

SENATE BILL 16

IN THE SENATE

January 3, 1979

Introduced and referred to
Committee on Local Government.

April 20, 1979

Died in Committee.

1 SENATE BILL NO. 16
 2 INTRODUCTION BY JERGESON, WATT
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LOCAL GOVERNMENT LAWS RELATING TO COMMUNITY AND RURAL
 6 DEVELOPMENT SERVICES; 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 3 becomes effective] shall continue in effect until repealed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 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. General definitions. In [SB 11, SB 12, SB
3 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21,
4 SB 22, and SB 23], unless otherwise provided or the context
5 requires a technical or other interpretation, the following
6 definitions apply:

7 (1) "Agricultural enterprises" means any agricultural
8 enterprise including but not limited to producing,
9 warehousing, storing, fattening, treating, handling,
10 distributing, or selling farm products or livestock.

11 (2) "Economic development project" means any land, any
12 building or other improvement, and all real and personal
13 properties considered necessary in connection therewith,
14 whether or not now in existence, which shall be suitable for
15 use for commercial, manufacturing, agricultural or
16 industrial enterprises, recreation or tourist facilities,
17 state and federal governmental facilities, and retirement
18 housing, hospitals, or long-term care or medical facilities.

19 Section 34. Economic development powers. (1) In
20 providing economic development services, a local government
21 may exercise the powers to:

22 (a) conduct studies, promote economic development
23 opportunities, and carry on any other activities generally
24 associated with economic development; and

25 (b) finance economic development projects with

1 industrial development bonds as provided in [section 35
2 through section 42 of SB 16].

3 (2) After notice and public hearing, the governing
4 body may appropriate the equivalent of 1 mill to conduct
5 preliminary feasibility studies, purchase land for
6 industrial parks, and construct buildings to house
7 manufacturing and processing operations. These funds may not
8 be used to directly assist an industry's operations by loan
9 or grant.

10 Section 35. Special economic development project
11 powers. In carrying out economic development projects, a
12 local government may:

13 (1) acquire by construction, purchase, devise, gift,
14 lease, or any combination of these methods one or more
15 economic development projects. A project must be located
16 within this state; however, a project may be located outside
17 the jurisdictional area of the local government.

18 (2) lease a project upon terms and conditions as the
19 governing body may consider advisable and which do not
20 conflict with the provisions of [section 33 through section
21 124 of SB 16]; and

22 (3) sell and convey any real or personal property
23 acquired pursuant to [section 33 through section 124 of SB
24 16], subject to the terms of any lease but free of any other
25 encumbrance.

1 Section 36. Authorization of project. (1) Prior to the
2 undertaking of an economic development project, the
3 governing body shall adopt a resolution authorizing the
4 project.

5 (2) Prior to the adoption of the resolution, the
6 governing body shall give notice and conduct a public
7 hearing on the proposed economic development project.

8 (3) The governing body shall not approve an economic
9 development project unless it appears after the public
10 hearing that approval is in the public interest.

11 Section 37. Restrictions on local governments. (1) No
12 local government may operate an economic development project
13 for a profit or in any manner other than as a lessor.

14 (2) A local government may not acquire any project by
15 condemnation.

16 (3) A local government may not in any mortgage
17 agreement for an economic development project obligate
18 itself except with respect to the project and the
19 application of the revenues from the project. A local
20 government may not incur a pecuniary liability or a charge
21 upon its general credit or against its taxing powers.

22 Section 38. Obligations. Obligations issued by a local
23 government for the purpose of financing an economic
24 development project shall be limited to revenue bonds. The
25 principal and interest of revenue bonds may be secured by:

1 (1) a pledge of the revenues from the project financed
2 with the proceeds of the bonds;

3 (2) a mortgage covering all or any part of the
4 economic development project;

5 (3) a pledge of the lease of the project; or

6 (4) any other security considered advantageous by the
7 governing body.

8 Section 39. Mortgages. (1) A mortgage made to secure
9 bonds issued under the authority of [section 38 of SB 16]
10 may contain any of the agreements and provisions authorized
11 for bonds in [section 91(5) of SB 22].

12 (2) In the event of default in the payment of
13 principal of or the interest on the bonds or in the
14 performance of any agreement contained in the mortgage, the
15 payment and performance may be enforced in the manner
16 provided in [section 91(5) of SB 22].

17 (3) A mortgage agreement may also provide that the
18 mortgage may be foreclosed in the event of default or
19 violation of any agreement contained in the mortgage.

20 (4) No breach of a mortgage agreement shall impose any
21 pecuniary liability upon a local government or any charge
22 upon its general credit or against its taxing powers.

23 Section 40. Determination of rentals. (1) Prior to the
24 leasing of any economic development project, the governing
25 body shall determine the amount of revenue necessary to:

1 (a) pay the principal and interest on bonds proposed
2 to finance the project;

3 (b) establish any reserve funds which it considers
4 advisable; and

5 (c) pay the operation and maintenance costs of the
6 project unless a subsequent lease agreement assigns the
7 maintenance responsibility to the lessee.

8 (2) (a) Prior to the issuance of bonds, the local
9 government shall lease a project to a lessee or lessees.

10 (b) The terms of the lease agreement or agreements
11 shall provide sufficient revenue to pay the costs to the
12 local government as determined pursuant to subsection (1) of
13 this section.

14 (c) The lease or extensions or modifications of the
15 lease agreement may contain other terms and conditions as
16 are mutually acceptable to the parties.

17 (d) The lease agreement may contain an option for the
18 lessee to purchase a project on terms and conditions as are
19 mutually acceptable to the parties.

20 Section 41. Use of proceeds of bond sales. Proceeds of
21 bond sales issued under authority of [section 33 through
22 section 124 of SB 16] shall only be used for the purpose for
23 which bonds were issued. Any accrued interest and premiums
24 or proceeds in excess of the funds necessary for the purpose
25 shall be applied to the payment of principal and interest on

1 the bonds.

2 Section 42. Taxation of projects. (1) Projects leased
3 or held by private interests on both the assessment date and
4 the date the levy is made in any year shall be taxed in the
5 same manner as privately owned property. The projects shall
6 not be subject to taxation if they are not leased or held on
7 both the assessment and levy dates in any year.

8 (2) A local government may make payments in lieu of
9 taxes and special assessments on economic development
10 projects.

11 (3) Where personal property is owned by a local
12 government and where payment of taxes on the personal
13 property is delinquent, only the personal property on which
14 such taxes were levied may be attached by a lien.

15 Section 43. Advice of department of community affairs.
16 The department of community affairs shall furnish advice and
17 information in connection with an economic development
18 project when requested to do so by a local government.

19 Section 44. Definitions. In [SB 11, SB 12, SB 13, SB
20 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22,
21 and SB 23], unless otherwise provided or the context
22 requires a technical or other interpretation, the following
23 definitions apply:

24 (1) "Housing development" means any work or
25 undertaking financed, in whole or in part, under [section 33

1 through section 124 of SB 16] for the primary purpose of
2 acquiring, constructing, or rehabilitating dwellings for
3 persons of lower income in need of housing.

4 (2) "Undertaking" includes any housing facilities,
5 land, equipment, facilities or other real or personal
6 properties including but not limited to streets, sewers,
7 utilities, parks, site preparation, and landscaping as are
8 determined by the housing agency to be necessary,
9 convenient, or desirable.

10 (3) "Persons of lower income" means persons or
11 families with insufficient personal or family income who
12 require assistance under [section 44 through section 63 of
13 SB 16], as determined by the housing agency, taking into
14 consideration:

15 (a) the amount of the total personal or family income
16 available for housing needs;

17 (b) the size of the family;

18 (c) the eligibility of persons or families under
19 federal housing assistance of any type based on lower income
20 or a functional or physical disability;

21 (d) the ability of persons or families to compete
22 successfully in the normal housing market and to pay the
23 amount at which private enterprise is providing decent,
24 safe, and sanitary housing;

25 (e) the availability and cost of housing in particular

1 areas; and

2 (f) needs of particular persons or families due to age
3 or physical handicaps.

4 Section 45. Special housing services authorized. In
5 addition to its own programs, a local government may
6 administer or participate in the financing of any federal,
7 state, or other program which is intended to:

8 (1) provide for the establishment, maintenance, and
9 operation of housing developments for persons of lower
10 income;

11 (2) assist persons of lower income in affording the
12 cost of satisfactory housing; or

13 (3) provide for the rehabilitation of deteriorating
14 housing.

15 Section 46. Finding and declaration of necessity. A
16 local government may provide the housing services authorized
17 in [section 45 of SB 16] only after the governing body gives
18 notice, conducts a public hearing, and adopts a resolution
19 finding that within its jurisdictional area:

20 (1) dwellings are being occupied which are unsafe or
21 unsanitary; or

22 (2) there is a shortage of safe sanitary dwellings at
23 prices affordable to persons of lower income.

24 Section 47. Establishment of housing agency. (1) In
25 order to provide the housing services authorized in [section

1 45 of SB 16], a governing body must adopt an ordinance
2 establishing a housing agency.

3 (2) A housing agency may be established by any of the
4 methods authorized in [section 39 of SB 14].

5 (3) A housing agency may be combined with any other
6 agency of a local government, but the additional powers
7 authorized by [section 33 through section 124 of SB 16] may
8 be exercised only in the provision of housing services.

9 (4) Prior to the adoption of an ordinance establishing
10 a housing agency, a governing body shall give notice and
11 conduct a public hearing.

12 Section 48. Additional housing powers. In providing
13 the housing services authorized by [section 33 through
14 section 124 of SB 16], a local government may:

15 (1) investigate housing conditions and needs within
16 its jurisdictional area;

17 (2) determine means and methods of improving
18 inadequate housing and alleviating housing shortages;

19 (3) demolish unsafe or unsanitary structures;

20 (4) plan, acquire, construct, rehabilitate, maintain,
21 and operate any housing development; and

22 (5) arrange or contract for the furnishing of public
23 or private services, privileges, works, or facilities for or
24 in connection with a housing development.

25 Section 49. Restrictions. Under no circumstances may a

1 governing body delegate the power to:

2 (1) make the findings and declaration of necessity as
3 provided for in [section 46 of SB 16];

4 (2) authorize a housing development as provided for in
5 [section 51 of SB 16]; and

6 (3) enter into interlocal agreement with other local
7 governments or public agencies.

8 Section 50. Housing authority. (1) To effect the
9 purposes of [SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, and
10 SB 20], a local government may by ordinance establish a
11 housing authority. Upon establishment, a housing authority
12 may exercise any power contained in [section 48 of SB 16]
13 and any power granted to local governments by [section 36 of
14 SB 14], except that it may not:

- 15 (a) enact ordinances; or
- 16 (b) issue general obligation bonds.

17 (2) A governing body which dissolves a housing
18 authority created under this section shall be responsible
19 for all obligations of the housing authority.

20 Section 51. Authorization of housing development. (1)
21 Before any housing development is undertaken, the governing
22 body shall adopt a resolution authorizing the housing
23 development.

24 (2) Prior to the passage of the resolution, the
25 governing body shall give notice and conduct a public

1 hearing on the proposed development.

2 Section 52. Consolidation of housing developments. (1)
3 For purposes related to the administration and financing of
4 housing developments, a governing body may by resolution
5 consolidate two or more housing developments.

6 (2) The governing body shall give notice and conduct a
7 public hearing prior to the approval of the consolidation.

8 Section 53. State and federal projects. (1) A local
9 government may purchase, lease, or manage in whole or in
10 part any housing development or related activity
11 constructed, owned, or managed by the state or federal
12 governments.

13 (2) Prior to entering into an agreement pursuant to
14 this section, a local government shall give notice and
15 conduct a public hearing on the proposed agreement.

16 (3) In connection with the assumption of any interest
17 in a state or federal housing development, a local
18 government may enter into any mortgage, trust indenture,
19 lease, or agreement as it considers necessary or desirable.

20 Section 54. Cooperation of public agencies. (1) For
21 the purpose of aiding and cooperating in the establishment,
22 maintenance, or operation of housing services upon the terms
23 it determines to be appropriate, a public agency may:

- 24 (a) dedicate, convey, or lease any of its interests in
- 25 any property or grant easements or any other rights to a

1 local, the state, or the federal government;

2 (b) establish or improve any public trafficways,
3 services, or facilities in order that they may be made
4 available to a housing development or residents occupying a
5 development;

6 (c) plan or replan, zone or rezone, and make
7 exceptions from building regulations and ordinances for
8 property included within or having a reasonable relationship
9 to a housing development;

10 (d) enter into agreements relating to the repair,
11 closing, or demolition of unsafe, unsanitary, or unfit
12 dwellings or structures;

13 (e) enter into agreements with a local government or
14 the state or federal government to assist in the provision
15 of housing; and

16 (f) do any and all things necessary and convenient to
17 assist in the provision of housing services.

18 (2) In aiding or cooperating in the provision of
19 housing services, a public agency may incur all or any part
20 of the expenses.

21 (3) A public agency may conclude any sale, conveyance,
22 lease, or agreement authorized by this section without
23 appraisal, notice, public hearing, or public bidding.

24 Section 55. Developments subject to general plan and
25 health laws. (1) All housing developments shall conform to:

1 (a) adopted elements of a general plan;

2 (b) local zoning subdivision ordinances; and

3 (c) health and building laws, regulations, and
4 ordinances.

5 (2) Local government planning and zoning may not be
6 used to discriminate against the construction of housing
7 developments.

8 (3) Where an urban redevelopment program has been
9 undertaken by a local government, housing developments shall
10 be coordinated where appropriate with the redevelopment
11 program.

12 Section 56. Tenant eligibility. (1) In operating a
13 housing development, a local government shall rent or lease
14 dwelling units exclusively to persons of lower income unless
15 there is an insufficient number of eligible applicants to
16 fill the development.

17 (2) The local government shall fix maximum income
18 limits for the admission and for the continued occupancy of
19 persons in housing developments. Housing developments
20 financed in any part by state or federal money shall be
21 subject to income limits established by the funding entity.

22 (3) A person who knowingly falsifies a statement
23 regarding the income of a person seeking admission to or
24 continued occupancy in a housing development shall be guilty
25 of a misdemeanor.

1 (4) In the event of a default of payment of a debt or
 2 obligation of a housing development, nothing in this section
 3 shall be construed to limit the power of the local
 4 government to vest in an obligee the right to take
 5 possession of a housing development or to cause the
 6 appointment of a receiver who may operate a development free
 7 from restrictions imposed by this section.

8 Section 57. Rentals. (1) A local government shall
 9 manage and operate its housing development in a manner that
 10 facilitates the fixing of rentals for dwelling
 11 accommodations at the lowest possible rates consistent with
 12 the provision of decent, safe, and sanitary dwellings.

13 (2) A local government shall fix rentals for dwellings
 14 at rates no higher than are necessary to produce revenues
 15 which, when combined with other revenues received in
 16 connection with the development, are sufficient to:

17 (a) pay principal and interest on bonds issued in
 18 connection with the housing development as they become due;

19 (b) create and maintain such reserves as may be
 20 desirable to assure the payment of principal and interest on
 21 the bonds;

22 (c) meet the cost of and provide for the maintenance
 23 and operation of a housing development, including the costs
 24 of any administrative expenses attributable to the housing
 25 development; and

1 (d) make payments in lieu of taxes for the provision
 2 of public services received by a housing development or
 3 residents of a housing development as are consistent with
 4 the maintenance of the low rent character of the
 5 development.

6 (3) A local government may not establish or operate a
 7 housing development as a source of revenue for the local
 8 government.

9 Section 58. Relocation. (1) A local government
 10 undertaking a housing project shall be responsible for the
 11 relocation of persons displaced as a result of the
 12 establishment of the housing development.

13 (2) The location of displaced persons shall comply
 14 with 70-31-201 through 70-31-207.

15 (3) Where federal money has been utilized to fund any
 16 part of the housing development, relocation shall comply
 17 with applicable federal laws and requirements.

18 Section 59. Exemption from taxation. (1) Real and
 19 personal property of a local government held as part of
 20 housing development is public property used for essential
 21 public and governmental purposes.

22 (2) Housing development property shall be exempt from
 23 all taxes of any public agency.

24 (3) In lieu of taxes on property exempted by this
 25 section, a local government may agree to make payments to

1 any public agency for services provided to a housing project
 2 or to residents of a housing project. Payments in lieu of
 3 taxes shall not exceed the costs incurred by the public
 4 agency in providing the services.

5 Section 60. Obligations. (1) Obligations issued by a
 6 local government for the purpose of financing a housing
 7 development shall be limited to revenue bonds upon which
 8 principal and interest are payable:

9 (a) exclusively from income and revenues of the
 10 development financed with the proceeds of such bonds; or

11 (b) exclusively from the income and revenues of
 12 certain designated housing developments whether or not they
 13 were financed in whole or in part with the proceeds of the
 14 bonds.

15 (2) Revenue bonds issued for the purpose of financing
 16 a housing development may be additionally secured by trust
 17 indenture with a trustee, pledge of any loan, grant, or
 18 contribution from the state or federal government or from
 19 any other source, or pledge of income or revenue in
 20 connection with a housing development.

21 (3) For the purpose of securing or improving the
 22 marketability of bonds issued for the purpose of financing a
 23 housing development, a local government may enter into such
 24 trust indentures with the bondholder which are considered to
 25 be in the public interest and are not inconsistent with

1 other provisions of [section 33 through section 124 of SB
 2 16].

3 (4) Bonds shall not be issued for a period greater
 4 than 50 years.

5 Section 61. Exemption from foreclosure. (1) All
 6 property owned or held by a local government in connection
 7 with a housing development shall be exempt from levy and
 8 sale by an execution.

9 (2) No execution or other judicial process shall be
 10 issued against the property, but the provisions of this
 11 section shall not prohibit the right of obligees to pursue
 12 any remedies for the enforcement of any pledge or lien given
 13 by the local government on its rents, fees, or revenues or
 14 the right of federal or state governments to pursue any
 15 remedies provided them by law or agreement.

16 (3) A local government may waive exemption of claims
 17 against any profitmaking enterprise occupying any portion of
 18 a development, provided this waiver does not affect or
 19 impair the rights of any obligee of the local government.

20 Section 62. Provision of housing for victims of major
 21 disasters. (1) Notwithstanding the provisions of state law,
 22 when the governing body of a local government determines
 23 that there is a need to assure the availability of housing
 24 for victims of a war or major disaster, it may undertake the
 25 establishment and administration of housing developments.

1 (2) Dwellings in any housing development under its
2 jurisdiction may be made available to victims of a war or
3 major disaster.

4 Section 63. Provision of dwellings for servicemen,
5 veterans, and persons engaged in war industries or
6 activities and their families. (1) Notwithstanding the
7 provision of state law, the governing body of a local
8 government may participate in any federal program to provide
9 adequate housing for servicemen, veterans, and persons
10 engaged in war industries or activities and their families.
11 A local government may exercise the power granted by this
12 section to establish and administer housing developments
13 only in response to specific federal statutes authorizing
14 such housing programs.

15 (2) The provision of housing under this section shall
16 not be subject to any of the provisions of [SB 14, SB 15, SB
17 16, SB 17, SB 18, SB 19, and SB 20] relating to rentals and
18 tenant eligibility.

19 (3) Upon termination of such federal programs, all
20 housing developments acquired or administered under this
21 section shall be administered for the purposes and in
22 accordance with [section 44 through section 61 of SB 16].

23 Section 64. General definitions. In [SB 11, SB 12, SB
24 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21,
25 SB 22, and SB 23], unless otherwise provided or context

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

3 (1) "Capital improvements program" means an itemized
4 program setting forth the schedule and details of specific
5 and contemplated public improvements as provided for in
6 [section 82 of SB 22].

7 (2) "Community facilities element" means a compilation
8 of policy statements, goals, objectives, principles,
9 standards, maps, and action programs for guiding future
10 development of public or semipublic facilities of a local
11 government.

12 (3) "Conditional use" means a major deviation from the
13 zoning regulations of a zoning district which is permitted
14 by a zoning ordinance only upon showing that such use in a
15 specified location will comply with the conditions and
16 standards for the location or operation of the conditional
17 use as contained in the zoning ordinance. Approval of a
18 conditional use may only be granted by a governing body
19 after it has received the recommendations of its zoning
20 board.

21 (4) "Dimensional variance" means a departure from the
22 terms of the zoning ordinance pertaining to height or width
23 of structures and size of yards and open spaces where such
24 departure will not be contrary to the public interest and
25 where, owing to conditions peculiar to the property and not

1 as a result of actions of the applicant, the literal
2 enforcement of the zoning regulation would result in
3 unnecessary and undue hardship.

4 (5) "General plan" means a compilation of policy
5 statements, goals, objectives, standards, maps, pertinent
6 data, and action programs for guiding the physical, social,
7 and economic evolution of a local government's
8 jurisdiction. A general plan may include but is not limited
9 to the following:

10 (a) statements of policies, goals, objectives,
11 principles, and standards;

12 (b) a land use element;

13 (c) a community facilities element;

14 (d) a public utilities element;

15 (e) a transportation element; and

16 (f) recommendations for plan execution.

17 (6) "Land use element" means a compilation of policy
18 statements, goals, objectives, principles, standards, maps,
19 pertinent data, and action programs for guiding the future
20 use of public and private property. A land use element shall
21 take into consideration other general plan elements and the
22 physical capabilities of the land and shall generally seek
23 to develop a plan which designates the nature and extent of
24 the uses of the property for the area included within the
25 element. Such a plan may include but is not limited to

1 including designations of property for agricultural, open
2 space, housing, commercial, industrial, recreational,
3 educational, and public uses.

4 (7) "Land use variance" means a departure from the
5 terms of zoning ordinance pertaining to use of land where
6 such departure will not be contrary to the public interest
7 and where, as a result of conditions peculiar to the
8 property and not as a result of actions of the applicant,
9 the literal enforcement of the zoning regulation would
10 result in undue hardship.

11 (8) "Public element" means a compilation of policy
12 statements, goals, objectives, principles, standards, maps,
13 and action programs for guiding the future development of
14 public or semipublic utilities of a local government.

15 (9) "Special use permit" means a permit which may be
16 granted by an administrative officer or on appeal by a board
17 of adjustment. A special use permit allows a use to take
18 place in a location which would otherwise be disallowed by
19 a zoning ordinance, provided that the proposed use complies
20 with conditions and standards for the use in the particular
21 location as are provided for in the zoning ordinance.

22 (10) "Transportation element" means a compilation of
23 policy statements, goals, objectives, principles, standards,
24 maps, and action programs for future development of various
25 modes of transportation within the jurisdiction of a local

1 government.

2 Section 65. Authorization to adopt and implement a
3 general plan. In order to manage the change which will take
4 place within its jurisdiction; to coordinate such change
5 with the efficient and economical provision of public
6 services; and to promote the maintenance and enhancement of
7 the public health, safety, and welfare, a local government
8 may adopt and implement a general plan or elements thereof.

9 Section 66. Establishment of a planning agency. In
10 order to exercise the planning powers conferred by [section
11 33 through section 124 of SB 16], a governing body shall
12 establish a planning agency. A planning agency may be a
13 planning board, a planning department, or both.

14 Section 67. Powers and duties of a planning agency. A
15 planning agency may exercise any administrative or advisory
16 power granted to it by ordinance and may:

17 (1) compile and maintain information and materials as
18 are necessary to understand past trends, current conditions,
19 and forces which cause changes in these conditions;

20 (2) make studies pertaining to the location,
21 condition, and adequacy of public and private services and
22 facilities;

23 (3) prepare the various elements of a general plan and
24 present them to the governing body for consideration;

25 (4) make recommendations to the governing body for the

1 implementation of the general plan;

2 (5) assist the governing body in the implementation of
3 the general plan;

4 (6) provide for the periodic review and, when
5 necessary, the revision of the elements of the general plan;

6 (7) conduct hearings necessary to carry out its
7 duties;

8 (8) consult with and coordinate its planning
9 activities with other local governments and other public
10 agencies; and

11 (9) perform any other related duties assigned to it by
12 the governing body.

13 Section 68. General plan -- purpose -- process. (1)
14 The elements of a general plan shall seek to guide community
15 evolution in a manner consistent with the goals and
16 objectives of the general plan.

17 (2) The process of developing a general plan shall
18 generally seek to:

19 (a) establish a base of information considered
20 sufficient by the planning agency to provide a reasonable
21 familiarity with the area being planned;

22 (b) analyze present and future needs;

23 (c) develop goals, objectives, policies, and
24 principles that will guide economic, social, environmental,
25 physical, or human resource development;

1 (d) consider alternatives;

2 (e) indicate the proposed location of private and
3 public land uses, transportation networks, utilities, and
4 other facilities considered necessary by the planning
5 agency;

6 (f) provide additional procedures to the formal
7 adoption of the general plan if additional procedures are
8 considered to be appropriate;

9 (g) provide for the implementation of the elements of
10 the general plan; and

11 (h) provide for the continuous review and revision of
12 the elements of the general plan as considered necessary by
13 the governing body.

14 Section 69. Adoption and amendment of a general plan.

15 (1) The planning agency shall give notice and hold a public
16 hearing on a proposed general plan prior to submitting its
17 recommendations to the governing body for the adoption or
18 amendment of the general plan.

19 (2) The general plan may be prepared, adopted, or
20 amended in sections. Each section may concern a major
21 element of the plan or may apply to a general geographic
22 area within the jurisdictional area of the local government.

23 (3) The governing body shall consider the
24 recommendations of the planning agency but shall not be
25 bound by the recommendations.

1 (4) After giving notice and holding a public hearing,
2 the governing body may adopt, revise, or reject by ordinance
3 all or any part of a proposed general plan or any amendment
4 to an adopted general plan.

5 Section 70. Recommendations for implementation of
6 general plan. (1) A planning agency may study and propose to
7 the governing body reasonable and practical methods for
8 implementing the general plan.

9 (2) Methods of implementation may include but are not
10 limited to:

11 (a) zoning regulations and districts;

12 (b) building and housing codes;

13 (c) subdivision regulations;

14 (d) a program for the coordination of public services;

15 (e) a capital improvements program;

16 (f) an urban redevelopment program; and

17 (g) an official map.

18 Section 71. Compliance by public agencies. (1) After a
19 general plan has been adopted, a governing body may require
20 that no publicly owned interest in real property except an
21 option to purchase or sell may be acquired or disposed of or
22 any capital improvement authorized until the planning agency
23 has reviewed and made written comments to the governing body
24 regarding the potential effects of the proposed action on
25 the general plan.

1 (2) The governing body shall establish a reasonable
2 time period in which the planning agency must submit its
3 comments. If the planning agency does not submit its
4 comments within the time period specified, the requirement
5 created pursuant to this section shall lapse.

6 (3) Except in instances where real property is
7 affected, a governing body may by resolution waive the
8 review and comment requirement where in its judgment a
9 proposed action has no relationship to the general plan. The
10 resolution shall specify the reason for the waiver.

11 Section 72. Extraterritorial powers. (1) Prior to the
12 exercise of extraterritorial power by a municipality,
13 memberships of the municipal planning board (if a planning
14 board exists), zoning board, and board of adjustment shall
15 be increased or modified to provide for at least one
16 representative living within the extraterritorial area.

17 (2) Representatives of the extraterritorial area shall
18 be appointed by the governing body of the county where the
19 extraterritorial area is located.

20 Section 73. Zoning authorization. After a governing
21 body has adopted a land use element of a general plan, it
22 may adopt a zoning ordinance. The zoning ordinance shall be
23 designed to implement the land use element.

24 Section 74. Zoning board. (1) In order to exercise
25 zoning powers, a governing body shall establish a zoning

1 board. Where a planning board exists, it may be designated
2 as the zoning board.

3 (2) The zoning board shall develop recommendations and
4 submit them to the governing body for the establishment of
5 the boundaries of zoning districts and the regulations to be
6 enforced within those districts.

7 (3) The zoning board shall prepare a report, give
8 notice, and hold a public hearing on the proposed zoning
9 district boundaries or zoning regulations prior to
10 submitting its recommendations to the governing body.

11 (4) After the initial adoption of a zoning ordinance,
12 the zoning board may make recommendations to the governing
13 body regarding amendments to the zoning ordinance.

14 (5) In recommending amendments, the zoning board shall
15 follow the same procedures as are required when submitting
16 its recommendations to the governing body for the initial
17 adoption of the zoning ordinance.

18 (6) The governing body may not take action on the
19 initial adoption of a zoning ordinance or amendment to a
20 zoning ordinance until it has received the recommendations
21 of the zoning board.

22 (7) The governing body may establish a reasonable time
23 period in which the zoning board shall submit its
24 recommendations regarding proposed amendments to a zoning
25 ordinance which were not initiated by the zoning board.

1 Section 75. Contents of a zoning ordinance. (1) A
2 zoning ordinance may regulate:

3 (a) uses of land, air, and watercourses;
4 (b) size, bulk, height, location, erection,
5 construction, maintenance, alteration, removal, and use of
6 structures;

7 (c) areas and dimensions of land bodies, air spaces,
8 or watercourses to be occupied by uses and structures, as
9 well as open spaces and distances to be left unoccupied by
10 uses and structures; and

11 (d) density of population and intensity of use.

12 (2) A zoning ordinance may divide all or any part of
13 the local government jurisdiction into zoning districts.

14 (3) Zoning regulations may differ from one district to
15 another.

16 (4) Regulations shall be uniform throughout each
17 district except that additional classifications may be made
18 within any district for making transitional provisions at or
19 near the boundaries of other districts and for regulating,
20 restricting, and prohibiting uses of land and structures at
21 or near:

22 (a) major trafficways, their intersections and
23 interchanges, and transportation arteries;

24 (b) natural and artificial bodies of water;

25 (c) places of relatively steep slope or grade;

1 (d) public buildings and grounds;

2 (e) places having unique historical interest and
3 value;

4 (f) aircraft landing facilities;

5 (g) floodplain areas; and

6 (h) other places of a natural significance.

7 (5) A zoning ordinance may contain:

8 (a) provisions whereby conditional uses may be granted
9 by the governing body. The provisions shall:

10 (i) contain standards and criteria which must exist or
11 be complied with in order for a conditional use to be
12 granted;

13 (ii) require that recommendations of the zoning board
14 be received by the governing body prior to its approval or
15 denial of a request for a conditional use.

16 (b) provisions whereby an administrative officer of
17 the local government may administer special use permits and
18 dimensional variances. The provisions shall establish
19 conditions and procedures whereby special exceptions and
20 dimensional variances may be granted.

21 (6) A zoning ordinance shall contain procedures for:

22 (a) administering and enforcing the zoning ordinance;
23 and

24 (b) protesting changes in the zoning ordinance.

25 Section 76. Adoption of a zoning ordinance. After

1 receiving the recommendations of the zoning board and after
2 giving notice and holding a public hearing on a proposed
3 zoning ordinance, a governing body may approve, revise, or
4 reject all or any part of the proposed zoning ordinance.

5 Section 77. Amendment of a zoning ordinance. (1) An
6 amendment to a zoning ordinance may be initiated by:

- 7 (a) the governing body;
- 8 (b) the planning agency;
- 9 (c) the zoning board; or
- 10 (d) petition of affected property owners.

11 (2) After receiving the recommendations of the zoning
12 board, giving notice, and holding a public hearing, the
13 governing body may adopt an amendment to a zoning ordinance
14 if it finds the proposed amendment is not incompatible with
15 the land use element of the general plan.

16 (3) In deciding an amendment to a zoning ordinance
17 which would change the zoning district classification for
18 property to a classification which is less restrictive, a
19 governing body may prescribe certain terms under which the
20 amendment would be granted.

21 (4) To enforce the terms, a governing body may require
22 a landowner receiving benefit from the amendment to:

- 23 (a) enter into a covenant with the local government
- 24 which places restrictions on the use of the property which
- 25 are greater than those generally imposed on the new district

1 in which the property has been placed; or

2 (b) enter into an agreement with the local government
3 which places restrictions on the property which are greater
4 than the restrictions generally imposed on the new district
5 in which the property has been placed.

6 (5) Violation of the covenants or agreements shall be
7 considered to be a violation of the zoning ordinance.

8 Section 78. Board of adjustment. (1) Upon adoption of
9 a zoning ordinance, the governing body shall establish a
10 board of adjustment. Where a planning board exists, it may
11 be designated as the board of adjustment, provided the
12 planning board does not also serve as the zoning board.

13 (2) Appeals to the board of adjustment may be taken by
14 any person aggrieved by or any officer, board, or department
15 of the local government affected by any decision of an
16 administrative official in enforcing the zoning ordinance.

17 (3) The board of adjustment shall establish procedures
18 whereby it shall receive and process appeals.

19 (4) Upon appeal to the board of adjustment, all
20 proceedings shall be stayed. If the officer from whom the
21 appeal is taken certifies to the board of adjustment that
22 the stay would cause imminent peril to life or property,
23 proceedings shall not be stayed unless the board issues a
24 restraining order.

25 Section 79. Powers of board of adjustment. (1) A board

1 of adjustment shall:

2 (a) hear and decide appeals when it is alleged that
3 there is an error in any order, requirement, decision, or
4 determination made by an administrative officer in the
5 administration of the zoning ordinance;

6 (b) hear and decide questions regarding the provisions
7 of a zoning ordinance and make interpretations of zoning
8 district boundaries and regulations as the board is
9 specifically authorized to consider by the zoning ordinance;

10 (c) hear and decide requests for special use permits
11 as the board of adjustment is specifically authorized to
12 consider by the zoning ordinance. The board shall:

13 (i) confer with and receive written comments from the
14 zoning board in all cases involving requests for special use
15 permits;

16 (ii) in granting any special use permit, determine that
17 the grant will not adversely affect the public interest.

18 (d) hear and decide requests for dimensional variances
19 or land use variances as the board is specifically
20 authorized to hear and decide by the zoning ordinance. In
21 granting a dimensional variance or a land use variance, the
22 board of adjustment shall find that:

23 (i) special conditions exist which are peculiar to the
24 land or structure involved which are not applicable to other
25 lands or structures in the same zoning district;

1 (ii) special conditions and circumstances do not result
2 from actions of the applicant;

3 (iii) a literal interpretation of the provisions of the
4 ordinance would deprive the applicant of rights enjoyed by
5 other properties in the same zoning district under the terms
6 of the ordinance and would work unnecessary hardship on the
7 applicant; and

8 (iv) the dimensional variance would not award a person
9 any special privileges that would be denied another person
10 under similar circumstances.

11 (2) In granting a special use permit or a variance,
12 the board may prescribe appropriate conditions and
13 safeguards. Violation of the conditions and safeguards when
14 made part of the terms under which a special use permit or
15 variance is granted shall be considered a violation of the
16 ordinance.

17 (3) The findings and conclusions of the board of
18 adjustment shall be based upon evidence introduced at the
19 hearing or upon official government records available to the
20 public. The board shall prepare a written report summarizing
21 its findings and conclusions as they pertain to each of its
22 decisions. Each report shall be filed with the records
23 administrator of the local government where the board
24 exists.

25 (4) A governing body may hear appeals of board of

1 adjustment decisions. However, the governing body may not
2 overrule a decision of the board unless it finds that the
3 board's decision exceeds the authority granted to it by the
4 zoning ordinance.

5 Section 80. Appeal of board of adjustment or governing
6 body decision to district court. (1) Within 30 days after a
7 decision by the board of adjustment or a decision on an
8 appeal to the governing body, a person may petition the
9 appropriate district court challenging the legality of the
10 decision by the board or governing body.

11 (2) Costs may not be awarded against the board or
12 governing body unless it appears to the court that the board
13 or governing body acted with gross negligence, in bad faith,
14 or with malice in making the decisions.

15 Section 81. Petition for the establishment of zoning.

16 (1) (a) Residents of an area of at least 40 acres may
17 petition the governing body to develop a land use element
18 and zoning ordinance for the area. The petition must contain
19 the signatures of a majority of the freeholders residing in
20 the area.

21 (b) Upon receipt of the petition, the governing body
22 shall give notice and set a date for a public hearing.

23 (c) Following the public hearing, the governing body
24 may either adopt a resolution stating its intention to
25 develop a land use element and zoning ordinance for the area

1 or refuse to act further on the matter.

2 (2) In developing and adopting the land use element
3 and zoning ordinance, a local government shall follow the
4 procedures for development and adoption of the element and
5 ordinance as are provided for in [section 33 through section
6 124 of SB 16].

7 (3) A governing body may establish a separate zoning
8 board or board of adjustment or may designate an existing
9 zoning board or board of adjustment to serve the area for
10 which the petition was submitted.

11 Section 82. Interim zoning. (1) A governing body may
12 adopt an interim zoning ordinance as an urgency measure. An
13 interim ordinance may prohibit any uses which may be in
14 conflict with a contemplated land use element which the
15 governing body is considering or intends to consider in a
16 reasonable period of time.

17 (2) A governing body may adopt an interim zoning
18 ordinance without following the preliminary procedures which
19 are otherwise required preliminary to adoption of zoning
20 ordinance.

21 (3) A governing body must give notice and hold a
22 public hearing prior to adopting an interim zoning
23 ordinance.

24 (4) Upon adoption, an interim zoning ordinance may be
25 in effect for a period of 6 months. The ordinance may be

1 extended:

2 (a) for 1 year by a two-thirds vote of the governing
3 body; and

4 (b) no more than twice.

5 Section 83. Validation of previous zoning. (1) Where
6 under previous state law a zoning ordinance has been adopted
7 for an area for which a land use plan has not been adopted,
8 the zoning regulations and zoning district boundaries
9 contained in the ordinance shall remain in effect until such
10 time as a land use element is adopted for the area or the
11 zoning ordinance is repealed.

12 (2) Amendments to a zoning ordinance validated by this
13 section shall be subject to the same authorizations,
14 procedures, and requirements as is zoning adopted under the
15 provisions of [section 33 through section 124 of SB 16],
16 except that the governing body shall make written findings
17 explaining that:

18 (a) the original zoning regulations or district
19 boundaries were inappropriate or improper or major changes
20 in economic, physical, or social conditions have occurred
21 which were not anticipated or applicable when existing
22 classifications were adopted; and

23 (b) the proposed amendment is in the public interest.

24 Section 84. Natural resources protected. No zoning
25 ordinance shall prevent the development of forest,

1 agricultural, or mineral resources.

2 Section 85. Nonconforming uses and structures. (1) Any
3 nonconforming use or structure existing at the time of
4 passage of a zoning ordinance shall be permitted to continue
5 upon the lot or structure.

6 (2) Upon the discontinuance of a nonconforming use for
7 a period of time designated by the governing body in its
8 zoning ordinance or the destruction of the nonconforming use
9 or structure, the governing body may require any further use
10 or structure to conform with the zoning ordinance. The time
11 period established in the zoning ordinance shall be no less
12 than 6 months.

13 (3) A governing body may include in a zoning ordinance
14 provisions for the regulation of nonconforming uses and
15 structures.

16 Section 86. Validation of townsite titles. (1) All
17 titles to public lands acquired under the provisions of
18 sections 5060 through 5080 and sections 5100 through 5124 of
19 the Political Code of 1895 are validated.

20 (2) All trafficways, parks, and other public places
21 dedicated to the public use under the provisions of section
22 5065 of the Political Code of 1895 are under the
23 jurisdiction of the municipality for incorporated towns, and
24 the dedicated property may be vacated or disposed of as
25 other dedicated property.

1 (3) (a) All trafficways, parks, and other public
2 places dedicated to public use in unincorporated towns under
3 the provisions of section 5105 of the Political Code of 1895
4 are the property of the county so long as the town remains
5 unincorporated, and the dedicated property may be vacated or
6 disposed of as other dedicated property.

7 (b) If the unincorporated town incorporates, the
8 dedicated land shall be under the jurisdiction of the
9 municipality and may be vacated or disposed of as other
10 dedicated property.

11 (4) All titles to public lands acquired under section
12 1, Chapter 9, Laws of Montana, 1919, are validated.

13 (5) If a townsite has been established through the
14 procedures described in subsection (1) of this section and
15 land within that townsite, other than trafficways, parks,
16 and other public places dedicated to public use, appears to
17 be not deeded or a deed has been issued but has not been
18 recorded and has been lost or cannot be found, the land may
19 be disposed of in the following manner:

20 (a) A petition shall be filed with the clerk of the
21 district court in the county in which the land is situated.
22 The petition shall:

23 (i) state that either no deed has been issued for the
24 land described in the petition or that a deed has been
25 issued but has not been recorded and has been lost or cannot

1 be found;

2 (ii) be signed by the claimant or claimants;

3 (iii) contain a statement of their proof of claim; and

4 (iv) request the senior district court judge to issue a
5 deed for the land to the claimant or claimants.

6 (b) Upon verification by the county in which the land
7 is located that either no deed has been issued or that a
8 deed has been issued but not recorded, the senior district
9 court judge shall set a day for a hearing on the matter.

10 (c) The county shall publish notice of the hearing
11 four times for 4 successive weeks.

12 (d) At the hearing the judge shall examine the
13 petition and the claim and hear any proof the claimant may
14 submit to support the claim. If the judge finds that the
15 claimant is in possession of the land or, by reference to
16 abstracts of title or other evidence in support of the
17 claim, finds that the title to the land has been derived or
18 deraigned from the person who originally entered the land or
19 held title to the land and that no conflicting claims have
20 been filed, he shall, upon payment of the proper fees, issue
21 a deed for the land to the claimant.

22 Section 87. General definitions. In [SB 11, SB 12, SB
23 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21,
24 SB 22, and SB 23], unless otherwise provided or context
25 requires a technical or other interpretation, the following

1 definitions apply:

2 (1) "Lake" means a body of standing water and the area
3 within its lakeshore, occurring naturally rather than by
4 virtue of constructed impoundments (although a natural lake
5 whose level is raised and whose area is increased by the
6 construction of impoundments includes the additional level
7 and area), having a water surface area of at least 160 acres
8 for at least 6 months in a year of average precipitation as
9 the averages are determined by the United States geological
10 survey, not used exclusively for agricultural purposes, and
11 navigable by canoes and small boats. A local governing body
12 may by resolution change the minimum size in the definition
13 of a lake so that [section 33 through section 124 of SB 16]
14 may apply to natural lakes in the county no smaller than 20
15 acres in water surface area.

16 (2) "Lakeshore" is the perimeter of a lake when the
17 lake is at mean annual high water elevation, including the
18 land within 20 horizontal feet from that high water
19 elevation.

20 (3) "Mean annual high water elevation" is the mean
21 average of the highest elevation of a lake in each of at
22 least 5 consecutive years, excluding any high levels caused
23 by erratic or unusual weather or hydrological conditions. A
24 highest elevation caused by operation of a dam or other
25 impoundment counts toward the establishment of the mean

1 annual high water elevation.

2 Section 88. Permit required. A person proposing an
3 activity which will alter or diminish the course, current,
4 or cross-sectional area of a lake or lakeshore must first
5 secure a permit for the activity from the local government
6 having jurisdiction over the lake or lakeshore. Without
7 limitation, the following activities are, when conducted
8 below mean annual high water elevation, examples of work for
9 which a permit is required:

- 10 (1) construction of channels and ditches;
- 11 (2) dredging of lake bottom areas to remove muck,
12 silt, or weeds;
- 13 (3) lagooning;
- 14 (4) construction of breakwaters or pilings; and
- 15 (5) construction of wharves and docks.

16 Section 89. Criteria for issuance of permits. (1) (a)
17 A governing body having jurisdiction over a lake shall adopt
18 an ordinance establishing regulations in the form of
19 criteria for the issuance or denial of permits for
20 activities in lakes and on lakeshores.

21 (b) Where a planning agency has been established under
22 [section 66 of SB 16], the governing body shall seek the
23 advice of the planning agency as to the regulations to be
24 adopted.

25 (c) Prior to adoption of the ordinance, the governing

1 body shall give notice and hold a public hearing on the
2 proposed ordinance.

3 (2) The department of natural resources may upon
4 petition of five owners or 30% of the owners of land
5 abutting the lake, whichever is smaller, adopt regulations
6 for a particular lake. The department may then exercise the
7 powers conferred to a local government until the local
8 governing body adopts the necessary regulations.

9 Section 90. Contents of regulations. (1) The
10 regulations adopted by the governing body shall not allow
11 the issuance of a permit if the proposed activity will
12 during its construction or utilization:

- 13 (a) materially diminish water quality;
- 14 (b) materially diminish habitat for fish or wildlife;
- 15 (c) interfere with navigation or lawful recreation;
- 16 (d) create a public nuisance; or
- 17 (e) create a visual impact discordant with natural
18 scenic values, as determined by the local governing body,
19 where such values form the predominant landscape elements.

20 (2) The requirements of subsection (1) of this section
21 are minimum requirements and do not restrict a governing
22 body from adopting stricter or additional regulations as may
23 be authorized by other statutes.

24 (3) A governing body whose jurisdictional area
25 contains more than one lake or lakeshore may adopt

1 regulations which differ for the various lakes or
2 lakeshores, recognizing the physical and social differences
3 between the lakes and lakeshores.

4 Section 91. Application for permit. (1) A person
5 seeking a permit to allow an activity in a lake or on a
6 lakeshore shall apply to the governing body for the issuance
7 of the permit.

8 (2) (a) Where a planning agency has been established
9 for the area containing the lake in question, the governing
10 body shall seek the recommendation of the planning agency as
11 to compliance of the proposed activity with the regulations
12 adopted pursuant to [section 33 through section 124 of SB
13 16].

14 (b) The planning agency shall report its
15 recommendations to the governing body as to whether the
16 proposed activity conforms to the criteria for issuance of a
17 permit.

18 (c) The planning agency may require the applicant to
19 submit additional information before the agency reports its
20 recommendations to the governing body.

21 (d) In areas where a planning agency has not been
22 established, the functions of the agency under this section
23 shall be exercised by the governing body.

24 (3) (a) Unless the applicant agrees to an extension of
25 time, the governing body shall grant or deny permission for

1 the activity within 90 days of receiving application for a
2 permit.

3 (b) If the governing body finds that the proposed
4 activity conforms to the criteria for issuing a permit, it
5 shall issue a permit or conditional permit.

6 (c) If the governing body finds that the activity does
7 not conform to the criteria, it shall deny the application.

8 Section 92. Variance procedure. A governing body which
9 proposes to grant a variance from its regulations shall:

10 (1) cause an environmental impact statement to be
11 prepared, at the expense of the applicant;

12 (2) establish informational requirements to be
13 included in the statement;

14 (3) distribute the statement to interested residents;
15 and

16 (4) conduct a public hearing on the proposed action.

17 Section 93. Restoration -- property rights. (1) A
18 person who performs an activity in a lake without first
19 obtaining a permit as required by [section 88 of SB 16]
20 shall, if required by the governing body or district court
21 having jurisdiction, restore the lake or lakeshore to its
22 previous condition.

23 (2) A permit issued for an activity shall not create a
24 vested property right except in a physical structure for
25 which a permit was issued.

1 Section 94. Judicial enforcement and review. The
2 district court may hear and decide the following cases
3 arising under [section 33 through section 124 of SB 16]:

4 (1) a complaint and petition of a governing body or an
5 interested person for an order to restore a lake to its
6 previous condition or to enjoin the continuance of an
7 activity in a lake;

8 (2) a petition of an interested person for review of a
9 final action of a governing body upon an application for a
10 permit;

11 (3) a petition of an interested person for review of
12 an action of a governing body in adopting or amending
13 regulations.

14 Section 95. Underground conversion of utilities. (1)
15 The governing body may create a local improvement district
16 as provided in [section 64 through section 117 of SB 12],
17 except where otherwise provided in [section 95 through
18 section 106 of SB 16], for the conversion of existing
19 overhead electrical and communication facilities to
20 underground locations.

21 (2) The local improvement district shall include an
22 area having a frontage of not less than 1,000 feet upon a
23 public trafficway or utilities easement along which overhead
24 electric or communications facilities are located.

25 Section 96. Definitions. In [SB 11, SB 12, SB 13, SB

1 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22,
2 and SB 23], unless otherwise provided or the context
3 requires a technical or other interpretation, the following
4 definitions apply:

5 (1) "Communication service" means the transmission of
6 intelligence by electrical means, including but not limited
7 to telephone, telegraph, messenger-call, clock, police, fire
8 alarm, and traffic control circuits or the transmission of
9 standard television or radio signals.

10 (2) "Electrical service" means the distribution of
11 electricity for heat, light, or power.

12 (3) "Convert" or "conversion" means the removal of all
13 or any part of any existing overhead electric or
14 communications facilities and the replacement thereof with
15 underground electric or communication facilities constructed
16 at the same or different locations.

17 (4) "Electric or communication facilities" means any
18 works or improvements used or useful in providing electric
19 or communication service, including but not limited to
20 poles, supports, tunnels, manholes, vaults, conduits, pipes,
21 wires, conductors, guys, stubs, platforms, crossarms,
22 braces, transformers, insulators, cutouts, switches,
23 capacitors, meters, communication circuits, appliances,
24 attachments, and appurtenances. "Electric facilities" shall
25 not include any facilities used or intended to be used for

1 the transmission of electric energy at nominal voltages in
2 excess of 25,000 volts.

3 (5) "Overhead electric or communication facilities"
4 means electric or communication facilities located, in whole
5 or in part, above the surface of the ground.

6 (6) "Underground electric or communication facilities"
7 means electric or communication facilities located, in whole
8 or in part, beneath the surface of the ground.

9 (7) "Public utility" means any public or private
10 person, corporation, or cooperative that provides electric
11 or communication service to the public by means of electric
12 or communication facilities and shall include any special
13 improvement district that provides electric or communication
14 service to the public by means of electric or communication
15 facilities.

16 Section 97. Maintenance, construction, and title to
17 converted facilities. The public utility shall have the duty
18 to maintain, repair, and replace all underground facilities
19 installed pursuant to [section 33 through section 124 of SB
20 16]. There shall be no competitive bidding for the
21 construction of the converted facilities since existing
22 facilities are owned, maintained, and operated by the public
23 utility and the continuity of service of the utility is
24 essential, both of which make construction work by third
25 persons impracticable. Therefore, the public utility

1 concerned shall be responsible for the accomplishment of all
 2 construction work and may contract out the construction work
 3 as it considers desirable. Title to the converted facilities
 4 shall be at all times solely and exclusively in the public
 5 utility involved, as the public is only purchasing the
 6 intangible benefits which come from the converted
 7 facilities, i.e., the removal of the overhead facilities and
 8 replacement by underground facilities.

9 Section 98. Conversion costs. In determining the
 10 conversion costs, the public utility is entitled to amounts
 11 sufficient to repay it for the following costs, as computed
 12 and reflected by the uniform system of accounts approved by
 13 the public service commission, federal communications
 14 commission, or federal power commission, or if the public
 15 utility is not subject to regulation by any of the above
 16 governmental agencies, by the public utility's system of
 17 accounts then in use and in accordance with standard
 18 accounting procedures of the public utility. The costs to be
 19 repaid are:

20 (1) the original costs less depreciation taken of the
 21 existing overhead electric and communication facilities to
 22 be removed;

23 (2) the estimated costs of removing the overhead
 24 electric and communication facilities, less the salvage
 25 value of the facilities removed;

1 (3) if the estimated cost of constructing new
 2 underground facilities exceeds the estimated cost of
 3 constructing new aerial facilities, then the cost difference
 4 between the two;

5 (4) the cost of obtaining new easements when technical
 6 considerations make it reasonably necessary to utilize
 7 easements for the underground facilities different from
 8 those used for aboveground facilities or where the
 9 preexisting easements are insufficient for the underground
 10 facilities.

11 Section 99. Statement of conversion costs, notice to
 12 landowners, and removal of overhead facilities. Upon
 13 completion of the conversion of the overhead electric or
 14 communication facilities on public lands and right-of-way to
 15 underground, the public utility shall file a verified
 16 statement of the costs of the conversion with the governing
 17 body. The governing body shall mail to each landowner a
 18 notice stating that:

19 (1) service from the underground facilities is
 20 available;

21 (2) the landowner has 60 days after the date of the
 22 mailing of the notice to convert all overhead electric or
 23 communication facilities providing service to any structure
 24 or improvement located on his lot or parcel to underground
 25 service facilities;

1 (3) after the 60-day period following the date of the
2 mailing of the notice, the governing body will order the
3 public utility to disconnect and remove all overhead
4 electric and communication facilities providing service to
5 any structure or improvement within the area.

6 Section 100. Conversion of facilities on private
7 property. (1) Any conversion of electric or communication
8 service facilities, including service connections, located
9 on a privately owned lot or parcel shall be made at the
10 expense of the landowner by the public utility owning the
11 facility. The conversion shall be made in accordance with
12 applicable safety rules, codes, regulations, tariffs, or
13 ordinances. The public utility shall not be required to
14 convert service lines on property, other than public lands
15 and right-of-way, until the landowner furnishes to the
16 public utility a permit or easement authorizing the public
17 utility and its employees, agents, and contractors to enter
18 upon real property of the landowner for the purpose of
19 performing conversion work thereon.

20 (2) Upon completion of the conversion of overhead
21 electric or communication service facilities on privately
22 owned lots and parcels within a district, the public utility
23 shall file with the governing body a verified statement of
24 the costs of the conversion of the service facilities of
25 each landowner in the district. Promptly thereafter, the

1 governing body shall mail to each landowner a copy of the
2 verified statement, which shall be due and payable within 30
3 days or as otherwise provided by the public utility.

4 Section 101. Private property conversion upon default
5 of owner. If the owner of any structure or improvement
6 served from the overhead electric or communication service
7 facilities within the local improvement district does not
8 grant the utility a permit or easement referred to in
9 [section 100 of SB 16] or if such an owner fails to convert
10 to underground service facilities within 60 days after the
11 mailing to him of the notice provided by [section 99 of SB
12 16], the governing body shall order the public utility to
13 complete the conversion and to disconnect and remove all
14 overhead facilities, including service facilities, providing
15 service to the structure or improvement.

16 Section 102. Payment of public utility. Upon
17 completion of the conversion provided by [section 33 through
18 section 124 of SB 16], the public utility shall present the
19 governing body with its verified bill for conversion costs
20 as computed in [section 98 of SB 16] but based upon the
21 actual cost of constructing the underground facility rather
22 than the estimated cost of the facility. In the event the
23 conversion costs are less than the estimated conversion
24 costs, each assessed owner within the local improvement
25 district shall receive the benefit, prorated in such form

1 and at such time or times as the governing body may
 2 determine. The bill of the public utility shall be paid
 3 within 30 days by the governing body from the local
 4 improvement district revenues or such other source as is
 5 properly designated by the governing body. In determining
 6 the actual cost of constructing the underground facility,
 7 the public utility shall use its standard accounting
 8 procedures, such as the uniform system of accounts as
 9 defined by the federal communications commission, federal
 10 power commission, or Montana public service commission and
 11 as is in use at the time of the conversion by the public
 12 utility involved.

13 Section 103. Reinstallation of overhead facilities not
 14 permitted. Once removed, no overhead electric or
 15 communication facilities shall be installed in a local
 16 improvement district for conversion of overhead electric and
 17 communication facilities, except as authorized by [SB 14, SB
 18 15, SB 16, SB 17, SB 18, SB 19, and SB 20].

19 Section 104. No limitation of public service
 20 commission's jurisdiction. Nothing contained in [SB 14, SB
 21 15, SB 16, SB 17, SB 18, SB 19, and SB 20] shall vest any
 22 jurisdiction over a public utility in the governing body.
 23 The public service commission of Montana shall retain all
 24 jurisdiction now or hereafter conferred upon it by law.

25 Section 105. Invalidity of one provision not to affect

1 others -- exception. If any section or provision of [SB 14,
 2 SB 15, SB 16, SB 17, SB 18, SB 19, and SB 20] be adjudged
 3 unconstitutional or invalid for any reason, such
 4 adjudication shall not affect the validity of [SB 14, SB 15,
 5 SB 16, SB 17, SB 18, SB 19, and SB 20] as a whole or of any
 6 section or provision hereof which is not specifically so
 7 adjudicated unconstitutional or invalid; however, if any
 8 section or provision of [SB 14, SB 15, SB 16, SB 17, SB 18,
 9 SB 19, and SB 20] concerning the payment to the public
 10 utility shall be adjudged unconstitutional or invalid for
 11 any reason in such a way that the payment to the public
 12 utility or the creation of the funds for that purpose is
 13 adjudged to be invalid or unconstitutional, then such
 14 invalidity or unconstitutionality shall invalidate [SB 14,
 15 SB 15, SB 16, SB 17, SB 18, SB 19, and SB 20] in its
 16 entirety and to this end and in this event the provisions of
 17 [SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, and SB 20] are
 18 declared to be nonseverable.

19 Section 106. Abatement of construction. If a local
 20 improvement district is established pursuant to [SB 14, SB
 21 15, SB 16, SB 17, SB 18, SB 19, and SB 20], the public
 22 utility involved shall not be required to commence
 23 conversion until the ordinance, the assessment roll, and
 24 issuance of bonds have become final and no civil action has
 25 been filed or, if civil action has been filed, until the

1 decision of the court upon the action has become final and
2 is not subject to further appeal.

3 Section 107. Definitions. In [SB 11, SB 12, SB 13, SB
4 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22,
5 and SB 23], unless otherwise provided or the context
6 requires a technical or other interpretation, the following
7 definitions apply:

8 (1) "Deteriorated area" means an area where:

9 (a) a significant number of structures exist, which by
10 reason of dilapidation, deterioration, age, or obsolescence
11 create conditions which endanger life and property; or

12 (b) due to inadequate street or lot layout,
13 incompatible land uses or land-use relationships, unsafe or
14 unsanitary conditions, deteriorated public improvements, tax
15 or special assessment delinquency, overcrowding or excessive
16 building density, or diversity of ownership, conditions
17 exist which retard sound development of the area and
18 represent a menace to the public health, safety, and
19 welfare.

20 (2) "Redevelopment area" means the deteriorated area
21 or the area possessing symptoms of deterioration which the
22 governing body designates as appropriate for a redevelopment
23 project.

24 (3) "Redevelopment plan" means a plan as it exists
25 from time to time for a community redevelopment project or

1 projects.

2 (4) "Redevelopment project" means undertakings and
3 activities in a redevelopment area for the elimination and
4 prevention of the spread of deteriorated conditions. A
5 redevelopment project may involve slum clearance, restoring
6 and rebuilding in a redevelopment area, rehabilitation or
7 conservation, or any combination or part thereof in
8 accordance with a redevelopment plan.

9 (5) "Symptoms of deterioration" means an area which in
10 the opinion of the governing body will become a deteriorated
11 area within 5 years if the local government does not take
12 actions to alleviate the decline of the area.

13 Section 108. Findings and declaration of necessity. A
14 local government may not provide the redevelopment services
15 authorized by [section 33 through section 124 of SB 16]
16 until its governing body after notice and public hearing has
17 adopted a resolution finding:

18 (1) within its jurisdiction a deteriorated area exists
19 or an area exists possessing the symptoms of deterioration;
20 and

21 (2) the redevelopment of the area is necessary in the
22 interest of the public health, safety, or welfare.

23 Section 109. Establishment of a redevelopment agency.

24 (1) In order to provide the services authorized by [section
25 33 through section 124 of SB 16], a governing body must

1 establish by ordinance a redevelopment agency.

2 (2) A redevelopment agency may be:

3 (a) the governing body itself; or

4 (b) an office or department of the local government.

5 (3) Two or more local governments may establish a
6 joint redevelopment agency through an interlocal agreement.

7 (4) A redevelopment agency may be combined with any
8 other agency of a local government; however, the additional
9 powers authorized by [section 33 through section 124 of SB
10 16] may only be exercised pursuant to the purposes of
11 [section 33 through section 124 of SB 16].

12 (5) Prior to the passage of an ordinance establishing
13 a redevelopment agency, a governing body shall give notice
14 and hold a public hearing.

15 Section 110. Special redevelopment project powers. A
16 local government may exercise the following special powers
17 in connection with the establishment, operation, and
18 maintenance of a redevelopment project:

19 (1) acquire, hold, improve, or otherwise prepare real
20 and personal property for redevelopment;

21 (2) demolish and remove buildings and improvements;

22 (3) arrange or contract for the furnishing of public
23 and private services and facilities;

24 (4) rent, lease, sell, transfer, or otherwise dispose
25 of real or personal property; and

1 (5) enforce or arrange for the enforcement of codes
2 and programs for the voluntary or compulsory repair or
3 rehabilitation of buildings or other improvements.

4 Section 111. Redevelopment plan. After a governing
5 body has made the findings required by [section 108 of SB
6 16], it may cause a redevelopment plan to be prepared for
7 the area for which the findings were made. A redevelopment
8 plan shall:

9 (1) be sufficiently complete to indicate, on a yearly
10 basis or otherwise:

11 (a) land acquisition;

12 (b) any demolition and removal of structures;

13 (c) any redevelopment, rehabilitation, or
14 improvements;

15 (d) any zoning or planning changes;

16 (e) land uses, maximum densities, and building
17 requirements;

18 (2) indicate its relationship to local objectives
19 respecting:

20 (a) appropriate land uses;

21 (b) transportation systems;

22 (c) public utilities;

23 (d) recreational and community facilities; and

24 (e) any other public improvements;

25 (3) propose methods for financing redevelopment

1 projects; and

2 (4) propose a plan for the relocation of persons
3 displaced as a result of a redevelopment project.

4 Section 112. Adoption of a redevelopment plan. (1) A
5 governing body shall use the following procedure in adopting
6 a redevelopment plan:

7 (a) If a planning agency exists, the governing body
8 shall submit the proposed redevelopment plan to the planning
9 agency for review and comment. The governing body shall
10 establish a reasonable period of time in which the planning
11 agency must submit its comments to the governing body.

12 (b) The governing body shall give notice and conduct a
13 public hearing on the proposed redevelopment plan. In
14 addition to notice, the governing body shall give notice by
15 certified mail to the persons whose names appear on the
16 latest completed tax roll as owners or reputed owners of the
17 property within the redevelopment area. Where the
18 redevelopment plan has been submitted to a planning agency,
19 the hearing may not be held until the planning agency's
20 comments have been received or the time period specified by
21 the governing body has elapsed.

22 (c) After the public hearing, the governing body may
23 adopt a redevelopment plan if it finds that:

24 (i) where a general plan has been adopted, the
25 redevelopment plan is compatible with the adopted objectives

1 and elements of the general plan;

2 (ii) a feasible program exists to relocate persons
3 displaced by redevelopment projects;

4 (iii) the redevelopment plan provides opportunity for
5 private enterprise to participate in redevelopment projects;
6 and

7 (iv) a sound financial program exists for the financing
8 of the projects included within the redevelopment plan.

9 (2) Approval of a redevelopment plan shall constitute
10 approval of each redevelopment project included within the
11 plan.

12 (3) Approval of a redevelopment plan shall become void
13 if within 90 days after the approval of the plan the
14 governing body receives a protest from the owners of more
15 than 50% of the property covered by the plan.

16 Section 113. Amendment of a redevelopment plan. (1) In
17 amending a redevelopment plan, the governing body shall
18 follow the same procedures it is required to follow in the
19 initial adoption of a redevelopment plan, except that notice
20 by certified mail need only be given to persons whose
21 interest in property or bonds would be substantially
22 affected by the amendment.

23 (2) If amendment of a redevelopment plan occurs after
24 the disposal of real property located within the
25 redevelopment project, the amendment shall be subject to the

1 rights at law or equity as have occurred to the lessee or
2 purchaser or their successors.

3 (3) If amendment of a redevelopment plan occurs after
4 the sale of bonds in connection with a redevelopment
5 project, and if the amendment substantially affects the
6 security of the bonds, the amendment shall be subject to the
7 rights at law or equity as have occurred to the bondholders.

8 Section 114. Effect of redevelopment plan. (1) Upon
9 the effective date of a redevelopment plan, the plan shall
10 control all future use and building requirements of all
11 property in the project area, but building requirements may
12 not be lower than minimum building standards established by
13 the state.

14 (2) Each portion of a redevelopment plan shall be
15 considered to be essential to the overall purposes of the
16 plan. Any portion of the plan may be changed or modified
17 only through the amendment of the redevelopment plan.

18 Section 115. Consolidation of redevelopment projects.
19 (1) Two or more redevelopment projects may be consolidated
20 by the amendment of the respective redevelopment plans.

21 (2) Each former project area shall continue under its
22 own redevelopment plan. Taxes attributed to each project
23 area which are allocated under [section 122 of SB 16] shall
24 be devoted to the entire merged project area as provided.

25 (3) If any indebtedness has been incurred prior to the

1 consolidation under this section, taxes allocated under
2 [section 122 of SB 16] shall be first used to pay the
3 principal and interest on prior obligations.

4 Section 116. Cooperation by state and political
5 subdivisions. (1) For the purpose of aiding and cooperating
6 in the establishment, maintenance, and operation of a
7 redevelopment project, the state or any political
8 subdivision of the state may, when it possesses the
9 authority to do so and upon such terms as it determines:

10 (a) dedicate, convey, or lease any of its interests in
11 any property or grant easements or any other rights therein
12 to a local government, state, or to the federal government;

13 (b) cause any public trafficways, services, or
14 facilities that it may provide to be established or improved
15 in order to be made available to a redevelopment project;

16 (c) plan or replan, zone or rezone, and make
17 exceptions from building regulations and ordinances for
18 property included within a redevelopment project;

19 (d) enter into agreements relating to the repair,
20 closing, or demolition of structures which are identified
21 for repair, closing, or demolition by the redevelopment
22 plan;

23 (e) enter into agreements with a local government or
24 the state or federal government to assist in the provision
25 of redevelopment services; and

1 (f) do any and all things necessary and convenient to
2 assist in the establishment, maintenance, and operation of a
3 redevelopment project.

4 (2) A public agency may incur all or part of any
5 expenses it makes while aiding or cooperating in a
6 redevelopment project.

7 (3) Any sale, conveyance, lease, or agreement provided
8 for in this section may be made by a public agency without
9 appraisal, notice, public hearing, or public bidding.

10 Section 117. Compensation for real property.
11 Compensation for real property acquired for a redevelopment
12 project by the exercise of eminent domain shall not be
13 increased in value because of any increase in the value of
14 the real property caused by the redevelopment project.

15 Section 118. Disposal of property. (1) A local
16 government may dispose of any property or interest in
17 property acquired by it for a redevelopment project in any
18 manner authorized by [SB 11, SB 12, SB 13, SB 14, SB 15, SB
19 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23].

20 (2) A local government may retain such property or
21 interest in the property only for parks and recreation,
22 education, public transportation, public safety, health,
23 trafficways, buildings, and facilities, parking lots, public
24 housing, and other public improvements in accordance with
25 the redevelopment plan.

1 (3) Purchasers or lessees and their successors and
2 assignees shall devote real property only to the uses
3 specified in the redevelopment plan. The local government
4 may require them to comply with other requirements
5 considered to be in the public interest.

6 (4) A local government may maintain real property
7 acquired in accordance with [SB 14, SB 15, SB 16, SB 17, SB
8 18, SB 19, and SB 20], pending the disposition of the
9 property for redevelopment, without regard to [section
10 118(2) of SB 16] for uses and purposes as may be in the
11 public interest even though not in conformity with the
12 redevelopment plan.

13 Section 119. Tax exemption. (1) Real and personal
14 property of a local government held as a part of a
15 redevelopment project is public property for essential
16 public and governmental purposes. The redevelopment project
17 property shall be exempt from all taxes and assessments of
18 any public agency. In the first fiscal year of acquisition
19 by the local government from a nonexempt body the local
20 government may pay that portion of taxes corresponding to
21 the portion of the taxable year in which the local
22 government held the property.

23 (2) A local government may make payments in lieu of
24 taxes and special assessments on property exempted from the
25 taxes or assessments by the provisions of this section.

1 (3) The tax exemption shall terminate when the local
2 government disposes of the property to a purchaser or lessee
3 which is not a public agency entitled to a property tax
4 exemption.

5 Section 120. Relocation. (1) A local government
6 undertaking a redevelopment project shall provide for the
7 relocation of persons displaced as a result of the
8 redevelopment project. Relocation of displaced persons shall
9 comply with 70-31-201 through 70-31-207.

10 (2) Where federal money has been utilized to fund any
11 part of a redevelopment project, relocation shall comply
12 with the applicable federal laws and requirements.

13 Section 121. Exemption from foreclosure. (1) All
14 property owned or held by a local government in connection
15 with a redevelopment project shall be exempt from levy and
16 sale by an execution.

17 (2) No execution or other judicial process may be
18 issued against the property, but the provisions of this
19 section shall not prohibit the right of obligees to pursue
20 any remedies for the enforcement of any pledge or lien given
21 by the local government on its rents, fees, or revenues or
22 the right of the federal or state government to pursue any
23 remedies provided by law or agreement.

24 Section 122. Tax increment financing. (1) A
25 redevelopment plan may contain a provision or be amended to

1 contain a provision for the segregation and application of
2 tax increment as provided for in this section.

3 (2) For the purposes of this section, the following
4 terms shall have the meanings given to them unless otherwise
5 provided for or indicated by the context:

6 (a) "Original taxable value" means the taxable value
7 of all taxable property within a redevelopment area as
8 calculated from the assessment roll last equalized prior to
9 the effective date of a tax increment provision, subject to
10 adjustment as provided in subsection (8) of this section.

11 (b) "Actual taxable value" means the taxable value, at
12 any time, of all taxable property within a redevelopment
13 area as calculated from the assessment roll last equalized.

14 (c) "Incremental taxable value" means the amount, if
15 any, by which the actual taxable value, at any time, exceeds
16 the original taxable value of all taxable property within a
17 redevelopment area.

18 (d) "Tax increment" means the collections realized
19 from extending the tax levies, expressed in mills, of all
20 taxing bodies in which the redevelopment area is located
21 against the incremental taxable value.

22 (e) "Tax increment provision" means a provision for
23 the segregation and application of tax increment as
24 authorized by this section.

25 (f) "Taxes" means all taxes levied by a taxing body on

1 ad valorem basis.

2 (g) "Taxing body" means any local government or other
3 political subdivision or governmental unit of the state,
4 including the state, which levies taxes against property
5 within a redevelopment area.

6 (3) (a) The records administrator of the local
7 government implementing a tax increment provision shall file
8 a certified copy of each redevelopment plan or amendment to
9 a plan containing a tax increment provision with state and
10 local government officers responsible for determining the
11 value of taxable property within the redevelopment area.

12 (b) The records administrator shall also file the
13 certified copy with the records administrator of each of the
14 affected taxing bodies.

15 (c) Upon receipt of the tax increment provision and in
16 each ensuing year, the officers responsible for determining
17 the taxable value of taxable property within the
18 redevelopment area shall calculate and certify to the local
19 government implementing the tax increment provision and each
20 other affected taxing body the original, actual, and
21 incremental taxable value of such property.

22 (4) (a) Mill rates of taxing bodies for taxes levied
23 after the effective date of the tax increment provision
24 shall be calculated on the basis of a taxable value of
25 property within their taxing jurisdiction which includes

1 only the original taxable value of the property located
2 within the redevelopment area.

3 (b) The mill rate so determined shall be levied
4 against the sum of the actual taxable value of all taxable
5 property located within as well as outside the redevelopment
6 area.

7 (c) The tax increment, if any, received in each year
8 from the levy of the combined mill rates of all the affected
9 taxing bodies against the incremental taxable value within
10 the redevelopment area shall be paid into a special fund
11 held by the treasurer of the local government implementing
12 the tax increment provision and shall be used as provided in
13 this section, except that taxes for the payment of all bonds
14 and interest of each taxing body shall be levied against all
15 property within the taxing body's jurisdiction to tax
16 without limitation by the provisions of this section.

17 (d) The balance of the taxes collected in each year
18 shall be paid to each of the taxing bodies as otherwise
19 provided by law.

20 (5) (a) The tax increment may be used by the local
21 government to pay the following costs of or incurred in
22 connection with a redevelopment project:

23 (i) the acquisition of property within the
24 redevelopment area;

25 (ii) the provision and improvement of public services

1 and facilities in the redevelopment area;

2 (iii) the relocation of occupants of the redevelopment
3 area;

4 (iv) the acquisition of any items of equipment
5 incidental to the provision and improvement of public
6 services in the redevelopment area.

7 (b) The tax increment may be pledged to the payment of
8 the principal, premiums (if any), and interest on revenue
9 bonds which the local government may issue to finance all or
10 a portion of a redevelopment project, and the following
11 apply:

12 (i) Bonds issued pursuant to this section shall be
13 designed to mature not later than 25 years from their date
14 of issue and shall be designed to mature in such years and
15 amounts that the principal and interest due on the bonds in
16 each year shall not exceed the estimated tax increment and
17 other estimated revenues, including the proceeds of the
18 bonds available for payment of interest on the bonds,
19 pledged to their payment to be received in such year.

20 (ii) The governing body in the resolution authorizing
21 the bonds shall determine the estimated tax increment and
22 other revenues (if any) for each year the bonds are to be
23 outstanding.

24 (iii) In calculating the costs for which the bonds are
25 to be issued, the local government may include an amount

1 sufficient to pay interest on bonds prior to receipt of tax
2 increment pledged and sufficient for the payment therefor
3 and to fund any reserve fund in respect to the bonds.

4 (c) The local government implementing a tax increment
5 provision may enter into agreements with other affected
6 taxing bodies to remit to the taxing bodies any portion of
7 the annual tax increment not currently required for the
8 payment of the principal, premiums, and interest on the
9 bonds.

10 (6) (a) At the time of adoption of a tax increment
11 provision or at any time after adoption of a tax increment
12 provision, the governing body of the local government
13 implementing the tax increment provision may provide that
14 only a portion of the tax increment from the incremental
15 taxable value shall be segregated as provided for in
16 subsections (3) and (4) of this section.

17 (b) The portion so determined shall be certified by
18 the records administrator to the officers and taxing bodies
19 to which the provision for segregation and application of
20 the tax increment is certified.

21 (c) Thereafter, in determining the mill rates of
22 affected taxing bodies, the taxable values against which the
23 mill rates are extended, and the tax increment to be paid to
24 the local government, the original taxable value shall be
25 accordingly increased and the incremental taxable value

1 shall be accordingly decreased by an amount sufficient to
2 decrease the tax increment to the portion so determined.

3 (7) (a) The tax increment provision shall terminate
4 upon the 10th year following its adoption or upon the
5 payment or provision for payment in full of all principal,
6 premiums, and interest on bonds for which the tax increment
7 was pledged.

8 (b) Unless otherwise provided by agreement with other
9 taxing bodies, any tax increments remaining after
10 termination of the provision for the segregation and
11 application of tax increments shall be distributed to all
12 affected taxing bodies in proportion to the mill rates of
13 each for the last year for which the tax increment provision
14 was effective.

15 (8) In the event of a comprehensive revaluation of all
16 property within a county, the original taxable value shall,
17 at the request of the local government implementing the tax
18 increment provision and subject to the provision of bond
19 ordinances and resolutions, be increased or decreased by the
20 officer responsible for determining the taxable value of
21 taxable property within the redevelopment area to minimize
22 the effect of the revaluation on the incremental taxable
23 value for the year immediately preceding the year of the
24 revaluation.

25 Section 123. Severability. If a part of this act is

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

6 Section 124. Effective date. This act is effective on
7 July 1, 1981.

-End-