

SENATE BILL 18

IN THE SENATE

January 3, 1979

Introduced and referred to  
Committee on Local Government.

April 20, 1979

Died in Committee.

1                    SENATE BILL NO. 18  
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 EMERGENCY 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3 becomes effective] shall continue in effect until repealed  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) "Plot" 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. How fire prevention and protection  
3 services to be provided. (1) A municipality shall provide  
4 fire protection services.

5 (2) Fire protection services may be provided by any of  
6 the methods prescribed in [section 39 of SB 14], except that  
7 a municipality having a population of 7,500 or more shall  
8 have a paid fire service.

9 (3) A fire service may be established only by  
10 ordinance. The ordinance shall specify the organization and  
11 supervision of the fire service. Supervision of the fire  
12 service shall be vested in the local government governing  
13 body, in the chief executive, or in a board authorized to  
14 supervise the fire service.

15 Section 34. Fire prevention. (1) A local government  
16 may, through its fire service, provide fire prevention  
17 services, enforce fire codes, and conduct fire inspections  
18 as authorized by ordinance.

19 (2) A fire inspection conducted by an agency other  
20 than the local fire service may not be conducted until the  
21 chief of the local fire service is notified. The chief or  
22 other representative of the local fire service may accompany  
23 the inspector on the inspection.

24 Section 35. Reports of fire services. (1) A fire chief  
25 shall investigate and report fires as required by 50-63-203.



1 (2) The state fire marshal bureau shall promulgate  
2 rules for the statistical reporting of fire activities,  
3 training, equipment, personnel, and finances.

4 (3) The state board of education shall set fire  
5 training standards and require reports on the training  
6 activities of a fire service which shall be published in the  
7 register and Montana Administrative Code.

8 Section 36. Provisions common to all fire services.

9 (1) If a firefighter has reasonable suspicion to believe a  
10 destructive fire is within a building, he may enter that  
11 building at any time to suppress the fire.

12 (2) A fire chief or the commanding officer in charge  
13 at the suppression of a fire has the necessary and  
14 reasonable powers to insure the safety of firefighters,  
15 safety of other persons, and the protection of property.  
16 These powers include the power to:

17 (a) direct and control vehicular and pedestrian  
18 traffic at the scene of a fire for the protection of persons  
19 or property;

20 (b) enter any building in the fire area to evacuate  
21 persons and property or to conduct fire suppression  
22 activities; and

23 (c) destroy or move property in the necessary course  
24 of fire suppression for the protection of persons and  
25 property or to prevent the spread of the fire.

1 (3) No local government or its officers, employees, or  
2 firefighters are liable for property damage or personal  
3 injuries resulting from reasonable and necessary action  
4 taken by a firefighter in the suppression of a fire, in the  
5 prevention of the spread of a fire, or in safeguarding  
6 persons or property in a fire area.

7 (4) In the event of a fire disaster, the chief  
8 executive of a local government may conscript able-bodied  
9 inhabitants over the age of 18 years to assist, directly or  
10 indirectly, in the suppression of the fire.

11 Section 37. Paid fire service. A paid fire service may  
12 be established by ordinance to provide services for all its  
13 jurisdictional area or for a subordinate service district.

14 Section 38. Chief of the paid fire service. The chief  
15 of a paid fire service is the administrator of the paid fire  
16 service. He shall be a paid firefighter subject to the same  
17 conditions for appointment, discharge, suspension, and  
18 demotion as a paid firefighter. The powers, duties, and  
19 responsibilities of the chief shall be established by  
20 ordinance.

21 Section 39. Volunteer firefighters of a paid fire  
22 service. (1) A paid fire service may consist of volunteers  
23 as well as paid personnel. The chief may appoint and  
24 discharge volunteer personnel. A volunteer may be  
25 discharged at any time, without cause, in writing.

1 Appointment qualifications and training requirements of  
 2 volunteers for a paid fire service must equal or exceed the  
 3 qualifications and training for volunteer firefighters as  
 4 specified in [section 50 and section 51 of SB 18].

5 (2) A municipality utilizing volunteer firefighters  
 6 shall provide full workers' compensation coverage for the  
 7 volunteer firefighters while they are providing actual  
 8 service for a fire service. Coverage shall be provided  
 9 through the state compensation insurance fund, and the  
 10 municipality shall pay to the state fund an appropriate  
 11 premium, as established by the state fund, to cover the  
 12 insurance risk of providing that coverage.

13 (3) A municipality may not reduce the authorized  
 14 number of paid firefighters through the appointment or  
 15 utilization of volunteer firefighters.

16 Section 40. Appointment of paid firefighters. The  
 17 appointment of a paid firefighter shall conform to the  
 18 following:

19 (1) "Paid firefighter" means a person who is a  
 20 probationary or confirmed firefighter employed as a  
 21 full-time firefighter by a local government.

22 (2) (a) A paid firefighter shall be appointed on the  
 23 basis of merit.

24 (b) Prior to probationary appointment as a paid  
 25 firefighter, a person must meet the applicable entrance

1 requirement qualifications set forth in national fire  
 2 protection association standards and any additional or  
 3 similar qualifications established by the local government  
 4 and be not less than 18 or more than 31 years of age.

5 (c) A qualified person may be appointed as a  
 6 firefighter for a probationary term not to exceed 1 year  
 7 upon nomination by the chief executive and with consent of  
 8 the governing body.

9 (d) After a probationary firefighter has exhibited  
 10 satisfactory job performance, the chief executive officer  
 11 may nominate the probationary firefighter for appointment as  
 12 a confirmed firefighter with the consent of the governing  
 13 body.

14 (e) A person appointed as a confirmed firefighter  
 15 shall hold that appointment until discharged for cause,  
 16 released from the appointment because of reduction in force,  
 17 or retired.

18 Section 41. Discharge, suspension, or demotion of a  
 19 paid firefighter. (1) The chief executive officer and the  
 20 entity responsible for supervision of the volunteer fire  
 21 service may for cause discharge, suspend, or demote a paid  
 22 fire chief, paid assistant fire chief, paid fire officer,  
 23 paid firefighter, or employee of a public fire department.

24 (2) A fire chief may for cause discharge, suspend or  
 25 demote a paid assistant fire chief, paid fire officer, paid

1 firefighter, or employee of a public fire department.

2 (3) An assistant fire chief may for cause discharge,  
3 suspend, or demote a paid firefighter.

4 Section 42. Appeal of discharge, suspension, or  
5 demotion. (1) A firefighter who has been discharged,  
6 demoted, or suspended from a public fire service may appeal  
7 the discharge, suspension, or demotion to the civil service  
8 board, where one has been established, or may appeal by the  
9 following procedure:

10 (a) A person who is discharged, suspended, or demoted  
11 from a public fire service shall be given, in writing, the  
12 specific reasons for the discharge, suspension, or demotion  
13 and an opportunity to be heard in his own defense within 30  
14 days by the person who discharged or suspended him.

15 (b) A person in the fire service aggrieved by his  
16 discharge, suspension, or demotion may, within 30 days after  
17 being heard in his own defense or after refusal of his right  
18 to be heard, appeal to the governing body. The appeal shall  
19 be in the form prescribed by the governing body.

20 (2) Upon receipt of an appeal, the governing body  
21 shall set a time and place for a hearing on the issue. The  
22 hearing shall be set for a date not later than 15 days after  
23 the receipt of the appeal. The governing body shall give  
24 reasonable notice to the parties of the time and place set  
25 for hearing. At the hearing the governing body shall:

1 (a) keep a record in sufficient detail to allow an  
2 appeal on the record. The record shall include all  
3 pleadings, motions, and intermediate rulings; evidence; a  
4 stenographic or mechanical record of oral proceedings when  
5 demanded by a party; objections and rulings; and proposed  
6 findings.

7 (b) accept evidence in substantial compliance with  
8 statutory and common-law rules of evidence.

9 (3) Following the hearing, the governing body shall  
10 give a written decision on all issues before it, setting out  
11 in detail the facts relied on.

12 (4) The aggrieved person may appeal the decision of  
13 the governing body within 30 days after the decision is  
14 made. The decision is subject to judicial review by the  
15 district court of the proper judicial district. The judicial  
16 review shall be a review of the hearing record on issues of  
17 law, but in the interests of justice the court may require  
18 additional evidence to be presented at the judicial review.

19 (5) If the person discharged, suspended, or demoted  
20 prevails, he shall be reinstated and shall be entitled to  
21 that compensation he would have received had he not been  
22 discharged, suspended, or demoted.

23 Section 43. Training of paid fire service. (1)  
24 Training of paid fire service personnel shall be conducted  
25 in accordance with the standards prescribed by the national

1 fire protection association and any additional standards or  
2 requirements prescribed by the state board of education and  
3 the chief of the paid fire service.

4 (2) The state fire training officer shall be  
5 responsible for insuring that personnel of a paid fire  
6 service comply with training standards and requirements. The  
7 state training officer may conduct general or specific  
8 training for paid fire service personnel and may provide  
9 training support to a paid fire service.

10 Section 44. Private fire service. A private fire  
11 service is a fire service which is not publicly financed and  
12 shall be either:

13 (1) a corporation, either profit or nonprofit, created  
14 under the laws of this state; or

15 (2) a subdivision of a private business entity which  
16 provides fire protection to residences of nonemployees or  
17 which decides to be governed by the provisions of [section  
18 33 through section 69 of SB 18] by reporting as provided in  
19 [section 46 of SB 18].

20 Section 45. Fire training for private fire services.

21 (1) The personnel employed by a private fire service  
22 organized for profit or by a private business entity which  
23 provides fire protection to residences of nonemployees shall  
24 be trained in accordance with the applicable standards  
25 established by the national fire protection association.

1 (2) The state fire training academy may provide  
2 training for personnel of nonprofit private fire services  
3 and may charge a reasonable fee for training personnel of  
4 other private fire services.

5 Section 46. Report required of private fire services.  
6 On or before April 1 of each year, each private fire service  
7 shall submit a report to the state fire marshal containing:

8 (1) the name and address of the private service;

9 (2) whether the private fire service is a profit or  
10 nonprofit corporation;

11 (3) the method and schedule of charges for the private  
12 fire service plus any other manner utilized for obtaining  
13 revenue;

14 (4) the number of personnel in the private fire  
15 service, their job descriptions and training;

16 (5) the quantity and description of all major  
17 equipment and buildings owned, rented, or leased by the  
18 private fire service.

19 Section 47. Volunteer fire service. (1) A volunteer  
20 fire service shall consist of volunteer firefighters and  
21 other volunteer personnel augmented by any number of paid  
22 firefighters as the local government may authorize.

23 (2) A volunteer fire service may be established by  
24 ordinance.

25 (3) A volunteer fire service may be divided into

1 companies by ordinance.

2 Section 48. Rules of a volunteer fire service. The  
3 active volunteer membership of a volunteer fire service  
4 shall by vote establish rules for the discipline and  
5 operation of the volunteer fire service, subject to the  
6 approval of the entity responsible for supervision of the  
7 volunteer fire service.

8 Section 49. Chief of a volunteer fire service. The  
9 ordinance creating the volunteer fire service shall specify  
10 the manner in which the chief is to be selected and the  
11 powers, duties, and responsibilities of the chief. The chief  
12 of the volunteer fire service is the administrator of the  
13 volunteer fire service.

14 Section 50. Appointment and discharge of volunteer  
15 fire service personnel. Appointment and discharge of  
16 volunteer personnel of a volunteer fire service shall  
17 conform to the following:

18 (1) A person who meets the entrance requirement  
19 specifications of a firefighter as set forth in national  
20 fire protection association standard 1001 or similar  
21 qualifications established by the local government may be  
22 appointed a volunteer firefighter by a vote of the  
23 membership of the volunteer fire service.

24 (2) A person who meets the qualifications set forth by  
25 the governing body of the volunteer fire service may be

1 appointed as a volunteer nonfirefighting member of the fire  
2 service by vote of the membership of the volunteer fire  
3 service.

4 (3) Volunteer members may be discharged by vote of the  
5 membership of the fire service or company to which they  
6 belong or by the chief as determined by rule.

7 (4) The appointment, discharge, suspension, and  
8 demotion of paid firefighters of a volunteer fire service  
9 shall conform to the provisions of [section 40 through  
10 section 42 of SB 18].

11 Section 51. Training of personnel in a volunteer fire  
12 service. A volunteer firefighter shall receive not less than  
13 30 hours of fire training a year under the direction of the  
14 state fire training academy in accordance with applicable  
15 standards prescribed by the national fire protection  
16 association and any additional training prescribed in the  
17 state fire training academy. A paid member of a volunteer  
18 fire service shall receive the same training required for a  
19 paid firefighter of a paid fire service. The state fire  
20 training academy may establish and conduct general or  
21 specific fire training for volunteers. The academy shall  
22 provide a program of training for paid firefighters of  
23 volunteer fire services.

24 Section 52. Fund raising activities of volunteer fire  
25 service. A volunteer fire service may solicit money from any

1 source and may conduct fundraising activities. The money may  
2 be earmarked and expended by the unit responsible for their  
3 collection. All money shall be reported to the governing  
4 body of the local government but is not subject to control  
5 or appropriation by the local government.

6 Section 53. Fire councils and county fire plans. (1)  
7 To encourage coordination of fire prevention and protection  
8 services, the county governing body shall provide by  
9 ordinance for the organization of a fire council  
10 encompassing all fire organizations operating within the  
11 county.

12 (2) As part of a county service plan, by October 1,  
13 1983, the county governing body shall make a plan  
14 identifying all fire services in the county and shall on a  
15 biennial basis review and update the plan. The plan  
16 identifying all fire services in the county shall be sent to  
17 the state fire marshal bureau by October 1 each biennium and  
18 at any other time it is modified or updated.

19 Section 54. General definitions. In [SB 11, SB 12, SB  
20 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21,  
21 SB 22, and SB 23], unless otherwise provided or the context  
22 requires a technical or other interpretation, the following  
23 definitions apply:

24 (1) "Auxiliary officer" means an unsworn, part-time,  
25 nonregular volunteer member of a law enforcement agency who

1 may perform but is not limited to the performance of such  
2 functions as civil defense, search and rescue, office  
3 duties, crowd and traffic control, and crime prevention  
4 activities. An auxiliary officer has only the arrest  
5 authority granted a private person in 45-6-502.

6 (2) "Chief law enforcement administrator" means the  
7 elected or appointed administrator of the county law  
8 enforcement agency as provided in [section 57 of SB 18 and  
9 section 51 of SB 21] or the administrator of the municipal  
10 law enforcement agency as provided in [section 58 of SB 18].

11 (3) "General law enforcement duties" means patrol  
12 operations performed for detection, prevention, and  
13 suppression of crime and the enforcement of the criminal and  
14 traffic codes of this state and its local governments.

15 (4) "Law enforcement agency" means a law enforcement  
16 service provided directly by a local government.

17 (5) "Law enforcement officer" means a sworn, employed  
18 member of a law enforcement agency who is a peace officer as  
19 defined in 46-1-201(8) and has arrest authority as described  
20 in 46-6-401.

21 (6) "Reserve officer" means a sworn, part-time,  
22 nonregular volunteer member of a law enforcement agency who  
23 is a peace officer as defined in 46-1-201(8) and has arrest  
24 authority as described in 46-6-401 only when authorized to  
25 perform these functions as a representative of the law

1 enforcement agency.

2 Section 55. How law enforcement services to be  
3 provided. (1) A local government shall provide law  
4 enforcement services.

5 (2) Law enforcement services may be provided by any of  
6 the methods prescribed in [section 39 of SB 14], except  
7 general law enforcement services may not be provided by a  
8 private vendor. A local government may, however, contract  
9 with a private vendor for security, guard, crowd control, or  
10 other specific services which do not include arrest powers  
11 and where arrest is not a reasonable consequence in  
12 providing the service.

13 (3) A local government may create a subordinate  
14 service district to provide law enforcement services. Law  
15 enforcement services within a subordinate district shall be  
16 provided by law enforcement officers employed by the local  
17 government in which the subordinate service district is  
18 located.

19 Section 56. Rules for operation of law enforcement  
20 agency. The elected sheriff or, if there is no elected  
21 sheriff, the chief executive may promulgate rules for the  
22 direction and management of the law enforcement agency of  
23 the local government and for the discipline of its  
24 personnel.

25 Section 57. Sheriff. (1) As provided in [section 51 of

1 SB 21], it shall be the duty of each county to provide for a  
2 chief law enforcement administrator who shall be called the  
3 sheriff and who shall perform the following duties:

4 (a) preserve the peace;

5 (b) arrest and take before the nearest magistrate for  
6 examination any person who attempts to commit or has  
7 committed a public offense;

8 (c) prevent and suppress all affrays, breaches of  
9 peace, riots, and insurrections which may come to the  
10 administrator's knowledge;

11 (d) perform the duties of humane officer within the  
12 county for the protection of animals until animal control  
13 services are otherwise provided by the county;

14 (e) attend all courts, except justice and police  
15 courts, at their respective terms or sessions held within  
16 the county and obey their lawful orders and directions;

17 (f) command the aid of as many inhabitants of the  
18 county as thought necessary in the execution of these  
19 duties;

20 (g) take charge of and keep the county jail and the  
21 prisoners therein;

22 (h) on the first Monday in January and every 3 months  
23 thereafter, provide the governing body a certified list of  
24 the names of all prisoners in custody on the last day of the  
25 preceding month, with the time and cause of their

1 confinement, the length of time for which they were  
2 committed, and the number received and discharged during the  
3 preceding 3 months. In case he fails to do so, the sheriff  
4 may not receive any compensation for the sustenance of the  
5 prisoners in his custody.

6 (i) perform any other duty required of the sheriff by  
7 law or ordinance.

8 (2) Where the sheriff is elected, he shall perform  
9 those functions assigned by [section 33 through section 69  
10 of SB 18] to either the elected sheriff or the chief  
11 executive officer.

12 Section 58. Chief of police. (1) The municipal chief  
13 executive shall designate a law enforcement officer as the  
14 chief law enforcement administrator, who may be called the  
15 chief of police.

16 (2) It shall be the responsibility of the law  
17 enforcement officer so designated to:

18 (a) arrest any person guilty of a breach of the peace  
19 or for violation of any local government ordinance or state  
20 law and bring the violator before the appropriate court;

21 (b) have charge and control of all municipal law  
22 enforcement officers, subject to such rules as may be  
23 prescribed by ordinance or promulgated under [section 56 of  
24 SB 18], and report to the local government all  
25 delinquencies, neglect of duty, or official misconduct of

1 municipal law enforcement officers; and

2 (c) perform such other duties as the municipal chief  
3 executive officer or chief administrative officer may  
4 require.

5 Section 59. Assistant to elected sheriff. (1) An  
6 elected sheriff may appoint an assistant sheriff.

7 (2) An assistant sheriff must be a sworn law  
8 enforcement officer but need not be appointed according to  
9 the provisions of [section 62 of SB 18].

10 (3) The assistant sheriff in his capacity as assistant  
11 sheriff may be terminated without cause by an elected  
12 sheriff.

13 (4) An assistant sheriff who is selected from the  
14 ranks of the law enforcement agency of the local government  
15 shall be entitled to reinstatement as a regular law  
16 enforcement officer in that agency at the termination of his  
17 appointment as assistant sheriff.

18 (5) Whenever a vacancy occurs in the office of an  
19 elected sheriff, the assistant sheriff shall execute the  
20 duties of that office until a successor is appointed to fill  
21 the vacancy according to [section 70(3)(a) of SB 12].

22 Section 60. Law enforcement board. (1) A local  
23 government with a law enforcement agency having three or  
24 more law enforcement officers, not including the sheriff or  
25 assistant sheriff, shall have a law enforcement board. The



1 board shall consist of at least three members who shall be  
 2 residents of the local government who are eligible for  
 3 public office and are not law enforcement officers or  
 4 officers or employees of the local government. The members  
 5 shall be appointed for terms of 3 years. The terms of the  
 6 members shall be staggered so that as nearly as possible the  
 7 appointments of one-third of the membership of the board  
 8 will expire annually.

9 (2) The Montana board of crime control shall prepare a  
 10 manual on the organization and operation of local law  
 11 enforcement boards.

12 Section 61. Standards and examination of law  
 13 enforcement applicants. (1) Prior to appointment as a law  
 14 enforcement officer a person must meet the minimum  
 15 qualifying standards for the appointment of peace officers  
 16 as promulgated by the Montana board of crime control.

17 (2) The law enforcement board shall examine each  
 18 applicant for the position of law enforcement officer to  
 19 determine if that person meets statutory, regulatory, or  
 20 other standards established for that position. The law  
 21 enforcement board shall, subject to the approval of the  
 22 elected sheriff or the chief executive, make rules regarding  
 23 the examination of applicants.

24 (3) The board shall make available a manual explaining  
 25 the minimum qualification, examination rules, minimum

1 training standards, and any other information considered  
 2 advisable by the board or chief law enforcement  
 3 administrator for law enforcement officers, reserve  
 4 officers, and auxiliary officers.

5 (4) The Montana board of crime control shall assist in  
 6 the preparation of the manual.

7 Section 62. Appointment of law enforcement officer. A  
 8 person may be appointed as a sworn law enforcement officer  
 9 of a local government only through the following procedure:

10 (1) The applicant shall file an application for  
 11 appointment with the elected sheriff or the chief executive  
 12 officer of the local government.

13 (2) The elected sheriff or the chief executive officer  
 14 may refer the application to the law enforcement board if in  
 15 his sound discretion the application merits examination by  
 16 the board.

17 (3) The board shall certify the application to the  
 18 elected sheriff or the chief executive officer if the  
 19 applicant passes the examination of the law enforcement  
 20 board and qualifies for appointment as a law enforcement  
 21 officer.

22 (4) The elected sheriff or the chief executive  
 23 officer:

24 (a) shall maintain an eligibility list of applicants  
 25 certified by the law enforcement board;

1 (b) shall appoint applicants from the eligibility list  
2 to fill vacancies as they occur in the law enforcement  
3 agency; and

4 (c) may cause additional applicants to be examined and  
5 placed on the eligibility list, if in his discretion there  
6 are no suitable applicants at the time a vacancy occurs.

7 (5) A law enforcement officer shall serve a  
8 probationary term not to exceed 1 year from the date of  
9 appointment. The elected sheriff or the chief executive  
10 officer may revoke the appointment at any time prior to the  
11 end of the probationary period.

12 (6) At the end of the probationary term, the elected  
13 sheriff or the chief executive officer shall submit the  
14 appointment to the governing body. Within 30 days of the  
15 submission of the application, the governing body shall  
16 confirm or reject the appointment.

17 (7) If the appointment is confirmed, the applicant  
18 shall become a member of the law enforcement agency of the  
19 local government and shall hold that position during good  
20 behavior unless suspended or discharged by the board as  
21 provided by law.

22 (8) If the appointment is not submitted to the  
23 governing body, the governing body may consider the  
24 application.

25 (9) If there has been no decision by the governing

1 body within 1 year and 30 days after probationary  
2 appointment, the appointment is automatically confirmed.

3 (10) (a) If the local government does not have a law  
4 enforcement board, the elected sheriff or, if there is no  
5 elected sheriff, the chief executive may appoint qualified  
6 persons as law enforcement officers for a probationary term  
7 not to exceed 1 year.

8 (b) A probationary appointment may be terminated  
9 without cause.

10 (c) Confirmation shall follow the procedures specified  
11 in subsections (6), (8), and (9).

12 (d) If the appointment is confirmed, the applicant  
13 shall become a member of the law enforcement agency of the  
14 local government and shall hold that position during good  
15 behavior, unless suspended or discharged as provided by law.

16 Section 63. Reduction in force. (1) The governing  
17 body, or, in the case of a sheriff's department administered  
18 by an elected sheriff, the sheriff may determine and limit  
19 the number of law enforcement officers of the local  
20 government and may reduce the number of law enforcement  
21 officers at any time.

22 (2) Law enforcement officers of the law enforcement  
23 agency shall be removed based upon length of service, those  
24 with least service being released first.

25 (3) Law enforcement officers released because of a

1 reduction in force shall be placed upon the eligibility list  
 2 provided for in [section 62(4) of SB 18] in order of  
 3 seniority ahead of applicants on the eligibility list who  
 4 were not removed from the law enforcement agency.  
 5 Reappointment to the law enforcement agency shall be made  
 6 from the eligibility list when vacancies exist.

7 Section 64. Temporary law enforcement officers. (1) On  
 8 recommendation of the chief executive officer or elected  
 9 sheriff, the law enforcement board may appoint temporary law  
 10 enforcement officers when, through some unforeseen  
 11 occurrence or because of training requirements, temporary  
 12 law enforcement officers are required.

13 (2) The temporary officers may be retired law  
 14 enforcement officers, sworn reserve officers, or law  
 15 enforcement officers from another law enforcement agency.

16 (3) The term may not exceed 30 days without the  
 17 consent of the governing body.

18 (4) In no event may a temporary officer serve for a  
 19 term to exceed 6 months.

20 (5) The law enforcement board may appoint nonsworn and  
 21 nontrained local residents only when no trained, sworn  
 22 officers are available. The term of the temporary officer  
 23 shall terminate at the termination of the occurrence which  
 24 occasioned the appointment.

25 Section 65. Reserve and auxiliary officers. (1) A

1 local government may authorize auxiliary and reserve  
 2 officers. A person may be appointed as a reserve or  
 3 auxiliary officer if he meets the minimum standards of  
 4 employment promulgated by the Montana board of crime control  
 5 for a peace officer. Each applicant shall have resided  
 6 within the state continuously for at least 1 year prior to  
 7 appointment and within the county 6 months prior to  
 8 appointment.

9 (2) No reserve officer may be authorized to function  
 10 as a representative of a law enforcement agency performing  
 11 general law enforcement duties after 1 year from the  
 12 original appointment unless the reserve officer has  
 13 satisfactorily completed a minimum basic training program  
 14 prescribed by regulation promulgated by the Montana board of  
 15 crime control. The law enforcement agency shall be  
 16 responsible for training its reserve officers in accordance  
 17 with minimum standards established by the Montana board of  
 18 crime control.

19 (3) Reserve officers shall act only in a supplementary  
 20 capacity to the law enforcement agency. A reserve officer  
 21 may be appointed as a regular law enforcement officer  
 22 through the procedures in [section 62 of SB 18].

23 (4) Reserve officers shall serve as peace officers  
 24 only on the orders and at the direction of the chief law  
 25 enforcement administrator of the local government.

1           (5) The chief law enforcement administrator of a law  
2 enforcement agency with reserve officers shall appoint a  
3 regular law enforcement officer of the agency as a reserve  
4 force coordinator and supervising officer. Reserve and  
5 auxiliary officers:

6           (a) shall be subordinate to regular law enforcement  
7 officers; and

8           (b) may not serve unless supervised by a regular law  
9 enforcement officer whose span of control would be  
10 considered within reasonable limits.

11           (6) No reserve officer may carry a weapon:

12           (a) while on assigned duty until the reserve officer  
13 has qualified on the firing range with a weapon in  
14 compliance with firearms training standards established by  
15 the Montana board of crime control; and

16           (b) until authorized by the chief law enforcement  
17 administrator to carry a weapon.

18           (7) A reserve officer shall be vested with the same  
19 powers, rights, privileges, obligations, and duties as any  
20 other peace officer of this state upon being activated by  
21 the chief law enforcement administrator of the local  
22 government and while on assigned duty only. A reserve or  
23 auxiliary officer may not participate in any pension or  
24 retirement system established for regular law enforcement  
25 officers.

1           (8) Each law enforcement agency that utilizes reserve  
2 and auxiliary officers shall provide full workers'  
3 compensation coverage for the officers while they are  
4 providing actual service for that agency. Coverage shall be  
5 provided through the state compensation insurance fund. The  
6 enforcement agencies shall pay to the state fund an  
7 appropriate premium as established by the state fund to  
8 cover the insurance risk of providing coverage to the  
9 officers.

10           (9) A local government may not reduce the authorized  
11 number of regular law enforcement officers through the  
12 appointment or utilization of reserve officers.

13           (10) Reserve and auxiliary officers shall serve at the  
14 pleasure of the chief law enforcement administrator and may  
15 be terminated without cause at any time by the chief law  
16 enforcement administrator by written notification.

17           Section 66. Exemptions for law enforcement officer. A  
18 law enforcement officer may not:

19           (1) be arrested on civil process while actually on  
20 duty;

21           (2) be liable to militia or jury duty; or

22           (3) hold any office of the local government, except  
23 the office of sheriff.

24           Section 67. Summary suspension of law enforcement  
25 officer. (1) An elected sheriff or the chief law enforcement

1 administrator, with the consent of the chief executive  
2 officer, may summarily suspend, with or without pay, an  
3 officer for a period not to exceed 10 regular working days  
4 in any 30-day period.

5 (2) A suspended member or officer may appeal the  
6 suspension to the law enforcement board.

7 (3) A summary suspension shall be reported to the law  
8 enforcement board in writing within 48 hours of its  
9 imposition. Within 7 days of the receipt of notification,  
10 the law enforcement board may order a hearing before it  
11 rather than accept the summary suspension. When a hearing  
12 is ordered, the summary suspension shall be changed to a  
13 suspension with or without pay, pending the hearing.

14 Section 58. Hearing of charges against law enforcement  
15 officer. (1) The law enforcement board shall hear, try, and  
16 decide all charges brought by any person against a law  
17 enforcement officer of the law enforcement agency. The  
18 charges may state that:

19 (a) an officer is incompetent to discharge the duties  
20 of his position by reason of age, disease, or other causes;

21 (b) an officer has been guilty of neglect of duty,  
22 misconduct in his position, conduct unbecoming a law  
23 enforcement officer, or conduct such as to bring reproach  
24 upon the law enforcement agency; or

25 (c) an officer has been found guilty of a crime.

1 (2) The charges shall be brought not later than 1 year  
2 after the law enforcement administrator has actual notice of  
3 the action to be taken.

4 (3) A charge brought against a law enforcement officer  
5 shall be in writing in the form required by the board. A  
6 copy shall be served upon the accused officer at least 15  
7 days prior to the time fixed for hearing on the charge.

8 (4) The law enforcement board may suspend the accused  
9 officer, with or without pay, pending the hearing.

10 (5) Prior to and at the hearing, the law enforcement  
11 board may subpoena persons and records for the hearing.

12 (6) At the hearing, the board shall:

13 (a) keep a record including:

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

15 (ii) all evidence received or considered, including a  
16 stenographic or mechanical record of oral proceedings;

17 (iii) a statement of matters officially noticed;

18 (iv) questions and offers of proof, objections, and  
19 rulings thereon; and

20 (v) proposed findings and exceptions;

21 (b) accept evidence in substantial compliance with  
22 statutory and common-law rules of evidence.

23 (7) Within 30 days after the completion of the  
24 hearing, the board shall decide whether each charge was  
25 proven or not proven.

1 (8) The board shall give a written decision on issues  
2 before it, setting out in detail the facts relied on.

3 (9) One copy of its decision shall be filed with the  
4 records administrator of the county in which the hearing was  
5 held, one copy shall be certified to the chief executive,  
6 one copy shall be given to the chief law enforcement  
7 administrator, and one copy shall be given to the accused  
8 officer.

9 (10) If the law enforcement board decides that the  
10 charge is not proven, the accused law enforcement officer  
11 shall be reinstated to the law enforcement agency and shall  
12 be entitled to that compensation he would have received had  
13 he not been suspended.

14 (11) If the law enforcement board decides by a majority  
15 vote that the charge is proven, it may discipline, suspend,  
16 demote, or discharge any law enforcement officer who has  
17 been found guilty of the charge filed against him.

18 (12) If the board decides that the charges have been  
19 proven against the law enforcement officer, the chief  
20 executive officer may modify or veto the decision of the  
21 board. The veto or modification shall be made in writing and  
22 shall be filed with the county records administrator and  
23 given to the chief law enforcement administrator and the  
24 accused officer within 5 days of the filing of the decision.

25 (13) When a charge against an officer is found proven

1 by the board and is not vetoed by the chief executive, the  
2 elected sheriff or the chief executive shall make an order  
3 enforcing the decision of the board. If the decision is  
4 modified, the elected sheriff or the chief executive shall  
5 make an order enforcing the decision as modified.

6 (14) The decision of the law enforcement board or the  
7 decision as modified is subject to judicial review by the  
8 district court of the proper judicial district. The petition  
9 for judicial review must be commenced within 30 days after  
10 the decision has been filed with the records administrator.  
11 An accused officer, the chief law enforcement administrator,  
12 or the claimant who brought the charges may petition for  
13 judicial review.

14 (15) The judicial review shall be a review of the  
15 hearing record on all questions of law, but in the interests  
16 of justice the court may require that additional evidence be  
17 submitted at the judicial review.

18 Section 69. Money received through provisions of  
19 police retirement system. A local government not governed by  
20 the statutory provisions of the police retirement system  
21 shall expend money received through the provisions of that  
22 system only for law enforcement training or for the purchase  
23 of pensions for the members of its law enforcement agency.  
24 On or before April 1 of each year the local government  
25 finance administrator shall report to the state auditor how

1 the money was expended.

2 Section 70. Severability. If a part of this act is  
3 invalid, all valid parts that are severable from the invalid  
4 part remain in effect. If a part of this act is invalid in  
5 one or more of its applications, the part remains in effect  
6 in all valid applications that are severable from the  
7 invalid applications.

8 Section 71. Effective date. This act is effective on  
9 July 1, 1981.

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