

SENATE BILL 19

IN THE SENATE

January 3, 1979

Introduced and referred to
Committee on Local Government.

April 20, 1979

Died in Committee.

1 SENATE BILL NO. 19

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 HUMAN SERVICES, WATER,
6 WASTE, AND UTILITY SERVICES; AND PROVIDING AN EFFECTIVE
7 DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

1 1 security of any such bond, debt, contract, or obligation.
2 2 (2) All ordinances, resolutions, regulations, and
3 3 interlocal agreements in effect [at the time this act
4 4 becomes effective] shall continue in effect until repealed
5 5 or amended in the manner provided by law.

6 6 (3) Each officer or employee affected by the
7 7 reorganization of local government under this [act] is
8 8 entitled to all rights which he possessed as a local
9 9 government officer or employee before [the effective date of
10 10 this act], including rights to tenure in position and of
11 11 rank or grade, rights to vacation and sick pay and leave,
12 12 rights under any retirement or personnel plan or labor union
13 13 contract, rights to compensatory time earned, and any other
14 14 rights under any law, ordinance, resolution, or
15 15 administrative policy. This section is not intended to
16 16 create any new rights for any officer or employee but to
17 17 continue only those rights in effect before [the effective
18 18 date of this act].

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

1 office or position; the transfer of the officer or employee
2 to another position; or the termination of employment of the
3 employee.

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

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

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

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

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

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

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

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

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

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

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

1 Section 9. General definitions. In this [act], unless
 2 otherwise provided or the context requires a technical or
 3 other interpretation, the following definitions apply:

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

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

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

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

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

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

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

1 government and limitations thereon.

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

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

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

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

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

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

25 (14) "Consolidation" means the joinder of one or more

1 municipalities with one or more counties to form a single
2 local government that is both a municipality and a county
3 for all purposes.

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

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

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

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

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

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

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

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

24 (23) "Executive branch" means that part of the local
25 government, including departments, offices, and boards,

1 charged with implementing actions approved and administering
2 policies adopted by the governing body of the local
3 government or performing the duties required in [section 33
4 through section 92 of SB 21].

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

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

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

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

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

24 (29) "Franchise" means an exclusive public privilege or
25 right granted by a local government to an individual,

1 corporation, or any other public or private entity in the
 2 manner prescribed by [section 61 of SB 12].

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

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

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

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

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

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

25 (36) "Local improvement district" means an area within

1 a local government established as provided in [section 90 of
 2 SB 12] with specific boundaries in which property is
 3 specially assessed to pay for a specific capital improvement
 4 benefiting the property assessed.

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

7 (38) "May" confers a power.

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

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

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

1 (42) "Municipal limits" means the corporate boundary of
2 an incorporated municipality.

3 (43) "Municipality" or "municipal" means an entity
4 which incorporates as provided by [section 47 through
5 section 65 of SB 11] or which was incorporated under the
6 provisions of any prior law as a city or town.

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

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

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

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

20 (48) "Per diem" means actual cost of or a fixed rate
21 for meals, lodging, and incidental expenses.

22 (49) "Person" means any individual, firm, partnership,
23 company, corporation, trust, trustee, assignee or other
24 representative, association, or other organized group.

25 (50) "Personal property" means tangible property other

1 than real property, such as merchandise and stock in trade,
2 machinery and equipment, furniture and fixtures, motor
3 vehicles and vehicles, boats, vessels, and aircraft.

4 (51) "Plan of government" means a certificate submitted
5 by a study commission, a governing body, or petition from
6 the provisions of Title 7, part 3, that documents the basic
7 form of government selected including all applicable
8 suboptions. The plan must establish the terms of all
9 officers and the number of commissioners, if any, to be
10 elected.

11 (52) "Plat" means a graphical representation of a tract
12 of annexed land, a townsite, or a subdivision showing the
13 division of land into lots, parcels, blocks, trafficways,
14 and other divisions and dedications.

15 (53) "Political subdivision" refers to a local
16 government, authority, school district, or multicounty
17 agency.

18 (54) "Population" means the number of inhabitants as
19 determined by an official federal, state, or local census or
20 official population estimate approved by the department of
21 community affairs.

22 (55) "Printed" means the act of reproducing a design on
23 a surface by any process as defined by 1-1-203(3).

24 (56) "Property" means real and personal property.

25 (57) "Prosecuting attorney" means the person designated

1 by each county governing body to perform the duties
 2 described in [section 53 of SB 21].

3 (58) "Public agency" means a political subdivision,
 4 Indian tribal council, state and federal department or
 5 office, and the Dominion of Canada or any provincial
 6 department or office or political subdivision thereof.

7 (59) "Public property" means any and all property owned
 8 by a local government or held in the name of a local
 9 government by any of the departments, boards, or authorities
 10 of the local government.

11 (60) "Real property" means lands, structures,
 12 buildings, and interests in land, including lands under
 13 water and riparian rights, and all things and rights usually
 14 included within the term real property, including not only
 15 fee simple absolute but also all lesser interests such as
 16 easements, rights-of-way, uses, leases, licenses, and all
 17 other incorporeal hereditaments and every estate, interest,
 18 or right, legal or equitable, pertaining to real property.

19 (61) "Records administrator" means the person
 20 designated by the governing body as the individual
 21 responsible for keeping the records which [section 36
 22 through section 43 of SB 21] requires be kept.

23 (62) "Reproduced" means the act of reproducing a design
 24 on any surface by any process.

25 (63) "Resolution" means a statement of policy by the

1 governing body or an order by the governing body that a
 2 specific action be taken.

3 (64) "School district" means any territory, regardless
 4 of county boundaries, organized under the provisions of
 5 Title 20 to provide public educational services under the
 6 jurisdiction of the trustees prescribed by that title.

7 (65) "Service" means an authorized function or activity
 8 performed by local government.

9 (66) "Shall" imposes a duty, is always mandatory, and
 10 is not merely directory.

11 (67) "Structure" means the entire governmental
 12 organization through which a local government carries out
 13 its duties, functions, and responsibilities.

14 (68) "Study commission" means a local government study
 15 commission established pursuant to [section 33 through
 16 section 49 of SB 12].

17 (69) "Study commissioner" means an elected or appointed
 18 member of a local government study commission.

19 (70) "Subordinate service district" means an area
 20 within a local government, established as provided in
 21 [section 81 of SB 12], with specific boundaries in which
 22 certain services are carried out and in which taxes may be
 23 levied to finance the service.

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

1 Section 10. Administrative rules. The governing body
2 may by ordinance authorize the chief executive to adopt
3 administrative rules. All administrative rules shall be
4 entered in an administrative code that shall be available in
5 the office of the local government.

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

13 (2) The newspaper shall be:

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

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

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

1 Section 12. Notice. Unless otherwise specifically
2 provided, when notice of a hearing or other official act is
3 required, the following shall apply:

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

8 (2) The published notice shall contain:

9 (a) the date, time, and place at which the hearing or
10 other action will occur;
11 (b) a brief statement of the action to be taken;
12 (c) the address and telephone number of the person who
13 can be contacted for further information on the action to be
14 taken; and

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

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

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

25 (a) deposit of the notice properly addressed in the

1 United States mail with postage paid at the first-class
2 rate;

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

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

8 (2) The notice shall contain:

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

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

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

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

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

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

24 (a) contains a statement of the purpose for which it
25 is circulated sufficient to meet the specific criteria set

1 out in the section authorizing the petition;

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

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

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

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

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

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

25 (6) If a petition is determined adequate, the

1 elections administrator shall certify its adequacy and
2 submit it to the governing body without delay.

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

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

9 (a) a standard petition form;

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

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

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

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

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

1 prior to their determination.

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

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

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

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

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

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

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

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

24 (c) the address of the person protesting.

25 (2) Protests shall be submitted as provided by law and

1 ordinance. The person receiving protests for a local
 2 government shall note on each protest the date it was
 3 received.

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

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

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

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

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

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

1 Section 19. Posting. (1) The governing body shall
 2 specify by resolution a public location for posting
 3 information and shall order erected a suitable posting
 4 board.

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

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

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

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

25 (2) If all persons entitled to protest an action waive

1 in writing their right to protest, the governing body may
2 proceed without publishing notice or meeting other
3 requirements designed to permit protests to be filed.

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

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

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

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

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

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

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

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

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

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

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

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

1 may be moved by the governing body to another location which
 2 it considers most suitable.

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

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

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

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

1 Section 26. Public meeting required. (1) All meetings
 2 of local government governing bodies, boards, authorities,
 3 committees, or other entities created by or subordinate to a
 4 local government shall be open to the public except as
 5 provided in 2-3-203.

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

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

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

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

1 for providing copies of public records.

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

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

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

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

1 or inspection.

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

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

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

1 CHAPTER 2.

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

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

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

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

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

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

1 (2) The chief executive may specify the form, content,
 2 and deadline for filing reports.

3 Section 33. Administration. (1) A county may create an
 4 administrative board to assist with social service programs
 5 as provided in subsections (3) and (4).

6 (2) A majority of the board shall be members of the
 7 general public. One member shall be a member of the county
 8 governing body.

9 (3) The board shall advise the local department of
 10 public welfare, the department of social and rehabilitation
 11 services, the department of institutions, and any other
 12 social service related agency on:

13 (a) the development and concerns of locally sponsored
 14 social service programs; and

15 (b) appeals and complaints of consumers and providers
 16 of social services.

17 (4) The board may request authority from the state
 18 department of social and rehabilitation services to serve as
 19 a preliminary appeals board on objections to determinations
 20 of eligibility made by the county department of social and
 21 rehabilitation services. This authority is subject to the
 22 rules of the department of social and rehabilitation
 23 services.

24 Section 34. Coordination. (1) A county shall whenever
 25 possible coordinate all municipal, county, state, federal,

1 and private social services provided within its boundaries.
2 (2) To facilitate coordination, a county shall require
3 all agencies providing social services within its boundaries
4 to file a registration statement describing the services
5 offered or provided.

6 (3) (a) Where a county or administrative board has
7 been established, it may formulate a development plan for
8 the provision of social services within the county.

9 (b) The plan shall include data about the available
10 local resources and their utilization, costs of existing and
11 proposed social services, and the effectiveness of existing
12 and proposed social services weighed against the current and
13 future needs of the county.

14 (c) If a plan has been formulated, the county shall
15 evaluate all proposals to deliver social services on the
16 basis of that plan.

17 Section 35. General definitions. In [SB 11, So 12, So
18 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21,
19 SB 22, and SB 23], unless otherwise provided or the context
20 requires a technical or other interpretation, the following
21 definitions apply:

22 (1) "Garbage" means all putrescible waste matter
23 except sewage.

24 (2) "Refuse" means putrescible or nonputrescible solid
25 wastes (except sewage), including garbage, rubbish, street

1 cleanings, dead animals, yard clippings, and solid market
2 and solid industrial wastes.

3 (3) "Rubbish" means nonputrescible solid wastes,
4 consisting of either combustible or noncombustible wastes
5 such as paper, cardboard, abandoned automobiles, tin cans,
6 wood, glass, bedding, crockery, and similar materials.

7 (4) "Department" means the department of health and
8 environmental sciences provided for in Title 2, chapter 15,
9 part 21.

10 (5) "Solid waste" means garbage, refuse, or rubbish.

11 (6) "Solid waste disposal area" means any land used
12 for the disposal of solid wastes, including but not limited
13 to dumps, landfills, and composting plants.

14 (7) "Resource recovery" means the process by which
15 materials which still have useful physical or chemical
16 properties after serving a specific purpose are reused or
17 recycled for the same or other purposes, including as an
18 energy source.

19 Section 36. Special protest provisions. (1) An
20 ordinance establishing a subordinate service district for
21 the purpose of solid waste collection or disposal shall be
22 void if, within 30 days of the notice required in [section
23 81 of SB 12], 50% or more of the service units in the
24 proposed subordinate service district protest. This protest
25 provision shall not apply if the subordinate service

1 district must be established to comply with state or federal
 2 laws or rules.

3 (2) "Service unit" includes:

4 (a) the residence of a single family in a separate
 5 residence or in a multiunit facility;

6 (b) each separate commercial and industrial unit; and
 7 (c) each separate facility of a public agency.

8 Section 37. Installment payments for land and
 9 equipment. To defray the initial cost of purchasing land,
 10 equipment, and facilities for solid waste collection,
 11 treatment, and disposal, payments may be spread over a term
 12 of not to exceed 20 years. Payments are to be made in equal
 13 installments out of the money received for provision of the
 14 service.

15 Section 38. Regulation of refuse disposal areas.
 16 County and district boards of health shall license and
 17 inspect refuse disposal areas as provided in Title 75,
 18 chapter 10.

19 Section 39. Regulation of local government refuse
 20 disposal areas. A local government may establish and operate
 21 a disposal area without paying the annual license fee, but
 22 must meet all other requirements of Title 75, chapter 10.

23 Section 40. General definitions. In [SB 11, SB 12, SB
 24 13, SB 14, SB 15, SB 16, SB 17, SB 18, SB 19, SB 20, SB 21,
 25 SB 22, and SB 23], unless otherwise provided or the context

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

3 (1) "Community sewage system" means any system,
 4 whether publicly or privately owned, serving two or more
 5 individual lots for the collection and disposal of sewage or
 6 industrial wastes.

7 (2) "Community water supply system" means a source of
 8 water and a distribution system, including treatment
 9 facilities, whether publicly or privately owned, serving 10 or
 10 more families or supplying an industry employing 10 or
 11 more persons.

12 (3) "Individual sewage systems" means a single system
 13 of sewers and piping, treatment tanks, or other facilities
 14 serving only a single lot. Such a system may dispose, in
 15 whole or in part, of sewage or industrial wastes of a liquid
 16 nature on or in the soil of the property, into any waters of
 17 this state, or by other methods.

18 (4) "Industrial water supply system" means a single
 19 system of pipes, pumps, tanks, or other facilities utilizing
 20 a source of groundwater or surface water to supply less than
 21 10 families or to supply an industry employing less than 10
 22 persons.

23 Section 41. Appropriation of water. A governing body
 24 may acquire water rights by purchase, appropriation,
 25 location, condemnation, or otherwise.

1 Section 42. Regulatory power over facilities. (1) A
2 local government shall have regulatory power and control
3 over:

4 (a) the territory occupied by a community water supply
5 and sewage facilities;

6 (b) the territory along the line of reservoirs,
7 streams, trenches, pipes, drains, sewers, and other
8 appurtenances used in the establishment and provision of the
9 services; and

10 (c) the source from which water is taken.

11 (2) A local government may exercise its jurisdiction
12 over the territory, the line of facilities, or the sources
13 of water only for the purpose of enforcing sanitary
14 conditions, abating nuisances, or preserving the purity of
15 its water supply.

16 Section 43. Approval of department of health and
17 environmental sciences. (1) The construction, alterations, or
18 extension of water supply and distribution systems and
19 sewage facilities requires prior approval of the department
20 of health and environmental sciences as provided in Title
21 75, chapters 5 and 6, and Title 76, chapter 4.

22 (2) All water and sewage treatment plants and water
23 distribution systems must be supervised by an operator
24 licensed under the provisions of Title 37, chapter 42.

25 Section 44. Establishment and review of water or sewer

1 rates. (1) Rates for water or sewer service may be
2 established and revised by ordinance only after published
3 notice and public hearing.

4 (2) Any person provided water or sewer service by a
5 local government may file a complaint with the public
6 service commission as provided in 63-3-321, 63-3-325, and
7 63-3-326.

8 (3) Except as provided in this section, a local
9 government is subject to the jurisdiction of the public
10 service commission as established by Title 69, chapter 3.

11 Section 45. Power to construct works across
12 trafficways, right-of-way through state lands. The local
13 government shall have power to construct water and sewer
14 works across any stream of water, watercourse, trafficway,
15 railway, canal, ditch, or flume which the route of the works
16 may intersect or cross, provided that the works are
17 constructed in a manner to afford security for life and
18 property, and the local government shall restore the
19 crossings and intersections to as close to their former
20 state as possible. The right-of-way is hereby given,
21 dedicated, and set apart to locate, construct, and maintain
22 water and sewer works over and through any of the lands
23 which are now or may be the property of the state.

24 Section 46. Consent to annexation for water or sewer
25 service. Any person receiving water or sewer service outside

1 of municipal limits may be required by the municipality as a
2 condition for initiating such service to waive in writing
3 any right to protest annexation and to consent in writing to
4 the future annexation of the tract of property served by the
5 municipality. The waiver and consent to annexation is
6 limited to that tract or parcel or portion of tract or
7 parcel that is clearly and immediately and not potentially
8 being serviced by the water or sewer service.

9 Section 47. Severability. If a part of this act is
10 invalid, all valid parts that are severable from the invalid
11 part remain in effect. If a part of this act is invalid in
12 one or more of its applications, the part remains in effect
13 in all valid applications that are severable from the
14 invalid applications.

15 Section 48. Effective date. This act is effective on
16 July 1, 1981.

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