with the  
 6 clerk of the governing body for a period of 30 days prior to  
 7 final adoption of the ordinance which incorporates the code,  
 8 portion, or amendment by reference.

9 (2) The governing body may adopt or amend a code by  
 10 reference by an emergency ordinance and without notice. The  
 11 emergency ordinance is automatically repealed 90 days  
 12 following its adoption and cannot be reenacted as an  
 13 emergency ordinance.

14 (3) The process for repealing an ordinance which  
 15 adopted or amended a code by reference shall be the same as  
 16 for repealing any other ordinance.

17 (4) In a local government that has adopted codes by  
 18 reference pursuant to subsection (1), the chief executive  
 19 may adopt administrative regulations which incorporate by  
 20 reference subsequent changes and amendments thereof,  
 21 properly identified as to date and source, that have been  
 22 adopted by the agency or association which promulgated the  
 23 code if the chief executive finds that the changes and  
 24 amendments conform to nationally recognized standards,  
 25 accepted engineering practices, or state and national model

1 codes.

2 (5) Any administrative regulations which incorporate  
 3 code amendments by reference shall become effective upon the  
 4 expiration of 60 calendar days or after the fourth official  
 5 meeting of the governing body following the promulgation of  
 6 the regulation, whichever is later, unless within that  
 7 period of time a resolution disapproving the administrative  
 8 regulation shall have been adopted by the governing body.

9 (6) In addition to complying with all requirements for  
 10 the issuance of administrative regulations by the chief  
 11 executive, the filing requirement of subsection (1) of this  
 12 section shall be complied with in adopting amendments to  
 13 codes.

14 (7) Any ordinance adopting a code, portion, or  
 15 amendment by reference shall state the penalty for violating  
 16 the code, portion, or amendment, or any provision thereof  
 17 separately, and no part of any penalty shall be incorporated  
 18 by reference.

19 (8) For purposes of this section, "code" means any  
 20 published compilation of rules which has been prepared by  
 21 various technical trade associations, model code  
 22 organizations, federal agencies, or this state or any agency  
 23 thereof; and shall include specifically but shall not be  
 24 limited to: traffic codes, building codes, plumbing codes,  
 25 electrical wiring codes, health or sanitation codes, fire

1 prevention codes, inflammable liquids codes, together with  
2 any other code which embraces rules pertinent to a subject  
3 which is a proper local government legislative matter.

4 Section 58. Penalty for violation of ordinance. A  
5 local government may fix penalties for the violation of an  
6 ordinance which do not exceed a fine of \$500 or 6 months'  
7 imprisonment or both the fine and imprisonment.

8 Section 59. Resolution requirements. (1) All  
9 resolutions shall be submitted in the form prescribed by  
10 resolution of the governing body.

11 (2) Resolutions may be submitted and adopted at a  
12 single meeting of the governing body.

13 (3) If the plan of government allows the executive to  
14 veto resolutions, this power must be immediately exercised  
15 in writing at the same meeting. If the executive fails to  
16 act, the resolution shall be approved. If the executive  
17 vetoes a resolution, the governing body must act at the same  
18 meeting or its next regularly scheduled meeting to either  
19 override or confirm the veto.

20 (4) After passage and approval, all resolutions shall  
21 be entered into the minutes and signed by the chairperson of  
22 the governing body.

23 (5) All resolutions shall be immediately effective  
24 unless a delayed effective date is specified.

25 Section 60. Interlocal agreements. (1) Any one or more

1 local governments or public agencies may contract with any  
2 one or more other local governments or public agencies to  
3 perform any administrative service, activity, or undertaking  
4 which any of the public agencies entering into the contract  
5 are authorized by law to perform.

6 (2) In addition, and unless specifically prohibited by  
7 law or charter, a local government may contract with one or  
8 more political subdivisions of this or any other state or  
9 public agencies to:

10 (a) cooperate in the exercise of any function, power,  
11 or responsibility;

12 (b) share the services of any officer, department,  
13 board, employee, or facility; and

14 (c) transfer or delegate any function, power,  
15 responsibility, or duty.

16 (3) An interlocal agreement shall be authorized,  
17 approved, and amended by the governing body of each party to  
18 the agreement, shall set forth fully the purposes, powers,  
19 rights, obligations, and responsibilities of the contracting  
20 parties, and shall specify the following:

21 (a) its duration;

22 (b) the precise organization, composition, and nature  
23 of any separate legal entity created;

24 (c) the purpose or purposes of the interlocal  
25 agreement;

1 (d) the manner of financing the joint or cooperative  
2 undertaking and establishing and maintaining a budget;

3 (e) the permissible method or methods to be employed  
4 in accomplishing the partial or complete termination of the  
5 agreement and for disposing of property upon partial or  
6 complete termination. The method or methods for termination  
7 shall include a requirement of 6 months' written  
8 notification of the intent to withdraw by the governing body  
9 of the public agency wishing to withdraw.

10 (f) provision for an administrator or a joint board  
11 responsible for administering the joint or cooperative  
12 undertaking, including representation of the contracting  
13 parties on the joint board;

14 (g) the manner of acquiring, holding, and disposing of  
15 real and personal property used in the joint or cooperative  
16 undertaking; and

17 (h) any other necessary and proper matters.

18 (4) Every agreement and amendment made shall, prior to  
19 and as a condition precedent to its final adoption and  
20 performance, be submitted to the municipal or county civil  
21 attorney who shall determine whether the agreement is in  
22 proper form and compatible with the laws of the state of  
23 Montana. The civil attorney shall approve any agreement  
24 submitted to him unless he finds it does not meet the  
25 conditions set forth in this section and shall detail in

1 writing addressed to the governing bodies of the public  
2 agencies concerned the specific respects in which the  
3 proposed agreement fails to meet the requirements of law.  
4 Failure to disapprove an agreement within 30 days of its  
5 submission shall constitute approval.

6 (5) Every agreement and amendment including the state  
7 or a state agency shall, prior to and as a condition  
8 precedent to its final adoption and performance, be  
9 submitted to the chief legal counsel of the agency or to the  
10 attorney general who shall determine whether the agreement  
11 is in proper form and compatible with the laws of the state  
12 of Montana. The chief legal counsel of the agency or the  
13 attorney general shall approve any agreement submitted to  
14 him unless he finds it does not meet the conditions set  
15 forth in this section and shall detail in writing addressed  
16 to the governing bodies of the public agencies concerned the  
17 specific respects in which the proposed agreement fails to  
18 meet the requirements of law. Failure to disapprove an  
19 agreement within 30 days of its submission shall constitute  
20 approval.

21 (6) Within 10 days after final approval and prior to  
22 commencement of performance, the interlocal agreement shall  
23 be filed with the county records administrator of the county  
24 or counties where the public agencies are located and with  
25 the department of community affairs.

Section 61. Franchise. (1) A local government may grant a franchise for a service the local government is authorized to provide for a term not to exceed 25 years, except that a local government may not grant a franchise to any public utility as defined in 69-9-101. The franchise may be granted, amended, extended, or renewed only by ordinance.

(2) An ordinance granting a franchise shall state:

(a) the duration of the franchise;

(b) the rights and responsibilities of the franchisee and conditions thereon including performance bonds; and

(c) the amount of the fee to be paid for the franchise or the method by which the amount to be paid is to be calculated.

(3) An ordinance granting a franchise without election may be adopted only after notice and a public hearing and may not exceed 5 years.

Section 62. Initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2) of this section, may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in this section.

(2) The powers of initiative shall not extend to the following:

(a) the annual budget;

(b) property tax levies;

(c) bond proceedings, except for ordinances authorizing bonds;

(d) the establishment and collection of charges pledged for the payment of principal and interest on bonds; or

(e) the levy of special assessments pledged for the payment of principal and interest on bonds.

(3) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(4) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(5) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners, or in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment, or in the case of referendum, set out the ordinance sought to be repealed; and

(c) contain the number of signatures required by [section 14 of SB 12].

(6) (a) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(b) If the governing body does not, within 60 days, take the proposed action, then the question shall be submitted to the electors at the next school, primary, or general election or a special election called for that purpose. Before submitting the question to the electors, the governing body may direct that a suit be brought in district court by the local government to determine whether the petition is regular in form, has sufficient signatures, and whether the proposed action would be valid and constitutional.

(c) The complaint shall name as defendants not less than 10 or more than 20 of the petitioners. In addition to the names of the defendants, to the caption of the complaint there shall be added the words: "and all petitioners whose

names appear on the petition for an ordinance filed on the ..... day of ....., in the year ....", stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition shall be published. All costs, including reasonable attorney's fees incurred by the defendants, concerning proof of petition validity shall be paid by the local government.

(d) If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative, at any time, to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

(7) (a) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(i) the petition asks that the question be submitted at a special election and is signed by at least 25% of the

electors of the local government, in which case the governing body shall call a special election; or

(ii) the governing body calls for a special election on the question.

(b) If the adequacy of the petition is determined by the elections administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election, unless a special election is called.

(c) Whenever a measure is ready for submission to the electors, the elections administrator shall, in writing, notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of referendum, the ordinance sought to be repealed shall be published.

(d) The question shall be placed on the ballot giving the electors a choice between accepting or rejecting the proposal.

(e) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal.

Section 63. Legislative organization and procedure for town meeting. Except for the sections in [section 50 through section 63 of SB 12] on public participation [section 51 of

SB 12], interlocal agreements [section 60 of SB 12], initiative and referendum [section 62 of SB 12], and franchises [section 62 of SB 12], the legislative body of a town meeting form of government is exempt from the provisions of [section 50 through section 63], but the town meetings shall adopt rules of procedure governing its enactment of ordinances, resolutions, and taxes.

Section 64. Office of the chief executive. (1) The chief executive may establish divisions in his office to carry out his assigned responsibilities.

(2) The chief executive may appoint temporary advisory committees. Confirmation by the governing body of temporary advisory committees is not required. Temporary advisory committees shall be abolished within 1 year of their creation.

Section 65. Creation of departments. (1) Unless the adopted plan of government specifies department structure, the governing body shall prescribe by ordinance the office, department, and board structure of the local government and may prescribe the functions of all offices, departments, and boards, except that no function required by [SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23] may be discontinued.

(2) Two or more local governments may provide for joint departments. The joint departments shall be

1 established by interlocal agreements.

2 (3) The governing body shall by ordinance assign any  
3 function mandated by state law to an appropriate office,  
4 department, or board.

5 (4) The functions assigned to the following positions  
6 by [SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18,  
7 SB 19, SB 20, SB 21, SB 22, and SB 23] shall be allocated by  
8 ordinance among the departments and officers and employees  
9 of the local government:

- 10 (a) records administrator;
- 11 (b) elections administrator;
- 12 (c) civil attorney;
- 13 (d) finance administrator; and
- 14 (e) budget administrator.

15 (5) The following county functions mandated by  
16 [section 33 through section 92 of SB 21] shall be allocated  
17 by ordinance among the departments, officers, and employees  
18 of the county:

- 19 (a) chief law enforcement administrator;
- 20 (b) clerk of the district court;
- 21 (c) assessor;
- 22 (d) prosecuting attorney;
- 23 (e) public administrator; and
- 24 (f) superintendent of schools.
- 25 (6) (a) In counties with a commission plan of

1 government based on 7-3-401, the governing body shall  
2 designate:

3 (i) the elected clerk and recorder as the records  
4 administrator and elections administrator;

5 (ii) the elected civil attorney as the civil attorney  
6 and public prosecutor;

7 (iii) the elected sheriff as the chief law enforcement  
8 administrator;

9 (iv) the elected clerk of the district court as the  
10 clerk of the district court;

11 (v) the elected superintendent of schools as the  
12 superintendent of schools;

13 (vi) the elected public administrator as the public  
14 administrator;

15 (vii) the elected assessor as assessor; and

16 (viii) the elected coroner as individual responsible  
17 for inquests.

18 (b) The duties of the finance administrator shall be  
19 allocated between the elected clerk and recorder, elected  
20 treasurer, and elected auditor as provided in [section 57 of  
21 SB 22].

22 (c) Nothing in this section shall prevent the  
23 reassignment of duties as provided in [section 34 of SB 21].

24 Section 66. Direction of departments. (1) All  
25 departments shall be under the direction and supervision of



1 the chief executive specified in the plan of government in  
2 force in the local government.

3 (2) Department heads shall be selected in the manner  
4 provided by the plan of government in force in the local  
5 government.

6 (3) If the plan so provides, or with the consent of  
7 the governing body, the chief executive may act as head of  
8 one or more departments.

9 (4) The governing body may provide for departments  
10 headed by elected officials.

11 (5) The governing body shall prescribe by ordinance  
12 the duties and powers of department heads.

13 (6) The governing body may prescribe by ordinance the  
14 qualifications for department heads.

15 (7) The governing body may require reports from the  
16 chief executive and for purposes of investigation may  
17 require reports from department heads and employees.

18 Section 67. Boards. (1) The governing body may by  
19 ordinance establish advisory or administrative boards. The  
20 ordinance creating a board shall specify the number of board  
21 members; terms of board members; whether board members shall  
22 be entitled to mileage, per diem, expenses, and a salary;  
23 and any special qualifications for membership on the board  
24 in addition to those established by [SB 11, SB 12, SB 13, SB  
25 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22,

1 and SB 23].

2 (2) An advisory board may be created to assist a  
3 department or subordinate service district. An advisory  
4 board may furnish advice, gather information, make  
5 recommendations, and perform other activities as may be  
6 necessary to comply with federal funding requirements. It  
7 does not have the power to administer programs or set  
8 policy.

9 (3) An administrative board may be assigned  
10 responsibility for a department or a subordinate service  
11 district.

12 (4) An administrative board may exercise  
13 administrative powers as granted by ordinance, except that  
14 it may not be authorized to pledge the credit of the local  
15 government, impose a tax, or sue or be sued independently of  
16 the local government. It may administer programs, set  
17 policy, and adopt rules of procedure and administrative  
18 rules.

19 (5) Administrative boards may be made elective.

20 (6) Board members shall be appointed in the manner  
21 provided in the plan of government. The appointing authority  
22 shall post prospective vacancies at least 1 month prior to  
23 filling a vacancy on a board.

24 (7) The chief executive shall maintain a register of  
25 appointments including:

1 (a) the name of the board;

2 (b) the date of appointment and confirmation, if any

3 is required;

4 (c) the length of term;

5 (d) the name and term of the chairman and other

6 officers of each board; and

7 (e) the date, time, and place of regular monthly or

8 other regularly scheduled meetings.

9 (8) Terms of all board members except elected board

10 members shall not exceed 4 years. Unless otherwise provided

11 by ordinance, board members shall serve terms beginning on

12 July 1 and shall serve at the pleasure of the appointing

13 authority.

14 (9) A board shall contain at least five members. All

15 boards shall consist of an odd number of members.

16 (10) The ordinance creating a board may provide for

17 voting or nonvoting ex officio members.

18 (11) Two or more local governments may provide for

19 joint boards. The joint boards shall be established by

20 interlocal agreements.

21 (12) A majority of the board members shall constitute a

22 quorum for the purpose of conducting business and exercising

23 powers and responsibilities. Board action may be taken by a

24 majority vote of those present and voting, unless the

25 ordinance creating the board or rules of procedure of the

1 board requires otherwise.

2 (13) All boards shall provide for the keeping of

3 written minutes which include the final vote on all board

4 actions indicating the vote of each individual member on the

5 question.

6 (14) All boards shall by rule provide for date, time,

7 and place of regular monthly or other regularly scheduled

8 meetings. This information shall be filed with the chief

9 executive.

10 (15) Unless otherwise provided by law, a person must be

11 a resident of the local government to be eligible for

12 appointment to a board. The governing body may prescribe by

13 ordinance additional qualifications for appointment to

14 boards.

15 (16) A person may be removed from a board for cause by

16 the appointing authority or as provided by ordinance.

17 Section 68. Appointment of youth to boards. (1)

18 Notwithstanding any provision of law relating to age, the

19 local government appointing authority may appoint

20 youth—persons 16 to 18 years old—who are local government

21 residents, to boards.

22 (2) Youth may be appointed to local government boards

23 requiring special qualifications for membership if the

24 proposed nominees, except for their age, meet the

25 qualifications set by law or ordinance.

1 (3) Youth appointed to local government boards under  
2 this section are entitled to the rights, privileges, and  
3 responsibilities of other members when acting as board  
4 members, and their appointments are subject to confirmation  
5 by the governing body when required by law, ordinance, or  
6 charter.

7 Section 69. Officers of local government. (1) The  
8 elected officers of a local government are those officers  
9 specified:

10 (a) in the plan of government adopted by the local  
11 government;

12 (b) by ordinance adopted by the governing body; or

13 (c) as required by state law.

14 (2) The term of each elected local government officer  
15 shall be the term specified in the plan of government,  
16 ordinance, or state law.

17 (3) Each officer must continue to discharge the duties  
18 of his office until his successor is qualified even though  
19 his term has expired.

20 (4) Each officer is entitled to the possession of all  
21 books and papers pertaining to his office or in the custody  
22 of a former officer by virtue of his office.

23 (5) When an officer discharges ex officio the duties  
24 of another office than that to which he is elected or  
25 appointed, his official signature and attestation, except as

1 otherwise provided by law, must be in the name of the  
2 officer whose duties he discharges.

3 (6) In the case of the temporary absence or disability  
4 of the chief executive, as determined by the governing body,  
5 his duties shall be performed during his temporary absence  
6 or disability by an acting chief executive appointed by the  
7 governing body.

8 Section 70. Vacancy in office. (1) An office shall be  
9 considered vacant if any one of the following conditions  
10 exists:

11 (a) the incumbent fails to meet the qualifications for  
12 office;

13 (b) the incumbent refuses or neglects to take and  
14 subscribe to an official oath required by law;

15 (c) the incumbent refuses or neglects to secure an  
16 official bond required by law or ordinance;

17 (d) the incumbent resigns;

18 (e) the incumbent is successfully recalled as provided  
19 in state law;

20 (f) the incumbent ceases to meet any residency  
21 requirements for office;

22 (g) the incumbent is removed from office by judicial  
23 proceedings as provided in 45-7-401 and 23-5-126;

24 (h) the election or appointment of the incumbent is  
25 declared void by a judicial proceeding;

1 (i) the incumbent is convicted of a felony, an offense  
2 involving moral turpitude, or a violation of his official  
3 duties;

4 (j) the incumbent ceases to discharge the duties of  
5 his office for a period of 3 months, except when prevented  
6 by sickness or excused by the governing body of the local  
7 government;

8 (k) the incumbent is declared of unsound mind;

9 (l) the governing body determines that the incumbent  
10 has become disabled to the degree that he cannot perform the  
11 duties of his office;

12 (m) the incumbent dies; or

13 (n) no person is elected to the office.

14 (2) Whenever an office is declared or becomes vacant  
15 as a result of judicial proceedings, the body or judge  
16 before whom the proceedings were held must notify the  
17 governing body of the local government in which the officer  
18 served.

19 (3) (a) Unless otherwise provided by law or charter,  
20 all vacancies in offices, except in the governing body,  
21 shall be filled by appointment by the governing body.

22 (b) Vacancies in the governing body are filled as  
23 provided in [section 52 of SB 12].

24 (4) To be eligible for appointment to a vacancy in an  
25 elected office, the person appointed must meet all of the

1 requirements for election to the office.

2 (5) A person appointed to fill a vacancy shall serve  
3 until the next regularly scheduled local election, at which  
4 time the remainder of the term shall be filled by election.

5 Section 71. Suspension. The governing body may suspend  
6 an elected officer if indicted for a felony, an offense  
7 involving moral turpitude, or a violation of his official  
8 duties.

9 Section 72. Resignation. Resignation of officers must  
10 be in writing to the governing body.

11 Section 73. Consolidation, joining, or elimination of  
12 offices. (1) The governing body of a county may by ordinance  
13 combine any two or more elected offices into a single  
14 office.

15 (2) The governing bodies of two or more counties may  
16 provide by ordinance for a joint office. This procedure may  
17 not be used to eliminate an elective office.

18 (3) A municipal governing body may by ordinance  
19 eliminate the separate office of elected treasurer.

20 (4) The governing body or bodies may adopt an  
21 ordinance consolidating, joining, or eliminating elected  
22 offices only after notice and a public hearing on the  
23 proposed ordinance.

24 (5) The ordinance consolidating, joining, or  
25 eliminating elected offices shall not be effective until the

1 expiration of the existing officeholders' terms or until a  
2 vacancy occurs in one of the offices.

3 (6) Offices consolidated, joined, or eliminated shall  
4 remain so until the ordinance is amended or repealed.

5 Section 74. Civil attorney. (1) The governing body  
6 shall provide by ordinance for a civil attorney who may be  
7 the prosecuting attorney. The designation of an elected  
8 prosecuting attorney as civil attorney or the reassignment  
9 of the civil attorney function to a person other than the  
10 elected prosecuting attorney shall be completed at least 90  
11 days before the date of the primary election for the office  
12 and may not be changed during the term of the prosecuting  
13 attorney, except with the consent of that officer.

14 (2) The local government civil attorney shall be the  
15 attorney for all officers, departments, boards, subordinate  
16 service districts, and local improvement districts of the  
17 local government, except that the governing body may require  
18 that interested parties retain another attorney or pay  
19 special fees to the civil attorney to prepare necessary  
20 documents for the creation of subordinate service districts,  
21 local improvement districts, and authorities.

22 (3) The civil attorney shall not be the attorney for  
23 authorities except that, at the discretion of the governing  
24 body, the civil attorney may serve as attorney for  
25 authorities and be compensated by the authorities.

1 (4) The governing body may authorize the employment of  
2 special legal counsel and shall authorize the employment of  
3 special legal counsel in the event that a conflict of  
4 interest would prohibit the civil attorney from serving as  
5 attorney for the local government, officers, departments,  
6 boards, subordinate service districts, or local improvement  
7 districts.

8 (5) The municipal civil attorney shall be the  
9 prosecutor in all actions for the violation of a municipal  
10 ordinance.

11 Section 75. Authorities. (1) Authorities may be  
12 established in the manner provided by law.

13 (2) Authorities include:

14 (a) municipal and regional airport authorities as  
15 provided in [Title 67, chapter 11];

16 (b) conservancy districts as provided in [Title 85,  
17 chapter 9];

18 (c) conservation districts as provided in [Title 76,  
19 chapter 15];

20 (d) county water and sewer districts organized before  
21 [the effective date of this act] as provided in [Title 7,  
22 chapter 13]; however, no additional districts may be  
23 organized;

24 (e) drainage districts as provided in [Title 85,  
25 chapter 8];

1 (f) hospital districts as provided in [Title 7,  
2 chapter 34];

3 (g) housing authorities as provided in [section 50 of  
4 SB 16];

5 (h) irrigation districts as provided in [Title 85,  
6 chapter 7];

7 (i) flood control and water conservation districts as  
8 provided in [Title 76, chapter 5]; and

9 (j) urban transportation districts organized as  
10 provided in [Chapter 355, Laws of 1975], before [the  
11 effective date of this act] and operating under the  
12 provisions of [section 86 through section 93 of SB 20].

13 (3) Authorities shall prepare budgets in the manner  
14 provided by law and rules promulgated by the department of  
15 community affairs.

16 (4) Mill levies established by authorities shall be  
17 certified to the county finance administrator for  
18 collection.

19 (5) All funds of the authorities shall be administered  
20 by a local government, and they are subject to the  
21 accounting and reporting procedures established by the  
22 department. A local government administering funds for an  
23 authority shall be reimbursed by the authority for the costs  
24 of financial administration.

25 (6) Each authority shall file its budget and annual

1 financial report with the department of community affairs.

2 (7) Employees of authorities are entitled to all the  
3 same benefits as other local government employees provided  
4 by [section 33 through section 65 of SB 13].

5 Section 76. Reorganization of departments and boards.

6 (1) Each fiscal year the chief executive shall file a plan  
7 showing the organizational chart of the executive branch  
8 with the governing body and the department of community  
9 affairs. The plan shall indicate the number of employees and  
10 the lines of responsibility.

11 (2) At any time the chief executive may submit  
12 proposed changes in department and board structure to the  
13 governing body.

14 (3) Within 6 months of the submission of proposed  
15 changes in department and board structure, the governing  
16 body shall act on the proposals.

17 Section 77. Transition to new plan of government. (1)  
18 Following a change in the plan of government, if the new  
19 plan does not specify a department and board structure, the  
20 department structure of the preceding plan of government  
21 shall continue to function and remain in existence until a  
22 new department structure is adopted.

23 (2) Within 10 months of the change in the plan of  
24 government, the chief executive shall submit a proposed  
25 department structure to the governing body.

(3) Within 4 months of the submission of a proposed department and board structure, the governing body shall adopt a department and board structure.

Section 78. Reorganization of existing districts. (1)

(a) All districts created by previous law, except special improvement districts, rural improvement districts, and districts created for authorities, are reorganized by this section into subordinate service districts on [the effective date of SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23].

(b) Such districts shall continue to possess any property tax authority they possessed under previous state law and shall be limited by the maximum mill levy limit established by previous state law.

(c) Within 1 year of [the effective date of SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23], the governing body shall adopt ordinances identifying each existing district and its tax authority under previous state law.

(2) Special improvement maintenance districts and rural improvement maintenance districts are reorganized by this section into subordinate service districts.

(3) Existing special improvement districts and rural improvement districts shall have the status of local improvement districts on [the effective date of SB 11, SB

12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23].

(4) Districts created for authorities identified in [section 75 of SB 12] shall continue as authority districts.

(5) The chief executive shall review the status and boundaries of all previous districts and submit a report proposing the continuation, combination, enlargement, reduction, or abolition as a part of the service plan required by [section 54 of SB 14].

(6) After notice as required by [section 81 and section 82 of SB 12], the governing body may by ordinance continue, combine, enlarge, reduce, or abolish subordinate service districts reorganized under this section.

(7) Boards established by previous state law to administer districts may be reorganized under the provisions of [section 79 of SB 12].

Section 79. Transition of existing boards. (1) The state laws providing for the organization and operation of the following boards shall be given the status of local ordinances for 1 year following [the effective date of SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23], and such boards shall continue to function during this period under the respective laws until the boards are reorganized by local ordinance:

(a) air pollution board;

1 (b) airport board;  
 2 (c) buildings and improvement management commission;  
 3 (d) board of trustees of public cemetery;  
 4 (e) county disaster committee;  
 5 (f) economic opportunity and poverty relief  
 6 commissions;  
 7 (g) county fair commission;  
 8 (h) district fair board of directors;  
 9 (i) fire district trustees;  
 10 (j) board of health;  
 11 (k) interlocal cooperation commission;  
 12 (l) library board;  
 13 (m) local improvement district committee of  
 14 supervisors;  
 15 (n) mosquito abatement district board;  
 16 (o) museum board;  
 17 (p) open-space land planning commission;  
 18 (q) board of park commissioners;  
 19 (r) board of recreation;  
 20 (s) parking commission;  
 21 (t) zoning board of adjustment;  
 22 (u) planning board and planning and zoning commission;  
 23 (v) zoning commission;  
 24 (w) department of public safety supervisors;  
 25 (x) refuse disposal district board;

1 (y) rural improvement district board;  
 2 (z) television district trustees;  
 3 (aa) board of urban renewal agencies;  
 4 (bb) sanitary and storm sewer district commissioners;  
 5 (cc) weed control and extermination district board;  
 6 (dd) winter works committee; and  
 7 (ee) housing authority.

8 Section 80. Subordinate service districts. (1)  
 9 Subordinate service districts to provide one or more of the  
 10 services authorized by [SB 11, SB 12, SB 13, SB 14, SB 15,  
 11 SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23]  
 12 may be established, operated, altered, combined, enlarged,  
 13 reduced, or abolished by the governing body by ordinance.

14 (2) A subordinate service district may include all or  
 15 any part of the jurisdictional area of the local government.  
 16 Two or more local governments may create a joint subordinate  
 17 service district by interlocal agreement.

18 (3) A subordinate service district may:

19 (a) provide a higher level of service of any service  
 20 available on a jurisdiction-wide basis; or

21 (b) provide a service that is not available on a  
 22 jurisdiction-wide basis.

23 (4) A subordinate service district shall be  
 24 established according to criteria of need and economic  
 25 operating efficiency.



(5) A subordinate service district may not be established if the service or services proposed to be provided can be provided either by an existing subordinate service district or by annexation to an incorporated municipality. The subordinate service district may be created if the municipality refuses or is unable to annex the area.

(6) The governing body may levy subordinate service district taxes, impose charges, or establish service charges in service districts to finance the services and facilities provided, or it may finance the services out of any other funds available other than general taxes.

Section 81. Establishment of subordinate service district. (1) A subordinate service district may be established by either of the following methods:

(a) The governing body of a local government may establish a subordinate service district by ordinance adopted after notice and public hearing.

(b) If a petition signed by not less than 15% of the electors of a proposed subordinate service district requesting the local government to provide a service is presented to the governing body, the governing body shall set a date for a public hearing within 30 days and give notice of the hearing. Following the public hearing, the governing body may either adopt an ordinance creating the

subordinate service district or refuse to act further on the matter.

(2) (a) After adopting the ordinance, the governing body shall, in addition to all other requirements, publish notice of the adoption of the ordinance creating the subordinate service district. The notice shall include a statement setting out the electors' right to protest. If within 30 days of the notice 50% or more of the electors residing in the proposed subordinate service district file a protest, then the ordinance creating the subordinate service district shall be void.

(b) If hearings on protests indicate that a geographic area desires exclusion from the proposed subordinate service district, the governing body may amend the ordinance to exclude the property in that area.

(3) The governing body may conduct preliminary studies to determine the feasibility, necessity, and advisability of creating a subordinate service district.

(4) The governing body may by resolution require the petitioners to pay the costs of public notice and preliminary studies to determine the feasibility of the subordinate service district.

(5) The ordinance or petition to establish a subordinate service district shall include:

(a) the name of the proposed district;

1 (b) the services to be provided by the proposed  
 2 district;  
 3 (c) the convenience or necessity of the proposed  
 4 district;  
 5 (d) a map containing the boundaries of the proposed  
 6 district;  
 7 (e) the estimated cost of services to be provided and  
 8 methods of financing the proposed services;  
 9 (f) the method for administering the proposed  
 10 district; and  
 11 (g) the maximum mill levy limit for subordinate  
 12 service district taxes.  
 13 (6) (a) An ordinance authorizing, modifying, or  
 14 terminating a subordinate service district may be proposed  
 15 by initiative of electors within the district or submitted  
 16 to referendum of the electors within the proposed or  
 17 existing district.  
 18 (b) The procedures provided in [section 62 of SB 12]  
 19 shall apply, except only electors of the proposed  
 20 subordinate service district may vote or sign petitions. An  
 21 initiative or referendum petition for a subordinate service  
 22 district requires signatures of 15% of the electors residing  
 23 within the district.  
 24 Section 82. Modification of a district. (1) After  
 25 receiving petitions or after adoption of an ordinance with

1 notice and public hearing as required in [section 81 of SB  
 2 12], the governing body may:  
 3 (a) increase, decrease, or terminate the type of  
 4 services that the subordinate service district is authorized  
 5 to provide, unless 50% of the electors residing in the  
 6 district protest;  
 7 (b) enlarge the district to include adjacent land if  
 8 50% or more of the electors residing in the proposed  
 9 addition do not protest;  
 10 (c) combine the subordinate service district with  
 11 another subordinate service district, unless 50% of the  
 12 electors in either district protest;  
 13 (d) abolish the subordinate service district, unless  
 14 50% of the electors in the district protest;  
 15 (e) reduce the area of the district by removing  
 16 property from the district, unless 50% of the electors  
 17 residing in the territory to be removed from the district  
 18 protest; and  
 19 (f) change the method for administering the  
 20 subordinate service district, unless 50% of the electors in  
 21 the district protest.  
 22 (2) These changes in subordinate service districts may  
 23 be submitted to the electors of the existing or proposed  
 24 district, whichever is larger, by initiative or referendum.  
 25 Section 83. Abolition of a district. (1) As provided

1 in [section 82 of SB 12], a governing body may abolish or  
2 combine subordinate service districts.

3 (2) The ordinance abolishing or combining the  
4 subordinate service district shall provide for the transfer  
5 or other disposition of property and other rights, claims,  
6 and assets of the subordinate service district.

7 (3) All obligations of the abolished subordinate  
8 service district shall be paid from resources of the  
9 subordinate service district.

10 (4) All costs of abolishing or combining the  
11 subordinate service district shall be paid out of resources  
12 of the subordinate service district.

13 (5) The abolition or combination of the subordinate  
14 service district shall not affect the validity of any bond,  
15 debt, contract, obligation, or cause of action accrued or  
16 established under the subordinate service district.

17 (6) An ordinance for combining or abolishing a  
18 subordinate service district shall provide for the equitable  
19 disposition of the assets of the district, for adequate  
20 protection of legal rights of employees of the district, and  
21 for adequate protection of legal rights of creditors.

22 (7) If a district is abolished, the governing body may  
23 assume all rights, duties, personnel, property, assets, and  
24 liabilities of the former district.

25 Section 84. District boundaries. (1) If possible and

1 practicable, subordinate service district boundaries shall  
2 conform to boundaries of other political subdivisions such  
3 as school district or conform to township and range lines.

4 (2) A legal description of the boundaries of all  
5 subordinate service districts shall be filed with the county  
6 records administrator.

7 Section 85. Phased implementation. While implementing  
8 a subordinate service district, a governing body may  
9 implement services by geographical area of the district.  
10 Service charges and taxes may be levied only against that  
11 part of the district that is receiving the service.

12 Section 86. Annexation by a municipality. (1) If a  
13 portion of a county subordinate service district or an  
14 entire subordinate service district is annexed to a  
15 municipality or is incorporated, the municipal governing  
16 body may in the resolution annexing the area or after  
17 annexation or incorporation of the area adopt an ordinance  
18 after notice and public hearing to:

19 (a) authorize the county to continue to administer the  
20 subordinate service district within the municipal limits;

21 (b) transfer administration of the subordinate service  
22 district within the municipal limits to the municipality;

23 (c) abolish the subordinate service district within  
24 the municipal limits and assume responsibility for providing  
25 the services.

1       (2) The municipal ordinance is subject to all of the  
2 provisions of [section 82 of SB 12] except the protest  
3 provision.

4       (3) After a municipality assumes administration of a  
5 former county subordinate service district, the district has  
6 the status of a subordinate service district created by the  
7 municipality and may be operated, altered, combined,  
8 enlarged, reduced, or abolished by the municipal governing  
9 body.

10       Section 87. Joint subordinate service districts. Two  
11 or more local governments may create joint subordinate  
12 service districts. Each governing body shall follow the  
13 procedures prescribed in [section 81 of SB 12] and shall  
14 adopt an interlocal agreement to prescribe administration of  
15 the district.

16       Section 88. Administration of subordinate service  
17 districts. (1) A subordinate service district may be  
18 administered directly as a part of a department with or  
19 without an advisory board or by an administrative board.

20       (2) A subordinate service district administered by an  
21 administrative board shall be attached to a department for  
22 purposes of budget submission.

23       (3) The budget for each subordinate service district  
24 shall be submitted by the department to which it is attached  
25 as a separate item in the department budget.

1       (4) On request, the county assessor shall provide the  
2 governing body with the assessed or taxable value of all  
3 property in a proposed or established subordinate service  
4 district and a list of property owners upon the last  
5 completed assessment roll.

6       (5) Service charges for subordinate service districts  
7 may be entered on tax notices to be collected with other  
8 taxes. If a property owner fails to pay the service charges,  
9 they shall become a lien on the property.

10       (6) Moneys raised for a subordinate service district  
11 may be used only for subordinate service district purposes.

12       Section 89. Joint service and local improvement  
13 district. (1) A joint subordinate service and local  
14 improvement district may be created to provide services and  
15 to finance the acquisition and construction of facilities  
16 through special assessments.

17       (2) A joint district may be created by giving notice  
18 to all persons entitled to notice by [section 81(2) of SB  
19 12] and to all persons entitled to notice by [section 90(7)  
20 of SB 12] and by complying with all requirements for the  
21 creation of a subordinate service district and a local  
22 improvement district.

23       (3) If within 30 days of notice of intent to create a  
24 joint district, either 50% of the electors or the owners of  
25 property bearing one-half of the estimated first-year cost

1 protest, the governing body may not proceed with the joint  
2 district except under provisions of [section 91 of SB 12].

3 Section 90. Local improvement districts. (1) The  
4 governing body may establish a local improvement district  
5 for the purpose of financing capital improvements through  
6 special assessments on property within the district. The  
7 costs of the improvements include any or all of the kinds of  
8 expenses and materials referred to in [section 81(4) of SB  
9 22].

10 (2) Procedures to establish a local improvement  
11 district may be initiated by either:

12 (a) a petition to the governing body by the owners of  
13 one-half in assessed value of the property to be benefited  
14 or by one-half of the number of owners of property in the  
15 area to be benefited or by the owners of one-half of the  
16 area of the property in the area to be affected; or

17 (b) resolution of the governing body, if it determines  
18 that the improvement is necessary and should be made.

19 (3) The petition or resolution shall recommend a  
20 method of payment for the costs.

21 (4) When a petition proposing a local improvement  
22 district is presented to the governing body, the governing  
23 body shall determine by resolution if:

24 (a) the proposed improvement is necessary and should  
25 be made; and

1 (b) the proposal has sufficient and proper  
2 petitioners.

3 (5) The findings of the governing body on the  
4 necessity of the proposal and the sufficiency of the  
5 petition are conclusive.

6 (6) When directed by the governing body, the chief  
7 executive shall develop a plan for the proposed improvement.  
8 It may require property owners petitioning for the  
9 improvement to pay, agree to pay, or file a surety bond  
10 securing the payment of part or all of the cost of  
11 developing the plan if it is not implemented. If the  
12 improvement is completed, the cost of the plan is  
13 assessable. The plan shall include:

14 (a) a general description of the improvement;

15 (b) a map of the district showing the location of the  
16 improvement and the location and designation of the lots and  
17 parcels of land in the district;

18 (c) an estimate of the cost, including not only  
19 construction cost but all other items of cost enumerated in  
20 [section 81(4) of SB 22] that are then foreseen as necessary  
21 to complete and pay for the improvement;

22 (d) an estimate of the amount of the cost to be levied  
23 upon the property within the district and the method or  
24 methods by which it is proposed to be apportioned in levying  
25 the special assessments, pursuant to [section 93 of SB 12];

1 (e) a local improvement district file for each and all  
2 of the lots and parcels of land within the district, each  
3 showing:

4 (i) the description of the property as shown on the  
5 tax list, corresponding to its designation on the map, and  
6 its street address, if any; and

7 (ii) the name and address of the owner as shown on the  
8 last property tax roll; and

9 (f) if the governing body desires to establish at the  
10 initial hearing the special assessments necessary to pay the  
11 cost of the improvement, including the principal of and  
12 interest on bonds required to be issued for that purpose, it  
13 shall cause to be entered in the local improvement district  
14 file for each lot and parcel of land:

15 (i) the estimated principal amount of the special  
16 assessment on the property;

17 (ii) the number of annual installments in which the  
18 special assessment must be paid, with interest at least  
19 sufficient to pay interest on bonds issued for the  
20 improvement;

21 (iii) the method of computing principal and interest on  
22 the special assessment, pursuant to [section 93 of SB 12];  
23 and

24 (iv) if the special assessment is to be deferred  
25 pursuant to [section 93 of SB 12], the time and method of

1 deferment.

2 (7) (a) The governing body shall by resolution give  
3 preliminary approval to the creation of the local  
4 improvement district and to the proposed plan for the  
5 improvement and shall give notice of a public hearing and  
6 mail notice of the public hearing to every recorded owner of  
7 property within the local improvement district. The notice  
8 shall include all of the information contained in the plan  
9 as required in [section 90 of SB 12].

10 (b) In the event that the governing body desires to  
11 establish at this hearing the special assessments to be  
12 levied for the improvement, mail notice of the hearing shall  
13 be given to the owner of each lot and parcel of land within  
14 the district at his address as shown in the local  
15 improvement district file and to the street address of the  
16 property, if different, or shall be personally served by  
17 leaving a copy with the owner or with a person of suitable  
18 age and discretion residing at each such address, not less  
19 than 15 days before the hearing. This notice shall include,  
20 in addition to the information contained in the published  
21 notice, the information as to the special assessment on the  
22 property as required in [section 90(6)(f) of SB 12].

23 (8) If the name or address of the owner of any lot or  
24 parcel of land cannot be ascertained from the property tax  
25 roll or from other official records of the local government

1 and no person resides on the property, service of notice of  
2 the special assessment shall be considered complete upon  
3 publication.

4 (9) A municipal governing body may not create a local  
5 improvement district including property outside its  
6 corporate limits, and a county governing body may not create  
7 a local improvement district including property within a  
8 municipality; but they may by resolution jointly create a  
9 local improvement district including property within both  
10 such areas, and either one may delegate to the other the  
11 power to contract for and construct a local improvement  
12 therein and to assess the cost subject to final approval by  
13 the body having jurisdiction over the property. A local  
14 improvement district may include a major part or all of the  
15 property under the taxing jurisdiction of a local  
16 government, if the improvement is determined to benefit all  
17 such property and the governing body determines that the  
18 cost thereof should be paid from special assessments rather  
19 than from revenues or from ad valorem taxes on all property  
20 within its taxing jurisdiction.

21 Section 91. Protest and revisions. (1) The governing  
22 body may by resolution create the local improvement  
23 district, approve the plan, and proceed with the improvement  
24 if protests are not filed with the clerk of the governing  
25 body at or before the time of the hearing, signed by the

1 following number of owners of property within the district:

2 (a) if special assessments are included in the  
3 improvement plan and notice, by the owners of property upon  
4 which more than one-half of the cost is proposed to be  
5 assessed;

6 (b) otherwise, by the owners of more than one-half of  
7 the area of the district, excluding trafficways.

8 (2) Property of the federal government, the state, the  
9 local government, any other local government, or school  
10 district shall be included in determining the sufficiency of  
11 objections unless the improvement plan provides that special  
12 assessments shall not be levied on such property.

13 (3) (a) If the improvement is the construction of a  
14 sanitary sewer, the governing body may by an affirmative  
15 vote of a majority of its members overrule the protests  
16 unless they have been filed by the owners of property  
17 representing 75% of the special assessments or the area, as  
18 the case may be, and may be overruled regardless of number  
19 if the governing body by unanimous vote determines that  
20 failure to construct the sewer will pose a threat to the  
21 public health.

22 (b) If the improvement consists of the paving, with  
23 necessary incidentals, of not more than one cross block to  
24 connect with streets or avenues already paved or the  
25 extension of existing paved streets for not more than one

1 block, the governing body may proceed regardless of  
 2 protests. Otherwise, if sufficient protests are filed as  
 3 provided in subsection (1) of this section, the governing  
 4 body shall not create the local improvement district or  
 5 proceed with the plan; but nothing herein shall prevent the  
 6 construction and financing of the improvement by any other  
 7 method than the levy of special assessments.

8 (4) The governing body may adjourn the hearing from  
 9 time to time. Property owners shall have the right to  
 10 withdraw or to file protest within the time period  
 11 established by the governing body, and which time period may  
 12 be no later than 2 weeks prior to the date final action is  
 13 taken by the governing body. Final action shall be taken  
 14 within a period not exceeding 3 months after the date of the  
 15 hearing as set forth in the original published notice.

16 (5) The governing body may revise an improvement plan  
 17 to meet protests and may approve and adopt the revised plan  
 18 after notice and hearing in the same manner as required for  
 19 the original plan.

20 (6) When special assessments are included in the  
 21 original improvement plan, protests to individual special  
 22 assessments may be presented by any property owner, with or  
 23 without protest to other provisions of the improvement  
 24 plan. Action taken with reference to such objections shall  
 25 not constitute a revision of the improvement plan. Such

1 special assessments shall be subject to all of the  
 2 provisions of [section 93 through section 99 of SB 12].

3 Section 92. Payment of costs. The governing body shall  
 4 provide for making payment for improvement in any local  
 5 improvement district by the following method: As authorized  
 6 in [SB 22], the governing body shall sell bonds or issue  
 7 warrants in an amount sufficient to pay that part of the  
 8 total cost and expense of making the improvement which is to  
 9 be assessed against the property within the district. The  
 10 proceeds of the sale shall be used to make payment to the  
 11 contractor or contractors. The payment may be made either  
 12 from time to time on estimates made by the engineer in  
 13 charge of the improvements for the governing body or upon  
 14 the completion of the improvements and acceptance thereof by  
 15 the governing body.

16 Section 93. Assessments. (1) At any time upon or after  
 17 the creation of a local improvement district and approval of  
 18 the improvement plan for it, the governing body may levy  
 19 special assessments against each parcel of land within the  
 20 district, according to the method specified in the  
 21 improvement plan, in an aggregate amount not exceeding the  
 22 cost of the improvement as estimated at the time of the  
 23 levy. Parcels owned by the federal government, the state,  
 24 the local government, another local government, or a school  
 25 district may be included in or omitted from the levy of



1 special assessments as provided in the improvement plan.  
 2 Public streets and alleys shall be omitted. Public land, the  
 3 improvement of which is the subject of the assessment, such  
 4 as land improved for park or parking purposes, shall be  
 5 omitted from the assessment of the cost of that improvement.  
 6 The amount of special assessments that would be levied  
 7 against such property if not omitted, according to the  
 8 method or methods provided in the improvement plan, may be  
 9 paid by the local government.

10 (2) The special assessment to be levied against each  
 11 parcel may be determined by any of the following or any  
 12 combination of the following methods, any of which may be  
 13 used in allocating either the entire cost or a specified  
 14 amount or fraction thereof or the cost of a specified part  
 15 of the improvement:

16 (a) (i) Frontage basis. Each parcel of land within the  
 17 district shall have a special assessment levied for that  
 18 part of the whole cost which its frontage bears to the  
 19 frontage of all parcels in the entire district.

20 (ii) The frontage of a corner lot in a platted block  
 21 shall be considered its shorter dimension.

22 (iii) The special assessments for improvements on side  
 23 streets may be limited to the frontage of half blocks upon  
 24 which they abut.

25 (b) Area basis. Each assessable parcel may be assessed

1 that proportion of the total cost which its area bears to  
 2 the total area of all assessable parcels.

3 (c) Value basis. Each assessable parcel may have a  
 4 special assessment levied against it in that proportion of  
 5 the cost which its current assessed valuation bears to the  
 6 total assessed valuation of all assessed parcels.

7 (d) Parcel basis. Each assessable parcel may have a  
 8 special assessment levied against it in an equal share of  
 9 the cost.

10 (e) Relative benefit basis. Each assessable parcel may  
 11 have a special assessment levied against it in that  
 12 proportion of the cost which the benefit estimated to be  
 13 derived by it from the improvement bears to the total  
 14 benefit estimated to be derived therefrom by all assessable  
 15 parcels. The governing body may apply one or a combination  
 16 of formulas to determine approximate relative benefits,  
 17 giving consideration to any special factors which would make  
 18 a formula special assessment substantially disproportionate  
 19 to the benefit to any individual parcel. Such formulas may  
 20 be based on one or a combination of characteristics of  
 21 assessable lots such as the following:

22 (i) proximity to the improvement;

23 (ii) vacant or improved;

24 (iii) zoning;

25 (iv) size and use of building and floor space.

1 estimated to continue substantially for the useful life of  
2 the improvement;

3 (v) number or size of utility connections, estimated  
4 to continue substantially for the useful life of a utility  
5 improvement.

6 (3) The governing body shall, in its discretion,  
7 select the method of special assessment which most nearly  
8 matches the special assessment on each parcel to the benefit  
9 received by the parcel.

10 (4) If the total amount of the special assessment  
11 exceeds by more than 10% the estimated cost as stated in the  
12 notice of hearing on the improvement plan pursuant to  
13 [section 93(6) of SB 12] or a revision thereof pursuant to  
14 [section 91 of SB 12], the owners of property within the  
15 district may protest the improvement in the manner as  
16 provided in [section 91 of SB 12]. If the cost assessed does  
17 not exceed the estimate by more than 10% or if a contract  
18 for the improvement has been finally awarded, protests shall  
19 be limited to errors in the method of determining the  
20 relative amounts to be levied as provided in this section.  
21 At or after the hearing the governing body may correct any  
22 errors and for that purpose may raise or lower the amount of  
23 any special assessment, provided that an additional hearing  
24 shall be held after similar published and mailed notice if  
25 any special assessment is raised more than 10%.

1 (5) The governing body may provide for the payment of  
2 special assessments in not more than 20 consecutive annual  
3 installments. Each installment shall include the interest  
4 for 1 year on the unpaid balance of principal at a rate  
5 fixed by the governing body, not exceeding the contract  
6 usury rate provided by law. The installments shall be  
7 computed as follows:

8 (a) each installment shall include an equal principal  
9 amount to which shall be added interest for 1 year at the  
10 rate fixed on the aggregate principal amount of that and all  
11 subsequent installments; or

12 (b) each installment shall be equal and shall be fixed  
13 at the amount required to be paid annually in arrears to  
14 amortize the amount of the assessment over a term of years  
15 equal to the number of installments with interest at the  
16 rate fixed.

17 (6) The governing body may provide for receiving  
18 payment of the installments of the special assessments  
19 before they become due and using the proceeds thereof in  
20 paying for the project, redeeming the bonds, or investing  
21 the proceeds.

22 (7) The governing body may determine the value of  
23 improvements previously installed or work done and credit  
24 the value of the improvements or work against the special  
25 assessments levied against the affected property.

1 (8) The amount of the special assessments shall be  
2 entered in the special assessment file pursuant to [section  
3 90(b) of SB 12] containing property descriptions and the  
4 amount of the assessment on each parcel.

5 (9) The governing body shall fix a time and place to  
6 hear objections to the assessment. Notice of the hearing and  
7 assessment shall be published.

8 (10) After the public hearing, the governing body shall  
9 correct errors and any inequalities in the assessment file  
10 as adopted and certify it as corrected.

11 Section 94. Reassessment. (1) The governing body may  
12 correct any deficiency or mistake in a special assessment or  
13 at any time increase a special assessment to include damages  
14 awarded by a court against the district.

15 (2) Notice and hearing must conform to the initial  
16 special assessment procedures.

17 (3) Payments on the initial special assessment are  
18 credited to the property upon reassessment.

19 (4) The reassessment becomes a charge upon the  
20 property notwithstanding failure to comply with any  
21 provision of the levying procedure.

22 Section 95. Appeal of the special assessment roll. (1)  
23 The decision of the governing body upon a protest may be  
24 appealed to the district court within 30 days of the date of  
25 confirmation of the special assessment.

1 (7) No other action may be filed, except for the  
2 filing of an appeal questioning the validity of the special  
3 assessment on any parcel.

4 (3) The court shall determine whether the property  
5 assessed has been properly included in the district and such  
6 property has been properly assessed for the improvement. If  
7 the court finds fault with either the inclusion of the  
8 property in the improvement district, or the special  
9 assessment to be levied on the property, it shall remit the  
10 assessment to the governing body for either exclusion from  
11 the improvement district or reassessment as provided in  
12 [section 94 of SB 12]. Nothing herein may be construed as to  
13 invalidate the special assessments on the remaining parcels.

14 (4) If no protest is filed or an appeal taken within  
15 the time provided in this section, the special assessment  
16 procedure shall be considered regular and valid in all  
17 respects.

18 Section 96. Payment. (1) The municipal and county  
19 finance officers shall annually certify by the first Friday  
20 of September to the county finance administrator all special  
21 assessments due. The special assessment installments shall  
22 be collected in the same manner as property taxes.

23 (2) All special assessment installments shall be  
24 payable on or before 5 p.m. on November 30 of each year, and  
25 in the event the special assessment installments are not

1 paid on or before that date, the special assessment  
2 installments shall be subject to the same interest and  
3 penalties for nonpayment as are provided by the laws of the  
4 state of Montana for other delinquent taxes.

5 (3) All statutes providing for the levy and collection  
6 of state and county taxes, including the collection of  
7 delinquent taxes and sale of property for nonpayment of  
8 taxes, are applicable to the special assessments provided  
9 for under this section.

10 (4) When the payment of any one installment of special  
11 assessment becomes delinquent, the governing body may by  
12 resolution declare all subsequent installments of the  
13 special assessment delinquent. The delinquent special  
14 assessments shall be certified to the county finance  
15 administrator, who shall collect the delinquent special  
16 assessments in the same manner and at the same time as the  
17 taxes are collected by him, and if the special assessments  
18 are not paid, the whole property shall be sold, the same as  
19 other property is sold for taxes.

20 Section 97. Delinquent special assessments may be  
21 reinstated. Upon payment of the delinquent special  
22 assessment installments, the governing body may by  
23 resolution repeal the resolution declaring all subsequent  
24 installments delinquent. The repeal and reinstatement may be  
25 had and made at any time before or after sale of the

1 property for delinquent taxes and before the tax deed has  
2 been executed. The certified copy of the resolution of the  
3 governing body with reference to the payment, withdrawal,  
4 and reinstatement filed with the finance administrator shall  
5 be authority for the finance administrator to cancel and  
6 withdraw the delinquent special assessments or any  
7 installments thereof.

8 Section 98. Mistakes or misnomers not to invalidate  
9 special assessment. When under any of the provisions of [SB  
10 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19,  
11 SB 20, SB 21, SB 22, and SB 23] special assessments are  
12 levied against any lot or parcel of land or a part of a  
13 parcel as the property of a particular person, no misnomer  
14 of the owner or supposed owner or other mistake relating to  
15 the ownership thereof shall affect the special assessment or  
16 render it void.

17 Section 99. Annexation by a municipality. If a portion  
18 of a county local improvement district or an entire local  
19 improvement district is annexed to a municipality or is  
20 incorporated, the municipal governing body may, after the  
21 consent of the county governing body, in the resolution  
22 annexing the area or after annexation or incorporation of  
23 the area adopt an ordinance after notice and a public  
24 hearing to:

25 (1) authorize the county to continue to administer the

1 local improvement district within the municipal limits; or  
 2 (2) transfer administration of the local improvement  
 3 district within the municipal limits to the municipality.

4 Section 100. General definitions. In [SB 11, SB 12, SB  
 5 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21,  
 6 SB 22, and SB 23], unless otherwise provided or the context  
 7 requires a technical or other interpretation, the following  
 8 definitions apply:

9 (1) "Ballot issue" means a question as defined in  
 10 [section 100(4) of SB 12] that is submitted to the electors.

11 (2) "General election" means an election held  
 12 throughout the state at times specified by law for the  
 13 purpose of electing individuals to an office; it includes  
 14 municipal and county general elections.

15 (3) "Primary" or "primary election" means an election  
 16 held for the purpose of nominating candidates to public  
 17 offices; it includes municipal and county primary elections.

18 (4) "Questions submitted to the electors" includes any  
 19 initiative, referendum, recall, bond, franchise, annexation,  
 20 incorporation, disincorporation, consolidation,  
 21 confederation, merger, boundary alteration, amendment and  
 22 adoption of a local government form, or any other issue  
 23 required or permitted by law to be submitted to the electors  
 24 at any special or regularly scheduled election. This term  
 25 does not include the nomination or election of candidates

1 for office.

2 (5) "Regularly scheduled election" means a general,  
 3 primary, school, or other election held at times specified  
 4 by law.

5 (6) "Special election" means an election held on a  
 6 date other than the date of a school, primary, general, or  
 7 other election regularly scheduled by law; or an election on  
 8 one or more particular issues held in conjunction with but  
 9 not required by law to coincide with a regularly scheduled  
 10 election.

11 Section 101. Officers of local governments. The  
 12 elected officers of a local government and their terms of  
 13 office are those specified in [section 69 of SB 12].

14 Section 102. Apportionment. (1) If an adopted plan of  
 15 local government requires election of members of the  
 16 governing body by districts, the governing body shall by  
 17 ordinance after each official state, local, or federal  
 18 census and may at any time make adjustments in the  
 19 boundaries of the districts as are necessary to make the  
 20 districts as nearly equal in population as possible. The  
 21 ordinance may be adopted only after notice has been given  
 22 and a public hearing held. Immediately after adoption, a  
 23 copy of the ordinance shall be filed with the elections  
 24 administrator. Boundaries of all county commissioner  
 25 districts shall coincide with legislative district

1 boundaries as much as practical. One or more county  
2 commissioner districts may be within a legislative district,  
3 and one or more legislative districts may be within a county  
4 commissioner district.

5 (2) (a) If an adopted plan of local government  
6 provides for the election of all members of the governing  
7 body at large and also provides that some or all members be  
8 nominated by district, the governing body shall by ordinance  
9 after each official state, local, or federal census and may  
10 at any time make any or any combination of the changes or  
11 adjustments provided by this section. Changes or adjustments  
12 must insure that the plan of nomination does not preclude  
13 the possibility of the majority of the electors nominating  
14 candidates for the majority of the seats on the governing  
15 body from persons residing in the district or districts  
16 where the majority of the electors reside.

17 (b) Permitted changes or adjustments allowed under  
18 this section are:

19 (i) changing the boundaries of commissioner districts,  
20 except that in the case of county district changes, one  
21 urban area shall not be included in more than one district;

22 (ii) changing the plan of nomination of one or more  
23 members of the governing body from district to at large or  
24 from at large to district, provided that the majority of the  
25 governing body be nominated by district;

1 (iii) changing the number of districts to the extent  
2 necessary to accomplish subsection (ii).

3 (c) The ordinance may be adopted only after notice has  
4 been given and a public hearing held. A copy of the  
5 ordinance shall be filed with the elections administrator.

6 Section 103. Elections required. (1) A county  
7 election, at which officers are elected to those offices for  
8 which the terms of one or more incumbents expire, shall be  
9 held in the year next preceding the year in which the  
10 incumbents' terms expire.

11 (2) A municipal election, at which officers are  
12 elected to those offices for which the terms of one or more  
13 incumbents expire, shall be held in the year in which the  
14 incumbents' terms expire.

15 (3) (a) A municipality shall hold its general election  
16 on the first Tuesday in April in any year in which an  
17 election is required.

18 (b) A municipality shall hold its primary election on  
19 the first Tuesday in February preceding its general  
20 election.

21 (4) (a) A county shall hold its general election on  
22 the first Tuesday after the first Monday in November in any  
23 year in which an election is required.

24 (b) A county shall hold its primary election on the  
25 same day as the regular statewide primary election is held.

1 (5) Municipal officers shall begin their duties the  
2 first Monday in May following their election. County  
3 officers shall begin their duties on the first Monday in  
4 January following their election.

5 (c) A county, after notice has been given and a public  
6 hearing held, may adopt an ordinance rescheduling county  
7 elections to coincide with municipal elections. If county  
8 elections are scheduled to coincide with municipal  
9 elections, elected county officers shall begin their duties  
10 the first Monday in May following their election.

11 Section 104. Qualification of local government  
12 electors. (1) Any person who has registered as an elector as  
13 prescribed in Title 13 is an elector of the local government  
14 of which he is a resident.

15 (2) As provided in Title 13, the elections  
16 administrator of the county shall supply a municipality with  
17 precinct registers prior to any municipal election unless  
18 informed as provided in Title 13 that precinct registers are  
19 not needed.

20 (3) When it is necessary to determine the number of  
21 electors of a local government for any purpose, including  
22 petitions, the number of electors voting at the last  
23 preceding general election held by that local government  
24 shall be considered the number of electors.

25 Section 105. Qualifications of local government

1 officers. (1) Except as provided in this section, a person  
2 is eligible to local government elective office if he is a  
3 resident and an elector of the local government and if he  
4 meets the district residence requirements for the office, if  
5 any, imposed by the plan of government.

6 (2) (a) In addition to the requirements established by  
7 subsection (1), to be eligible for the offices of civil  
8 attorney or prosecuting attorney a person must be admitted  
9 to the practice of law in Montana.

10 (b) A nonresident of the county may be appointed as  
11 prosecuting attorney if there is no licensed attorney  
12 residing in the county. Whenever a licensed attorney  
13 establishes residence in a county where a nonresident  
14 attorney serves as prosecuting attorney and becomes eligible  
15 to hold the office of prosecuting attorney, the governing  
16 body may appoint such attorney as prosecuting attorney and  
17 terminate the employment of the nonresident attorney.

18 (3) In addition to the requirements established by  
19 subsection (1) to be eligible for the elective office of  
20 county superintendent of schools, a person must:

21 (a) hold a valid teacher certificate issued by the  
22 superintendent of public instruction; and

23 (b) have at least 3 years of successful teaching  
24 experience.

25 Section 106. Precincts — districts — polling places.

(1) The county governing body, after consultation with the governing bodies of all municipalities within the county and in consideration of the recommendations of all applicable elections administrators, shall establish precincts for both municipal and county elections as provided in Title 13, chapter 3.

(2) (a) At least 60 days before the election being held, the county governing body shall designate one or more polling places for each precinct for all state and county elections.

(b) In cases of emergency, polling places may be changed by the governing body after the date prescribed in this section. Notice must be, if possible, published once, and notice shall be posted at the old and new polling places.

(3) (a) At least 30 days before any municipal election, the municipal governing body shall designate polling places for the election. A precinct polling place may be located outside the precinct boundaries. In a municipal election two or more precincts may have a single polling place.

(b) In cases of emergency, polling places may be changed by the governing body after the date prescribed in this section. Notice must be, if possible, published once, and notice shall be posted at the old and new polling

places.

(4) When members of the governing body are to be nominated or elected by districts, there shall be at least one polling place for each district, except that in municipalities with a population of less than 1,500 as determined by the most recent official census, the governing body may provide for a single polling place by ordinance.

(5) Polling places may be located outside of the boundaries of a precinct.

Section 107. Partisan nomination. Nomination for a local government office by an individual in primary partisan elections shall be as provided in Title 13, chapter 10.

Section 108. Election procedures for partisan primary and partisan general elections. (1) Except as otherwise provided by this section, local government partisan primary and general elections shall be conducted, canvassed, and the results returned as provided in Title 13. In municipal elections the governing body of a municipality shall perform the functions assigned to the county governing body in Title 13. If a member of the municipal governing body cannot attend the meeting required by 13-10-318 and 13-15-1401, the governing body shall fill the number of vacancies by appointing other elected or appointed municipal officials.

(2) The governing body of each local government shall designate an officer or employee to perform the function of



1 registrar as provided in Title 13. The person designated  
2 shall be the elections administrator. County elections  
3 administrators shall be responsible for registration of  
4 electors in the county, including all municipalities.

5 (3) If no more than the number of candidates to be  
6 elected to each of the offices to be filled file as  
7 candidates for all of the party tickets for the primary  
8 election, a primary election shall not be held in that year  
9 and all candidates who have filed shall be deemed nominated  
10 for their respective offices and shall have their names  
11 placed on the general election ballot.

12 (4) Certification of election shall be delivered by  
13 each elections administrator to those persons elected.  
14 Elections administrators shall file the results of local  
15 government elections with the secretary of state, and the  
16 elections administrator of each municipality shall also file  
17 the results of municipal elections with their county  
18 elections administrator.

19 (5) In municipalities with a population of 3,500 or  
20 less, a primary election is not required and candidates  
21 shall have their names entered on the general election  
22 ballot by filing a declaration or certificate of nomination  
23 not later than 5 p.m. 40 days prior to the date of the  
24 election.

25 Section 109. Nonpartisan nomination. (1) Each

1 candidate for a nonpartisan primary election shall send a  
2 declaration of nomination as prescribed in 13-10-201, to  
3 the elections administrator of the local government in which  
4 he seeks office not later than 5 p.m. 40 days prior to the  
5 date of the primary election.

6 (2) A candidate successfully completing the  
7 requirements of this section shall have his name entered on  
8 the nonpartisan primary election ballot as provided in  
9 [section 110 of SB 12].

10 Section 110. Nonpartisan primary ballot and election.

11 (1) Except as otherwise provided in this section, a  
12 nonpartisan primary election shall be conducted, canvassed,  
13 and its results returned in the same manner as a partisan  
14 primary election.

15 (2) Ballots in a nonpartisan primary election shall  
16 contain only the name of the candidate and the office to  
17 which the candidate seeks election.

18 (3) Electors voting at a nonpartisan primary election  
19 may vote for the number of candidates to be elected to each  
20 office.

21 (4) If the number of candidates to be entered on the  
22 nonpartisan primary ballot for each office does not exceed  
23 twice the number of candidates to be elected for the  
24 respective offices, a nonpartisan primary election shall not  
25 be held in that year and all candidates entered on the

1 nonpartisan primary ballot shall be deemed nominated for  
 2 their respective offices and shall have their names placed  
 3 on the nonpartisan general election ballot. If the number  
 4 of candidates to be entered on the nonpartisan primary  
 5 ballot for any particular office does exceed twice the  
 6 number of persons to be elected to that office, a primary  
 7 election shall be held for all offices to be voted on at the  
 8 general election.

9 (5) Candidates for nomination, equal to twice the  
 10 number to be elected at the nonpartisan general election for  
 11 that office, who receive the highest number of votes cast at  
 12 the nonpartisan primary or nominees determined under  
 13 subsection (4) of this section are nominees for office and  
 14 shall have their names entered on the nonpartisan general  
 15 election ballot.

16 (6) In municipalities with a population of 3,500 or  
 17 less, a primary election is not required and candidates  
 18 shall have their names entered on the general election  
 19 ballot by filing a declaration of nomination not later than  
 20 5 p.m. 40 days before the date of the election.

21 Section 111. Nonpartisan general elections. A  
 22 nonpartisan general election shall be conducted, canvassed,  
 23 and its results returned in the same manner as a partisan  
 24 general election except that party designation may not  
 25 appear on the ballot.

1 Section 112. Election procedures for questions  
 2 submitted to the electors. (1) An election on a question  
 3 submitted to the electors may be held at a special election  
 4 called for that purpose or may be held with any school,  
 5 primary, general, or other election.

6 (2) An election on a question submitted to the  
 7 electors shall be conducted, canvassed, and returned in the  
 8 manner provided in Title 13 and [section 33 through section  
 9 117 of SB 12] for general elections; however, if the  
 10 question is submitted to the electors at any school,  
 11 primary, general, or other election, separate ballots may be  
 12 used and separate tally books shall be kept.

13 (3) Unless otherwise provided, the affirmative vote of  
 14 a majority of those voting on the question shall be required  
 15 for adoption.

16 (4) If the question is submitted at a general or  
 17 primary election, the polls shall be kept open during the  
 18 same hours as are fixed for the general or primary election  
 19 and the judges and clerks for the general or primary  
 20 election shall act as the judges and clerks for the  
 21 election.

22 (5) If the question is submitted at a special election  
 23 called for that purpose, the governing body shall fix the  
 24 hours through which the polls are to be kept open. The polls  
 25 shall be open for at least 8 hours. The governing body may

1 appoint a smaller number of election judges than is required  
2 for a general election, but in no case shall there be less  
3 than three judges in each precinct. Judges shall act as  
4 their own clerks.

5 (6) If the question is submitted at a special election  
6 called for that purpose, two or more precincts may have a  
7 single polling place. A precinct polling place may be  
8 located outside the precinct boundaries.

9 (7) If the question is submitted at a special election  
10 called for that purpose, the governing body shall meet as  
11 soon as practicable but no later than 10 days after the date  
12 of holding the special election and canvass the returns.

13 Section 113. Bond election procedures. (1) As provided  
14 in [section 88 of SB 22], a local government must submit to  
15 the electors at a regular or special election all proposed  
16 general obligation bond authorizations.

17 (2) General obligation bond elections shall be  
18 conducted, canvassed, and returned in the manner provided in  
19 [section 112 of SB 12].

20 (3) Any elector of the local government may vote in  
21 the general obligation bond election.

22 (4) Before a general obligation bond issue election,  
23 the governing body shall give notice, which shall include:

- 24 (a) the date of election;  
25 (b) the hours of election;

1 (c) the amount and purpose of the proposed bond issue;  
2 (d) the current total general obligation bonded  
3 indebtedness, including authorized but unsold bonds of the  
4 local government;

5 (e) the estimated cost of debt service for the next  
6 year if the bond issue is not approved and the estimated  
7 cost if the bond issue is approved; and

8 (f) other information as the governing body may  
9 determine necessary.

10 (5) Upon the adoption of the resolution calling for a  
11 special election and the filing of the resolution with the  
12 elections administrator, the elections administrator must  
13 cause a notice to be published stating that registration for  
14 the bond election will close at 5 p.m. of the 30th day prior  
15 to the date for holding the election, and at that time the  
16 registration books shall be closed for the election. This  
17 notice shall supersede the notice required by 13-2-301.

18 (6) The bond authorization ordinance ballot shall  
19 contain the text of the ordinance and a question stating:

- 20 ☐ FOR (the purpose or purposes and the amount or  
21 amounts of the bond)  
22 ☐ AGAINST (the purpose or purposes and the amount or  
23 amounts of the bond).

24 Section 114. Elections for administrative boards and  
25 community councils. A governing body may provide procedures

for the nomination and election of the members of administrative boards and community councils by ordinance.

Section 115. Elections on questions submitted to electors within a district. (1) Elections on questions submitted to electors within a proposed or existing subordinate service district through the process of initiative or referendum shall be held at the next county or municipal general or primary election unless the governing body of the county calls a special election or the petition requesting the election contains the signatures of at least 25% of the electors residing in the proposed or existing district and it requests a special election.

(2) If the proposed or existing subordinate service district is to be located in more than one county, after each county's petition has been certified by its elections administrator, petitions shall be submitted to the elections administrator of the county in which over one-half of the proposed or existing district is located, who shall be responsible for coordinating the election.

(3) Unless otherwise provided in this section, the election, if needed, shall be conducted, canvassed, and returned by the county as provided in [section 112 of SB 12] for questions submitted to the electors and in accordance with [section 62 of SB 12] for initiative and referendum.

Section 116. Severability. If a part of this act is

invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 117. Effective date. (1) Section 1 through section 49 and section 64 through section 117 of SB 12 are effective on July 1, 1981.

(2) Section 50 through section 63 of SB 12 are effective on July 1, 1980, and from July 1, 1980, through June 30, 1981, a local government governing body may enact any ordinance or resolution or take any other action authorized by [SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23] for the purpose of implementing the provisions of [SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23], but the ordinance or action may not become effective until July 1, 1981.

-End-