

SENATE BILL 17

IN THE SENATE

January 3, 1979

Introduced and referred to
Committee on Local Government.

April 20, 1979

Died in Committee.

1 Senate BILL NO. 17
2 INTRODUCED BY JERGESON, WATT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LOCAL GOVERNMENT LAWS RELATING TO COMMUNITY SERVICES; AND
6 PROVIDING AN EFFECTIVE DATE."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

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3 becomes effective] shall continue in effect until repealed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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (38) "May" confers a power.

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

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

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

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

1 an incorporated municipality.

2 (43) "Municipality" or "municipal" means an entity
3 which incorporates as provided by [section 47 through
4 section 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. Title 3, 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) "Cemetery" means a tract of land with specific
8 boundaries established, dedicated, and maintained as a place
9 for interment of human bodies.

10 (2) "Decedent" means a dead person.

11 (3) "Lot" means a specific, small parcel of land set
12 aside for the interment of a human body within the
13 boundaries of a cemetery.

14 Section 34. Administration. (1) Lands acquired for a
15 cemetery shall be formally dedicated as a cemetery.

16 (2) An existing tract of land not formally dedicated
17 as a cemetery but having specific boundaries within which
18 six or more human bodies are interred shall be dedicated as
19 a cemetery.

20 (3) A cemetery may be laid out in lots and the lots
21 may be disposed of at the discretion of the agency charged
22 with the administration of the cemetery.

23 (4) Lands dedicated as a cemetery may be used for no
24 other purpose unless the public health or welfare is
25 substantially endangered by continued cemetery use. Interred

1 bodies may be removed from a cemetery where the public
2 health and welfare is substantially endangered and interred
3 elsewhere in land dedicated as a cemetery.

4 (5) A local government may administer a cemetery in
5 any authorized manner or it may recognize one or more
6 cemetery associations as provided in Title 35, chapter 20.

7 (6) A local government shall survey the boundaries of
8 each cemetery over which it has regulatory discretion and,
9 based on the survey, shall record the exact location of each
10 cemetery. Each cemetery shall be enclosed by fencing or
11 other suitable material which shall clearly define its
12 boundaries.

13 (7) A local government shall record the following
14 information about each decedent interred in a cemetery over
15 which it has regulatory discretion:

- 16 (a) name;
- 17 (b) date of birth;
- 18 (c) date of death;
- 19 (d) birthplace; and
- 20 (e) exact location of interment.

21 Section 35. Finances. Revenue received from the sale,
22 care, and maintenance of cemetery lots shall be used only
23 for the care, maintenance, and improvement of cemetery
24 properties. Revenues in excess of the amount needed to
25 properly keep and maintain cemetery grounds may be used for

1 such other purposes as the local government may designate.

2 Section 36. Use, lease, or sale of parklands. (1)
3 Lands acquired for public recreation, parks, or parklands
4 may be used only for those purposes.

5 (2) Lands originally acquired under the provisions of
6 Title 76, chapter 3, including land dedicated for public
7 recreation, parks, or parklands, but which are not suited to
8 that use may be sold or leased or traded by two-thirds vote
9 of the entire membership of the governing body after notice,
10 public hearing, and determination that it is not advisable
11 to retain, use, or improve the land as a park.

12 (3) Any real or personal property or money realized
13 through the disposition of lands acquired under the
14 provisions of Title 76, chapter 3, may be used only to
15 acquire parkland or for initial development of parkland.

16 Section 37. General definitions. In [SB 11, SB 12, SB
17 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21,
18 SB 22, and SB 23], unless otherwise provided or the context
19 requires a technical or other interpretation, the following
20 definitions apply:

- 21 (1) "Animal" means an animate being not human.
- 22 (2) "Domestic animal" means an animal owned or kept
23 for any human purpose.
- 24 (3) "Kennel" means any establishment where five or
25 more pets are kept for the purpose of boarding, breeding,

1 sale, sporting, or commerce.

2 (4) "Humane destruction" means a method of killing an
3 animal which minimizes the pain and suffering of the animal.

4 (5) "Humane treatment" means the provision of adequate
5 food, water, shelter, and necessary veterinary attention for
6 impounded animals.

7 (6) "Impound" means the holding of an animal in a
8 specific place pending claim by its owner or other
9 disposition.

10 (7) "Owner" means a person who keeps or holds an
11 animal as personal property.

12 (8) "Pet" means an animal owned or kept for other than
13 agricultural purposes.

14 Section 38. Animal control program. A local government
15 may provide animal control services which may contain any of
16 the following provisions:

17 (1) provisions for licensing of animals kept as pets
18 and for setting or collecting fees for licenses, including
19 differential license fees for pets in an altered state and
20 animals in kennels;

21 (2) provisions for keeping records of applications for
22 licenses and licenses issued;

23 (3) provisions for mandatory vaccination of pets for
24 immunity from diseases which may be transmitted to humans or
25 which may pose a threat to public health;

1 (4) provisions for seizing and impounding animals
2 running at large or posing a public nuisance or a threat to
3 the public within the jurisdictional area of the local
4 government;

5 (5) provisions for the sale and humane treatment of
6 animals impounded;

7 (6) (a) provisions for the sale, humane destruction,
8 or other humane means of disposal of an impounded animal not
9 claimed by its owner after a reasonable time period, not
10 less than 72 hours, and after a reasonable attempt has been
11 made to identify and inform the owner of the animal's
12 impoundment; and

13 (b) notice to owners of livestock conforming with
14 81-4-403 through 81-4-410;

15 (7) definition of the responsibility of an owner of an
16 animal for damages to persons or property caused by the
17 animal and provision for payment of restitution by the owner
18 for such damages;

19 (8) definition of acts committed by an animal for
20 which its owner may be held liable;

21 (9) provisions for setting and collecting fines
22 incurred by an owner because of liability for acts defined
23 in accordance with this section;

24 (10) provisions for fees for reasonable compensation
25 paid by the owner to the local government for the care and

1 feeding and other costs of seizing and impounding the
2 animal. The refusal or failure of the owner of any animal to
3 pay the compensation fee and charges after due notification
4 shall be held to be an abandonment of the animal by the
5 owner.

6 (11) provisions to prevent cruelty to animals; and
7 (12) other provisions deemed necessary to prevent
8 animals from being a public nuisance or a threat to public
9 health.

10 Section 39. Custody of impounded animals. An animal
11 impounded by a municipality may be turned over to the humane
12 officer of the county.

13 Section 40. Rabid animals. An impounded animal
14 suspected of having rabies or known to have bitten a human
15 or animal shall not be sold, destroyed, or otherwise
16 disposed of or released to its owner until authority to do
17 so is given by the responsible county health officer or his
18 agent.

19 Section 41. Special provisions. (1) In providing
20 television program distribution services, the local
21 government may perform all the acts and take all the
22 necessary or proper steps to assure that there will be a
23 fair, efficient, and equitable distribution of television
24 services within the service area in order that all persons
25 within the service area shall be supplied by means of an

1 appropriate electrical or electronic system for television
2 program distribution. But the local government may not
3 perform any acts or take any steps to construct or operate
4 community antenna systems, commonly known and referred to as
5 cable TV systems.

6 (2) A system is to provide such flexibility as to
7 permit improvements in technical quality without rendering
8 inoperative its receivers, but discontinuance of service by
9 the district for improvements or repairs for a temporary
10 period shall not be construed as rendering the service
11 inoperative.

12 Section 42. Exemptions from taxes or service charges.

13 (1) A system for financing television program distribution
14 services shall provide for the exemption of:

- 15 (a) persons who do not own television sets;
- 16 (b) persons who do not receive the signal of the
17 television translator station;
- 18 (c) persons who receive direct reception from the
19 television station from which the television translator
20 repeats a signal; and
- 21 (d) persons who receive service through the medium of
22 a community antenna system on which they are subscribers in
23 good standing.

24 (2) Persons filing with the finance administrator an
25 affidavit setting forth any of the grounds listed above

1 shall be exempt from taxes or service charges for financing
2 television program distribution services.

3 (3) Any person who makes a false or fraudulent claim
4 in the affidavit for exemption is guilty of a misdemeanor.

5 Section 43. Local improvement district for ditch
6 protection. (1) Any county or municipal government may
7 create a local improvement district for ditch protection.

8 (2) The owner or owners of open ditches carrying
9 irrigation or other water shall not be included in any local
10 improvement district under [SB 11, SB 12, SB 13, SB 14, SB
11 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB
12 23] for the purpose of assessment to support the local
13 improvement district for the installation, repair, or
14 maintenance of any protective devices to protect the safety
15 of the public from open ditches carrying irrigation or other
16 water. Such devices or improvements shall provide access to
17 and shall not be constructed so as to hinder the operation
18 and maintenance of the ditch.

19 Section 44. Open ditch in municipality declared
20 nuisance. (1) Notwithstanding any provision contained in
21 Title 30 or any law pertaining to the use of water in
22 Montana, it is hereby declared that water which flows
23 through the limits of a municipality in an open ditch is a
24 public nuisance if such municipal governing body declares it
25 to be a nuisance.

1 (2) This section does not apply to ditches carrying
2 water used for commercial irrigation purposes.

3 (3) The governing body of a municipality is hereby
4 given the power to:

5 (a) investigate the dangerous condition of such
6 ditches within the limits of a municipality and to declare
7 any such ditch a public nuisance; and

8 (b) determine the measures necessary to remove the
9 danger and public nuisance, including fencing or use of
10 culvert or other protective device based upon standards to
11 be determined by the governing body.

12 (4) When a public nuisance has been declared as
13 provided in this section, the municipality shall give public
14 notice for at least 60 days to owners of the ditch and of
15 any water rights affected that such ditch has been declared
16 a public nuisance and that it shall be closed and filled
17 unless the owners of such rights desire to keep the ditch
18 open. Such notice shall include publication once each week
19 in an established newspaper published within the
20 municipality if one exists or in its absence in the official
21 county newspaper for at least 8 successive weeks.

22 (5) If a person claims that the water has not been
23 abandoned and claims the right to use water in a ditch that
24 the municipality has declared a public nuisance, he shall
25 notify the municipality before the expiration of the 60-day

1 period that he wishes to continue the use of such water
2 within the municipality and that he, individually or with
3 others, will provide such protective devices as ordered by
4 the municipality. If such notice is given, the person or
5 persons claiming such right or rights shall have a period
6 not to exceed 6 months to remove the public nuisance in the
7 manner ordered by the municipality.

8 (6) If the municipality approves the work, it shall
9 permit the water to flow into the municipality. If the
10 protective device is not provided or if it does not meet
11 specifications required by the municipality, the
12 municipality may designate such ditch abandoned and order it
13 closed or filled when the 6-month period ends.

14 Section 45. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

20 Section 46. Effective date. This act is effective on
21 July 1, 1981.

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