

SENATE BILL 14

IN THE SENATE

January 3, 1979

Introduced and referred to
Committee on Local Government.

January 17, 1979

Committee recommend bill, do
not pass.

On motion, Senate reconsider
its action taken on adverse
committee report. Laid on the
table. Motion adopted.

1 SENATE BILL NO. 14
 2 INTRODUCTION BY WATT, JERGESON
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAWS RELATING TO THE POWERS AND SERVICES OF GENERAL POWER
 6 LOCAL 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 3 becomes effective] shall continue in effect until repealed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 66 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 31 of SB 12], with specific boundaries in which
21 certain services are carried out and in which taxes may be
22 levied to finance the service.

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

25 Section 10. Administrative rules. The governing body

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

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

12 (2) The newspaper shall be:

- 13 (a) of general paid circulation with a second-class
- 14 mailing permit;
- 15 (b) published at least once a week;
- 16 (c) published in the county;
- 17 (d) published continuously in the county for the 12
- 18 months preceding the awarding of the contract.

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

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

25 Section 12. Notice. Unless otherwise specifically

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

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

7 (2) The published notice shall contain:

- 8 (a) the date, time, and place at which the hearing or
- 9 other action will occur;
- 10 (b) a brief statement of the action to be taken;
- 11 (c) the address and telephone number of the person who
- 12 can be contacted for further information on the action to be
- 13 taken; and
- 14 (d) any other information required by the specific
- 15 section requiring notice.

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

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

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

1 rate;

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

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

7 (2) The notice shall contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 submit it to the governing body without delay.

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

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

- 8 (a) a standard petition form;
- 9 (b) sample petition forms for initiatives,
10 referendums, and recall elections; and
- 11 (c) sample petition forms for creation of subordinate
12 service districts and local improvement districts.

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

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

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

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

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

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

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

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

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

- 18 (a) a description of the action protested sufficient
19 to identify the action against which the protest is lodged;
- 20 (b) a statement of the protester's qualifications to
21 protest the action against which the protest is lodged,
22 including ownership of property affected by the action; and
- 23 (c) the address of the person protesting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (c) the address of the person;

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

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

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

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

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

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

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

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

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

1 it considers most suitable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) Any claim, 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. Local government a corporate body. A local
3 government with general government powers is a body politic
4 and corporate and as such shall have corporate and
5 governmental powers, a corporate name, and perpetual
6 succession.

7 Section 34. Distribution of powers. (1) A local
8 government has legislative, executive, and judicial powers.

9 (2) All legislative powers are vested in the governing
10 body of the local government.

11 (3) Executive powers are vested as provided in the
12 form of government adopted by the local government.

13 (4) The judicial powers of a county are vested in the
14 justice court, and the judicial powers of a municipality are
15 vested in the municipal court.

16 Section 35. Legislative powers. A local government
17 with general powers has the legislative power subject to the
18 provisions of state law to adopt, amend, and repeal
19 ordinances and resolutions required to:

20 (1) preserve peace and order and secure freedom from
21 dangerous or noxious activities;

22 (2) secure and promote the general public health and
23 welfare;

24 (3) provide any service or perform any function
25 authorized or required by state law;

1 (4) exercise any power granted by state law;
 2 (5) levy any tax authorized by state law;
 3 (6) appropriate public funds;
 4 (7) impose a special assessment reasonably related to
 5 the cost of any special service or special benefit provided
 6 by the local government or impose a fee for the provision of
 7 a service;
 8 (8) grant franchises; and
 9 (9) provide for its own organization and the
 10 management of its affairs.

11 Section 36. Powers. A local government with general
 12 powers has the power subject to provisions of state law to:
 13 (1) enact ordinances and resolutions;
 14 (2) sue and be sued;
 15 (3) buy, sell, mortgage, rent, lease, hold, manage,
 16 and dispose of any interest in real and personal property;
 17 (4) contract with persons, corporations, or any other
 18 governmental entity;
 19 (5) pay debts and expenses;
 20 (6) borrow money;
 21 (7) solicit and accept bequests, donations, or grants
 22 of money, property, services, or other advantages, and
 23 comply with any condition that is not contrary to the public
 24 interest;
 25 (8) execute documents necessary to receive money,

1 property, services, or other advantages from the state
 2 government, the federal government, or any other source;
 3 (9) make grants and loans of money, property, and
 4 services for public purposes;
 5 (10) require the attendance of witnesses and production
 6 of documents relevant to matters being considered by the
 7 local government governing body;
 8 (11) cite for contempt and disorder in the governing
 9 body's chambers;
 10 (12) hire, direct, and discharge employees and appoint
 11 and remove members of boards;
 12 (13) ratify any action of the local government or its
 13 officers or employees which could have been approved in
 14 advance;
 15 (14) have a corporate seal and flag;
 16 (15) acquire by eminent domain as provided in Title 70,
 17 chapter 30, any interest in property to provide any service
 18 or facility authorized by law. An ordinance authorizing the
 19 taking of private property by a municipality is conclusive
 20 as to the necessity of the taking.
 21 (16) initiate a civil action to restrain or enjoin
 22 violation of an ordinance;
 23 (17) enter private property, obtaining warrants when
 24 necessary, for the purpose of enforcing ordinances that
 25 affect the general welfare and public safety;

1 (18) conduct a census;
 2 (19) conduct inventories of public property and
 3 preparatory studies;
 4 (20) condemn and demolish hazardous structures;
 5 (21) purchase insurance and establish self-insurance
 6 plans;
 7 (22) impound animals and other private property
 8 creating a nuisance or obstructing a trafficway;
 9 (23) establish quarantines; and
 10 (24) exercise powers not inconsistent with law
 11 necessary for effective administration of authorized
 12 services and functions.

13 Section 37. Limit on liability. (1) As provided in
 14 Article II, section 18, of the 1972 Montana constitution, a
 15 local government shall have no immunity from suit for injury
 16 to a person or property, except as may be specifically
 17 provided by law by a two-thirds vote of each house of the
 18 legislature.

19 (2) A local government has the right but not the duty
 20 to purchase insurance to protect against claims for injury
 21 to a person or property.

22 (3) Local governments are subject to the provisions of
 23 Title 2, chapter 9, in regard to insurance and tort claims.

24 Section 38. Purpose. It is a policy of the state of
 25 Montana to grant maximum authority to general powers local

1 governments to provide services desired by their citizens,
 2 and it is further a policy of the state to permit general
 3 powers local governments to determine locally the
 4 appropriate methods for administering and financing local
 5 services.

6 Section 39. Methods for providing services and
 7 facilities. Authorized local government services and
 8 facilities may be provided:

9 (1) directly by a local government through an office
 10 or a department with or without an administrative or
 11 advisory board;

12 (2) by interlocal agreement;

13 (3) by purchasing the services from a private or
 14 public vendor;

15 (4) through the establishment of subordinate service
 16 districts and local improvement districts;

17 (5) through the creation of public nonprofit
 18 corporations;

19 (6) through the establishment of authorities;

20 (7) through a franchise; or

21 (8) through any combination of these methods.

22 Section 40. Authorized local government services and
 23 facilities. A local government may exercise the powers
 24 necessary to provide the following services and facilities:
 25 (1) agricultural services, subject to the provisions

1 of [section 33 through section 67 of SB 15]; including:

2 (a) extension services including agriculture, home

3 economics, and community development;

4 (b) fairs and livestock shows and sales services;

5 (c) livestock inspection and protection services;

6 (d) agricultural market and marketing services;

7 (e) public scales and loading and unloading services;

8 (f) rodent, predator, and vertebrate control services;

9 (g) noxious plant control services; and

10 (h) insect control services;

11 (2) community and rural development services, subject

12 to the provisions of [section 33 through section 124 of SB

13 16], including:

14 (a) economic development services;

15 (b) housing services;

16 (c) open spaces as provided in Title 76, chapter 6;

17 (d) planning, zoning, and subdivision control

18 services;

19 (e) urban and rural development, rehabilitation, and

20 redevelopment services;

21 (f) watercourse, drainage, irrigation, and flood

22 control services;

23 (g) lake protection; and

24 (h) underground conversion of utilities;

25 (3) community services, subject to the provisions of

1 [section 33 through section 46 of SB 17], including:

2 (a) animal control services;

3 (b) cemetery, burial, and memorial services;

4 (c) consumer, education and protection services;

5 (d) exhibition and show services;

6 (e) libraries, museums, civic centers, auditoriums,

7 theaters, art galleries, and other arts and educational or

8 cultural services;

9 (f) preservation of antiquities and natural sites and

10 other historic services;

11 (g) parks, forests, recreational, and athletic services;

12 (h) public camping services;

13 (i) zoos, aviary, aquarium, and botanical services;

14 (j) trees, shrubs, and other landscaping services on

15 public easements or property;

16 (k) nuisance weed control services; and

17 (l) devices to protect the public from open ditches

18 carrying irrigation or other water;

19 (4) emergency services, subject to the provisions of

20 [section 33 through section 71 of SB 18], including:

21 (a) ambulance services subject to regulation as

22 provided in Title 50, chapter 6, and emergency medical

23 services, subject to regulation as provided in Title 50,

24 chapter 6;

25 (b) civil defense services subject to the provisions

1 of Title 77 and Title 10, chapter 3;
 2 (c) fire prevention and protection services;
 3 (d) law enforcement protection, jails, and juvenile
 4 detention services; and
 5 (e) armories and other military facilities;
 6 (5) human services, subject to the provisions of
 7 [section 33 and section 34 of SB 19], including:
 8 (a) environmental protection services including air
 9 and water pollution control services subject to regulations
 10 as provided in 75-2-301;
 11 (b) child care, youth, and senior citizen services;
 12 (c) public health and hospital services;
 13 (d) nursing homes and other extended care services;
 14 (e) social and rehabilitative services;
 15 (f) mental health services subject to the provisions
 16 of Title 53, chapter 21; and
 17 (g) alcohol and drug dependence prevention and
 18 treatment services;
 19 (6) water and waste and utility services, subject to
 20 the provisions of [section 35 through section 71 of SB 18],
 21 including:
 22 (a) recycling and resource recovery services;
 23 (b) solid waste collection treatment and disposal
 24 services;
 25 (c) natural or manufactured gas services;

1 (d) sanitary and storm sewers and sewage treatment
 2 services; and
 3 (e) water supply and distribution services;
 4 (7) transportation services, subject to the provisions
 5 of [section 33 through section 98 of SB 20], including:
 6 (a) airports, passenger terminals, accommodations of
 7 air travelers, air navigation, aircraft servicing, and other
 8 aviation services;
 9 (b) ferries, wharves, docks, and other marine
 10 services;
 11 (c) vehicle parking services;
 12 (d) bus and other public transportation services;
 13 (e) trafficways as defined in [section 33 of SB 20];
 14 (f) lighting of trafficways.
 15 Section 41. Regulatory powers. A local government may
 16 exercise the powers necessary to regulate in all or part of
 17 its jurisdictional area the following activities to the
 18 extent they affect the general health, safety, well-being,
 19 or welfare of its inhabitants:
 20 (1) the operation and use of its public property,
 21 services, and facilities;
 22 (2) the operation and use of its public rights-of-way
 23 and railroad crossings;
 24 (3) subdivision and platting of lands as provided in
 25 [section 33 through section 124 of SB 16];

1 (4) land uses and zoning as provided in [section 33
 2 through section 124 of SB 16];
 3 (5) lakes and lakeshores as provided in [section 33
 4 through section 124 of SB 16];
 5 (6) building, housing, electrical, plumbing, and
 6 related construction activities subject to the provisions of
 7 Title 50, chapter 60;
 8 (7) naming and numbering of trafficways and numbering
 9 of houses and lots;
 10 (8) demolition and removal of dangerous or damaged
 11 structures;
 12 (9) floodplain construction, watercourses, waterways,
 13 lakes, and drainage;
 14 (10) public accommodations;
 15 (11) fire prevention and safety, including the storage,
 16 possession, and transportation of dangerous or inflammable
 17 substances;
 18 (12) air and water pollution within the standards
 19 established by the state;
 20 (13) planting, care, and trimming of trees abutting
 21 public ways;
 22 (14) open ditches and other nuisances;
 23 (15) the licensing, impoundment, treatment, and
 24 disposition of animals;
 25 (16) selling of goods;

1 (17) selling of food;
 2 (18) selling of alcoholic beverages as provided in
 3 Title 16;
 4 (19) vehicles, parking, and traffic;
 5 (20) taxis, buses, street railroads, and other public
 6 transportation systems;
 7 (21) pawnshops and secondhand shops;
 8 (22) junkyards, solid waste collection and disposal,
 9 and dumps as provided in Title 75, chapter 10;
 10 (23) circuses, prizefights, dances, shows, and other
 11 places of amusement;
 12 (24) cemeteries, mausoleums, and columbariums;
 13 (25) gambling as provided in Title 23, chapter 5;
 14 (26) public auctions as provided in Title 30, chapter
 15 11;
 16 (27) occupations, businesses, and industries only to
 17 the extent that they affect the general health, safety,
 18 well-being, or welfare of its inhabitants and each
 19 regulation may not affect the standards of professional or
 20 occupational competence established pursuant to Title 77 as
 21 prerequisites for the practice of a profession or
 22 occupation;
 23 (28) water supply and sewage disposal;
 24 (29) obscenity and display of offensive sexual material
 25 as provided in 45-8-201 and 45-8-202; and

1 (30) all other activities affecting the general health,
2 safety, well-being, or welfare of its inhabitants.

3 Section 42. Property and facilities. (1) The power of
4 a local government to provide services includes the power to
5 provide necessary and convenient real and personal property,
6 equipment, materials, facilities, and appurtenances.

7 (2) A property or facility may be located outside of
8 the boundaries of the local government.

9 (3) The power to provide a facility includes the power
10 to plan, establish, acquire, develop, construct, purchase,
11 enlarge, improve, maintain, operate, regulate, and protect
12 the facility.

13 (4) A local government may exercise its jurisdiction
14 and control over its facilities and property located outside
15 the boundaries of the local government or the boundaries of
16 the state. No other local government may charge a license
17 fee or tax for operations on such a facility.

18 (5) Any public property acquired under [SB 11, SB 12,
19 SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB
20 21, SB 22, and SB 23] is hereby declared to be acquired,
21 owned, controlled, and occupied for a public use and as a
22 matter of public necessity.

23 (6) (a) Any public property acquired under [SB 11, SB
24 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20,
25 SB 21, SB 22, and SB 23] is exempt from property taxation,

1 and any income derived from the property is exempt from
2 taxation.

3 (b) These exemptions shall not apply to private
4 facilities or personal property located on public property
5 or the incomes of persons employed on public property.

6 (c) The department of revenue may exempt from property
7 taxation any property acquired with the state of Montana by
8 a public agency of another state for governmental purposes
9 and any income derived from the property, to the extent that
10 such other state authorizes similar exemptions from taxation
11 to public agencies of this state.

12 Section 43. Regulatory powers inferred. The power of a
13 local government to provide services includes the power to
14 exercise regulatory powers in conjunction with those
15 services.

16 Section 44. Concurrent powers. (1) If a local
17 government is authorized to regulate an area which the state
18 by statute or administrative regulation also regulates, the
19 local government may regulate the area only by enacting
20 ordinances which are consistent with state law or
21 administrative regulation.

22 (2) If state statute or administrative regulation
23 prescribes a single standard of conduct, an ordinance is
24 consistent if it is identical to the state statute or
25 administrative regulation.

1 (3) If state statute or administrative regulation
2 proscribes a minimal standard of conduct, an ordinance is
3 consistent if it establishes a standard which is the same as
4 or higher or more stringent than the state standard.

5 (4) A local government may adopt ordinances and
6 regulations which incorporate by reference state statutes
7 and administrative regulations in areas in which a local
8 government is authorized to act.

9 Section 45. Services for public purpose. (1) The rule
10 of law that distinguishes between governmental and corporate
11 functions of a local government shall not apply to the
12 functions, services, and duties of local government in
13 Montana.

14 (2) All services, functions, and duties authorized for
15 local governments are hereby declared to be public and
16 governmental functions and exercised for a public purpose.

17 Section 46. Prohibition of discriminatory practices.
18 All local governments shall comply with the provisions of
19 Title 49, chapter 2, in regard to the prohibition of
20 discriminatory practices in the delivery of any service.

21 Section 47. Prohibition on competition with private
22 enterprise. In providing services authorized by [SB 11, SB
23 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20,
24 SB 21, SB 22, and SB 23], local governments shall not
25 compete with, as far as is practical, private enterprise.

1 Section 48. Policy and purpose. (1) It is a policy of
2 the state of Montana to minimize duplication of services and
3 to encourage cooperation in the delivery of services.

4 (2) It is the purpose of [section 48 through section
5 63 of SB 14] to provide common procedures for:

6 (a) establishing services by general powers and
7 self-government powers local governments;

8 (b) determining the authority of general powers and
9 self-government powers counties to provide services within
10 municipal limits; and

11 (c) determining the authority of general powers and
12 self-government powers municipalities to exercise
13 extraterritorial powers beyond municipal limits.

14 (3) Nothing in [SB 14, SB 15, SB 16, SB 17, SB 18, SB
15 19, and SB 20] shall be interpreted to prevent the
16 utilization of interlocal agreements to share and allocate
17 the authority for delivering services.

18 Section 49. Existing services. Until otherwise
19 provided by ordinance or authorized by an appropriation,
20 local governments shall continue to provide in the same
21 manner those services provided by the local government on
22 [the effective date of SB 11, SB 12, SB 13, SB 14, SB 15, SB
23 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23].

24 Section 50. Establishment of jurisdictionwide
25 services. Services that will be available to or benefit the

1 entire local government jurisdiction may be established in
2 the following manner:

3 (1) The governing body of a local government may
4 establish the service or facility by ordinance.

5 (2) If a petition signed by not less than 15% of the
6 electors of a local government requesting the local
7 government to provide the service is presented to the
8 governing body, the governing body shall set a date for a
9 public hearing and give notice. Following the public
10 hearing, the governing body may either adopt an ordinance
11 authorizing the service or refuse to act further on the
12 matter.

13 (3) An ordinance authorizing a service may be proposed
14 by initiative or submitted to referendum as provided in
15 [section 100 through section 117 of SB 12].

16 Section 51. Financing jurisdictionwide services. (1)
17 The governing body may finance services available on a
18 jurisdictionwide basis by levying taxes, imposing service
19 charges or special assessments, or out of any other funds at
20 its disposal.

21 (2) The governing body may finance the construction of
22 any facility benefiting the jurisdiction as a whole with
23 general revenue of the local government or by issuing
24 general obligation bonds, revenue bonds, or local
25 improvement district bonds. Bonds shall be issued as

1 provided in [section 33 through section 98 of SB 20].

2 (3) Any facility may be financed in part by general
3 obligation bonds or local improvement district bonds and in
4 part by revenue bonds.

5 Section 52. Establishment of services less than
6 jurisdictionwide. (1) Services that will be available to or
7 benefit only a portion of the local government jurisdiction
8 must be provided through a subordinate service district or
9 local improvement district which is created as provided in
10 [section 64 through section 99 of SB 12].

11 (2) A subordinate service district may also be used to
12 provide a higher level of service than that provided on a
13 jurisdictionwide basis.

14 Section 53. Financing services less than
15 jurisdictionwide. (1) The governing body may finance
16 services available only on a less than jurisdictionwide
17 basis by levying subordinate service district taxes,
18 imposing service charges or special assessments, or out of
19 any other funds at its disposal.

20 (2) The governing body may finance the construction of
21 any facility benefiting less than the total jurisdiction
22 with district general revenue or out of any other funds at
23 its disposal or by issuing revenue bonds or creating a local
24 improvement district and issuing local improvement bonds.
25 Bonds shall be issued as provided in [section 33 through

1 section 98 of SB 20].

2 (3) Any facility may be financed in part by local
3 improvement district bonds and in part by revenue bonds.

4 Section 54. Service plan. (1) Within 2 years of [the
5 effective date of SB 11, SB 12, SB 13, SB 14, SB 15, SB 16,
6 SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23], each
7 county governing body shall develop a service plan
8 identifying those services that are available to or benefit
9 the entire county jurisdiction; those services that are
10 available to or that benefit only a portion of the county
11 jurisdiction; and those areas of the county that receive a
12 higher level of services than that provided on a
13 jurisdictionwide basis.

14 (2) Three years after [the effective date of SB 11, SB
15 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20,
16 SB 21, SB 22, and SB 23], services available less than
17 jurisdictionwide or a higher level of services than are
18 provided jurisdictionwide may be financed only through a
19 subordinate service district or a local improvement district
20 or service charges levied solely upon residents or property
21 in the area receiving the services. A service made available
22 but not actually provided jurisdictionwide may be financed
23 through general county tax revenues only if the service plan
24 contains a deadline for the actual provision of the service
25 on a jurisdictionwide basis.

1 (3) Two years after [the effective date of SB 11, SB
2 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20,
3 SB 21, SB 22, and SB 23], the governing body of a
4 municipality or municipalities, by resolution, or the
5 electors of a municipality or county, by petition, may
6 identify a service rendered for the benefit of only the
7 property or residents in unincorporated areas and financed
8 from countywide revenues. The resolution or petition may
9 request the county governing body to develop an appropriate
10 mechanism to finance the activity which may be by
11 subordinate service district taxes, special assessments, or
12 service charges levied solely upon residents or property in
13 the unincorporated area.

14 (4) The county governing body within 90 days shall
15 hold a public hearing after notice and file a response to
16 the resolution or petition which shall either initiate the
17 development of appropriate mechanisms to finance the service
18 or reject the petition or resolution if the petition or
19 resolution states findings of fact demonstrating that the
20 service does not specifically benefit the property or
21 residents of the unincorporated areas.

22 (5) The county governing body shall annually review
23 the service plan. The plan is subject to challenge by
24 municipalities or petition at any time.

25 Section 55. County services. (1) A county shall

1 perform countywide those services required by [section 33
2 through section 92 of SB 21] and may provide countywide the
3 services permitted by subsections (1), (2)(f), (4)(a),
4 (4)(b), and (5) of [section 40 of SB 14]. It may perform all
5 other services and exercise regulatory authority only in the
6 territory outside of the municipal limits unless the
7 provisions of [section 57 of SB 14] are complied with.

8 (2) A municipality may continue to provide until July
9 1, 1984, any service permitted by subsections (1), (2)(f),
10 (4)(a), (4)(b), and (5) of [section 40 of SB 14] which it
11 was providing on [the effective date of SB 11, SB 12, SB 13,
12 SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB
13 22, and SB 23].

14 (3) A municipality may provide these services after
15 July 1, 1984, only by complying with [section 59 of SB 14],
16 and may begin new services subject to this section after
17 [the effective date of SB 11, SB 12, SB 13, SB 14, SB 15, SB
18 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23]
19 only by complying with [section 59 of SB 14].

20 Section 56. Concurrent services. (1) Except for law
21 enforcement, public health, and noxious plant control, if a
22 service is assigned to a county by [section 33 through
23 section 92 of SB 21], a municipality may not perform the
24 service.

25 (2) A municipality may provide additional law

1 enforcement, public health, and noxious plant control
2 services within its jurisdictional area without prior
3 consent of the county governing body.

4 Section 57. County services in municipal limits. (1)
5 Except for services required by [section 33 through section
6 92 of SB 21] and services authorized by subsections (1),
7 (2)(f), (4)(a), (4)(b), and (5) of [section 40 of SB 14], a
8 county may not perform any other service or regulate any
9 activity within municipal limits without prior approval by
10 resolution of the municipal governing body.

11 (2) The municipal resolution may permit concurrent
12 authority for both the county and the municipality to
13 provide the service or regulate the activity, or the
14 municipality may surrender its authority to provide the
15 service and regulate the activity to the county.

16 (3) The concurrent jurisdiction or surrender of
17 authority shall be considered permanent until repealed or
18 amended and shall not be considered an interlocal agreement.

19 (4) The repeal or amendment of concurrent jurisdiction
20 requires the approval of both the county and municipal
21 governing bodies.

22 (5) If the municipal authority to provide a service
23 has been surrendered to the county, it may be repealed only
24 with the consent of both the county and municipal governing
25 bodies.

1 Section 58. Total transfer of a service to a county.

2 (1) A municipal governing body may by resolution request the
3 county to assume complete responsibility for a service or
4 regulatory activity being provided by the municipality. The
5 county governing body shall consider the municipal request
6 and respond by resolution within 6 months.

7 (2) If the county accepts responsibility for a
8 municipal service, after the county begins delivery of the
9 service, the municipality may not provide the service or
10 regulate the activity unless the county repeals its
11 acceptance. The total transfer of a service to a county
12 under this section shall be considered permanent until
13 repealed or amended and shall not be considered an
14 interlocal agreement.

15 Section 59. Municipal performance of county services.

16 (1) A municipality choosing to provide services authorized
17 by subsections (1), (2)(f), (4)(a), (4)(b), and (5) of
18 [section 40 of SB 14] may provide those services only after
19 adopting a resolution providing for the assumption of the
20 service by the municipality on the first day of the
21 following fiscal year. Prior to adopting the resolution, the
22 municipal governing body shall give notice and conduct a
23 joint public hearing with the county governing body. A copy
24 of the resolution shall be delivered to the county governing
25 body at least 90 days prior to the beginning of the fiscal

1 year.

2 (2) The requirement for commencement at the beginning
3 of the fiscal year and the requirement for a resolution
4 delivered to the county governing body at least 90 days
5 prior to the beginning of the fiscal year may be waived by
6 agreement of the governing bodies.

7 (3) After a municipality assumes any service listed in
8 [section 59 of SB 14], the service provided in the area of
9 the county, excluding the exempted municipality may be
10 financed only through a subordinate service district
11 excluding the exempted municipality and may not be financed
12 by the county all-purpose mill levy.

13 (4) Under this section, a municipality may not assume
14 any service required by [section 33 through section 92 of SB
15 21].

16 Section 60. Municipal extraterritorial powers. (1) A
17 municipality may exercise the powers granted by state law
18 only within its municipal limits, except that it may within
19 5 miles of its limits:

20 (a) provide the services authorized by subsections
21 (2)(d), (2)(f), (3)(a), (3)(b), (4)(a), (5)(a), (6), and (7)
22 of [section 40 of SB 14]; and

23 (b) exercise its regulatory powers authorized by
24 subsections (1), (3), (4), (5), (6), (7), (11), (12), (20),
25 (22), (23), (24), and (28) of [section 41 of SB 14].

1 (2) (a) Within a metropolitan service area established
 2 by an ordinance of both the municipal and county governing
 3 bodies after notice and public hearing, a municipality may
 4 provide any service or exercise any regulatory power that it
 5 is authorized to carry out in the extraterritorial area.

6 (b) The metropolitan service area may include
 7 territory beyond the 5-mile extraterritorial limit.

8 (3) This section shall not be construed to restrict
 9 the authority of a local government to enter into interlocal
 10 agreements for any purpose.

11 (4) A municipality may continue any extraterritorial
 12 service or regulation it was providing on [the effective
 13 date of SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB
 14 18, SB 19, SB 20, SB 21, SB 22, and SB 23]. The municipality
 15 shall provide the county governing body with a list of all
 16 existing extraterritorial services and regulations within 1
 17 year of [the effective date of SB 11, SB 12, SB 13, SB 14,
 18 SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and
 19 SB 23].

20 (5) (a) A municipality may exercise any additional
 21 extraterritorial authority only after notice and public
 22 hearing and adopting an ordinance indicating its intent to
 23 do so. A copy of the ordinance shall be delivered to the
 24 county governing body after first reading and prior to its
 25 final adoption.

1 (b) The county may prevent the final adoption of the
 2 ordinance establishing additional municipal extraterritorial
 3 authority by adopting a resolution notifying the municipal
 4 governing body of its intent to proceed under subsection
 5 (5)(c) of [section 60 of SB 14].

6 (c) The county governing body by ordinance may preempt
 7 existing or proposed extraterritorial authority of the
 8 municipality only if the county agrees to provide the same
 9 or increased level of regulation or service provided or
 10 proposed to be provided by the municipality.

11 (d) A county ordinance preempting additional municipal
 12 extraterritorial authority shall become effective in the
 13 same manner as all other ordinances, but ordinances
 14 preempting the existing extraterritorial authority of a
 15 municipality shall not be effective until the first day of
 16 the next fiscal year unless municipal consent for an earlier
 17 effective date is granted by ordinance.

18 (6) Except for law enforcement and regulatory
 19 services, extraterritorial municipal services shall be
 20 financed by service charges and other nontax revenue.

21 (7) If the municipal limits of two or more
 22 municipalities are located within 10 miles of each other,
 23 their extraterritorial jurisdiction shall be determined by
 24 dividing equally the distances between the municipalities,
 25 or the municipalities may by interlocal agreement establish

1 their respective extraterritorial jurisdictions.

2 Section 61. Effective date of service changes. The
3 effective date for a change in responsibility for delivering
4 a service shall be the first day of the next fiscal year
5 unless the ordinance or interlocal agreement provides
6 otherwise.

7 Section 62. Allocation of assets and liabilities. If
8 the responsibility for the delivery of a service is
9 reallocated between units of local government, the governing
10 bodies may provide for the reallocation between units of
11 local government of property rights, assets, and liabilities
12 related to the service.

13 Section 63. Effect of annexation general plan,
14 official map, and subdivision regulations and permits. The
15 delivery of services by local governments shall conform to
16 annexation plans to provide services as provided in [section
17 62 of SB 11], general plan as provided in [section 68 of SB
18 16], and subdivision regulations and permits as provided in
19 [section 33 through section 124 of SB 16].

20 Section 64. Severability. If a part of this act is
21 invalid, all valid parts that are severable from the invalid
22 part remain in effect. If a part of this act is invalid in
23 one or more of its applications, the part remains in effect
24 in all valid applications that are severable from the
25 invalid applications.

1 Section 65. Effective date. (1) Section 1 through
2 section 33 and section 38 through section 65 are effective
3 on July 1, 1981.

4 (2) Section 34 through section 37 are effective on
5 July 1, 1980, and from July 1, 1980, through June 30, 1981,
6 a local government governing body may enact any ordinance or
7 resolution or take any other action authorized by [SB 11, SB
8 12, SB 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20,
9 SB 21, SB 22, and SB 23] for the purpose of implementing the
10 provisions of [SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB
11 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23], but the
12 ordinance or action may not become effective until July 1,
13 1981.

-End-