SENATE LOCAL GOVERNMENT
EXHIBIT NO. 4
DATE 2.9.09
BILL NO. SB 8

Amendments to Senate Bill No. 8
1st Reading Copy

Requested by Senator Ken (Kim) Hansen

For the Senate Local Government Committee

Prepared by Greg Petesch
February 9, 2009 (10:17am)

1. Title, line 5.
Strike: "SELF-GOVERNING"
Insert: "CERTAIN"
Following: "POWERS;"
Insert: "AUTHORIZING THE ISSUANCE OF REVENUE BONDS TO FUND PROJECTS;"

2. Title, line 6.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "2-7-501,"
Insert: "7-6-4020, 7-6-4035, AND 15-10-420,"

3. Page 1, line 12.
Strike: "7"
Insert: "22"

4. Page 1, line 14.
Following: "agricultural"
Strike: ","
Insert: "and"
Following: "recreational"
Strike: ", and municipal"

5. Page 1, line 18.
Strike: "limits"
Insert: "boundaries"

6. Page 2, line 1.
Following: ";"
Insert: "and"

7. Page 2, line 2.
Strike: line 2 in its entirety
Renumber: subsequent subsection

8. Page 2, line 4.
Strike: "and granting it the powers enumerated in a charter"

9. Page 2, line 20.

Strike: "and exercise the powers proposed in the accompanying charter"

10. Page 2, line 23.
Following: ";"
Insert: "and"

11. Page 2, lines 24 and 25.
Following: "authority" on line 24
Strike: remainder of line 24 through "authority" on line 25

12. Page 2, lines 26 and 27.
Following: "authority" on line 26
Strike: remainder of line 26 through "charter" on line 27

13. Page 3, line 5.
Following: "authority"
Strike: "and granting it the powers enumerated in the proposed charter"

14. Page 3, line 18 through line 28.
Strike: section 7 in its entirety
Insert: "NEW SECTION. **Section 7. Regional resource authority -- powers -- limits.** (1) A regional resource authority has power to:

(a) sue and be sued;

(b) purchase and hold lands within its limits;

(c) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;

(d) make orders for the disposition or use of its property that the interests of its inhabitants require; and

(e) subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in 7-6-2527, under its exclusive jurisdiction unless prohibited by law;

(f) impose fees or assessments for services provided;

(g) pay debts and expenses;

(h) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;

(i) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(j) make grants and loans of money, property, and services for public purposes;

(k) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(l) hire, direct, and discharge employees and appoint and remove members of boards;

(m) ratify any action of the regional resource authority or

its officers or employees that could have been approved in advance;

(n) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a public use authorized by law;

(o) initiate a civil action to restrain or enjoin an action adverse to the regional resource authority;

(p) enter private property, obtaining warrants when necessary, for the purpose of enforcing its authority that affects the general welfare and public safety;

(q) conduct preparatory studies;

(r) purchase insurance and establish self-insurance plans;

(s) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions; and

(r) issue bonds and notes for the purpose of funding projects as provided in [sections 8 through 22].

(2) A regional resource authority may not:

(a) authorize a tax on income or the sale of goods or services;

(2) regulate private activity beyond its geographic limits;

(3) impose a duty on another unit of local government, except that nothing in this limitation affects the right of a regional resource authority to enter into and enforce an agreement on interlocal cooperation;

(4) exercise any judicial function, except as an incident to the exercise of an administrative power; or

(5) exercise any power enumerated in 7-1-111."

Insert: "NEW SECTION. **Section 8. Regional resource authority projects -- definition.** (1) A regional resource authority may:

(a) construct, reconstruct, improve, or extend any project within the boundaries of the regional resource authority or partially within or partially outside of the boundaries, and acquire by gift, purchase, or the exercise of the right of eminent domain pursuant to Title 70, chapter 30, any project and land or rights in land or water rights in connection with the project;

(b) operate and maintain any project and furnish the service, facilities, and commodities of the project for its own use and for the use of public and private consumers within or outside of the boundaries of the regional resource authority; and

(c) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by the project.

(2) The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under [sections 8 through 22] for those purposes.

(3) As used in [sections 8 through 22], "project" means one or a combination of the following:

(a) water systems, together with all parts of the systems and appurtenances to the systems, including but not limited to

supply and distribution systems, reservoirs, dams, and treatment and disposal works;

(b) renewable energy generation and transmission."

Insert: "NEW SECTION. **Section 9. Role of state agencies.** A regional resource authority acting pursuant to [sections 8 through 22] is not required to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate a project. The supervisory powers and duties of the department of environmental quality apply to projects under [sections 8 through 22], and the functions of the department of natural resources and conservation and the water court apply to water rights associated with projects."

Insert: "NEW SECTION. **Section 10. Authority to issue revenue bonds.** A regional resource authority may:

(1) issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any project;

(2) pledge to the punctual payment of the bonds issued under [sections 8 through 22] and interest on the bonds an amount of the revenue of the project or of any part of the project sufficient to pay the bonds and interest as the bonds and interest become due and create and maintain reasonable reserves for the payments. "

Insert: "NEW SECTION. **Section 11. Determination of cost.** The governing body of a regional resource authority, in determining cost for purposes of [section 10], may include:

(1) all costs and estimated costs of the issuance of revenue bonds, including a permissible underwriter's discount, if any;

(2) all engineering, inspection, fiscal, and legal expenses; and

(3) interest estimated to accrue during the construction period and for 6 months after construction on money borrowed or on money that it is estimated will be borrowed pursuant to [sections 8 through 22]. "

Insert: "NEW SECTION. **Section 12. Nature of revenue bonds.** (1) The holder or holders of any bonds issued under [sections 8 through 22] does not have the right to compel any exercise of taxing power of the regional resource authority to pay the revenue bonds or the interest on the bonds.

(2) Each bond issued under [sections 8 through 22] must recite in substance that:

(a) the bond, including interest on the bond, is payable from the revenue pledged to the payment of the bond; and

(b) the bond does not constitute a debt of the regional resource authority within the meaning of any constitutional or statutory limitation or provision. "

Insert: "NEW SECTION. **Section 13. Projects to be self-**

supporting. (1) A regional resource authority issuing bonds pursuant to [sections 8 through 22] shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the project and shall revise the rates, fees, or charges from time to time whenever necessary so that the project is and remains self-supporting. The property taxes specifically authorized to be levied for the general purpose served by the project constitute revenue of the project and may not result in a project being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property tax collections, must produce revenue at least sufficient to:

(a) pay when due all bonds and interest on the bonds, the payment for which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and

(b) provide for all expenses of operation and maintenance of the project, including reserves."

Insert: "NEW SECTION. **Section 14. Use of revenue from project.** (1) A regional resource authority issuing bonds pursuant to [sections 8 through 22] for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any project has the right to appropriate, apply, or extend the revenue of the project for the following purposes:

(a) to pay when due all bonds and interest on the bonds for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves;

(b) to provide for all expenses of operation and maintenance of the project, including reserves; and

(e) to provide a reserve for improvements or enhancements to the project.

(2) Unless and until adequate provision has been made for the purposes of subsection (1), a regional resource authority may not transfer the revenue of the project to its general fund."

Insert: "NEW SECTION. **Section 15. Covenants in resolution authorizing issuance of bonds.** Any resolution or resolutions authorizing the issuance of bonds under [sections 8 through 22] may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the disposition of the proceeds;

(2) the use and disposition of the revenue of the project for which the bonds are to be issued, including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion of the property tax revenue referred to in [section 7];

(3) the transfer from the general fund of the regional resource authority to the account or accounts of the project of an amount equal to the cost of furnishing the regional resource authority or any of its departments or boards with the services, facilities, or commodities of the project;

(4) the issuance of other or additional bonds payable from

the revenue of the project;

(5) the operation and maintenance of the project;

(6) the insurance to be carried on the project and the use and disposition of insurance money;

(7) books of account and the inspection and audit of the books; and

(8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:

(a) enter and take possession of the project;

(b) operate and maintain the project;

(c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and

(d) collect, receive, and apply all revenue arising from the project."

Insert: "NEW SECTION. **Section 16. Remedies.** The provisions of [sections 8 through 22] and any resolution or resolutions are enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding."

Insert: "NEW SECTION. **Section 17. Presumption of validity of bonds.** (1) Bonds bearing the signatures of the officers of the regional resource authority in office on the date of the signing of the bonds are valid and binding obligations, notwithstanding that before the delivery of the bonds and payment for the bonds, any or all the persons whose signatures appear on the bonds have ceased to be officers of the regional resource authority issuing the bonds.

(2) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the project for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to [sections 8 through 22]. The recital is conclusive evidence of the validity of the bonds and of the regularity of their issuance."

Insert: "NEW SECTION. **Section 18. Liens arising from bonds.** The resolution or resolutions authorizing the bonds must specify and define the revenue or portion of the revenue that is appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenue in favor of bonds of one or more series or issues, whether issued concurrently or at different times."

Insert: "NEW SECTION. **Section 19. Details relating to revenue bonds.** (1) Bonds authorized to be issued under [sections 8 through 22]:

(a) must bear interest at a rate or rates not exceeding the

limitation of 17-5-102;

(b) may be issued in one or more series;

(c) may bear a date or dates;

(d) may mature at a time or times not exceeding 40 years from their respective dates of issue;

(e) may be payable in a place or places;

(f) may carry registration privileges;

(g) may be subject to terms of redemption;

(h) may be executed;

(i) may contain terms, covenants, and conditions; and

(j) may be in coupon or registered form, as provided by the initial resolution or subsequent resolutions.

(2) The regional resource authority may fix the minimum price for the bonds in an amount less than the principal amount of the bonds but not less than 97% of the principal amount if it determines that a sale at that price is in the best interests of the project."

Insert: "NEW SECTION. **Section 20. Sale of bonds.** (1) Bonds authorized to be issued under [sections 8 through 22] must be sold at a price not less than that prescribed by the governing body of the regional resource authority, plus interest to the date of delivery of the bonds.

(2) (a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.

(b) Unless sold to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state, the bonds must be sold at public sale after notice of the sale."

Insert: "NEW SECTION. **Section 21. Notice of sale of bonds.** The notice of sale of bonds required by [section 20(2)(b)] must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the regional resource authority may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco."

Insert: "NEW SECTION. **Section 22. Interim receipts or certificates.** Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions that the governing body of the regional resource authority may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to [sections 8 through 22]. The bonds and interim receipts or certificate are fully negotiable, as provided by Title 30, chapter 8."

Renumber: subsequent sections

15. Page 6, line 1.

Insert: "Section 24. Section 7-6-4020, MCA, is amended to read:

"7-6-4020. Preliminary annual operating budget. (1) A preliminary annual operating budget must be prepared for the

local government.

(2) This part does not provide for the consolidation or reassignment, but does not prohibit delegation by mutual agreement, of any duties of elected county officials.

(3) (a) Before June 1 of each year, the county clerk and recorder shall notify the county commission and each board, office, regional resource authority, or official that they are required to file preliminary budget proposals for their component of the total county budget.

(b) Component budgets must be submitted to the clerk and recorder before June 10th or on a date designated by the county commission and must be submitted on forms provided by the county clerk and recorder.

(c) The county clerk and recorder shall prepare and submit the county's preliminary annual operating budget.

(d) Component budget responsibilities as provided in this subsection (3) include but are not limited to the following:

(i) The county surveyor or any special engineer shall compute road and bridge component budgets and submit them to the county commission.

(ii) The county commission shall submit road and bridge component budgets.

(iii) The county treasurer shall submit debt service component budgets.

(iv) The county commission shall submit component budgets for construction or improvements to be made from new general obligation debt.

(4) The preliminary annual operating budget for each fund must include, at a minimum:

(a) a listing of all revenue and other resources for the prior budget year, current budget year, and proposed budget year;

(b) a listing of all expenditures for the prior budget year, the current budget year, and the proposed budget year. All expenditures must be classified under one of the following categories:

(i) salaries and wages;

(ii) operations and maintenance;

(iii) capital outlay;

(iv) debt service; or

(v) transfers out.

(c) a projection of changes in fund balances or cash balances available for governmental fund types and a projection of changes in cash balances and working capital for proprietary fund types. This projection must be supported by a summary for each fund or group of funds listing the estimated beginning balance plus estimated revenue, less proposed expenditures, cash reserves, and estimated ending balances.

(d) a detailed list of proposed capital expenditures and a list of proposed major capital projects for the budget year;

(e) financial data on current and future debt obligations;

(f) schedules or summary tables of personnel or position counts for the prior budget year, current budget year, and proposed budget year. The budgeted amounts for personnel services must be supported by a listing of positions, salaries, and benefits for all positions of the local government. The listing of positions, salaries, and benefits is not required to be part of the budget document.

(g) all other estimates that fall under the purview of the budget.

(5) The preliminary annual operating budget for each fund for which the local government will levy an ad valorem property tax must include the estimated amount to be raised by the tax."
{*Internal References to 7-6-4020:*
7-6-4022 x}"

Insert: "Section 25. Section 7-6-4035, MCA, is amended to read:

"7-6-4035. Tax levies for boards and commissions -- bond exemption. (1) The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.

(2) Except for a port authority created under Title 7, chapter 14, part 11, the taxes, revenue, or fees legally pledged for the payment of debt <u>or for the operations of a regional resource authority</u> are not subject to approval by the governing body.

(3) Except for judgment levies under 2-9-316 or 7-6-4015, all tax levies are subject to 15-10-420."
{*Internal References to 7-6-4035: None.*}"

Insert: "Section 26. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city

average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; ~~or~~

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703<u>; or</u>

<u>(c) a mill levy imposed for a newly created regional resource authority</u>.

(6) For purposes of subsection (1)(a), taxes imposed do not

include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; ~~or~~

(iv) a levy for the support of a study commission under 7-3-184; or

(v) a levy for the support or a newly established regional resource authority.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

{*Internal References to 15-10-420:*

2-9-212	*2-9-212*	*2-9-212*	*2-9-212*
2-9-212	*2-9-212*	*2-18-703*	*7-1-112*
7-1-114	*7-1-2103*	*7-1-4123*	*7-2-2730*
7-2-2730	*7-2-2746*	*7-2-4111*	*7-2-4918*
7-2-4918	*7-3-1104*	*7-3-1310*	*7-3-1310*
7-3-1311	*7-3-1311*	*7-3-1313*	*7-3-1313*
7-3-4312	*7-6-502*	*7-6-2501*	*7-6-2511*
7-6-2512	*7-6-2513*	*7-6-2522*	*7-6-4035*
7-6-4036	*7-6-4401*	*7-6-4406*	*7-6-4421*
7-6-4431	*7-6-4431*	*7-6-4438*	*7-6-4438*
7-6-4453	*7-11-1106*	*7-11-1112*	*7-11-1112*
7-13-144	*7-13-3027*	*7-14-111*	*7-14-232*
7-14-1111	*7-14-1131*	*7-14-2101*	*7-14-2101*

7-14-2101	7-14-2501	7-14-2502	7-14-2503
7-14-2801	7-14-2801	7-14-2807	7-14-4404
7-14-4644	7-14-4703	7-14-4713	7-14-4734
7-15-4281	7-16-101	7-16-2102	7-16-2108
7-16-2109	7-16-2205	7-16-2411	7-16-2423
7-16-2431	7-16-2443	7-16-4105	7-16-4113
7-16-4114	7-21-3203	7-21-3410	7-21-3432
7-21-3433	7-22-2142	7-22-2222	7-22-2306
7-22-2432	7-22-2512	7-32-235	7-32-4117
7-33-2109	7-33-2209	7-33-4111	7-33-4130
7-34-102	7-34-2122	7-34-2133	7-34-2417
7-35-2122	7-35-2205	13-13-230	15-7-403
15-10-202	15-10-401	15-10-402	15-10-425
15-10-425	15-16-203	15-23-214	15-24-1402
15-24-1402	15-24-1501	15-24-1603	19-7-404
19-9-209	19-13-214	19-18-504	19-19-301
20-7-714	20-9-331	20-9-333	20-9-360
20-9-404	20-9-533	20-15-305	20-15-311
20-15-311	20-15-313	20-15-314	20-15-314
20-25-423	20-25-439	22-1-304	22-1-316
22-1-702	22-1-707	22-1-708	22-1-711
22-1-711	23-4-303	39-71-403	41-5-1804
50-2-111	50-2-111	53-20-208	53-21-1010
67-10-402	67-11-201	67-11-301	67-11-301
67-11-302	67-11-303	67-11-303	75-10-112
76-1-111	76-1-403	76-1-404	76-1-406
76-2-102	76-5-1116	76-5-1116	76-6-109
76-15-501	76-15-505	76-15-516	76-15-516
76-15-516	76-15-518	76-15-623	81-8-504
85-3-412	85-3-422	85-7-307	85-8-601
85-8-615	85-8-618	85-20-1001	85-20-1001
90-5-112	90-6-403	90-6-403	90-6-403 }"

Renumber: subsequent subsections

16. Page 6, line 6.
Strike: "7"
Insert: "22"

17. Page 6, line 7.
Strike: "7"
Insert: "22"

- END -