

SENATE BILL 21

IN THE SENATE

January 3, 1979

Introduced and referred to  
Committee on Local Government.

April 20, 1979

Died in Committee.

1                    SENATE BILL NO. 21  
 2 INTRODUCTION BY WATT, JERGSON

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 LAWS RELATING TO THE DUTIES OF LOCAL GOVERNMENTS AS AGENTS  
 6 OF THE STATE; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

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 3 becomes effective] shall continue in effect until repealed  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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (38) "May" confers a power.

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

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

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

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

1 an incorporated municipality.

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

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

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

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

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

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

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

24 (50) "Personal property" means tangible property other  
25 than real property, such as merchandise and stock in trade,

1 machinery and equipment, furniture and fixtures, motor  
2 vehicles and vehicles, boats, vessels, and aircraft.

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

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

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

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

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

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

24 (57) "Prosecuting attorney" means the person designated  
25 by each county governing body to perform the duties

1 described in [section 53 of SB 21].

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

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

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

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

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

24 (63) "Resolution" means a statement of policy by the  
25 governing body or an order by the governing body that a

1 specific action be taken.

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

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

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

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

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

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

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

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

25 Section 10. Administrative rules. The governing body



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

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

12 (2) The newspaper shall be:

13 (a) of general paid circulation with a second-class  
14 mailing permit;

15 (b) published at least once a week;

16 (c) published in the county;

17 (d) published continuously in the county for the 12  
18 months preceding the awarding of the contract.

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

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

25 Section 12. Notice. Unless otherwise specifically

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

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

7 (2) The published notice shall contain:

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

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

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

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

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

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

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

1 rate;

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

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

7 (2) The notice shall contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 submit it to the governing body without delay.

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

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

8 (a) a standard petition form;

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (c) the address of the person protesting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (c) the address of the person;

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

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

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

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

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

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

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

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

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

1 it considers most suitable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (2) The chief executive may specify the form, content,

1 and deadline for filing reports.

2 Section 33. Purpose. (1) It is the policy of the state  
3 of Montana to encourage resourceful and responsible local  
4 government.

5 (2) To further this policy it is the purpose of  
6 [section 33 through section 92 of SB 21] to set out those  
7 services which a local government shall provide.

8 (3) In providing any service required by [section 33  
9 through section 92 of SB 21], a local government acts as an  
10 agent of the state.

11 Section 34. Assignment of duties. (1) The governing  
12 body of the local government shall provide by ordinance for  
13 the provision of the services required by [section 33  
14 through section 92 of SB 21].

15 (2) The governing body shall by ordinance assign  
16 responsibility for required services to one or more  
17 departments, officers, or employees of the local government.

18 (3) The responsibility for required services or  
19 components of required services may be divided between one  
20 or more departments, officers, or employees of the local  
21 government.

22 (4) The governing body may by ordinance at any time  
23 reassign responsibility for any required service to a  
24 different department, office, or employee.

25 (5) The governing body may enter into interlocal



1 agreements to provide services required by [section 33  
2 through section 92 of SB 21].

3 Section 35. Mandatory financing of required services.  
4 Subject to the provisions of [section 73 of SB 22], the  
5 governing body shall appropriate sufficient resources to  
6 provide fully the services required by [section 33 through  
7 section 92 of SB 21].

8 Section 36. Filing. Each county shall provide for the  
9 filing of the following documents and their related  
10 documents:

- 11 (1) executions;
- 12 (2) assignments;
- 13 (3) applications for tax deed;
- 14 (4) attachments;
- 15 (5) bills of sale;
- 16 (6) certificates of fictitious name;
- 17 (7) lis pendens;
- 18 (8) liens and notices of liens;
- 19 (9) notarial commissions;
- 20 (10) notices of desire to hold mining claim;
- 21 (11) certificates of incorporation and articles of  
22 incorporation;
- 23 (12) continuation statements;
- 24 (13) certificates of sale;
- 25 (14) judgments;

- 1 (15) financing statements;
  - 2 (16) leases;
  - 3 (17) powers of attorney;
  - 4 (18) collateral releases;
  - 5 (19) affidavits;
  - 6 (20) notices of trustee sale;
  - 7 (21) water rights;
  - 8 (22) copartnerships and amendments;
  - 9 (23) agreements;
  - 10 (24) birth and death certificates;
  - 11 (25) certifications of redemption from sheriff's sale;
  - 12 (26) assignments for the benefit of creditors;
  - 13 (27) declarations for homestead; and
  - 14 (28) such other documents required by law to be filed.
- 15 Section 37. Recording. Each county shall provide for  
16 the recording of the following documents and their related  
17 documents:
- 18 (1) trust indentures;
  - 19 (2) notices of mining locations and declaratory  
20 statements;
  - 21 (3) leases;
  - 22 (4) bills of sale;
  - 23 (5) certificates of redemption from sheriff's sale;
  - 24 (6) affidavits;
  - 25 (7) declarations for homestead;

1 (8) agreements;  
 2 (9) resolutions;  
 3 (10) court orders;  
 4 (11) partnerships;  
 5 (12) assignments;  
 6 (13) financing statements;  
 7 (14) joint tenancy;  
 8 (15) quiet title documents;  
 9 (16) water rights;  
 10 (17) deeds, grants, transfers, and contracts to sell or  
 11 convey real estate;  
 12 (18) mortgages of real estate, releases of mortgages,  
 13 and powers of attorney to convey real estate;  
 14 (19) leases which have been acknowledged or proved and  
 15 abstracts of instruments which have been acknowledged or  
 16 proved;  
 17 (20) wills devising real estate admitted to probate;  
 18 (21) official bonds;  
 19 (22) transcripts of judgments which by law are made  
 20 liens upon real estate;  
 21 (23) instruments describing or relating to the  
 22 individual property of married individuals and sole trader  
 23 judgments;  
 24 (24) all orders and decrees made by the district court  
 25 in probate matters affecting property which are required to

1 be recorded;  
 2 (25) notice of preemption claims;  
 3 (26) notice and declaration of water rights;  
 4 (27) affidavits of annual work done on mining claims;  
 5 (28) notices of mining locations and declaratory  
 6 statement;  
 7 (29) estrays and lost property;  
 8 (30) a book containing appraisal of state lands;  
 9 (31) certified copies of final judgments or decrees  
 10 participating in or affecting the title or possession of  
 11 real property, any part of which is situated in the county;  
 12 (32) certificates of discharge of persons honorably  
 13 discharged who served with the United States forces; and  
 14 (33) such other writings as are required or permitted  
 15 by law to be recorded.  
 16 Section 38. Indexes. (1) The governing body shall by  
 17 ordinance require the elected official or the employee  
 18 designated as the records administrator to keep the  
 19 following indexes in the form prescribed by the department  
 20 of community affairs:  
 21 (a) an index of deeds, grants, transfers, and  
 22 contracts to sell or convey real estate;  
 23 (b) an index of real property mortgages;  
 24 (c) an index of releases of real property mortgages;  
 25 (d) an index of powers of attorney;

- 1 (e) an index of leases;
- 2 (f) an index of marriage certificates;
- 3 (g) an index of assignments of mortgages and leases;
- 4 (h) an index of wills;
- 5 (i) an index of official bonds;
- 6 (j) an index of notices of liens;
- 7 (k) an index to transcripts of judgments;
- 8 (l) an index of attachments;
- 9 (m) an index of notices of pending actions;
- 10 (n) an index of certificates of sale of real estate
- 11 sold under execution or under orders made in any judicial
- 12 proceeding;
- 13 (o) an index of the separate property of married
- 14 persons and sole trader judgments;
- 15 (p) an index to affidavits for annual work done on
- 16 mining claims;
- 17 (q) an index of mining claims and declaratory
- 18 statements;
- 19 (r) an index to the register of births and deaths;
- 20 (s) an index to notices and declaration of water
- 21 rights;
- 22 (t) an index to the "stray and lost property book";
- 23 (u) an index to the record of assignments for the
- 24 benefit of creditors;
- 25 (v) an index to financing statements as provided in

- 1 part 4 of the Uniform Commercial Code -- secured
- 2 transactions;
- 3 (w) an index to the official records of the county as
- 4 are prescribed in [section 42 of SB 21];
- 5 (x) all other indexes required by law; and
- 6 (y) a miscellaneous index of papers not stated in this
- 7 section.
- 8 (2) In keeping indexes, any county may keep in the
- 9 same volume any number of the indexes mentioned in this
- 10 section. All indexes must be kept separate and distinct, and
- 11 all volumes must be clearly marked as to which indexes they
- 12 contain.
- 13 (3) A county may use methods of information storage as
- 14 are authorized by the department of community affairs.
- 15 Section 39. Procedure for filing and recording --
- 16 requirements -- authorized fees. (1) Immediately upon
- 17 receipt of any document offered for filing or recording, the
- 18 county records administrator shall note in an official
- 19 receipt book the exact time and date of receipt. Upon
- 20 subsequent proper filing or recording as prescribed in this
- 21 section, the county records administrator shall note in the
- 22 reception book where the document is filed, if it is filed,
- 23 or the book and page where the document is recorded, if it
- 24 is recorded.
- 25 (2) A document offered for filing must, within a

1 reasonable time after receipt and upon payment of the  
2 authorized fee, be properly retained and filed in the office  
3 of the county records administrator. If requested, a signed  
4 receipt shall be furnished containing the exact date and  
5 time the document was received and an adequate description  
6 or the title of the filed document.

7 (3) A document offered for recording must, within a  
8 reasonable time after receipt and upon payment of the  
9 authorized fee, be properly recorded in the office of the  
10 county records administrator and have written on the  
11 document the exact time it was received and recorded and the  
12 book and pages in which it is recorded and shall be returned  
13 to the person who left it upon his request or instructions.  
14 If requested, a signed receipt shall be furnished containing  
15 the exact time the document was received and recorded and an  
16 adequate description or title of the document.

17 (4) Any document submitted for recording which seeks  
18 to convey property must describe that property by metes and  
19 bounds or have a certificate of survey on record to which  
20 the document can refer for description. Any document  
21 submitted for recording which seeks to convey property by  
22 referring to a previously recorded document by book and page  
23 number may be refused.

24 (5) Any document, subsequently filed or recorded in a  
25 proper manner as prescribed in this section, shall be

1 considered to have been filed or recorded at the time of  
2 noted receipt in the official reception book of the office  
3 of the county records administrator.

4 (6) If a document is filed in the office of the county  
5 records administrator, it is considered to be recorded in  
6 the same office. If a document is only recorded, it is not  
7 considered to be filed.

8 (7) If requested and upon payment of the authorized  
9 fee, the county records administrator shall certify any  
10 document offered for filing or recording. Certification  
11 shall be used only for the purpose of acknowledging the  
12 filing or recording of the document and may not be used to  
13 verify the validity of the document.

14 (8) Any document offered for recording must be  
15 legible. The office of the county records administrator may  
16 refuse any illegible document.

17 (9) Fees shall be:

- 18 (a) for filing, \$2 per instrument;
- 19 (b) for recording, \$2 per page;
- 20 (c) for certification, \$1 plus copying costs; and
- 21 (d) for searches, \$3 for any 5-year period plus \$1 per  
22 year thereafter.

23 (10) Seed liens and thresher's liens filed for record  
24 with a county shall be retained by the county for a period  
25 of 8 years after the lien has ceased to be a lien on the

1 property described therein.

2 Section 40. Making of searches. The records  
3 administrator may, upon the application of any person and  
4 upon the payment or tender of the required fees, make  
5 searches for conveyances, mortgages, and all other  
6 instruments, papers, or notices recorded or filed in his  
7 office and furnish a certificate thereof stating the names  
8 of the parties to the instruments, papers, and notices, the  
9 dates thereof, the time they were recorded or filed, and the  
10 book and pages where they are recorded or where they are  
11 filed.

12 Section 41. Liability for neglect of duty. Any records  
13 administrator to whom an instrument, proved or acknowledged  
14 according to law, or any paper or notice which may by law be  
15 recorded is delivered for record is liable to the party  
16 aggrieved for three times the amount of the damages which  
17 may be occasioned thereby and is punishable as provided by  
18 45-7-208, if he:

19 (1) neglects or refuses to record the instrument,  
20 paper, or notice within reasonable time after receiving it;

21 (2) records any instruments, papers, or notices in any  
22 other manner than as prescribed;

23 (3) neglects or refuses to keep in his office indexes  
24 as are required by [section 36 through section 43 of SB 21]  
25 or to make the proper entries therein;

1 (4) neglects or refuses to give the certificates  
2 required by [section 36 through section 43 of SB 21]; or if  
3 the certificates are incomplete or defective, when this  
4 incompleteness or defect is due to his direct responsibility  
5 particularly affecting the property in respect to which it  
6 is requested; or

7 (5) alters, changes, or obliterates any records  
8 deposited in his office or inserts any new matter therein.

9 Section 42. Official records. (1) The governing body  
10 of each county shall provide for the keeping of the  
11 following official records:

12 (a) maps of all municipalities or additions to  
13 municipalities within the county, together with the  
14 description, acknowledgment, or other writing thereon;

15 (b) maps of all subordinate service districts and  
16 authorities and all additions to these within the county,  
17 together with the descriptions, acknowledgments, or other  
18 writings thereon;

19 (c) in suitable plat books, all final subdivision  
20 plats made within the county;

21 (d) a correct record numbered progressively of all  
22 county surveys required by court order; and

23 (e) all other records required to be kept by law.

24 (2) Any original drawings, the original book or books  
25 of field notes, and all original calculations and

1 computations all properly endorsed as to their number of  
2 survey shall be retained with the official records.

3 (3) The county shall upon request make copies of all  
4 official records available to the public and may impose  
5 reasonable fees for providing the copies.

6 Section 43. Recordation of instruments under prior  
7 law. (1) All instruments properly recorded under the laws of  
8 Montana prior to the enactment of [section 33 through  
9 section 92 of SB 21] are declared to be properly recorded  
10 under the laws of Montana.

11 (2) Instruments recorded in accordance with this  
12 section are expressly validated insofar as validation may be  
13 necessary to establish them as correctly or legally recorded  
14 instruments.

15 (3) Methods of recordation in use under the laws of  
16 Montana prior to the enactment of [section 33 through  
17 section 92 of SB 21] shall remain proper until changed or  
18 abolished by the laws of Montana.

19 Section 44. 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) "Board" means a local board of health which is  
25 either a county board or a district board comprised of

1 membership from two or more contiguous counties.

2 (2) "Department" means the department of health and  
3 environmental sciences.

4 (3) "Environmental health services" means those  
5 programs provided by a public agency that are directed  
6 toward promoting sanitation, controlling or eradicating  
7 environmental pollution, and maintaining a healthful  
8 environment for the general public.

9 (4) "Individual sewage treatment installer" means a  
10 person who places, constructs, or alters all or part of an  
11 individual sewage treatment system.

12 (5) "Local health officer" means a physician or  
13 nonphysician county or district health officer.

14 (6) "Local health department" means either a local  
15 board of health or a local health officer, whichever has  
16 been designated by the county governing body to administer  
17 the local public health program defined in [section 45 of SB  
18 21] and any additional public health programs and services  
19 provided according to local needs and priorities.

20 (7) "Noncategorical" means not designated for a  
21 specific program or service.

22 (8) "Personal health programs" means those programs  
23 provided by a public agency that are directed toward  
24 promoting and maintaining optimum health and preventing  
25 illness among the general public.

1 (9) "Public health personnel" means all employees  
 2 whose services have been obtained by the local health  
 3 department to provide the local public health program,  
 4 including the local health officer if the program is  
 5 administered by a local board of health.

6 Section 45. Local public health program defined. There  
 7 shall be a local public health program provided by each  
 8 county which may include but not necessarily be limited to  
 9 the following:

- 10 (1) the services of a local health officer;
- 11 (2) community health nursing, including home health
- 12 nursing;
- 13 (3) school nursing;
- 14 (4) sanitarian services;
- 15 (5) health and nutrition education; and
- 16 (6) dental health education and services.

17 Section 46. Structure. (1) The local health department  
 18 may be administered by either a local health officer or a  
 19 local board of health to be appointed in the manner provided  
 20 by the plan of government.

- 21 (2) If a board is formed, it may be either:
- 22 (a) a county board of health created by ordinance; or
- 23 (b) a district board of health created by interlocal
- 24 agreement with at least one member appointed by each
- 25 participating county.

1 (3) Board membership shall include the following  
 2 individuals:

3 (a) no more than one county commissioner from each  
 4 participating county;

5 (b) at least one member to represent the interests of  
 6 the municipalities within the county;

7 (c) a physician licensed to practice medicine in  
 8 Montana, if available in the county and if he wishes to  
 9 serve, and if not, some other health professional;

10 (d) at least one representative of the schools within  
 11 the county; and

12 (e) additional members to be selected to represent a  
 13 reasonable cross section of the community.

14 (4) Except for provisions contained in [section 44  
 15 through section 50 of SB 21], appointments to boards shall  
 16 comply with [section 67 of SB 12].

17 (5) No public health personnel employed by the local  
 18 health department may be designated as members of the board  
 19 for that county.

20 (6) If a district board of health is formed, the  
 21 governing bodies of all participating counties shall  
 22 mutually agree on which county shall appoint each of the  
 23 individuals in subsection (3) of this section.

24 Section 47. Administrative provisions. (1) The board,  
 25 if any, shall meet at least quarterly.

1 (2) Each local health department shall obtain the  
2 services of  
3 a local health officer and may obtain the services of:

4 (a) a nurse licensed under 37-8-407, and preferably  
5 one with public health education or experience; and

6 (b) a sanitarian licensed under Title 37, chapter 40.

7 (3) The local health officer shall be either a  
8 physician licensed to practice medicine in Montana, an  
9 individual with a master's degree in public health, or an  
10 individual with appropriate public health experience as  
11 determined by the department.

12 (4) If a nonphysician health officer is appointed, all  
13 components of the public health program requiring the  
14 services of a physician shall be contracted with a physician  
15 licensed to practice medicine in Montana and may be obtained  
16 from a physician employee of the department.

17 (5) The county governing body shall provide, by  
18 ordinance, the methods by which public health personnel are  
19 appointed, supervised, dismissed, and their salaries are  
20 established.

21 (6) School nursing services may be provided by the  
22 local health department. A school district may also contract  
23 with a county for the provision of school nursing services.

24 (7) The local health officer shall report:

25 (a) communicable diseases designated reportable by the

1 department each week to the department;

2 (b) sanitary conditions within the jurisdiction of the  
3 local health department each month to the board, if any, or  
4 the county governing body and to the department; and

5 (c) general public health conditions and activities in  
6 the areas of personal and environmental health services  
7 conducted within the jurisdiction of the local health  
8 department each month to the board, if any, or the county  
9 governing body and to the department.

10 (8) Reports shall be submitted on forms provided by  
11 the department and contain information required by the  
12 department.

13 (9) Each county shall provide adequate office space  
14 for local public health personnel.

15 Section 48. Functions, powers, and duties of local  
16 health departments. (1) A local health department shall:

17 (a) provide for a program of public health services  
18 which may include those services defined in [section 45 of  
19 SB 21];

20 (b) employ the minimum qualified staff necessary to  
21 conduct the public health program in accordance with the  
22 provisions of [section 47(2) of SB 21];

23 (c) provide annually to the department a budget and a  
24 detailed program plan for the local health department.

25 (2) A local health department may:



1 (a) hire personnel in addition to those authorized in  
2 [section 47(2) of SB 21] to assist with the provision of the  
3 public health program;

4 (b) initiate and implement programs and measures other  
5 than those defined in [section 45 of SB 21] to enhance the  
6 general public health within the jurisdiction of the local  
7 health department;

8 (c) solicit and accept funds from the federal  
9 government or from any other agency or individual for the  
10 purpose of conducting public health programs. If a local  
11 health officer administers the local health department, the  
12 acceptance of funds is contingent upon the approval of the  
13 county governing body.

14 (d) contract with another county or agency to perform  
15 all or portions of the public health program;

16 (e) adopt rules, fees, and permit systems for:

17 (i) the certification of individual sewage treatment  
18 installers;

19 (ii) the control and disposal of sewage from private  
20 and public buildings not currently connected to any  
21 municipal system;

22 (iii) the regulation and control of sanitary conditions  
23 in establishments licensed by the state under Title 50,  
24 chapter 50, part 1; Title 50, chapter 51, part 1; and Title  
25 50, chapter 52, part 1;

1 (f) adopt other rules which do not conflict with and  
2 are at least as stringent as the rules of the department or  
3 the state board of health and environmental sciences but  
4 which are necessary to the provision of the public health  
5 program and to the implementation of state laws and rules  
6 relating to public health. These rules may include but are  
7 not limited to:

8 (i) the control of communicable diseases;

9 (ii) sanitation, heating, ventilation, water supply,  
10 and waste disposal in public buildings and public  
11 accommodations; and

12 (iii) other environmental and personal health services.

13 (g) take any action, including legal action, necessary  
14 to meet an emergency endangering the public health or to  
15 restrain the violation of public health laws, ordinances, or  
16 rules being violated within the jurisdiction of the local  
17 health department; and

18 (h) provide public health services to residents of  
19 Indian reservations which are contiguous to the jurisdiction  
20 of the local health department at the same level and under  
21 the same conditions as those provided to any other residents  
22 of the state. In order to receive these services, residents  
23 and tribal councils of Indian reservations must comply with  
24 all rules adopted by the local health department and all  
25 public health laws and rules of the department. The local

1 health department may charge the tribal council for the  
2 costs of providing these services.

3 (3) If the rules adopted under the provisions of  
4 subsections (2)(e) and (2)(f) of this section are not  
5 adopted by a board, the adoption of the rules is contingent  
6 upon the approval of the county governing body.

7 (4) The local health officer, with the concurrence of  
8 the board, if any, or the county governing body and the  
9 assistance of other local public health personnel, shall:

10 (a) keep the department informed of changes in the  
11 membership of the board, if any, and changes in personnel  
12 employed by the local health department;

13 (b) make inspections and otherwise ensure sanitary  
14 conditions in the jurisdiction of the local health  
15 department. Establishments to be inspected shall include but  
16 are not necessarily limited to the following:

17 (i) food service establishments;

18 (ii) lodging establishments;

19 (iii) tourist campgrounds and trailer courts;

20 (iv) schoolhouses;

21 (v) churches;

22 (vi) theaters;

23 (vii) jails; and

24 (viii) other buildings or facilities where persons  
25 assemble;

1 (c) guard against the introduction and spread of  
2 communicable diseases;

3 (d) conduct other environmental and personal health  
4 programs as required by law and rules of the department;

5 (e) cooperate with the department in the provision of  
6 statewide programs; and

7 (f) submit reports in accordance with [section 47(7)  
8 of SB 21].

9 (5) The local health officer, with the concurrence of  
10 the board, if any, or the county governing body and the  
11 assistance of other local public health personnel, may:

12 (a) establish and maintain quarantines and take other  
13 measures to guard against the spread of communicable  
14 diseases;

15 (b) isolate persons, animals, and objects which are  
16 infected or suspected of being infected with a communicable  
17 disease which is a threat to human health;

18 (c) disinfect places when a period of quarantine ends;

19 (d) forbid persons to assemble if the assembly  
20 endangers the public health;

21 (e) validate state licenses issued by the department  
22 in accordance with 50-50-201, 50-51-201, and 50-52-202;

23 (f) abate nuisances affecting the public health and  
24 safety;

25 (g) make full use of the consultative services.

1 technical assistance, and continuing education services  
2 available from the department;

3 (h) with the concurrence or upon the request of the  
4 chief law enforcement administrator, remove a diseased  
5 prisoner who is held in jail and whose condition is in need  
6 of medical treatment or is considered dangerous to the  
7 health of other prisoners to a hospital or other secure  
8 place where he may be treated and return the prisoner to  
9 jail when he is cured;

10 (i) issue a written order approved by the local board  
11 of health or, if none exists, by the county governing body  
12 to close for up to 72 hours an establishment licensed under  
13 Title 50, chapter 50; Title 50, chapter 51; and Title 50,  
14 chapter 52, the sanitary conditions of which, in the opinion  
15 of the health officer, are an imperative threat to the  
16 public health and require emergency action. The proprietor  
17 of the establishment may submit a plan for corrections to  
18 which the local health officer objected. If the plan is  
19 acceptable and correction of the violation has been  
20 initiated, no order for closure will be issued.

21 (j) collect fees; and

22 (k) request a law enforcement officer or another  
23 public official to assist in carrying out the provisions of  
24 [section 33 through section 92 of SB 21]. The official shall  
25 render the services as requested.

1 Section 49. Role of department. (1) The department  
2 shall develop reference materials for optional use by local  
3 health departments, local health officers, and other local  
4 public health personnel. The reference materials shall  
5 include but not necessarily be limited to the following:

6 (a) a description of the optimal practices for each  
7 program or service the local health department wishes to  
8 provide, which may include but not necessarily be limited to  
9 those services defined in [section 45 of SB 21] and which  
10 takes into account both the rural and urban characteristics  
11 of local health departments in Montana and available  
12 manpower and financial resources as well as available  
13 private medical and health services and facilities  
14 throughout the state. This description shall provide the  
15 basis upon which evaluations required in subsection (3)  
16 shall be conducted.

17 (b) the format and content of budgets and program  
18 plans required as a condition of receiving noncategorical  
19 state and federal revenues for public health services and  
20 programs;

21 (c) the content and availability of training and  
22 continuing education programs conducted for local public  
23 health personnel; and

24 (d) the content and due dates of standard reporting  
25 forms required periodically of local health departments by

1 the department.

2 (2) In developing the content of the reference  
3 materials or any proposed rule potentially affecting local  
4 health departments, the department or the state board of  
5 health and environmental sciences shall solicit formal  
6 comment and suggestions from local health officers, boards,  
7 if any, and other local public health personnel.

8 (3) The department shall, within the limits of  
9 available resources, annually evaluate the staff of and  
10 services and programs provided by local health departments  
11 and by school districts which provide their own school  
12 nursing services. Public health programs and services  
13 provided by nongovernmental agencies shall also be evaluated  
14 by the department if local funds in any proportion are  
15 utilized to provide the services. The report on the  
16 evaluation shall be made available to the local health  
17 officer, board, if any, and county governing body and to the  
18 public upon request.

19 (4) If, in the opinion of the department, the services  
20 of the minimum required and authorized staff have not been  
21 obtained by a county, the department shall, after adequate  
22 notice has been given to the affected county, provide the  
23 staff services itself. The department may then submit an  
24 itemized billing to the appropriate county for an equitable  
25 amount of the county share to cover the costs of providing

1 the services. The county shall pay the bill received from  
2 the department.

3 (5) In order to fulfill its responsibility of  
4 providing supportive services to local health departments,  
5 the department shall, within the limits of available  
6 resources:

7 (a) provide consultative services and technical  
8 assistance in the formation and ongoing operation and  
9 administration of and budgeting for the local health  
10 department;

11 (b) provide adequate advance notice of visits by all  
12 personnel to counties, boards, local health officers, and  
13 other public health personnel; and

14 (c) solicit funds available from federal and other  
15 agencies for use by local health departments.

16 (6) The department may:

17 (a) when practicable and particularly in emergency  
18 public health situations, provide department employees on a  
19 temporary loan basis as supplemental staff to local health  
20 departments; and

21 (b) request any necessary reports of local health  
22 officers and other local public health personnel in addition  
23 to those required in [section 47(7) of SB 21].

24 Section 50. Financing. (1) Rather than providing  
25 direct public health services itself, the department shall

1 offer any available financial resources to local health  
2 departments to provide public health programs which are  
3 authorized or mandated by state or federal law and whose  
4 purposes are to provide services directly to the citizens of  
5 the state. Exceptions to this are the following programs:

- 6 (a) air quality programs;
- 7 (b) central recording of vital statistic documents;
- 8 (c) departmental consulting and reference services  
9 available to local public health personnel and boards;
- 10 (d) family planning programs;
- 11 (e) hospital and medical facilities licensing and  
12 certification;
- 13 (f) inspection of state institutions for sanitary  
14 conditions;
- 15 (g) occupational health programs;
- 16 (h) radiological health programs;
- 17 (i) specialized medical and diagnostic services;
- 18 (j) state-level subdivision plan approval;
- 19 (k) statewide health planning; and
- 20 (l) water quality programs.

21 (2) If the local health department does not wish to  
22 provide or is incapable of providing any program offered by  
23 the department, the department may provide the program.

24 (3) Nothing in subsections (1) and (2) shall be  
25 construed to mean that the department is prohibited from

1 offering the above programs to local health departments and  
2 boards if it so desires.

3 (4) Noncategorical federal money which is appropriated  
4 to the state for distribution to local health departments,  
5 including those appropriated under Public Law 94-63, shall  
6 be allocated at the rate of at least 45 cents per capita of  
7 state population per year using the latest official  
8 population estimate for as long as the program continues.  
9 This amount may be adjusted if the total federal allocations  
10 to Montana increase or decrease under any federal programs  
11 but not less than 70% of the total amount received from the  
12 federal government under Public Law 94-63 shall be allocated  
13 to local health departments. The minimum amount allocated to  
14 any county shall be at least \$800 per year.

15 (5) Except for a school district which provides the  
16 minimum school nursing services itself in accordance with  
17 20-3-324, each elementary and secondary school district  
18 shall appropriate to the local health department an amount  
19 to be agreed upon by the school district and the county for  
20 the purpose of providing school nursing services and for  
21 other services of the local health department which will  
22 benefit the schools and school children.

23 (6) As a condition of receiving state revenues or  
24 federal revenues allocated to the state for noncategorical  
25 public health programs and services, the local health

1 department shall submit the proposed and adopted annual  
 2 budget and a detailed program plan to the department  
 3 annually. No conditions other than the provisions contained  
 4 in [section 33 through section 92 of SB 21] and federal  
 5 merit system requirements may be imposed on boards as  
 6 requirements for eligibility to receive noncategorical state  
 7 and federal revenues. Combined state and federal  
 8 noncategorical revenues disbursed by the department shall  
 9 not constitute more than 50% of the total annual budget of a  
 10 local health department.

11 (7) All fees collected by the local health department  
 12 shall be deposited in an account to be used only to defray  
 13 the expenses of providing the program of the local health  
 14 department.

15 (8) All fees available to the department for licenses,  
 16 permits, or other programs shall be shared with local health  
 17 departments if the local health department has assisted with  
 18 the administration of the program from which the fee  
 19 resulted. The department shall share an appropriate  
 20 percentage of the fee commensurate with the local health  
 21 department's effort.

22 Section 51. Law enforcement administrator. It shall be  
 23 the duty of each county to provide for a chief law  
 24 enforcement administrator who may be called the sheriff and  
 25 who shall perform the duties required by [section 57 of SB

1 18], law, or ordinances.

2 Section 52. Inquests. (1) It shall be the duty of each  
 3 county governing body to designate an officer, department,  
 4 or employee who shall:

5 (a) hold inquests as provided in 46-4-201 through  
 6 46-4-207;

7 (b) keep an official register, to be labeled "register  
 8 of inquests", in which the officer must enter the date of  
 9 holding all inquests, the name of the deceased, when known,  
 10 and when not, a description of the deceased as may be  
 11 sufficient for identification; property found on the person  
 12 of the deceased, if any; what disposition of the property  
 13 was made by the officer or employees; the cause of death,  
 14 when known, and any other information which may pertain to  
 15 the identity of the deceased;

16 (c) if the officer, department, or employee considers  
 17 it necessary, may hold an inquest as provided in 46-4-201  
 18 through 46-4-207 when a person confined in a state  
 19 institution has died. The inquest may be held only by the  
 20 officer, department, or employee in whose county the state  
 21 institution is located.

22 (d) whenever an inquest as described in subsection (c)  
 23 is held, properly certify a statement of all costs incurred  
 24 by the county in the inquest. The statement shall be  
 25 certified by the officer, department, or employee and sent

1 to the department of institutions for approval. Upon  
2 approval, the department must cause the amount of the costs  
3 to be paid out of the money appropriated for the state  
4 institution to the county financial administrator where the  
5 inquest was held.

6 (e) deliver, within 30 days after an inquest on a dead  
7 body, to the county financial administrator of the county or  
8 the legal representatives of the deceased any money or other  
9 property found upon the dead body;

10 (f) when an inquest is held and no other person takes  
11 charge of the body of the deceased, the officer, department,  
12 or employee shall cause it to be decently interred; and if  
13 there is not sufficient property belonging to the estate of  
14 the deceased to pay the necessary expenses of burial, the  
15 expenses are a legal charge against the county; and

16 (g) file with the county finance administrator of the  
17 governing body of the county a statement in writing,  
18 verified by his affidavit, showing the amount of money or  
19 other property belonging to the estate of the deceased  
20 person which has come into his possession since his last  
21 statement and the disposition of the property; and

22 (h) perform any other duty required by law.

23 (2) If the governing body of the county fails to  
24 designate an officer, department, or employee or the person  
25 designated is absent or unable to attend, the duties of this

1 section may be discharged by any justice of the peace of the  
2 county with like authority and subject to the same  
3 obligations and penalties as the person designated.

4 Section 53. Prosecuting attorney. (1) It shall be the  
5 duty of each county to provide for a prosecuting attorney  
6 who may be the county civil attorney. If the plan of  
7 government provides for an elected legal officer,  
8 prosecutor, or county attorney, the duties of the  
9 prosecuting attorney as provided in this section shall be  
10 performed by that person. The prosecuting attorney must:

11 (a) attend the district court and conduct, on behalf  
12 of the state, all prosecutions for public offenses and  
13 represent the state in all matters and proceedings to which  
14 it is a party, or in which it may be beneficially  
15 interested, at all times and in all places within the limits  
16 of his county;

17 (b) institute proceedings before magistrates for the  
18 arrest of persons charged with or reasonably suspected of  
19 public offenses, when he has information that the offenses  
20 have been committed, and for that purpose, whenever not  
21 otherwise officially engaged, must attend upon the  
22 magistrate in cases of arrest, and attend before and give  
23 advice to the grand jury, whenever cases are presented to it  
24 for their consideration;

25 (c) draw all indictments and informations, defend all

1 suits brought against the state in the county, prosecute all  
 2 recognizances forfeited in the courts of record and all  
 3 actions for the recovery of debts, fines, penalties, and  
 4 forfeitures accruing to the state;

5 (d) deliver receipts for money or property received in  
 6 his official capacity, and file duplicates thereof with the  
 7 county finance administrator;

8 (e) on the first Monday of January, April, July, and  
 9 October, in each year, file with the finance administrator  
 10 an account of all money received by him in his official  
 11 capacity during the preceding 3 months;

12 (f) keep a register of all official business, in which  
 13 must be entered a note of every action, whether criminal or  
 14 civil, prosecuted officially, and of the proceedings  
 15 therein;

16 (g) when ordered or directed by the attorney general  
 17 to do so, promptly institute and diligently prosecute in the  
 18 proper court and in the name of the state of Montana any  
 19 criminal or civil action or special proceeding, it being  
 20 hereby declared that the supervisory powers granted to the  
 21 attorney general by 2-15-501(5) include the power to order  
 22 and direct prosecuting attorneys and county civil attorneys  
 23 in all matters pertaining to the duties of their offices;

24 (h) institute an action if the governing body of the  
 25 county, without authority of law, orders any money paid as a

1 salary, fees, or for any other purpose and the money has  
 2 been actually paid; or if any other county officer has drawn  
 3 any warrant or warrants in his own favor or in favor of any  
 4 other person without authorization by the governing body of  
 5 the county or by law and the same has been paid. The action  
 6 shall be in the name of the county against the person or  
 7 persons to recover the money so paid and for 25% damages for  
 8 the use of the money. No order of the governing body of the  
 9 county is necessary to maintain the suit, but when the money  
 10 has not been paid on the order or warrants, it is the duty  
 11 of the public prosecutor, upon receiving notice thereof, to  
 12 commence an action in the name of the county for restraining  
 13 its payment, and no order of the governing body of the  
 14 county is necessary to maintain the action; and

15 (1) perform any other duty required by law or  
 16 ordinance.

17 (2) For counties where the prosecuting attorney is  
 18 also the county civil attorney, the legislature shall  
 19 appropriate and the department of community affairs shall  
 20 annually distribute \$10,000 to each county, plus \$1 per  
 21 person within the county based on the most recent federal  
 22 census or population estimate, to be applied against the  
 23 expenses budgeted by a county for that office.

24 (3) Except in counties where a separate office of  
 25 prosecuting attorney is established by ordinance:



1 (a) the annual state share of the expenses budgeted by  
2 a county for the office performing both civil and  
3 prosecuting duties may not exceed one-half; and

4 (b) the annual state contribution to a county may not  
5 exceed \$50,000.

6 (4) For counties where a separate office of  
7 prosecuting attorney is established by ordinance, the  
8 legislature shall appropriate and the department of  
9 community affairs shall distribute sufficient money to  
10 defray the expenses budgeted by a county for the office of  
11 prosecuting attorney.

12 (5) In each county with a population in excess of  
13 30,000 where the prosecuting attorney is also the civil  
14 attorney or where a separate office of prosecuting attorney  
15 is established by ordinance, that person is prohibited from  
16 engaging in the private practice of law or sharing directly  
17 or indirectly in the profits of any private practice of law,  
18 except that he may represent himself and his immediate  
19 family. He may prohibit deputies from engaging in the  
20 private practice of law or sharing directly or indirectly in  
21 the profits of any private practice of law, except that a  
22 deputy may represent himself and his immediate family.

23 Section 54. Claims against prosecuting attorney's or  
24 civil attorney's own county. The prosecuting attorney or  
25 civil attorney, except for his own services, must not

1 present any claim, account, or other demand for allowance  
2 against the county, or in any way advocate the relief asked  
3 on the claim or demand made by another.

4 Section 55. Jails. (1) A jail shall be built on  
5 provided and maintained at the expense of the county in each  
6 county, except that whenever, in the discretion of the  
7 governing bodies of two or more counties, it is necessary or  
8 desirable to build, provide, or utilize a common jail, they  
9 may do so in one of the counties concerned. The common jail  
10 shall be built or provided and maintained at the expense of  
11 the counties concerned on a basis as the governing bodies  
12 shall agree. The common jail shall be kept by the law  
13 enforcement officers of the counties utilizing it on a basis  
14 as the chief law enforcement administrators utilizing the  
15 common jail shall agree.

16 (2) The governing body has the duty of building,  
17 inspecting, and repairing the jail, and must, once every 3  
18 months, inquire into the security of the jail and must take  
19 all necessary precautions against escape, sickness, or  
20 infection.

21 (3) County jails shall be used for:

22 (a) the detention of persons committed to secure their  
23 attendance as witnesses in criminal cases;

24 (b) the detention of persons charged with crime and  
25 committed for trial;

1 (c) the confinement of persons committed for contempt,  
2 or upon civil process, or by other authority of law; and

3 (d) the confinement of persons sentenced to  
4 imprisonment upon a conviction of crime.

5 (4) Each county jail must contain a sufficient number  
6 of rooms to allow all persons belonging to any one of the  
7 following classes to be confined separately and distinctly  
8 from persons belonging to any of the other classes:

9 (a) persons committed on criminal process and detained  
10 for trial;

11 (b) persons already convicted of crime and held under  
12 sentence;

13 (c) persons detained as witnesses, or held under civil  
14 process, or under an order imposing punishment for a  
15 contempt;

16 (d) males separately from females; and

17 (e) juveniles separately from adults.

18 Section 56. Who may be detained, expense of prisoners,  
19 exceptions. (1) The chief law enforcement administrator must  
20 receive all persons committed to jail by a competent  
21 authority, and provide them with necessary food, clothing,  
22 and bedding, for which claims shall be submitted for the  
23 actual expenses incurred to the governing body of the county  
24 for their determination and, except as provided in this  
25 section, to be paid by the finance administrator.

1 (2) If a person is committed to jail by an agency of  
2 the state of Montana, the agency shall, upon a claim  
3 presented by the county, pay the county the actual and  
4 necessary expenses incurred for each and every prisoner held  
5 in the county jail upon order or commitment of the agency.  
6 For the purposes of this section, a day shall be defined as  
7 a 24-hour period or portion thereof, beginning with the time  
8 of incarceration.

9 (3) If the governing body of the county and the United  
10 States, through or by the proper officer or officers, enter  
11 into an agreement that the United States shall pay on demand  
12 by the county the actual and necessary expenses for each  
13 federal prisoner confined, the chief law enforcement  
14 administrator must receive and keep in the county jail any  
15 prisoner committed thereto by process or order issued under  
16 the authority of the United States until the prisoner is  
17 discharged according to law as if he had been committed  
18 under process issued under the authority of this state.

19 (4) Whenever a person is committed upon process in a  
20 civil action or proceeding, except when the state is a party  
21 thereto, the chief law enforcement administrator is not  
22 bound to receive the person, unless security is given on the  
23 part of the party at whose instance the process is issued by  
24 a deposit of money to meet expenses of necessary food,  
25 clothing, and bedding for the person committed or to detain

1 the person any longer than these expenses are provided for.  
 2 This section does not apply to cases where a party is  
 3 committed as a punishment for disobedience to the mandates,  
 4 process, writs, or order of court.

5 (5) If, in the opinion of the chief law enforcement  
 6 administrator, any prisoner, while detained, requires  
 7 medication, medical services, or hospitalization, the  
 8 expense of the prisoner shall be borne by the agency or  
 9 authority at whose instance the prisoner is detained when  
 10 the agency or authority is not the county wherein the  
 11 prisoner is being detained. The public prosecutor shall  
 12 initiate proceedings to collect any charges arising from  
 13 medical services or hospitalization for the prisoner  
 14 involved if it is determined the prisoner is financially  
 15 able to pay.

16 Section 57. Prisoners. (1) Persons committed on  
 17 criminal process and detained for trial, persons convicted  
 18 and under sentence, and persons committed upon civil process  
 19 must not be kept or put into the same room, nor shall male  
 20 and female prisoners (except husband and wife) be kept or  
 21 put into the same room.

22 (2) A prisoner committed to the county jail for trial  
 23 or for examination or upon conviction for a public offense  
 24 must be actually confined in the jail until he is legally  
 25 discharged; and if he is permitted to go at large out of the

1 jail, except by virtue of a legal order or process, it is an  
 2 escape.

3 (3) A chief law enforcement administrator to whose  
 4 custody a prisoner is committed, as provided in [section  
 5 56(3) of SB 21], is answerable for his safekeeping in the  
 6 courts of the United States according to the laws thereof.

7 (4) A law enforcement officer or jailer upon whom a  
 8 paper in a judicial proceeding, directed to a prisoner in  
 9 his custody, is served must immediately deliver it to the  
 10 prisoner with a note thereon of the time of its service.  
 11 For a neglect to do so he is liable to the prisoner for all  
 12 damages occasioned thereby.

13 (5) Persons confined in the county jail under a  
 14 judgment of imprisonment rendered in a criminal action or  
 15 proceeding may be required by the governing body of the  
 16 county to perform labor on the public works or ways in the  
 17 county. The governing body of the county making the order  
 18 may prescribe and enforce the rules under which the labor is  
 19 to be performed.

20 Section 58. Removal of prisoners in case of fire or  
 21 pestilence. (1) When a county jail or building contiguous to  
 22 it is on fire, and there is reason to believe that the  
 23 prisoners may be injured or endangered, the chief law  
 24 enforcement administrator must remove them to a safe and  
 25 convenient place and there confine them as long as it may be

1 necessary to avoid the danger.

2 (2) When a pestilence or contagious disease breaks out  
3 in or near a jail, and a physician certifies that it is  
4 likely to endanger the health of the prisoners, the district  
5 judge may by a written appointment designate a safe and  
6 convenient place in the county, or the jail in a contiguous  
7 county, as the place of their confinement. The appointment  
8 must be filed in the office of the district court and  
9 authorize the chief law enforcement administrator to remove  
10 the prisoners to the place or jail designated and there  
11 confine them until they can be safely returned to the jail  
12 from which they were taken.

13 Section 59. Contiguous county jail -- when used --  
14 process. (1) When there is no jail in the county or when the  
15 jail becomes unfit or unsafe for the confinement of  
16 prisoners, the district judge may designate the jail of a  
17 contiguous county for the confinement of the prisoners of  
18 his county by filing a written appointment with the clerk of  
19 the district court. He may at any time modify or annul the  
20 appointment.

21 (2) A copy of the appointment, certified by the clerk  
22 of the district court, shall be served on the chief law  
23 enforcement administrator or keeper of the jail designated.

24 That law enforcement officer or keeper:

25 (a) shall receive into his jail all prisoners

1 authorized to be confined to it, in accordance with this  
2 section; and

3 (b) is responsible for the safekeeping of the persons  
4 so committed in the same manner and to the same extent as if  
5 he were chief law enforcement administrator of the county  
6 for whose use his jail is designated.

7 (3) With respect to the persons so committed, he is  
8 considered the chief law enforcement administrator of the  
9 county from which they were removed.

10 (4) When a jail is erected in the county or when the  
11 existing jail is rendered fit and safe for the confinement  
12 of prisoners, the district judge of that county must, by a  
13 written revocation filed with the clerk, declare that the  
14 necessity for the designation has ceased, and that it is  
15 revoked.

16 (5) The clerk must immediately serve a copy of the  
17 revocation upon the chief law enforcement administrator of  
18 the county, who must thereupon remove the prisoners to the  
19 jail from which the removal was made.

20 Section 60. Mileage and expense of sheriff. (1) A  
21 sheriff serving a warrant or arrest or conveying a person  
22 under arrest before a magistrate or to jail shall be paid  
23 the following:

24 (a) for utilizing a privately owned vehicle or  
25 aircraft, mileage as provided in 2-18-503; or

1 (b) for utilizing a common carrier, expenses incurred  
2 for himself and the person conveyed; and

3 (c) for all other reasonable and necessary expenses  
4 incurred therein.

5 (2) A sheriff shall receive only expenses incurred in  
6 conveying a person to the state prison, a youth detention  
7 facility, or state mental health facility or for the return  
8 of fugitives apprehended and arrested outside the county.  
9 The expenses shall be evidenced by vouchers which shall be  
10 submitted to the department of administration or the local  
11 government, whichever is responsible for the expense.

12 (a) For use of a privately owned vehicle or aircraft,  
13 a sheriff shall be compensated as provided in 2-18-503.

14 (b) For lodging and subsistence, the sheriff shall be  
15 reimbursed for expenses not to exceed the amounts provided  
16 in 2-18-501 and 2-18-502 for himself and for the person  
17 conveyed.

18 Section 61. Justice and municipal courts. (1) Each  
19 county shall provide one or more justice of the peace  
20 courts.

21 (2) Each municipality shall provide for a municipal  
22 court.

23 Section 62. District court facilities. (1) Each county  
24 shall provide the district court with suitable rooms and  
25 chambers together with attendants, furniture, fuel, lights,

1 books, and stationery necessary for the transaction of the  
2 court's business.

3 (2) Each county shall provide for the safekeeping of  
4 court records, adequately protecting them against fire and  
5 other hazards.

6 (3) If a county fails to meet the obligations imposed  
7 by this section, the district judge may order the deficiency  
8 corrected at county expense.

9 Section 63. Clerk of district court. Each county shall  
10 designate one or more departments, officers, or employees to  
11 perform the following duties:

12 (1) take charge of and safely keep, or dispose of  
13 according to law, all books, papers, and records which may  
14 be filed or deposited with or in the district court;

15 (2) act as clerk of the district court and attend each  
16 term or session thereof, and attend the judges at chambers  
17 when required;

18 (3) issue all processes and notices required to be  
19 issued; enter all orders, judgments, and decrees proper to  
20 be entered; keep in each court a register of action, as  
21 provided in the code of civil procedure, which must also  
22 state the names of the attorneys and all fees charged in  
23 each action, and a list of all the fees charged;

24 (4) keep for the district court, in separate volumes:

25 (a) an index of all suits, labeled "general index -

1 plaintiffs", each page of which must be divided into seven  
 2 columns, under their respective heads, alphabetically  
 3 arranged as follows: "number of suit", "plaintiffs",  
 4 "defendants", "date of judgment", "number of judgment",  
 5 "page of entry of judgment in judgment book", "page in  
 6 minute book of district court"; and

7 (b) an index labeled "general index - defendants",  
 8 each page of which must be divided into seven columns under  
 9 their respective heads, alphabetically arranged as follows:  
 10 "number of suit", "defendants", "plaintiffs", "date of  
 11 judgment", "number of judgment", "page of entry of judgment  
 12 in judgment book", "page in minute book of district court";

13 (5) keep a record containing the daily proceedings of  
 14 the court which may be signed by the clerk;

15 (6) keep a record called "the judgment record", in  
 16 which judgments must be entered.

17 (7) keep a record called the "probate record", in  
 18 which must be recorded all wills, bonds, letters  
 19 testamentary, and other papers as prescribed elsewhere in  
 20 this code. The record must be indexed in the same manner as  
 21 the "record of probate proceedings".

22 (8) keep proper records for indexing bonds given in  
 23 criminal cases, and all the bonds filed therein shall be  
 24 entered showing the title and docket number of the case in  
 25 which the bond is filed, the names of principals and

1 sureties on the bonds in alphabetical order, the date and  
 2 amount of the bond and, upon its release, the date of the  
 3 order or authority for the release;

4 (9) keep records of naturalization proceedings as  
 5 required by federal law;

6 (10) keep a record called, "register of criminal  
 7 actions", in which must be entered the title and number of  
 8 the action, with a memorandum of every paper filed, order or  
 9 proceeding had therein, with the date thereof, the name of  
 10 every witness, and a proper index to the register;

11 (11) keep a record called "register of probate and  
 12 guardianship proceedings", in which must be entered the name  
 13 of the estate; the register number; a memorandum of every  
 14 paper filed, order or proceeding had therein, with the date  
 15 thereof, and the fees charged.

16 (12) keep an index of persons committed to state  
 17 institutions.

18 (13) keep a fee record, in which must be shown in an  
 19 itemized form all fees that he has received for any services  
 20 rendered as clerk;

21 (14) keep a record called "jurors' certificates", in  
 22 which must be contained the blank certificates and stubs to  
 23 be filled, as provided in this code;

24 (15) keep a "witness record", in which must be  
 25 contained blank certificates and stubs to be filled as

1 provided in [SB 11, SB 12, SB 13, SB 14, SB 15, SB 16, SB  
2 17, SB 18, SB 19, SB 20, SB 21, SB 22, and SB 23].

3 (16) keep a record of the attendance of all jurors and  
4 of witnesses in criminal actions, number of days in  
5 attendance, witness fees, and compute the mileage of each;

6 (17) keep in a separate record a general index to court  
7 records and an inverse general index to court records. Each  
8 index shall be in the form prescribed by supreme court rule.  
9 Entries shall be made in each index as the progress of the  
10 case may require.

11 (18) perform any other duty required by law.

12 Section 64. Jurors. (1) Each county shall provide the  
13 district court with a jury list drawn as provided in Title  
14 3, chapter 15, part 4.

15 (2) The officer or employee designated in [section 63  
16 of SB 21] shall receive the list and prepare jury boxes as  
17 provided in Title 3, chapter 15, parts 4 and 5.

18 (3) The chief law enforcement administrator or an  
19 employee of the local government shall summon jurors as  
20 provided in 3-15-505.

21 (4) The county shall pay jurors' fees as provided in  
22 Title 3, chapter 15, part 2.

23 Section 65. Witnesses. (1) The county shall pay  
24 witnesses as provided in Title 26, chapter 2, part 5.

25 (2) The officer or employee designated as provided in

1 [section 63 of SB 21] shall issue summons for witnesses as  
2 provided by law.

3 Section 66. Court reporters. (1) Each district court  
4 judge may appoint a court reporter as provided by 3-5-602.

5 (2) The salary and expenses of the court reporter  
6 shall be paid by the county subject to the limits contained  
7 in 3-5-602.

8 (3) If more than one county is included within the  
9 judicial district, the court reporter's salary and expenses  
10 shall be apportioned between the counties as provided in  
11 3-5-602.

12 Section 67. Interpreters. (1) Whenever a party to or a  
13 witness in any criminal proceeding cannot speak or  
14 understand the English language, the court may appoint an  
15 interpreter.

16 (2) The county shall pay a reasonable fee for the  
17 services of an interpreter as the court may establish.

18 Section 68. Public defenders. Each county shall pay  
19 the compensation and expenses of counsel assigned to  
20 represent indigent criminal defendants as provided in  
21 46-8-201.

22 Section 69. Youth probation officer. Each county shall  
23 provide facilities for and pay the salaries and expenses of  
24 the youth court probation officer in the manner and subject  
25 to the limitations contained in 41-5-704.

1 Section 70. Service of process and notice. (1) Each  
2 local government shall designate an officer or employee who  
3 shall:

4 (a) endorse all notices and processes with the year,  
5 month, day, hour, and minute of reception, and issue to the  
6 person delivering them, on payment of fees, a certificate  
7 showing the names of the parties, title of paper, and time  
8 of reception;

9 (b) serve all processes or notices in the manner  
10 prescribed by law, except those the sheriff or chief of  
11 police is specifically required by law to serve; and

12 (c) certify by hand upon the process or notice the  
13 manner and time of service, or if there is a failure to make  
14 service, the reasons for the failure, and return the same  
15 without delay.

16 (2) The return of the designated officer or employee,  
17 upon process or notice, is prima facie evidence of the facts  
18 in such return stated.

19 Section 71. Fees for service of process. (1) The  
20 following fees shall be charged for service of process:

21 (a) for serving a summons on each defendant, \$2;

22 (b) for levying and serving each writ of attachment or  
23 execution on real or personal property, \$2;

24 (c) for serving an attachment on the body or order of  
25 arrest on each defendant, \$2;

1 (d) for serving an affidavit, order, and undertaking  
2 in claim and delivery, \$2;

3 (e) for serving a subpoena on each witness summoned,  
4 \$2;

5 (f) for serving writ of possession or restitution, \$4;

6 (g) for trial of the right of property or damages,  
7 including all services except mileage, \$5;

8 (h) for taking bond or undertaking in any case  
9 authorized by law, \$2;

10 (i) for serving every notice, rule, or order, for each  
11 person served, \$2;

12 (j) for copying any writ, process, or other paper when  
13 demanded or required by law, per page, 25 cents;

14 (k) for advertising any property for sale on execution  
15 or under any judgment or order of sale, exclusive of cost of  
16 publication, \$2; and

17 (l) for mileage required for serving the paper or  
18 process and returning to the office in the amount specified  
19 in 2-18-503.

20 (2) Mileage shall be charged only once for serving  
21 more than one paper upon a single person at the same time.

22 (3) Mileage not requiring more than one trip for  
23 serving two or more persons shall be computed only for the  
24 shortest required single route to the most distant service.

25 (4) A court may order payment of expenses incurred for



1 the taking, possession, and preservation of property under  
 2 attachment, execution, or other process. If the property is  
 3 of such a character or the situation warrants employment of  
 4 a caretaker to insure the safety of the property, the court  
 5 may order the employment of a caretaker at a rate not to  
 6 exceed \$10 per day.

7 Section 72. Assessment of property. (1) Each county  
 8 shall designate a department, officer, or employee to  
 9 perform the duties of assessor and to act as the agent of  
 10 the state for the assessment of property for taxation as  
 11 provided in Title 15.

12 (2) The county shall make reports as are required by  
 13 the department of revenue.

14 Section 73. Levy and collection of taxes. (1) Each  
 15 county shall levy all property taxes certified to it by the  
 16 state, county, school district, authority, municipality, or  
 17 other entity authorized by law to certify property taxes to  
 18 a county for collection located wholly or partially within  
 19 the county.

20 (2) The state or any political subdivision with  
 21 property tax authority shall cause to be delivered a copy of  
 22 the certified mill levy to the county finance administrator  
 23 for the collection of the property tax no later than the  
 24 third Monday of August.

25 (3) If the jurisdictional area of the entity

1 certifying the tax is less than countywide the tax shall be  
 2 levied only on that part of the county that is within the  
 3 jurisdictional area of the entity.

4 (4) All money collected by the county on the property  
 5 tax levies shall be placed in a depository and distributed  
 6 to the appropriate accounts as provided by law or ordinance.

7 Section 74. School finance. Each county, through its  
 8 finance administrator, shall provide to school districts  
 9 located within its boundaries the following services:

10 (1) keep all school money in a separate account and  
 11 keep a separate accounting of their disbursement to the  
 12 several school districts which are entitled to receive them;

13 (2) notify the officer or body of the amount of the  
 14 county school account in the county treasury subject to  
 15 apportionment, whenever required, and inform the officer or  
 16 body of the amount of school money belonging to any other  
 17 fund subject to apportionment;

18 (3) pay all warrants drawn on school district money in  
 19 accordance with the provisions of law, whenever the warrants  
 20 are countersigned by the district clerk and properly  
 21 endorsed by holders;

22 (4) make annually during the month of September a  
 23 financial report for the preceding year ending with August  
 24 31 to the officer or body in the form as may be required by  
 25 the officer or body; and

1 (5) comply with other financial requirements as are  
2 prescribed in Title 20, chapter 9.

3 Section 75. School administration. (1) Each county  
4 shall designate one or more departments, officers, or  
5 employees to perform the duties of county superintendent of  
6 schools as prescribed in Title 20, chapter 3.

7 (2) One or more departments, officers, or employees  
8 shall be designated to serve in official positions required  
9 of the county superintendent of schools by Title 20, chapter  
10 11.

11 (3) The person performing the duties prescribed by  
12 20-3-205 and 20-3-210 shall have the qualifications of an  
13 elected county superintendent.

14 Section 76. Board of school budget supervisors. The  
15 governing body of the county shall constitute the board of  
16 school budget supervisors and in that capacity shall  
17 exercise the powers and duties prescribed in Title 20. The  
18 board may appoint the county school district officer as  
19 clerk of the board.

20 Section 77. Elections. (1) Each county shall provide  
21 for the registration of electors as provided in Title 13.

22 (2) Each county shall undertake all action and provide  
23 all facilities, materials, supplies, and personnel required  
24 by Title 13 to conduct state or other elections.

25 (3) Each county shall provide each municipality,

1 school district, and authority with lists of registered  
2 voters and all other materials and assistance required by  
3 Title 13 for its elections.

4 Section 78. Noxious plant control. Each county shall  
5 provide for the control of noxious plants in that county as  
6 provided by [section 36 through section 43 and section 44  
7 through section 50 of SB 15].

8 Section 79. Public administrator. Each county shall  
9 designate one or more departments, officers, or employees to  
10 carry out the duties of the public administrator as  
11 established by Title 72, chapter 15. The public  
12 administrator is allowed to receive and collect for his own  
13 use, for services rendered, the same fees allowed personal  
14 representatives, as provided in 72-3-631.

15 Section 80. Tax appeals board. (1) The governing body  
16 of each county shall appoint a county tax appeals board as  
17 provided in 15-15-101.

18 (2) The tax appeals board shall have the power and  
19 shall proceed as provided in Title 15, chapter 15.

20 Section 81. Surveyor. The governing body shall provide  
21 for any survey required by order of the court. No survey may  
22 be made by a person interested in lands to be surveyed.

23 Section 82. Motor vehicle graveyards. Each county  
24 shall provide a motor vehicle graveyard as provided for in  
25 Title 75, chapter 10.

1       Section 83. Licensing of refuse disposal districts.  
2 Each county shall provide for the licensing of refuse  
3 disposal districts as provided for in Title 75, chapter 10.

4       Section 84. Open burning. (1) Each local government  
5 shall establish by ordinance procedures for controlled  
6 burning within their jurisdiction.

7       (2) The ordinance shall:

8       (a) provide for seasons closed to open burning;

9       (b) take into account different types of controlled  
10 burning by class and may establish different permit criteria  
11 for differing types or classes of burning, including  
12 campfires, slash burning, land clearing, stubble burning, or  
13 burning of structures;

14       (c) provide for the issuance of burning permits;

15       (d) designate departments, employees, or persons of  
16 the local government that may issue burning permits;

17       (e) establish guidelines and conditions for the  
18 issuance of burning permits;

19       (f) provide for the timely notification of the fire  
20 service protecting the area:

21       (i) of the time of the burning;

22       (ii) where the burning is to be conducted; and

23       (iii) the type and size of the burning; and

24       (g) comply with state and federal laws establishing  
25 environmental, air quality, safety, and other standards.

1       (3) The fire service providing protection for the area  
2 where the burning permit is requested may veto the permit in  
3 cases where such burning is determined to be hazardous.

4       Section 85. Registration of motor vehicles. Each  
5 county shall provide for the registration of motor vehicles  
6 in that county as provided for in Title 61.

7       Section 86. Inspection of hides. Each county shall  
8 provide for the inspection of hides as required by Title 81,  
9 chapter 9.

10       Section 87. Purebred stock. Each county shall maintain  
11 and report, in the manner prescribed by Title 81, chapter 8,  
12 a record containing the names and addresses of all owners of  
13 purebred stock within the county.

14       Section 88. Administrative rules. Each county shall  
15 retain and maintain at least one copy of the Montana  
16 Administrative Code and any accompanying books or documents,  
17 as provided by Title 2, chapter 4, for the use of the county  
18 and the public.

19       Section 89. Underground facilities record. Each county  
20 shall maintain, as prescribed in Title 96, chapter 4, part  
21 5, a record of all underground facilities located within the  
22 county.

23       Section 90. Realty Transfer Act. Each county shall  
24 designate an officer, employee, or department to carry out  
25 the duties required by Title 15, chapter 7.

LC 0111/01

1       Section 91. Severability. If a part of this act is  
2       invalid, all valid parts that are severable from the invalid  
3       part remain in effect. If a part of this act is invalid in  
4       one or more of its applications, the part remains in effect  
5       in all valid applications that are severable from the  
6       invalid applications.

7       Section 92. Effective date. This act is effective on  
8       July 1, 1981.

-End-