

SENATE BILL 13

IN THE SENATE

January 3, 1979

Introduced and referred to
Committee on Local Government.

April 20, 1979

Died in Committee

1 SENATE BILL NO. 13

2 INTRODUCED BY JERGESON, WATT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAWS RELATING TO THE ADMINISTRATIVE PROVISIONS FOR LOCAL
6 GOVERNMENTS; AND 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3 becomes effective] shall continue in effect until repealed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 65 of SB 11] or which was incorporated under the
5 provisions of any prior law as a city or town.

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

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

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

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

19 (48) "Per diem" means actual cost of or a fixed rate
20 for meals, 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 rate;

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

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

7 (2) The notice shall contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 submit it to the governing body without delay.

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

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

8 (a) a standard petition form;

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (c) the address of the person protesting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (c) the address of the person;

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

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

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

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

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

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

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

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

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

1 it considers most suitable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) Any claim, warrant, voucher, bond, or general
2 receipt may be destroyed after a period of 25 years.

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

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

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

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

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

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

1 and deadline for filing reports.

2 Section 33. Employment. (1) All employees shall be
3 hired and discharged as provided in the plan of government
4 or charter. Unless otherwise provided by ordinance, elected
5 officials may employ subordinates in the number and at the
6 salary authorized by the governing body.

7 (2) Appointment, removal, and promotion of local
8 government officers and employees shall be made without
9 regard to race, color, sex, culture, social origin or
10 condition, or political or religious ideas and otherwise
11 comply with requirements of 49-3-201.

12 Section 34. Nepotism prohibited. (1) Nepotism is the
13 bestowal of political patronage by reason of relationships
14 rather than merit.

15 (2) No local government officer, employee, board,
16 authority, or governing body may appoint to any position any
17 person related or connected to him or any member by
18 consanguinity within the fourth degree or affinity within
19 the second degree. This section shall not apply to the chief
20 law enforcement administrator in the appointment of cooks or
21 matrons.

22 (3) Any person who knowingly or purposefully violates
23 this section is guilty of a misdemeanor.

24 Section 35. Political activity. (1) No person may
25 attempt to coerce, command, or require a local government

1 employee to influence or give money, service, or other
2 things of value to aid or promote any political committee or
3 to aid or promote the nomination or election of any person
4 to public office.

5 (2) No local government employee may solicit any
6 money, influence, service, or other things of value or
7 otherwise aid or promote any political committee or the
8 nomination or election of any person to public office while
9 on the job or at his place of employment. Nothing in this
10 section is intended to restrict the right of a local
11 government employee to express his personal political views.

12 (3) Any person who violates subsection (1) of this
13 section shall be fined not to exceed \$1,000 or be imprisoned
14 for a term not to exceed 6 months, or both, for each
15 separate offense. Any person who violates subsection (2) of
16 this section shall be guilty of a misdemeanor. Any violation
17 of this section shall also be punishable by removal from
18 office or discharge from employment.

19 Section 36. Collective bargaining. (1) In accordance
20 with the provisions of Title 39, chapter 31, all employees
21 of a local government shall have the right of
22 self-organization, to form, join, or assist any labor
23 organization, to bargain collectively, and to exercise all
24 other rights granted therein.

25 (2) Any general law or charter provision providing for

1 local employment terms and conditions may be modified
2 pursuant to any contract entered into under provisions of
3 Title 39, chapter 31, in regard to public-labor management
4 relations.

5 Section 37. Hours of labor. (1) Except as provided in
6 this section, a period of 8 hours shall constitute a day's
7 work in all works or undertakings carried on or aided by a
8 local government.

9 (2) The governing body may by ordinance, with the
10 approval of the employees or their duly constituted
11 representative, establish a 40-hour work week consisting of
12 4 consecutive 10-hour days. No employee shall be required to
13 work in excess of 8 hours in any one work day if he prefers
14 not to.

15 (3) In a local government with paid firefighters, a
16 work week for paid firefighters shall be a period of not
17 more than 40 hours during a 5-day week.

18 (4) In case of emergency when life or property is in
19 imminent danger or when the peace and safety of the local
20 government require, the working day may be extended.

21 Section 38. Office hours. The governing body shall by
22 ordinance establish office hours for all departments.

23 Section 39. Civil service board. (1) A local
24 government may establish a civil service board by ordinance
25 as provided in [section 33 through section 65 of SB 13].

1 (2) Local governments may establish joint civil
2 service boards.

3 (3) The civil service board shall be organized and
4 operated under [section 40 through section 42 of SB 13].

5 (4) The ordinance establishing a civil service board
6 shall designate which classes of employees will be subject
7 to the jurisdiction of the board. The classes of employees
8 so designated shall be considered as classified service.

9 Section 40. Composition of civil service board -- term
10 of office -- qualifications. (1) The civil service board
11 shall consist of five members appointed as provided in the
12 form of government or charter for the appointment of board
13 members. If the civil service board is a joint board, each
14 member shall be appointed by each of the cooperating local
15 governments before assuming his position on the civil
16 service board.

17 (2) At the time the civil service board is
18 established, one member shall be appointed for a term of 2
19 years, one member shall be appointed for a term of 3 years,
20 one member shall be appointed for a term of 4 years, one
21 member shall be appointed for a term of 5 years, and one
22 member shall be appointed for a term of 6 years. Thereafter,
23 each member shall be appointed for a term of 6 years.

24 (3) The governing body may remove any member of the
25 civil service board for cause upon stating in writing the

1 reasons for removal and giving the member an opportunity to
2 be heard. Removal shall require a two-thirds vote of the
3 whole governing body except when the governing body has only
4 three members in which case the affirmative vote of all
5 three members of the governing body is required for removal.
6 If the civil service board is a joint board, no member may
7 be removed until after a vote to remove him by each of the
8 cooperating local governments.

9 (4) A member of the civil service board shall be an
10 elector of the local government. In the case of a joint
11 board, a member shall be an elector of at least one of the
12 participating local governments.

13 (5) Immediately after appointment, the board shall
14 organize by electing one of its members chairman. The board
15 may appoint employees as may be authorized by appropriation.

16 Section 41. Duties of civil service board. (1) The
17 civil service board shall examine all applicants for any
18 classified service position except law enforcement. The
19 examination shall determine whether or not the applicant
20 meets the standards established by the local government and
21 is otherwise qualified to be an employee of the local
22 government.

23 (2) The civil service board shall provide each
24 applicant who passes the examination with a certificate of
25 eligibility for employment with the local government. No

1 person may be employed in a classified service position with
2 the local government who has not been certified as qualified
3 by the civil service board.

4 (3) The civil service board shall hear appeals of all
5 employees who are discharged, suspended, or demoted as
6 provided in [section 42 of SB 13].

7 Section 42. Demotion, suspension, or discharge. (1) An
8 employee in the classified service who is demoted,
9 suspended, or discharged shall be given, in writing, the
10 specific reasons for the demotion, suspension, or discharge
11 and an opportunity to be heard in his own defense.

12 (2) Any employee in the classified service aggrieved
13 by his demotion, suspension, or discharge may, within 30
14 days after being heard in his own defense or after the
15 refusal of his right to be heard, appeal to the civil
16 service board. The appeal shall be in the form prescribed by
17 the civil service board.

18 (3) Any employee may be summarily suspended, with or
19 without pay, for a period not to exceed 10 regular working
20 days in any one month. Rather than accept the summary
21 suspension, the suspended employee may appeal the suspension
22 to the civil service board, which may order a hearing before
23 it. In this event, the summary suspension shall be changed
24 to a suspension pending a hearing before the civil service
25 board.

1 (4) Upon receipt of an appeal, the civil service board
2 shall set a time and place for a hearing on the issue. The
3 civil service board shall give to the parties reasonable
4 notice of the time and place set for the hearing.

5 (i) At the hearing the civil service board shall:

6 (a) have the power to subpoena persons and records;

7 (b) keep a record including:

8 (i) all pleadings, motions, and intermediate rulings;

9 (ii) all evidence received or considered, including a
10 stenographic or mechanical record of oral proceedings when
11 demanded by a party;

12 (iii) a statement of matters officially noticed;

13 (iv) questions and offers of proof, objections, and
14 rulings thereon; and

15 (v) proposed findings and exceptions;

16 (c) accept evidence in substantial compliance with
17 statutory and common-law rules of evidence.

18 (6) Following the hearing, the civil service board
19 shall decide whether the charge was proven or not proven.
20 The civil service board shall give a written decision on
21 issues before it setting out in detail the facts relied on.
22 One copy of its decision shall be filed with the records
23 administrator, and one copy shall be given to the accused
24 employee.

25 (7) The civil service board shall have the power, by

1 decision of a majority of the board, to discipline, demote,
2 suspend, remove, or discharge any employee who shall have
3 been found guilty of the charge filed against him.

4 Section 43. Probationary period. The governing body
5 may by ordinance provide for a probationary period of not
6 more than 1 year following appointment or promotion during
7 which a new employee may be discharged or a promoted
8 employee demoted to his old rank without a civil service
9 board hearing.

10 Section 44. Salaries. (1) After giving notice and
11 conducting a public hearing, the governing body shall set
12 the minimum salary of each elected officer by ordinance at
13 least 90 days before the date of the primary election for
14 the office. The salary of an elected officer may not be
15 reduced during the term of the officer.

16 (2) All salaries, except those set by law, may be set
17 by resolution, or the governing body may by ordinance
18 authorize the chief executive, department heads, or
19 administrative boards to set salaries.

20 (3) A local government shall provide its share of any
21 salary set by law or its share of any salary increase
22 authorized by law.

23 (4) The county surveyor or coroner, public
24 administrator, and constable may collect and receive for
25 their own use, respectively, for official services, fees

1 established by law or ordinance. No other officer or
2 employee may receive or retain fees for his own use, and he
3 must deposit all fees as provided by law or ordinance and
4 [section 61 of SB 22].

5 (5) When the title of the incumbent of any office is
6 contested by judicial proceedings, no warrant may thereafter
7 be drawn or paid for any part of his salary until the
8 proceedings have been finally determined. As soon as such
9 proceedings are instituted, the clerk of the court of which
10 they are pending must certify the facts to the person whose
11 duty it is to draw the warrants to pay the salary.

12 (6) It is the duty of all officers to complete the
13 business of their respective offices to the time of the
14 expiration of their respective terms; and in case any
15 officer, at the close of his term, leaves to his successor
16 official labor to be performed for which he has received
17 compensation or which it was his duty to perform, he is
18 liable to pay to his successor the full value of such
19 services, which may be recovered in any court of competent
20 jurisdiction upon action brought against him on his official
21 bond.

22 (7) Each confirmed firefighter or law enforcement
23 officer of a municipality having a population of 7,500 or
24 more is entitled to a minimum monthly wage of \$750 plus 1%
25 of that amount for each year of service.

1 Section 45. Per diem, mileage, actual transportation
 2 expenses. The governing body by ordinance shall provide for
 3 payment of per diem and either mileage or actual
 4 transportation expenses for local government officers and
 5 employees on official and authorized business of the local
 6 government. Per diem may include actual expenses for meals,
 7 lodging, and incidental expenses or a fixed rate established
 8 by ordinance for meals, lodging, and incidental expenses.

9 Section 46. Annual vacation, sick, and other leaves of
 10 absence. A local government employee is entitled to leaves
 11 of absence as provided in Title 2, chapter 18.

12 Section 47. Holidays. (1) Local government holidays
 13 are those days defined as legal holidays in 1-1-216 and
 14 other days which are declared holidays by the local
 15 government's chief executive.

16 (2) A local government employee shall have a day off
 17 on legal holidays. Except for Sundays, he shall be paid for
 18 holidays the same as if he had worked.

19 Section 48. Social security. A local government which
 20 provides for coverage by the federal Social Security Act for
 21 its employees shall proceed as provided in Title 19, chapter
 22 1.

23 Section 49. Workers' compensation. (1) A local
 24 government shall provide workers' compensation coverage for
 25 its employees.

1 (2) A local government may elect to provide coverage
 2 under any of the plans authorized by Title 39, chapter 71,
 3 and shall be subject to the same requirements and rules as
 4 any other employer.

5 (3) Any sums required to be paid to provide the
 6 coverage shall be considered ordinary and necessary expenses
 7 of the local government. The amounts required shall be
 8 appropriated and paid by the governing body.

9 (4) Whenever any local government neglects or refuses
 10 to file with the industrial accident board a quarterly
 11 payroll report of its employees, the board is hereby
 12 authorized and empowered to levy a penalty upon the local
 13 government in an amount of \$25 for each penalty, to be
 14 collected in the manner provided in Title 39 for the
 15 collection of penalties.

16 Section 50. Unemployment compensation. (1) A local
 17 government is subject to all the obligations of a public
 18 employer established by Title 39, chapter 51.

19 (2) Any payments required for compliance with Title
 20 39, chapter 51, shall be considered ordinary and necessary
 21 expenses of the local government and shall be appropriated
 22 and paid by the governing body of the local government.

23 Section 51. Public pensions. (1) Any local government
 24 may contract with the public employees' retirement system as
 25 provided in Title 19, chapter 3, section 2, by another

1 pension system. All existing contracts between the public
 2 employees' retirement system and a local government shall
 3 continue in force until modified or rescinded as provided in
 4 Title 19, chapter 3, section 2.

5 (2) All municipal law enforcement officers shall be
 6 entitled to participate in the police retirement systems
 7 established by Title 19, chapters 9 and 10.

8 (3) All county law enforcement officers shall be
 9 entitled to participate in the sheriffs' retirement system
 10 established by Title 19, chapter 7.

11 (4) Municipal firefighters shall be entitled to
 12 participate in the firefighters' retirement system
 13 established by Title 19, chapter 11.

14 (5) Volunteer firefighters shall be entitled to
 15 participate in the volunteer firefighters' retirement system
 16 established by Title 19, chapter 12.

17 Section 52. Group insurance. (1) A local government
 18 shall, upon approval by two-thirds vote of the officers and
 19 employees of the local government, department, board, or
 20 authority, enter into group hospitalization, medical, health
 21 (including long-term disability), accident, dental, life, or
 22 other insurance contracts or plans for the benefit of the
 23 officers, employees, and their dependents.

24 (2) The local government shall pay not less than \$10
 25 per month or \$120 per year for the insurance for each

1 officer and employee if a group plan has been established.

2 (3) If a group plan has been established, the
 3 governing body may provide a method to exempt employees and
 4 pay the same contribution to other insurance plans of
 5 individual employees.

6 (4) Municipalities, if they provide insurance for
 7 other municipal employees under subsection (1), shall:

8 (a) provide the same insurance to their firefighters
 9 and law enforcement officers; and

10 (b) pay the full premium of each firefighter's and law
 11 enforcement officer's insurance, including the premium for
 12 coverage of dependents.

13 Section 53. Deferred compensation program. In
 14 accordance with the provisions and procedures of Title 19,
 15 chapter 2, any local government may establish, after
 16 reaching agreement with any employee or the employee's
 17 representative if one has been designated or certified, a
 18 program for the employee to defer any portion of his
 19 compensation, up to the maximum allowed by the Internal
 20 Revenue Code in a plan qualified for exemption under
 21 applicable sections of the Internal Revenue Code.

22 Section 54. Membership in organizations. (1) The
 23 governing body of a local government may join, pay
 24 membership fees and service charges, and cooperate with
 25 organizations and associations of local governments of this

1 state and other states for the advancement of good
2 government and the protection of local government interests.

3 (2) Elected officials of a local government shall be
4 allowed per diem and either mileage or actual transportation
5 expenses for attendance at meetings of the appropriate
6 association of local government officials; reasonable
7 expenses or charges against each local government, as a
8 member of the association, shall be paid by the local
9 government.

10 (3) Employees of a local government may be allowed per
11 diem and either mileage or actual transportation expenses
12 for attendance at meetings of professional organizations or
13 associations, and a local government may pay membership fees
14 and service charges to the organizations. Membership fees
15 and service charges exclude union dues.

16 Section 55. Purchase of surety bonds by local
17 government governing body. The governing body of a local
18 government shall purchase all surety bonds for local
19 government officers and employees. A bond may cover an
20 individual officer or employee, or a blanket bond may cover
21 all officers and employees or any group or combination of
22 officers and employees.

23 Section 56. Bonding of elected or appointed local
24 government officers and employees -- amount of bond --
25 soliciting of offers. Elected or appointed local government

1 officers and employees shall be bonded in sums as ordinance
2 may require. The amount for which a local government officer
3 or employee shall be bonded shall be based on the amount of
4 money or property handled and the opportunity for
5 defalcation. The local government governing body shall
6 actively solicit offers on a competitive basis from
7 available qualified insurance or surety companies before
8 purchasing the bonds.

9 Section 57. Premiums -- charge against appropriation.
10 The governing body by appropriation shall provide for the
11 payment of premiums for surety bonds of the local government
12 officers and employees.

13 Section 58. Approval of bond by local government legal
14 office -- filing. The form of bonds for local government
15 officers and employees must be approved by the local
16 government civil attorney and filed and recorded in the
17 office of the local government records administrator.

18 Section 59. Companies permitted to execute bonds.
19 Bonds purchased by the local government governing body shall
20 be executed by responsible insurance or surety companies
21 authorized and admitted to execute surety bonds in this
22 state.

23 Section 60. Conditions -- signatures and sureties. (1)
24 The condition of every official bond must be that the
25 covered officers and employees shall perform all official

1 duties required of them by law or ordinance, and also such
 2 additional duties as may be imposed on them by any law or
 3 ordinance subsequently enacted and that they will account
 4 for and pay over and deliver to the person or officer
 5 entitled to receive the same all moneys or other property
 6 that may come into their hands as such officers or
 7 employees. The sureties upon any official bond are also in
 8 all cases liable for the neglect, default, or misconduct in
 9 office of any deputy, clerk, or employee appointed or
 10 employed by a covered officer or employee.

11 (2) All official bonds must be signed and executed by
 12 the chief executive of the local government and one or more
 13 surety companies organized under the laws of this state or
 14 licensed to do business herein.

15 (3) Surety bonds shall comply with Title 2, chapter 9.

16 Section 61. Determination of adequacy of bond by
 17 department of community affairs. The amount for which any
 18 local government officer or employee or group of officers or
 19 employees shall be bonded shall be subject to the
 20 supervision of the department of community affairs. If the
 21 department of community affairs determines that the amount
 22 of the bond is inadequate, it may require the local
 23 government governing body to purchase an adequate bond.

24 Section 62. Public trust. (1) The holding of public
 25 office or employment is a public trust created by the

1 confidence which the electorate reposes in the integrity of
 2 officers and employees. An officer or employee shall carry
 3 out his duties for the benefit of the people of the local
 4 government. The officer or employee may not use his office,
 5 the influence created by his official position, or the
 6 inside information gained by virtue of that position to
 7 advance any of his own, his relatives', or his associates'
 8 personal economic interests, other than advancing strictly
 9 incidental benefits as may accrue to any of them from the
 10 enactment or administration of laws affecting the public
 11 generally.

12 (2) An officer or employee whose conduct departs from
 13 his fiduciary duty under this section is liable to the
 14 people of the local government as a trustee of property is
 15 liable to the beneficiary under 72-20-203(2) and shall
 16 suffer other liabilities as a private fiduciary would suffer
 17 for abuse of his trust. The legal officer of the local
 18 government where the trust is violated may bring any
 19 appropriate judicial proceedings on behalf of the local
 20 government. Any moneys collected in the actions shall be
 21 paid to the general fund of the local government.

22 Section 63. Rules of conduct. (1) An officer or
 23 employee may not:

24 (a) be interested in any contract made by him in his
 25 official capacity as officer or employee, or by any board of

1 which he is a member as provided in 2-2-201;

2 (b) be a purchaser at any sale or a vendor of any
3 purchase made by him in his official capacity as officer or
4 employee as provided in 2-2-202; or

5 (c) deal in warrants, scrip, or other local government
6 evidences of indebtedness as provided in 2-2-204.

7 (2) An officer or employee commits an offense if:

8 (a) he purposely or knowingly offers, confers, or
9 agrees to confer upon another, or solicits, accepts, or
10 agrees to accept any pecuniary benefit or benefit as
11 provided in 45-7-101;

12 (b) he knowingly solicits, accepts, or agrees to
13 accept any pecuniary benefit as compensation as provided in
14 45-7-103;

15 (c) he solicits, accepts, or agrees to accept any
16 pecuniary benefit from any person subject to his
17 jurisdiction, from any person known to be interested in or
18 likely to become interested in any contract, purchase,
19 payment, claim, or other pecuniary transaction over which he
20 has any discretionary function as provided in 45-7-104; or

21 (d) he knowingly makes a false statement, oath, or
22 equivalent affirmation or swears or affirms the truth of a
23 false statement previously made, when the subject is
24 material as provided in 45-7-201, 45-7-202, and 45-7-208.

25 Section 64. Ethical principles for all public officers

1 and employees. (1) The principles in this section are
2 intended as guides to conduct and do not constitute
3 violations as such of the public trust of office or
4 employment in local government.

5 (2) An officer or employee should not acquire an
6 interest in any business or undertaking which he has reason
7 to believe may be directly affected to its economic benefit
8 by official action to be taken by the local government.

9 (3) An officer or employee should not, within the 12
10 months following the termination of his office or
11 employment, assist or represent any person for a fee or
12 other consideration in connection with certain matters with
13 which he was directly involved during his term or
14 employment. These matters include legislation or rules which
15 he actively helped to formulate, and applications, claims,
16 or contested cases in the consideration of which he was an
17 active participant.

18 (4) An officer or employee should not perform an
19 official act directly affecting a business or other
20 undertaking to its economic detriment when he has a
21 substantial financial interest in a competing firm or
22 undertaking.

23 Section 65. Suspension and removal from office. (1)
24 The prosecuting attorney in the county in which the local
25 government is located may bring an action in district court

1 to remove from office any officer or employee who has
2 violated the rules of conduct set out in [section 63 of SB
3 13], in addition to penalties prescribed by law. A special
4 prosecutor appointed by the county governing body may file
5 an action in district court to remove from office a public
6 prosecutor who has violated the rules of conduct set out in
7 [section 63 of SB 13], in addition to penalties prescribed
8 by law.

9 (2) An officer or employee who has been charged as
10 provided in subsection (1) may be suspended by the governing
11 body from his office or position of employment without pay
12 pending final judgment. Upon final judgment of conviction he
13 shall permanently forfeit his office or position of
14 employment. Upon acquittal he shall receive all backpay.

15 (3) If the action is brought by a citizen, the court
16 may award reasonable attorney's fees.

17 Section 66. Severability. If a part of this act is
18 invalid, all valid parts that are severable from the invalid
19 part remain in effect. If a part of this act is invalid in
20 one or more of its applications, the part remains in effect
21 in all valid applications that are severable from the
22 invalid applications.

23 Section 67. Effective date. This act is effective on
24 July 1, 1981.

-End-