

HOUSE BILL 744

Introduced by O'Keefe, et al.

2/11	Introduced
2/11	Referred to Natural Resources
2/11	First Reading
2/11	Fiscal Note Requested
2/16	Fiscal Note Received
2/16	Fiscal Note Printed
2/18	Hearing
2/20	Tabled in Committee

1 House BILL NO. 744  
 2 INTRODUCED BY Rafe Adreity Marcus Ravey  
 3 Kadas Haysen William Erik Erik Yellowtail  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 MONTANA SUBDIVISION AND PLATTING ACT; REDEFINING THE TERM  
 6 SUBDIVISION; REMOVING CERTAIN EXEMPTIONS; PROVIDING AN  
 7 EXPEDITED REVIEW PROCESS FOR CERTAIN TYPES OF SUBDIVISIONS;  
 8 PROVIDING PUBLIC HEARING GUIDELINES; MODIFYING THE PARK  
 9 DEDICATION REQUIREMENTS; AMENDING SECTIONS 7-16-2324,  
 10 76-3-103, 76-3-104, 76-3-105, 76-3-201, 76-3-207, 76-3-210,  
 11 76-3-301, 76-3-305, 76-3-401, 76-3-402, 76-3-403, 76-3-404,  
 12 76-3-405, 76-3-505, 76-3-507, 76-3-604, 76-3-605, 76-3-606,  
 13 76-3-608, 76-3-609, 76-3-610, 76-3-611, 76-4-103, AND  
 14 76-4-125, MCA; REPEALING SECTIONS 76-3-202, 76-3-203,  
 15 76-3-204, 76-3-205, 76-3-206, AND 76-3-607, MCA; AND  
 16 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY  
 17 DATES."  
 18

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

20 **Section 1.** Section 76-3-103, MCA, is amended to read:  
 21 **"76-3-103. Definitions.** As used in this chapter, unless  
 22 the context or subject matter clearly requires otherwise,  
 23 the following words or phrases ~~shall~~ have the following  
 24 meanings:

25 (1) "Agricultural producer" means a person primarily

1 engaged in the production of agricultural products, measured  
 2 as a majority percentage of annual income, from a tract  
 3 classified as agricultural by the Montana department of  
 4 revenue.

5 (2) "Aliquot part" means any portion of a single United  
 6 States government section equal in area to all other  
 7 portions within the section.

8 ~~††~~(3) "Certificate of survey" means a drawing of a  
 9 field survey prepared by a registered professional land  
 10 surveyor for the purpose of disclosing facts pertaining to  
 11 boundary locations.

12 ~~††~~(4) "Dedication" means the deliberate appropriation  
 13 of land by an owner for any general and public use,  
 14 reserving to himself no rights which are incompatible with  
 15 the full exercise and enjoyment of the public use to which  
 16 the property has been devoted.

17 ~~††~~(5) "Division of land" means the segregation of one  
 18 or more parcels of land from a larger tract held in single  
 19 or undivided ownership by transferring or contracting to  
 20 transfer title to or possession of a portion of the tract or  
 21 properly filing a certificate of survey or subdivision plat  
 22 establishing the identity of the segregated parcels pursuant  
 23 to this chapter.

24 (6) "Dwelling" means a structure or portion of a  
 25 structure that is used for human habitation.



1 ~~(4)~~(7) "Examining land surveyor" means a registered  
2 professional land surveyor duly appointed by the governing  
3 body to review surveys and plats submitted for filing.

4 ~~(5)~~(8) "Governing body" means a board of county  
5 commissioners or the governing authority of any city or town  
6 organized pursuant to law.

7 ~~(6) -- "Irregularly shaped tract of land" means a parcel~~  
8 ~~of land other than an aliquot part of the United States~~  
9 ~~government survey section or a United States government lot,~~  
10 ~~the boundaries or areas of which cannot be determined~~  
11 ~~without a survey or trigonometric calculation.~~

12 (9) "Major subdivision" means a subdivision that is not  
13 a minor or special subdivision.

14 ~~(7) -- "Occasional sale" means one sale of a division of~~  
15 ~~land within any 12-month period.~~

16 (10) "Minor subdivision" means a subdivision of five or  
17 fewer parcels created from an original tract.

18 (11) "Original tract" means a tract of record created as  
19 of July 1, 1973.

20 ~~(8)~~(12) "Planned unit development" means a land  
21 development project consisting of residential clusters,  
22 industrial parks, shopping centers, office building parks,  
23 or any combination thereof which comprises a planned mixture  
24 of land uses built in a prearranged relationship to each  
25 other and having open space and community facilities in

1 common ownership or use.

2 ~~(9)~~(13) "Plat" means a graphical representation of a  
3 subdivision showing the division of land into lots, parcels,  
4 blocks, streets, alleys, and other divisions and  
5 dedications.

6 ~~(10)~~(14) "Preliminary plat" means a neat and scaled  
7 drawing of a proposed subdivision showing the layout of  
8 streets, alleys, lots, blocks, and other elements of a  
9 subdivision which furnish a basis for review by a governing  
10 body.

11 ~~(11)~~(15) "Final plat" means the final drawing of the  
12 subdivision and dedication required by this chapter to be  
13 prepared for filing for record with the county clerk and  
14 recorder and containing all elements and requirements set  
15 forth in this chapter and in regulations adopted pursuant  
16 thereto.

17 ~~(12)~~(16) "Registered professional land surveyor" means a  
18 person licensed in conformance with Title 37, chapter 67, to  
19 practice surveying in the state of Montana.

20 ~~(13)~~(17) "Registered professional engineer" means a  
21 person licensed in conformance with Title 37, chapter 67, to  
22 practice engineering in the state of Montana.

23 (18) "Review authority" means the person or entity with  
24 authority to approve, conditionally approve, or disapprove a  
25 subdivision application, as established by the governing

1 body.

2 (19) "Special subdivision" means a subdivision that  
 3 conforms to a master plan adopted pursuant to 76-1-601, a  
 4 long-range development program of public works projects  
 5 adopted pursuant to 76-1-601, and either local government  
 6 regulations adopted pursuant to 76-1-501 or zoning  
 7 regulations adopted pursuant to Title 76, chapter 2, part 2  
 8 or 3.

9 ~~(14)~~(20) "Subdivider" means any person who causes land  
 10 to be subdivided or who proposes a subdivision of land.

11 ~~(15)~~(21) "Subdivision" means a division of land or land  
 12 so divided which that creates one or more parcels containing  
 13 ~~less-than-20-acres, exclusive-of-public-roadways,~~ in order  
 14 that the title to or possession of the parcels may be sold,  
 15 rented, leased, or otherwise conveyed. and The term shall  
 16 include includes any resubdivision and ~~shall~~ further ~~include~~  
 17 includes any condominium or area, regardless of its size,  
 18 which that provides or will provide multiple space spaces  
 19 for dwellings, recreational camping vehicles, or mobile  
 20 homes work camp structures to exist for longer than 1 year.

21 (22) "Tract of record" means a single parcel of land  
 22 held in single and undivided ownership as shown by the  
 23 official records on file in the office of the county clerk  
 24 and recorder."

25 **Section 2.** Section 76-3-104, MCA, is amended to read:

1 "76-3-104. What constitutes subdivision. A subdivision  
 2 ~~shall comprise~~ comprises only those parcels ~~less--than--20~~  
 3 acres which have--been that would be segregated from the  
 4 original a tract of record, and the plat thereof--shall of  
 5 the subdivision must show all such the parcels, whether  
 6 contiguous or not."

7 **Section 3.** Section 76-3-105, MCA, is amended to read:

8 "76-3-105. Violations and penalties. (1) Any A person  
 9 who violates any provision of this chapter or any local  
 10 regulations adopted pursuant ~~thereto to this chapter~~ shall  
 11 be is guilty of a misdemeanor and is punishable by a fine of  
 12 not less than \$100 or more than \$500 or by imprisonment in a  
 13 county jail for not more than 3 months or by both fine and  
 14 imprisonment. Each sale, lease, or transfer of each separate  
 15 parcel of land in violation of any provision of this chapter  
 16 or any local regulation adopted pursuant ~~thereto shall--be~~  
 17 deemed to this chapter is considered a separate and distinct  
 18 offense.

19 (2) In addition to the fine specified in subsection  
 20 (1), a person who violates any provision of this chapter or  
 21 any local regulations adopted pursuant to this chapter is  
 22 subject to a civil penalty not to exceed \$1,000. Each day of  
 23 violation constitutes a separate violation.

24 (3) The governing body may file an action in district  
 25 court to enjoin the violation of any provision of this

1 chapter or any local regulation adopted pursuant to this  
2 chapter."

3 **NEW SECTION. Section 4. Certificate of taxes paid.** A  
4 division of land may not be made unless the county treasurer  
5 has certified that real property taxes assessed and levied  
6 on the land to be divided are not delinquent.

7 **Section 5.** Section 76-3-201, MCA, is amended to read:

8 **"76-3-201. Exemption for certain divisions of land.**

9 Unless the method of disposition is adopted for the purpose  
10 of evading this chapter, the requirements of this chapter  
11 ~~shall~~ do not apply to any division of land which:

12 (1) any division of land that is created by order of  
13 any court of record in this state or by operation of law or  
14 pursuant to the laws governing the distribution of estates  
15 (Title 72, chapters 1 through 5 and 10 through 14), the  
16 dissolution of marriage (Title 40, chapter 4), or any  
17 division of land that which, in the absence of agreement  
18 between the parties to the sale, could be created by an  
19 order of any court in this state pursuant to the law of  
20 eminent domain (Title 70, chapter 30);

21 (2) ~~is created to provide security for construction~~  
22 ~~mortgages, liens, or trust indentures~~ any division of land  
23 for which a deed, contract, lease, or other conveyance was  
24 executed prior to July 1, 1973;

25 (3) any division of land that creates an interest in

1 oil, gas, minerals, or water ~~which that~~ is now or hereafter  
2 severed from the surface ownership of real property;

3 (4) any division of land that creates cemetery lots;

4 (5) is any division of land created by the reservation  
5 of a life estate;

6 (6) is any division of land created by lease or rental  
7 for farming and agricultural purposes;

8 (7) the sale, rent, lease, or other conveyance of one  
9 or more parts of a building, structure, or other  
10 improvement, whether existing or proposed, when it is  
11 situated or constructed on land that has been divided in  
12 compliance with this chapter;

13 (8) a division of state-owned land unless the division  
14 creates a second or subsequent parcel from a single tract of  
15 record for sale, rent, or lease for residential purposes."

16 **Section 6.** Section 76-3-207, MCA, is amended to read:

17 **"76-3-207. Subdivisions exempted from review but**  
18 **subject to survey requirements -- exceptions.** (1) Except as  
19 provided in subsection (2), unless the method of disposition  
20 is adopted for the purpose of evading this chapter, the  
21 following divisions of land are not subdivisions under this  
22 chapter but are subject to the surveying requirements of  
23 76-3-401 for divisions of land ~~not amounting to~~  
24 subdivisions:

25 (a) ~~divisions made outside of platted subdivisions for~~

1 the purpose of relocating common boundary lines between  
2 adjoining properties;

3 (a) except for any applicable zoning requirements, a  
4 division made for the purpose of relocating boundary lines  
5 between adjoining properties, provided that the division is  
6 recorded in both the certificate of survey and the index of  
7 subdivision plats provided for in 76-3-613. Any  
8 restrictions, requirements, benefits, or obligations  
9 pertaining to the affected properties continue to apply.

10 ~~(b) divisions made outside of platted subdivisions for~~  
11 ~~the purpose of a gift or sale to any member of the~~  
12 ~~landowner's immediate family;~~

13 ~~(c)~~(b) divisions made outside of platted subdivisions  
14 by sale or agreement to buy and sell where the parties to  
15 the transaction enter a covenant running with the land and  
16 revocable only by mutual consent of the governing body and  
17 the property owner that the divided land will be used  
18 exclusively for agricultural purposes;

19 ~~(d) a single division of a parcel outside of platted~~  
20 ~~subdivisions when the transaction is an occasional sale;~~

21 ~~(e) for five or fewer lots within a platted~~  
22 ~~subdivision; relocation of common boundaries and the~~  
23 ~~aggregation of lots; and~~

24 ~~(f) divisions made for the purpose of relocating a~~  
25 ~~common boundary line between a single lot within a platted~~

1 subdivision and adjoining land outside a platted  
2 subdivision. Any restrictions or requirements on the  
3 original platted lot or original unplatted parcel continue  
4 to apply to those areas.

5 (c) except for the provisions of Title 76, chapter 4, a  
6 division created by an agricultural producer as a sale or  
7 gift to a member of the producer's immediate family for the  
8 purpose of maintaining the agricultural operation, limited  
9 to a single sale or gift to each family member.

10 (2) Notwithstanding the provisions of subsection (1),

11 ~~(a)~~ within a platted subdivision filed with the county  
12 clerk and recorder, any division of lots which that results  
13 in an increase in the number of lots or which that redesigns  
14 or rearranges six or more lots must be reviewed and approved  
15 by the governing body or review authority, and an amended  
16 plat must be filed with the county clerk and recorder.

17 ~~(b) any change in use of the land exempted under~~  
18 ~~subsection (1)(c) for anything other than agricultural~~  
19 ~~purposes subjects the division to the provisions of this~~  
20 ~~chapter.~~

21 (3) No division of land may be made under this section  
22 unless the county treasurer has certified that no real  
23 property taxes assessed and levied on the land to be divided  
24 are delinquent. Any change in use of the land exempted under  
25 this section for other than agricultural purposes subjects

1 the division to the review provisions of this chapter and  
2 local regulations."

3 **Section 7.** Section 76-3-210, MCA, is amended to read:

4 "76-3-210. Subdivisions Special subdivisions exempted  
5 from requirement of an environmental assessment. (1)  
6 Subdivisions Special subdivisions located totally within a  
7 an master--planning area adopted--pursuant--to--chapter--1  
8 wherein in which a master plan, zoning regulations, pursuant  
9 to part--3--of--chapter--2--or--76-2-201 and a long-range  
10 development program of public works+ works projects pursuant  
11 to 76-1-601 have been adopted are deemed considered to be in  
12 the public interest and are exempt from the requirement of  
13 an environmental assessment.

14 (2) (a) When a subdivision is proposed in an area for  
15 which a master plan has been adopted pursuant to chapter 1  
16 and the proposed subdivision will be in compliance with the  
17 plan or when the subdivision will contain fewer than 10  
18 parcels and less than 20 acres, a planning board established  
19 pursuant to chapter 1 and having jurisdiction over the area  
20 involved may exempt the subdivider from the completion of  
21 all or any portion of the environmental assessment.

22 (b) When such an exemption is granted, the planning  
23 board shall prepare and certify a written statement of the  
24 reasons for granting the exemption. A copy of this statement  
25 shall accompany the preliminary plat of the subdivision when

1 it is submitted for review.

2 (c) Where no properly established planning board having  
3 jurisdiction exists, the governing body may grant exemptions  
4 as specified in this subsection."

5 **Section 8.** Section 76-3-301, MCA, is amended to read:

6 "76-3-301. General restriction on transfer of title to  
7 subdivided lands. (1) Except as provided in 76-3-303, every  
8 final subdivision plat must be filed for record with the  
9 county clerk and recorder before title to the subdivided  
10 land can be sold or transferred in any manner. The clerk and  
11 recorder of the county shall refuse to accept any plat for  
12 record that fails to have the approval of 76-3-611(1) in  
13 proper form.

14 (2) The clerk and recorder shall notify the governing  
15 body or its designated agent of any land division described  
16 in 76-3-207(1) exempted from review but subject to survey  
17 requirements.

18 (3) If transfers not in accordance with this chapter  
19 are made, the county attorney shall commence action to  
20 enjoin further sales or transfers and compel compliance with  
21 all provisions of this chapter. The cost of such the action  
22 shall must be imposed against the party not prevailing."

23 **Section 9.** Section 76-3-305, MCA, is amended to read:

24 "76-3-305. Vacation of plats -- utility easements. (1)  
25 Any plat prepared and recorded as herein provided in this

1 part may be vacated either in whole or in part as provided  
 2 by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616,  
 3 7-14-2617, subsections (1) and (2) of 7-14-4114, and  
 4 7-14-4115, and upon such vacation the title to the streets  
 5 and alleys of such the vacated portions to the center  
 6 thereof ~~shall revert of the street or alley revert~~ to the  
 7 owners of the properties within the platted area adjacent to  
 8 such the vacated portions and must be considered as  
 9 aggregated with the adjacent properties.

10 (2) ~~However, when any~~ If a poleline, pipeline, or any  
 11 other public or private facility is located in a vacated  
 12 street or alley at the time of the reversion of the title  
 13 thereto ~~of the street or alley~~, the owner of said ~~the~~ public  
 14 or private utility facility ~~shall have~~ has an easement over  
 15 the vacated land to continue the operation and maintenance  
 16 of the public or private utility facility."

17 **Section 10.** Section 76-3-401, MCA, is amended to read:

18 "76-3-401. Survey requirements for ~~lands--other-than~~  
 19 ~~subdivisions~~ divisions of land. (1) All divisions of land  
 20 ~~for--sale--other-than-a-subdivision~~ after July 1, 1974, into  
 21 parcels which that cannot be described as 1/32 or larger  
 22 aliquot parts of a United States government section or as a  
 23 United States government lot must be surveyed by or under  
 24 the supervision of a registered professional land surveyor.

25 (2) Divisions of land that can be described as an

1 aliquot part as set forth in subsection (1) must be  
 2 graphically shown and described in a document recorded with  
 3 the county clerk and recorder."

4 **Section 11.** Section 76-3-402, MCA, is amended to read:

5 "76-3-402. Survey and platting requirements for  
 6 subdivided lands. (1) Every Except as provided for in  
 7 76-3-401, every subdivision of land after June 30, 1973,  
 8 shall be surveyed and platted in conformance with this  
 9 chapter by or under the supervision of a registered  
 10 professional land surveyor.

11 (2) Subdivision plats ~~shall~~ must be prepared and filed  
 12 in accordance with this chapter and regulations adopted  
 13 pursuant ~~thereto to this chapter.~~

14 (3) ~~All~~ The division of sections into aliquot parts and  
 15 retracement of lines must conform to United States bureau of  
 16 land management instructions, and all public land survey  
 17 corners ~~shall~~ must be filed in accordance with the Corner  
 18 Recordation Act of Montana (Title 70, chapter 22, part 1).  
 19 Engineering plans, specifications, and reports required in  
 20 connection with public improvements and other elements of  
 21 the subdivision required by the governing body ~~shall~~ must  
 22 be prepared and filed by a registered professional engineer or  
 23 a registered professional land surveyor as their respective  
 24 licensing laws allow in accordance with this chapter and  
 25 regulations adopted pursuant ~~thereto to this chapter."~~



1 **Section 12.** Section 76-3-403, MCA, is amended to read:

2 **"76-3-403. Monumentation.** ~~(1)~~ The department of  
3 commerce shall, in conformance with the Montana  
4 Administrative Procedure Act, prescribe uniform standards  
5 for monumentation and for the form, accuracy, and  
6 descriptive content of records of survey.

7 ~~(2)--It shall be the responsibility of the governing  
8 body to require the replacement of all monuments removed in  
9 the course of construction;"~~

10 **Section 13.** Section 76-3-404, MCA, is amended to read:

11 **"76-3-404. Certificate of survey.** (1) Within 180 days  
12 of the completion of a survey, the registered professional  
13 land surveyor responsible for the survey, whether he is  
14 privately or publicly employed, shall prepare and submit for  
15 filing a certificate of survey in the county in which the  
16 survey was made if the survey:

17 (a) provides material evidence not appearing on any map  
18 filed with the county clerk and recorder or contained in the  
19 records of the United States bureau of land management;

20 (b) reveals a material discrepancy in such a map;

21 (c) discloses evidence to suggest alternate locations  
22 of lines or points; or

23 (d) establishes one or more lines not shown on a  
24 recorded map, the positions of which are not ascertainable  
25 from an inspection of such the map without trigonometric

1 calculations.

2 (2) A certificate of survey ~~will~~ is not be required for  
3 any survey which that is made by the United States bureau of  
4 land management, ~~or which that~~ is preliminary, or which that  
5 will become part of a subdivision plat being prepared for  
6 recording under the provisions of this chapter.

7 (3) Certificates of survey ~~shall~~ must be legibly drawn,  
8 printed, or reproduced by a process guaranteeing a permanent  
9 record and shall conform to monumentation and surveying  
10 requirements promulgated under this chapter."

11 **Section 14.** Section 76-3-405, MCA, is amended to read:

12 **"76-3-405. Administration of oaths by registered**  
13 professional land surveyor. (1) Every A registered  
14 professional land surveyor may administer and certify oaths  
15 when:

16 (a) it becomes necessary to take testimony for the  
17 identification of old corners or reestablishment of lost or  
18 obliterated corners;

19 (b) a corner or monument is found in a deteriorating  
20 condition and it is desirable that evidence concerning it be  
21 perpetuated; or

22 (c) the importance of the survey makes it desirable to  
23 administer an oath to his assistants for the faithful  
24 performance of their duty.

25 (2) A record of oaths ~~shall~~ must be preserved as part

1 of the field notes of the survey and noted on the  
 2 ~~certificate-of-survey~~ corner record filed under 76-3-404  
 3 70-22-104."

4 **Section 15.** Section 76-3-505, MCA, is amended to read:

5 "76-3-505. Provision for summary review of  
 6 subdivisions. Local subdivision regulations shall include  
 7 procedures for the summary review and approval of special  
 8 subdivisions, subdivision-plats--containing--five--or--fewer  
 9 parcels minor subdivisions, and minor subdivisions that  
 10 create only one additional parcel where proper access to all  
 11 lots is provided, where no land in the subdivision will be  
 12 dedicated to public use for parks or playgrounds, and which  
 13 have been approved by the department of health and  
 14 environmental sciences where such approval is required by  
 15 part 1 of chapter 4; provided that reasonable local  
 16 regulations may contain additional requirements for summary  
 17 approval."

18 **Section 16.** Section 76-3-507, MCA, is amended to read:

19 "76-3-507. Provision for bonding requirements to insure  
 20 ensure construction of public improvements. (1) Except as  
 21 provided in subsection (2), the governing body shall require  
 22 the subdivider to complete any required public improvements  
 23 within the subdivision prior to the approval of the final  
 24 plat.

25 (2) Local--regulations--may-provide-that,--in In lieu of

1 the completion of the construction of any public  
 2 improvements prior to the approval of a final plat, the  
 3 governing-body subdivider shall ~~require~~ provide a bond or  
 4 other reasonable security, in an amount and with surety and  
 5 conditions satisfactory to ~~it~~ the governing body, providing  
 6 for ~~and---~~ securing the security and warranty for the  
 7 construction and installation of such the improvements  
 8 within a period specified by the governing body and  
 9 expressed in the bonds or other security.

10 (3) The governing body shall reduce the bond  
 11 requirements commensurate with the completion of  
 12 improvements; however, any specified warranty bond may be  
 13 retained for the duration of the warranty period."

14 **Section 17.** Section 76-3-604, MCA, is amended to read:

15 "76-3-604. Review of preliminary plat. (1) The  
 16 governing body or ~~its-designated-agent-or-agency~~ the review  
 17 authority shall review the preliminary plat to determine  
 18 whether it conforms to the local master plan if one has been  
 19 adopted pursuant to chapter 1, to the provisions of this  
 20 chapter, and to rules prescribed or adopted pursuant to this  
 21 chapter.

22 (2) The governing body or the review authority shall  
 23 approve, conditionally approve, or reject the preliminary  
 24 plat within 60 days of its presentation unless the  
 25 subdivider consents to an extension of the review period.

1 (3) If the governing body or review authority rejects  
 2 or conditionally approves the preliminary plat, it shall  
 3 forward one copy of the plat to the subdivider accompanied  
 4 by a letter over the appropriate signature stating the  
 5 reason for rejection or enumerating the conditions which  
 6 must be met to assure approval of the final plat."

7 **Section 18.** Section 76-3-605, MCA, is amended to read:

8 "76-3-605. **Hearing on preliminary plat.** (1) The  
 9 governing body or its authorized agent or agency shall hold  
 10 a no more than two public hearing hearings on the  
 11 preliminary plat for a major subdivision and shall consider  
 12 all relevant evidence relating to the public health, safety,  
 13 and welfare, including the environmental assessment, to  
 14 determine whether the plat should be approved, conditionally  
 15 approved, or disapproved by the governing body.

16 (2) All testimony presented by any party at a public  
 17 hearing must pertain to the subdivision application and the  
 18 criteria used by the governing body or review authority to  
 19 determine whether the application should be approved,  
 20 conditionally approved, or disapproved. Any part of the  
 21 evidence may be received in written form, and all testimony  
 22 of parties and witnesses must be made under oath. Hearsay  
 23 testimony may be used for the purpose of supplementing or  
 24 explaining other evidence, but it is not sufficient in  
 25 itself to support a finding unless it is admissible over

1 objection in civil actions.

2 ~~(2)~~(3) When a proposed subdivision is also proposed to  
 3 be annexed to a municipality, the governing body of the  
 4 municipality shall hold joint hearings on the preliminary  
 5 plat and annexation whenever possible.

6 ~~(3)~~(4) Notice of such the hearing shall must be given  
 7 by publication in a newspaper of general circulation in the  
 8 county not less than 15 days prior to the date of the  
 9 hearing. The subdivider, each property owner of record, and  
 10 each purchaser under contract for deed of property  
 11 immediately adjoining the land included in the plat ~~shall~~  
 12 must also be notified of the hearing by registered--or  
 13 certified mail not less than 15 days prior to the date of  
 14 the hearing.

15 ~~(4)~~(5) When a hearing is held by an agent or agency  
 16 designated by the governing body, other than the review  
 17 authority, the agent or agency shall act in an advisory  
 18 capacity and recommend to the governing body the approval,  
 19 conditional approval, or disapproval of the plat. This  
 20 recommendation must be submitted to the governing body in  
 21 writing not later than 10 days after the public hearing.

22 (6) The governing body or review authority may make its  
 23 decision during executive proceedings after the public  
 24 hearing or hearings."

25 **Section 19.** Section 76-3-606, MCA, is amended to read:

1       "76-3-606. ~~Dedication--of--land--to--public-----cash~~  
2       ~~donations~~ Park dedication requirement. ~~(1)--A--plat--of--a~~  
3       ~~residential--subdivision--shall--show--that--one--ninth--of--the~~  
4       ~~combined--area--of--lots--5--acres--or--less--in--size--and~~  
5       ~~one--twelfth--of--the--combined--area--of--lots--greater--than--5~~  
6       ~~acres--in--size,--exclusive--of--all--other--dedications,--is~~  
7       ~~forever--dedicated--to--the--public--for--parks--or--playgrounds. No~~  
8       ~~dedication--may--be--required--for--the--combined--area--of--those~~  
9       ~~lots--in--the--subdivision--which--are--larger--than--10--acres~~  
10       ~~exclusive--of--all--other--dedications. The governing--body,--in~~  
11       ~~consultation--with--the--planning--board--having--jurisdiction,--~~  
12       ~~may--determine--suitable--locations--for--such--parks--and~~  
13       ~~playgrounds. (1) Except as provided for in subsections (2),~~  
14       ~~(3), (7), and (8), a subdivider shall dedicate to the~~  
15       ~~governing body a land donation, cash donation, or a~~  
16       ~~combination thereof, equal to:~~

17       (a) 10% of the fair market value of the land proposed  
18       to be subdivided into parcels of 1/2 acre or smaller;

19       (b) 7.5% of the fair market value of the land proposed  
20       to be subdivided into parcels larger than one-half acre and  
21       not larger than 1 acre;

22       (c) 5% of the fair market value of the land proposed to  
23       be subdivided into parcels larger than 1 acre and not larger  
24       than 3 acres;

25       (d) 2.5% of the fair market value of the land proposed

1       to be subdivided into parcels larger than 3 acres and not  
2       larger than 5 acres.

3       (2) When a subdivision is located totally within an  
4       area for which density requirements have been adopted  
5       pursuant to a master plan under Title 76, chapter 1, or  
6       pursuant to zoning regulations under Title 76, chapter 2,  
7       the governing body may establish park dedication  
8       requirements based on the community need for parks and the  
9       development densities identified in the plan or regulations.  
10       The park dedication requirements are in lieu of those  
11       provided in subsection (1) and may not exceed 0.03 acres per  
12       dwelling.

13       (3) A park dedication may not be required for land  
14       proposed for subdivision into parcels larger than 5 acres,  
15       for subdivision into parcels that are all nonresidential, or  
16       where only one additional parcel is created. If a future  
17       subdivision of the land creates parcels smaller than 5  
18       acres, park dedication is required according to the  
19       provisions of this section.

20       (4) For the purpose of this section, the fair market  
21       value is the value of the unsubdivided, unimproved land.

22       (5) The governing body, in consultation with the  
23       subdivider and the planning board or park board having  
24       jurisdiction, may determine suitable locations for parks and  
25       playgrounds and determine whether the park dedication will

1 be a land donation, cash donation, or a combination of both.  
 2 Where the dedication of land for parks or playgrounds is  
 3 undesirable because of size, topography, shape, location, or  
 4 other circumstances, the governing body may, for good cause  
 5 shown, make an order to be endorsed and certified on the  
 6 plat accepting a cash donation in lieu of the a land  
 7 dedication donation. of--land-and-equal-to-the-fair-market  
 8 value-of-the-amount-of-land-that-would-have-been--dedicated.  
 9 For--the--purpose--of--this--section,--the--fair--market--value--is  
 10 the--value--of--the--unsubdivided,--unimproved--land.---Such--cash  
 11 donation--shall--be--paid--into--the--park--fund--to--be--used--for--the  
 12 purchase--of--additional--lands--or--for--the--initial--development  
 13 of--parks--and--playgrounds.

14 (6) (a) Except as provided in subsection (6)(b), the  
 15 governing body shall use the dedicated money, dedicated  
 16 land, or the combination of both for development of parks,  
 17 acquisition of parks, or both to serve the subdivision.

18 (b) The governing body may use the dedicated money to  
 19 acquire or develop regional parks or recreational areas or  
 20 for the purchase of public open space or conservation  
 21 easements only if the governing body has formally adopted a  
 22 park plan that establishes the needs and procedures for the  
 23 use of the money.

24 (3)--The-park-dedication-and-cash-in-lieu-requirements  
 25 of-subsections-(1)-and-(2)-do-not-apply-to-any-division-that

1 creates-only-one-additional-lot.

2 (7) The local governing body may waive the park  
 3 dedication requirement if:

4 (a) (i) the preliminary plat provides for a planned  
 5 unit development or other development with land permanently  
 6 set aside for park and recreational uses sufficient to meet  
 7 the needs of the persons who will ultimately reside in the  
 8 development; and

9 (ii) the appraised value of the land set aside for park  
 10 and recreational purposes equals or exceeds the value of the  
 11 dedication required under subsection (1) or (2); or

12 (b) (i) the preliminary plat provides long-term  
 13 protection of critical wildlife habitat; cultural,  
 14 historical, or natural resources; agricultural interests; or  
 15 aesthetic values; and

16 (ii) the appraised market value of the unimproved  
 17 subdivided land, by virtue of providing long-term protection  
 18 provided for in subsection (7)(b)(i), is reduced by an  
 19 amount equal to or exceeding the value of the dedication  
 20 required under this section.

21 (8) If a tract of land is being developed under single  
 22 ownership as a part of an overall plan, part of the tract  
 23 has been subdivided, and sufficient parklands have been  
 24 dedicated to the public from the area that has been  
 25 subdivided to meet the requirements of subsection (1) or (2)

1 for the entire tract being developed, the governing body  
2 shall issue an order waiving the land donation and cash  
3 donation requirements for the subsequently platted area."

4 **Section 20.** Section 76-3-608, MCA, is amended to read:

5 "76-3-608. Criteria for local government review. (1)  
6 The basis for the governing body's or review authority's  
7 decision to approve, conditionally approve, or disapprove a  
8 subdivision ~~shall~~ must be whether the preliminary plat,  
9 environmental assessment, public hearing, planning board  
10 recommendations, and additional information demonstrate that  
11 development of the subdivision would be in the public  
12 interest. The governing body or review authority shall  
13 disapprove any subdivision which that it finds not to be in  
14 the public interest.

15 (2) To determine whether the proposed subdivision would  
16 be in the public interest, the governing body or review  
17 authority shall issue written findings of fact which that  
18 weigh the following criteria for public interest:

19 (a) ~~the--basis--of-the-need-for-the-subdivision~~ effects  
20 on historic and prehistoric resources;

21 ~~(b)--expressed-public-opinion;~~

22 ~~(c)~~ (b) effects on agriculture and agricultural water  
23 user practices;

24 ~~(d)~~ (c) effects on local services;

25 ~~(e)~~ (d) effects on taxation;

1 ~~(f)~~ (e) effects on the natural environment;  
2 ~~(g)~~ (f) effects on wildlife and wildlife habitat; and  
3 ~~(h)~~ (g) effects on the public health and safety."

4 **Section 21.** Section 76-3-609, MCA, is amended to read:

5 "76-3-609. Review procedure for special and minor  
6 subdivisions. Subdivisions containing-five-or-fewer--parcels  
7 Special subdivisions or minor subdivisions where proper  
8 access to all lots is provided and in which no land is to be  
9 dedicated to the public for parks or playgrounds are to be  
10 reviewed as follows:

11 (1) The governing body or the review authority shall  
12 must approve, conditionally approve, or disapprove ~~the-first~~  
13 ~~such-subdivision~~ a subdivision from-a-tract-of-record within  
14 35 days of the submission of an application for approval  
15 thereof.

16 (2) The governing body or review authority shall state  
17 in writing the conditions which that must be met if the  
18 subdivision is conditionally approved or what local  
19 regulations would not be met by the subdivision if it  
20 disapproves the subdivision.

21 (3) The requirements for holding a public hearing and  
22 preparing an environmental assessment ~~shall do~~ not apply to  
23 a minor subdivision that is the first such subdivision  
24 created from a an original tract of--record or to special  
25 subdivisions.

1 (4) Subsequent minor subdivisions that would create  
 2 more than five parcels from a an original tract of--record  
 3 may not be considered a minor subdivision for review  
 4 purposes and shall must be reviewed under 76-3-505 this  
 5 chapter and regulations adopted pursuant to that--section  
 6 this chapter for major subdivisions."

7 **Section 22.** Section 76-3-610, MCA, is amended to read:

8 "76-3-610. **Effect of approval of preliminary plat.** (1)  
 9 Upon approving or conditionally approving a preliminary  
 10 plat, the governing body or the review authority shall  
 11 provide the subdivider with a dated and signed statement of  
 12 approval. This approval shall must be in force for not more  
 13 than 3 calendar years or less than 1 calendar year. At the  
 14 end of this period the governing body or the review  
 15 authority may, at the request of the subdivider, extend its  
 16 approval for no-more-than 1 calendar year at a time. The  
 17 total period of preliminary plat approval may not exceed 5  
 18 years, except that the governing body may extend its  
 19 approval for a period of more than ~~1-year~~ 5 years if that  
 20 approval period is included as a specific condition of a  
 21 written agreement between the governing body and the  
 22 subdivider, according to 76-3-507.

23 (2) After the preliminary plat is approved, the  
 24 governing body and its subdivisions or the review authority  
 25 may not impose any additional conditions as a prerequisite

1 to final plat approval providing said approval is obtained  
 2 within the original or extended approval period as provided  
 3 in subsection (1)."

4 **Section 23.** Section 76-3-611, MCA, is amended to read:

5 "76-3-611. **Review of final plat.** (1) The governing body  
 6 or the review authority shall examine every final  
 7 subdivision plat and shall approve it when-and only when:

8 (a) it conforms to the conditions of approval set forth  
 9 on the preliminary plat and to the terms of this chapter and  
 10 regulations adopted pursuant thereto to this chapter; and

11 (b) the county treasurer has certified issued a  
 12 certificate of taxes paid pursuant to [section 4] certifying  
 13 that no real property taxes assessed and levied on the land  
 14 to be subdivided are not delinquent.

15 (2) (a) The governing body or the review authority may  
 16 require that final subdivision plats and certificates of  
 17 survey be reviewed for errors and omissions in calculation  
 18 or drafting by an examining land surveyor before recording  
 19 with the county clerk and recorder. When the survey data  
 20 shown on the plat or certificate of survey meets the  
 21 conditions set forth by or pursuant to this chapter section,  
 22 the examining land surveyor shall so certify in a printed or  
 23 stamped certificate on the plat or certificate of survey.  
 24 Such The certificate shall must be signed by him.

25 (b) No A registered professional land surveyor shall

1 may not act as an examining land surveyor in regard to a  
 2 plat or certificate of survey in which he has a financial or  
 3 personal interest."

4 **Section 24.** Section 76-4-103, MCA, is amended to read:

5 "76-4-103. What constitutes subdivision. (1) A  
 6 subdivision ~~shall--comprise~~ comprises only those parcels of  
 7 ~~less-than-20-acres which have-been~~ that would be created by  
 8 a division of land, and the plat ~~thereof--shall~~ of the  
 9 subdivision must show all such the parcels, whether  
 10 contiguous or not.

11 (2) The rental or lease of one or more parts of a  
 12 building, structure, or other improvement, whether existing  
 13 or proposed, is not a subdivision, as that term is defined  
 14 in this part, and is not subject to the requirements of this  
 15 part."

16 **Section 25.** Section 76-4-125, MCA, is amended to read:

17 "76-4-125. Review of development plans -- land  
 18 ~~divisions excluded from review.~~ (1) Plans and specifications  
 19 of a subdivision as defined in this part ~~shall~~ must be  
 20 submitted to the reviewing authority, and the reviewing  
 21 authority shall indicate by certificate that it has approved  
 22 the plans and specifications and that the subdivision is not  
 23 subject to a sanitary restriction. The plan review by the  
 24 reviewing authority ~~shall~~ must be as follows:

25 (a) At any time after the developer has submitted an

1 application under the Montana Subdivision and Platting Act,  
 2 the developer shall present to the reviewing authority a  
 3 preliminary plan of the proposed development, whatever  
 4 information the developer feels necessary for its subsequent  
 5 review, and information required by the reviewing authority.

6 (b) The reviewing authority ~~must-give~~ shall take final  
 7 action ~~of on~~ the proposed plan within 60 days unless an  
 8 environmental impact statement is required, at which time  
 9 this deadline may be increased to 120 days.

10 (2) A subdivision excluded from the provisions of  
 11 chapter 3 ~~shall~~ must be submitted for review according to  
 12 the provisions of this part, except that the following  
 13 divisions, unless such exclusions are used to evade the  
 14 provisions of this part, are not subject to review:

15 (a) the exclusions cited in 76-3-201 ~~and-76-3-204~~;

16 (b) divisions made for the purpose of acquiring  
 17 additional land to become part of an approved parcel,  
 18 provided that no dwelling or structure requiring water or  
 19 sewage disposal is to be erected on the additional acquired  
 20 parcel and that the division does not fall within a  
 21 previously platted or approved subdivision; and

22 (c) divisions made for purposes other than the  
 23 construction of water supply or sewage and solid waste  
 24 disposal facilities as the department specifies by rule."

25 **Section 26.** Section 7-16-2324, MCA, is amended to read:



1       **"7-16-2324. Sale, lease, or exchange of dedicated park**  
 2 **lands.** (1) For the purposes of this section and part 25 of  
 3 **chapter 8, lands dedicated to the public use for park or**  
 4 **playground purposes under 76-3-606 and 76-3-607 or a similar**  
 5 **statute or pursuant to any instrument not specifically**  
 6 **conveying land to a governmental unit other than a county**  
 7 **are considered county lands.**

8       (2) A county may not sell, lease, or exchange lands  
 9 dedicated for park or playground purposes except as provided  
 10 under this section and part 25 of chapter 8.

11       (3) Prior to selling, leasing, or exchanging any county  
 12 land dedicated to public use for park or playground  
 13 purposes, a county shall:

14       (a) compile an inventory of all public parks and  
 15 playgrounds within the county;

16       (b) prepare a comprehensive plan for the provision of  
 17 outdoor recreation and open space within the county;

18       (c) determine that the proposed sale, lease, or  
 19 exchange furthers or is consistent with the county's outdoor  
 20 recreation and open space comprehensive plan;

21       (d) publish notice as provided in 7-1-2121 of intention  
 22 to sell, lease, or dispose of such lands, giving the people  
 23 of the county opportunity to be heard regarding such action;

24       (e) if the land is within an incorporated city or town,  
 25 secure the approval of the governing body thereof for the

1 action; and

2       (f) comply with any other applicable requirements under  
 3 part 25 of chapter 8.

4       (4) Any revenue realized by a county from the sale,  
 5 exchange, or disposal of lands dedicated to public use for  
 6 park or playground purposes shall be paid into the park fund  
 7 and used in the manner prescribed in 76-3-606 and 76-3-607  
 8 for cash received in lieu of dedication."

9       **NEW SECTION. Section 27. Repealer.** Sections 76-3-202,  
 10 76-3-203, 76-3-204, 76-3-205, 76-3-206, and 76-3-607, MCA,  
 11 are repealed.

12       **NEW SECTION. Section 28. Codification instruction.**  
 13 [Section 4] is intended to be codified as an integral part  
 14 of Title 76, chapter 3, and the provisions of Title 76,  
 15 chapter 3, apply to [section 4].

16       **NEW SECTION. Section 29. Effective date.** [This act] is  
 17 effective on passage and approval.

18       **NEW SECTION. Section 30. Applicability.** (1) [Sections  
 19 1, 2, 24, 27, and this section] apply to all subdivision  
 20 applications after [the effective date of this act].

21       (2) [Sections 3 through 23, 25, 26, 28, and 29] apply  
 22 to all subdivision applications after July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0744, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to generally revise the Montana subdivision and platting act; redefining subdivision; removing certain exemptions; providing an expedited review process for certain types of subdivisions; providing public hearing guidelines; and modifying the park dedication requirements.

ASSUMPTIONS:

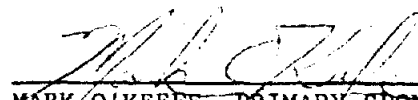
1. HB0744 would revise the definition of a subdivision for purposes of the Sanitation in Subdivisions Act. The number of minor subdivisions reviewed by the Department of Health and Environmental Sciences under the Sanitation in Subdivisions Act would approximately double over what are currently reviewed. The number of lots in minor subdivisions would approximately double over those currently reviewed.
2. Reimbursements to local governments on contract for minor subdivisions under the Sanitation in Subdivisions Act would be proportional to current levels.
3. Current review fees per lot under the Sanitation in Subdivisions Act would remain the same as under current law.
4. Increases in workload for the Department of Commerce program which provides technical assistance to local governments associated with the Subdivision and Platting Act would be minor and could be absorbed within the program's current level budget.

FISCAL IMPACT:

Department of Health and Environmental Sciences:

	FY92			FY93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	3.30	5.05	1.75	3.30	5.05	1.75
Personal Services	90,877	136,077	45,200	90,690	137,540	46,850
Operating Expenses	16,789	48,429	31,640	17,015	49,815	32,800
Grants	45,000	60,000	15,000	45,000	60,000	15,000
Total	152,666	244,506	91,840	152,705	247,355	94,650
<u>Funding:</u>						
General Fund (01)	152,666	244,506	91,840	152,705	247,355	94,650
<u>Revenues:</u>						
General Fund (01)	139,500	199,500	60,000	139,500	199,500	60,000
<u>Impact to General Fund</u>			(31,840)			(34,650)

  
 ROD SUNDSTED, BUDGET DIRECTOR      DATE 2-15-91  
 Office of Budget and Program Planning

  
 MARK O'KEEFE, PRIMARY SPONSOR      DATE 2/16/91  
 Fiscal Note for HB0744, as introduced.      **HB 744**

Fiscal Note Request, HB0744, as introduced.

Form BD-15

Page 2

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

1. Local government entities which contract with DHES for review of subdivisions under the Sanitation in Subdivisions Act would experience an increase in workload. Compensation currently ranges from \$5 to \$35 per lot reviewed, depending on time involved.
2. Local governments reviewing subdivisions pursuant to the Subdivision and Platting Act would experience a significant increase in workload. The fiscal impact to local entities cannot be determined at this time. The governing body is authorized under 76-3-602, MCA, to charge reasonable fees to defray the expenses of reviewing subdivision plats. The average annual salary for a staff planner or consultant is approximately \$24,000. Lot fees charged to subdividers may range from \$50 to several hundred dollars per lot. HB0744 proposes an expedited review process for certain types of subdivisions which would minimize increases in costs, particularly for local governments which already have planning staff.

HB 744