

HOUSE BILL 815

Introduced by Lee, at al.

2/13	Introduced
2/13	Referred to Natural Resources
2/13	First Reading
2/13	Fiscal Note Requested
2/19	Fiscal Note Received
2/20	Hearing
2/20	Fiscal Note Printed
2/21	Committee Report--Bill Passed as Amended
2/26	2nd Reading Passed
2/26	Taken from Engrossing and Referred to Appropriations
3/20	Hearing
3/23	Tabled in Committee

1 *House* BILL NO. *815*
 2 INTRODUCED BY *Lee* *Dillard* *Moore* *Colan*
 3 *Wm E. Behrnski* *John* *Raney*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN UNITS

5 OF LOCAL GOVERNMENT TO PREPARE, ADOPT, IMPLEMENT, AND
 6 ENFORCE MASTER PLANS AND DEVELOPMENT REGULATIONS; REQUIRING
 7 THE DEPARTMENT OF COMMERCE TO REVIEW AND APPROVE REQUIRED
 8 MASTER PLANS AND DEVELOPMENT REGULATIONS BEFORE LOCAL
 9 GOVERNMENT ADOPTION; ESTABLISHING GUIDELINES AND SPECIFIC
 10 AUTHORITY FOR DEPARTMENT RULEMAKING TO IMPLEMENT PROVISIONS
 11 OF THIS ACT; CREATING AND ESTABLISHING MEMBERSHIP AND DUTIES
 12 FOR A PLANNING ADVISORY COUNCIL; AMENDING SECTIONS 75-7-207,
 13 75-7-211, 76-1-103, 76-1-104, 76-1-601, 76-1-602, 76-1-603,
 14 76-1-604, 76-1-605, AND 76-1-606, MCA; AND PROVIDING AN
 15 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

16
 17
 18 A statement of intent is required in order to provide
 19 guidance to the department of commerce in adopting rules to
 20 implement the provisions of [this act]. The legislature
 21 understands that certain areas of Montana are experiencing
 22 rapid population growth or land development. In order to
 23 protect the health, safety, and welfare of all Montana
 24 citizens in these areas, it is the intent of the legislature
 25 that these rapidly developing areas prepare, adopt,

1 implement, and enforce reasonable, equitable, and effective
 2 master plans and development regulations.

3 The department, by November 1, 1993, shall adopt the
 4 necessary administrative rules to:

5 (1) identify areas of rapid population growth or land
 6 development;

7 (2) establish minimum state standards for the review of
 8 required master plans. In conducting this review, the
 9 department is prohibited from substituting its judgment for
 10 that of the unit of local government as to the detailed
 11 content of the master plan and development regulations.

12 (3) establish reasonable time schedules for the
 13 submission, review, adoption, and enforcement of the
 14 required master plans.

15 When developing the necessary administrative rules, the
 16 department shall work in consultation with the planning
 17 advisory council created in [section 14]. The council's
 18 members, appointed by the governor, shall represent units of
 19 local government and the planning, conservation, and
 20 development communities in Montana. Council duties include a
 21 report to the governor and the legislature by November 1,
 22 1993. The report must detail the rulemaking process used by
 23 the department in implementing [this act] and include
 24 council comments and recommendations regarding the adopted
 25 rules. The legislature shall consider this report when



1 considering what action, if any, to take in the 1993
2 legislature regarding the department rules adopted under
3 [this act]. It is the intent of the legislature that this
4 act not become applicable until after the 1993 legislature
5 adjourns to ensure that any inappropriate department rules
6 can be modified by the legislature.

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

9 **Section 1.** Section 76-1-103, MCA, is amended to read:

10 **"76-1-103. Definitions.** As used in this chapter, the
11 following definitions apply:

12 (1) "Capital budget" means a separate section of a
13 county's or municipality's annual budget document that
14 specifies which public facility and public works projects
15 will be funded in that budget year. In addition to funds
16 from local revenue sources, the capital budget may include
17 state or federal grant or loan commitments, private lending
18 institution commitments, and other sources of committed
19 funding.

20 (2) "Capital improvements plan" means an overall plan
21 of needed improvement to public facilities and public works
22 prepared for at least 5 years into the future that at a
23 minimum includes:

24 (a) a list of public facility projects in the order of
25 their priority based on need;

1 (b) the cost of each project;
2 (c) alternative and preferred methods for funding each
3 project; and
4 (d) a time schedule for funding and constructing each
5 project.

6 ~~††~~(3) "City" includes incorporated cities and towns.
7 ~~†2~~(4) "City council" means the chief legislative body
8 of a city or incorporated town.

9 (5) "Department" means the department of commerce as
10 provided in 2-15-1801.

11 (6) "Development regulation" means a regulation adopted
12 by a county or municipality to implement a master plan and
13 to control any aspect of the development of land.
14 Development regulations include but are not limited to the
15 regulatory measures described in [section 12].

16 ~~†3~~(7) "Governing body" or "governing bodies" means the
17 governing body of any governmental unit represented on a
18 planning board.

19 ~~†4~~(8) "Master plan" means a comprehensive development
20 plan or any of its parts such as a plan of land use and
21 zoning, of thoroughfares, of sanitation, of recreation, and
22 of other related matters.

23 ~~†5~~(9) "Mayor" means mayor of a city.

24 ~~†6~~(10) "Person" means any individual, firm, or
25 corporation.

1 {7}(11) "Planning board" means a city, ~~planning-board,~~ a
2 county, ~~planning---board---or---a~~ joint, city-county or
3 consolidated planning board.

4 {8}(12) "Plat" means a subdivision of land into lots,
5 streets, and areas, marked upon the earth and represented on
6 paper, and includes replats or amended plats.

7 {9}(13) "Public place" means any tract owned by the
8 state or its subdivisions.

9 {10}(14) "Streets" includes streets, avenues,
10 boulevards, roads, lanes, alleys, and all public ways.

11 {11}(15) "Units of government" means any federal, state,
12 or regional unit of government or any county, city, or town.

13 {12}(16) "Utility" means any facility used in rendering
14 service which the public has a right to demand."

15 NEW SECTION. Section 2. Mandatory planning. (1) A
16 first-class municipality, as defined in 7-1-4111, based on
17 census estimates; a county that exceeds 30,000 in
18 population, based on census estimates; and a county or
19 municipality that is experiencing rapid population growth or
20 land development, as identified by the department in
21 administrative rules adopted pursuant to [section 13], shall
22 comply with subsection (2).

23 (2) (a) A unit of government identified in subsection
24 (1) shall create a planning board and adopt a master plan as
25 provided in this chapter.

1 (b) While preparing the master plan and development
2 regulations and policies, a unit of government shall
3 establish and enforce interim zoning ordinances or
4 regulations as provided in 76-2-206 and 76-2-306.

5 (c) Upon approval of the plan by the department, as
6 required in [section 8], and adoption of the approved plan
7 by the local governing body, the unit of government shall
8 comply with the plan implementation provisions of [section
9 12].

10 **Section 3.** Section 76-1-104, MCA, is amended to read:

11 **"76-1-104. Procedure to establish county planning board**
12 **-- protest.** (1) Before a county planning board may be
13 created, the board of county commissioners shall by
14 resolution give public notice of their intent to create such
15 planning board and of a public hearing thereon by
16 publication of notice of time and place of hearing on such
17 resolution in each newspaper published in the county not
18 less than 15 or more than 30 days prior to the date of
19 hearing.

20 (2) A Except when a unit of government is required to
21 prepare a master plan under [section 2], a resolution
22 creating a county planning board shall may not be adopted by
23 the board of county commissioners if disapproved in writing,
24 not later than 60 days after such hearing, by a majority of
25 the qualified electors of the county residing outside the

1 limits of the jurisdictional area of an existing city-county
 2 planning board established pursuant to 76-1-504 through
 3 76-1-507 and outside the incorporated limits of each city
 4 and town in the county."

5 **Section 4.** Section 76-1-601, MCA, is amended to read:

6 "76-1-601. Master plan -- contents. The planning board
 7 shall prepare and propose a master plan for the
 8 jurisdictional area. The plan ~~may~~ must propose ordinances or
 9 resolutions for possible adoption by the appropriate
 10 governing body. The plan ~~may~~ must include:

11 (1) careful and comprehensive surveys and studies of
 12 existing conditions and the probable future growth of the
 13 city and its environs or of the county;

14 (2) maps, plats, charts, and descriptive material
 15 presenting basic information, locations, extent, and
 16 character of any of the following:

17 (a) history, population, and physical site conditions;

18 (b) land use, including the height, area, bulk,
 19 location, and use of private and public structures and
 20 premises;

21 (c) population densities;

22 (d) community centers and neighborhood units;

23 (e) blighted and slum areas;

24 (f) streets and highways, including bridges, viaducts,
 25 subways, parkways, alleys, and other public ways and places;

1 (g) sewers, sanitation, and drainage, including
 2 handling, treatment, and disposal of excess drainage waters,
 3 sewage, garbage, refuse, and other wastes;

4 (h) flood control and prevention;

5 (i) public and private utilities, including water,
 6 light, heat, communication, and other services;

7 (j) transportation, including rail, bus, truck, air,
 8 and water transport and their terminal facilities;

9 (k) local mass transit, including motor and trolley
 10 bus; street, elevated, or underground railways; and
 11 taxicabs;

12 (l) parks and recreation, including parks, playgrounds,
 13 reservations, forests, wildlife refuges, and other public
 14 grounds, spaces, and facilities of a recreational nature;

15 (m) public buildings and institutions, including
 16 governmental administration and service buildings,
 17 hospitals, infirmaries, clinics, penal and correctional
 18 institutions, and other civic and social service buildings;

19 (n) education, including location and extent of
 20 schools, colleges, and universities;

21 (o) land utilization, including areas for manufacturing
 22 and industrial uses, concentration of wholesale business,
 23 retail business, and other commercial uses, residential
 24 uses, and areas for mixed uses;

25 (p) conservation of water, soil, agricultural, and

1 mineral resources;

2 (q) any other factors which are a part of the
3 aesthetic, physical, economic, or social situation within
4 the city or county;

5 (r) policies to conserve and protect lakes as provided
6 in Title 75, chapter 7, part 2; and

7 (s) any other factors identified by the department in
8 administrative rules adopted under [section 13];

9 (3) reports, maps, charts, and recommendations setting
10 forth plans for the development, redevelopment, improvement,
11 extension, and revision of the subjects and physical
12 situations of the city or county set out in subsection (2)
13 so as to substantially accomplish the object of this chapter
14 as set out in 76-1-101 and 76-1-102;

15 (4) a long-range development program of public works'
16 projects, based on the recommended plans of the planning
17 board, for the purpose of eliminating unplanned, unsightly,
18 untimely, and extravagant projects and with a view to
19 stabilizing industry and employment and the keeping of such
20 program up-to-date for all separate taxing units within the
21 city or county, respectively, for the purpose of assuring
22 efficient and economic use of public funds;

23 (5) recommendations setting forth the development,
24 improvement, and extension of areas, if any, to be set aside
25 for use as trailer courts and sites for mobile homes."

1 **Section 5.** Section 76-1-602, MCA, is amended to read:

2 "76-1-602. Public hearing on proposed master plan. (1)
3 Prior to the submission of the proposed master plan to the
4 governing bodies, the board shall give notice and hold a
5 public hearing on the plan.

6 (2) At least ~~10~~ 21 days prior to the date set for
7 hearing, the board shall publish in a newspaper of general
8 circulation in the jurisdictional area a notice of the time
9 and place of the hearing."

10 **Section 6.** Section 76-1-603, MCA, is amended to read:

11 "76-1-603. Adoption of master plan by planning board.
12 (1) After consideration of the recommendations and
13 suggestions elicited at the public hearing, the planning
14 board shall by resolution recommend the proposed master plan
15 and any proposed ordinances and resolutions for its
16 implementation to the governing bodies of the governmental
17 units represented on the board.

18 (2) For master plans required under [section 2], the
19 governing body shall review the plan and:

20 (a) return the plan to the planning board with
21 suggested modifications; or

22 (b) tentatively approve the plan and forward the plan
23 to the department for review as provided in [section 8]."

24 **Section 7.** Section 76-1-604, MCA, is amended to read:

25 "76-1-604. Adoption, revision, or rejection of master

1 plan. (1) The Except for plans required under [section 2],
 2 the governing bodies shall adopt a resolution of intention
 3 to adopt, revise, or reject such proposed plan or any of its
 4 parts.

5 (2) If the governing bodies adopt a resolution of
 6 intention to adopt the proposed plan or any of its parts,
 7 they may, in their discretion, submit to the qualified
 8 electors of the jurisdictional area included within the
 9 proposed plan at the next primary or general election or at
 10 a special election the referendum question of whether or not
 11 the plan should be adopted. The provisions of Title 7,
 12 chapter 5, part 1, except as in this section otherwise
 13 provided, shall apply to such referendum election.

14 (3) The governing bodies may adopt, revise, or repeal a
 15 master plan under this section.

16 (4) The qualified electors of the jurisdictional area
 17 included within the master plan may by initiative or
 18 referendum, as provided in 7-5-131 through 7-5-137, adopt,
 19 revise, or repeal a master plan under this section."

20 NEW SECTION. Section 8. Master plan -- state review.

21 (1) The department shall review all master plans and
 22 proposed implementing ordinances and regulations submitted
 23 under 76-1-603(2) to ensure compliance with the minimum
 24 standards established by the department under [section 13].
 25 In conducting the review, the department shall ascertain

1 whether the local master plan and development regulations
 2 constitute a reasonable, minimal effort to satisfy the
 3 requirements of this chapter. The department may not
 4 substitute its judgment for that of the unit of government
 5 as to the detailed content of the master plan and
 6 development regulations.

7 (2) If the department approves the plan as submitted,
 8 the department shall forward the plan to the unit of
 9 government for public hearing and adoption under [section
 10 9].

11 (3) If the plan does not meet minimum state standards,
 12 the department shall identify the deficiencies in the plan
 13 and return the plan to the unit of government for
 14 modification and a second public hearing under 76-1-602.

15 NEW SECTION. Section 9. Mandatory adoption of approved
 16 master plan. (1) Upon approval by the department of a master
 17 plan required under [section 2], the governing body shall
 18 schedule a public hearing on the approved plan.

19 (2) At least 21 days prior to the date set for hearing,
 20 the governing body shall publish in a newspaper of general
 21 circulation in the jurisdictional area a notice of the time
 22 and place of the hearing.

23 (3) After consideration of the recommendations and
 24 suggestions made at the public hearing, the governing body
 25 shall adopt the plan or petition the department for plan

1 modification.

2 (4) The department shall review a petition for
3 modification submitted under subsection (3) and:

4 (a) grant the petition and forward the approved
5 modified plan to the governing body for a second public
6 hearing as provided under subsection (1). The department may
7 not grant a petition that would result in a plan that does
8 not meet the minimum state standards established in
9 administrative rules under [section 13]; or

10 (b) deny the petition. The department may not deny a
11 petition if that petition would result in a plan that meets
12 the minimum state standards established in administrative
13 rules under [section 13].

14 (5) A governing body shall adopt a master plan as
15 approved by the department if the petition for modification
16 submitted under subsection (3) is denied.

17 **Section 10.** Section 76-1-605, MCA, is amended to read:

18 "76-1-605. Use of adopted master plan for unit of
19 government not required to plan. After adoption of the a
20 master plan not required under [section 2], the city
21 council, the board of county commissioners, or other
22 governing body within the territorial jurisdiction of the
23 board shall be guided by and give consideration to the
24 general policy and pattern of development set out in the
25 master plan in the:

1 (1) authorization, construction, alteration, or
2 abandonment of public ways, public places, public
3 structures, or public utilities;

4 (2) authorization, acceptance, or construction of water
5 mains, sewers, connections, facilities, or utilities;

6 (3) adoption of subdivision controls;

7 (4) adoption of zoning ordinances or resolutions."

8 **Section 11.** Section 76-1-606, MCA, is amended to read:

9 "76-1-606. Effect of master plan on subdivisions and
10 plats. (1) Where a master plan has been approved, the city
11 council ~~may shall~~ by ordinance or the board of county
12 commissioners ~~may shall~~ by resolution require subdivision
13 plats to conform to the provisions of the master plan.
14 Certified copies of such ordinance shall be filed with the
15 city or town clerk and with the county clerk and recorder of
16 the county.

17 (2) Thereafter:

18 (a) a plat involving lands within the corporate limits
19 of the city and covered by said master plan shall not be
20 filed without first presenting it to the planning board,
21 which shall make a report to the city council advising as to
22 compliance or noncompliance of the plat with the master
23 plan. The city council shall have the final authority to
24 approve the filing of such plat pursuant to Title 76,
25 chapter 3.

(b) a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat pursuant to Title 76, chapter 3.

~~{3}--Nothing-herein-contained-shall--be--interpreted--to limit--the--present-powers-of-the-city-or-county-governments but-shall-be-an-additional-requirement-before-any-plat--may be-filed-of-record-or-entitled-to-be-recorded--"~~

NEW SECTION. Section 12. Implementation of mandatory plans. (1) Master plans required under [section 2] must be implemented by the adoption and enforcement of appropriate local regulations and policies on the development of lands and water within the local government's jurisdiction.

(2) Local land development regulations must contain specific and detailed provisions necessary or desirable to implement the master plan required under [section 2] and must as a minimum:

(a) regulate the subdivision of land pursuant to Title 76, chapters 3 and 4;

(b) regulate the use of land and water and ensure the compatibility of adjacent uses. However, nothing in this

section may conflict with the issuance of water use permits or the adjudication of water rights under Title 85 or the powers of conservation districts under Title 75, chapter 7.

(c) ensure the protection of environmentally sensitive land and open space; and

(d) include a capital improvements plan and capital budget.

(3) In addition to the requirements in subsection (2), units of government may adopt and enforce other implementation measures, including but not limited to density limits, performance standards, development permit regulations, sign regulation, natural resource protection regulations, landscaping and aesthetic standards, site plan review, impact fee regulations, acquisition of land or development rights, transfer of development rights, planned unit development regulations, or other reasonable, innovative devices or policies.

(4) Within 1 year after state approval of a master plan under [section 8], the unit of government required to plan shall adopt and enforce land development regulations that implement and are consistent with the adopted master plan.

NEW SECTION. Section 13. Department rulemaking. Working in consultation with the planning advisory council established in [section 14], the department shall adopt administrative rules that consistently and reasonably

1 implement the provisions of this title under the following
2 guidelines:

3 (1) To ensure that all areas of the state accomplish
4 the objectives in 76-1-102, the department shall adopt
5 administrative rules for the identification of units of
6 government experiencing rapid population growth or land
7 development, as provided in [section 2]. Factors the
8 department shall consider as indicators of rapid growth or
9 land development include but are not limited to:

10 (a) census and population data, based on census
11 estimates;

12 (b) the number of certificates of survey or subdivision
13 applications filed under Title 76, chapter 4;

14 (c) the number of building permits issued;

15 (d) the number of electrical, telephone, utility, and
16 sewer connections made;

17 (e) the number of septic system permits issued; and

18 (f) school attendance records.

19 (2) Using the factors in 76-1-601 as guidelines, the
20 department shall establish minimum state standards for
21 department review of master plans under [section 8]. In
22 conducting this review, the department shall ascertain
23 whether the local master plan and development regulations
24 constitute a reasonable, minimal effort to satisfy the
25 requirements of this chapter. The department may not

1 substitute its judgment for that of the unit of government
2 as to the detailed content of the master plan and
3 development regulations.

4 (3) The department shall adopt administrative rules
5 that establish time schedules for the submission and
6 adoption of master plans and implementing regulations and
7 policies as required under this title.

8 NEW SECTION. **Section 14.** Planning advisory council --
9 establishment, membership, and duties. (1) There is a
10 planning advisory council. The department shall consult with
11 the council on the development of all rules, guidelines, and
12 standards established under [section 13].

13 (2) The council is composed of nine members. The
14 governor shall appoint the members of the council, selecting
15 them on the basis of their knowledge of planning, local
16 government, land conservation, and land development.
17 Representation on the council must be as follows:

18 (a) three persons experienced in local planning;

19 (b) one official from a unit of local government;

20 (c) one person experienced in land conservation;

21 (d) two persons experienced in land development; and

22 (e) two members of the environmental quality council
23 established in 5-16-101.

24 (3) The planning advisory council shall report to the
25 environmental quality council by October 1, 1993. The report

1 must contain:

- 2 (a) information on the process of adopting rules as
3 used by the department in establishing the rules,
4 guidelines, and standards required under [section 13];
5 (b) information regarding public participation in the
6 rulemaking process and summaries of public comments
7 received;
8 (c) the final rules, guidelines, and standards as
9 adopted by the department under [section 13]; and
10 (d) the council's comments and recommendations
11 regarding the adoption process and the rules, guidelines,
12 and standards. The council's comments and recommendations
13 may include but are not limited to:
14 (i) comments on the fairness and efficiency of the
15 rulemaking process;
16 (ii) comments on the adequacy of opportunity for public
17 involvement; and
18 (iii) recommendations regarding the appropriate role of
19 the governor or legislature in implementing, enforcing, or
20 modifying the rules, guidelines, and standards.
21 (4) The environmental quality council shall forward the
22 report with appropriate comments and recommendations to the
23 governor and the legislature by November 1, 1993.
- 24 **Section 15.** Section 75-7-207, MCA, is amended to read:
25 "75-7-207. Regulations for issuance of permits. (1)

1 Before January 1, 1976, every governing body having
2 jurisdiction over an area containing a lake shall adopt
3 regulations in the form of criteria for the issuance or
4 denial of permits for work in lakes.

5 (2) Where a planning board has been created under
6 [section 2] or 76-1-104 for an area containing a lake, the
7 governing body shall seek the recommendations of the
8 planning board as to the regulations to be adopted under
9 this part.

10 (3) The local governing body may provide a summary
11 procedure to permit work which it finds has a minimal or
12 insignificant impact on a lakeshore.

13 (4) A governing body whose area contains more than one
14 lake may adopt regulations in differing form for the various
15 lakes, recognizing the physical and social differences
16 between lakes.

17 (5) The requirements of 75-7-208 are minimum
18 requirements and do not restrict a local governing body from
19 adopting such stricter or additional regulations as may be
20 authorized by other statutes."

21 **Section 16.** Section 75-7-211, MCA, is amended to read:

22 "75-7-211. Consultation with local planning board. (1)
23 Where a planning board has been created under [section 2] or
24 76-1-104 for the area containing the lake in question, the
25 governing body shall seek the recommendation of the planning

1 board as to the compliance of the proposed work with the
2 criteria for the issuance of a permit. The planning board
3 shall report its recommendations to the governing body as to
4 whether the proposed work conforms to the criteria for
5 issuance of a permit and may require the applicant to submit
6 additional information before the board reports its
7 recommendations.

8 (2) In areas where a planning board is not established,
9 the functions of a planning board under this section shall
10 be exercised by the local governing body."

11 NEW SECTION. Section 17. Codification instruction.
12 [Sections 2, 8, 9 and 12 through 14] are intended to be
13 codified as an integral part of Title 76, chapter 1, and the
14 provisions of Title 76, chapter 1, apply to [sections 2, 8,
15 9 and 12 through 14].

16 NEW SECTION. Section 18. Effective date. [This act] is
17 effective on passage and approval.

18 NEW SECTION. Section 19. Applicability. [Section 2]
19 applies to all identified local governments on July 1, 1993.

20 NEW SECTION. Section 20. Severability. If a part of
21 [this act] is invalid, all valid parts that are severable
22 from the invalid part remain in effect. If a part of [this
23 act] is invalid in one or more of its applications, the part
24 remains in effect in all valid applications that are
25 severable from the invalid applications.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0815, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act requiring certain units of local government to prepare, adopt, implement, and enforce master plans and development regulations; requiring the Department of Commerce to review and approve required master plans and development regulations before local government adoption; establishing guidelines and specific authority for department rulemaking to implement provisions of this act; creating and establishing membership and duties for a planning advisory council; amending existing statutes and providing an immediate effective date and an applicability date.

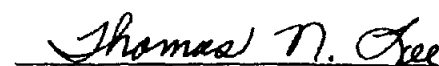
ASSUMPTIONS:

1. The proposed legislation will require municipalities of more than 10,000 residents and counties with populations of more than 30,000 residents, or a county or municipality that experienced rapid population growth or land development as defined by the department in administrative rules, to prepare, adopt, implement and enforce master plans and regulations for land use.
2. The Department of Commerce will organize a Planning Advisory Council to review and adopt rules, guidelines and standards to be used by the department for adopting land use plans and regulations.
3. The proposed master plan and land use regulations must be reviewed and approved by the Department of Commerce prior to local government adoption.
4. The FY92-FY93 expenses to implement the program are initial start-up costs. The proposed legislation will not apply to local governments until July 1, 1993.
5. Developing the program will require a 1.00 FTE planner at grade 15/step 2 and 1.00 FTE planning technician at grade 13/step 2 plus consulting services for economists and other planning consultants.
6. The proposed legislation does not include provisions for review fees. Program costs will be paid with general fund.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR 2-19-91
Office of Budget and Program Planning DATE


THOMAS N. LEE, PRIMARY SPONSOR 2/20/91
Fiscal Note for HB0815, as introduced DATE
HB 815

Fiscal Note Request, HB0815, as introduced

Form Bd-15

Page 2

FISCAL IMPACT:

Department of Commerce:

<u>Expenditures:</u>	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0.00	2.00	2.00	0.00	2.00	2.00
Personal Services	0	50,613	50,613	0	50,613	50,613
Operating Expenses	0	39,134	39,134	0	39,152	39,152
Capital Outlay	0	4,540	4,540	0	0	0
Total	0	94,287	94,287	0	89,765	89,765
<u>Funding:</u>						
General Fund	0	94,287	94,287	0	89,765	89,765
Impact to General Fund			(94,287)			(89,765)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. Local government impact during the 1993 biennium will be minimal due to the July 1, 1993, applicability date. Costs for local government planning activities should remain unchanged until after the administrative rules have been approved.
2. 76-1-104, MCA, will be amended to require the creation of planning commissions whenever events satisfy the conditions stipulated in the proposed legislation and subsequent administrative rules. Local governments which currently do not have planning boards or commissions would incur additional cost in such circumstances.
3. The proposed legislation does not contain grandfather rights for local government entities which currently have master land use plans and regulations. Therefore, all municipalities with populations over 10,000 residents and counties with populations over 30,000 residents will need to submit an application for a state approved master plan. The fiscal impact upon local governments will vary relative to a variety of factors including the complexity of land use plans and regulations, the nature of proposed developments, and the identification of other factors

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. The State of Washington has a mandatory local government planning program that is comparable to the proposed legislation. The State of Washington's annual program cost is in excess of \$1 million and includes 12 FTE. The Department of Commerce will need to hire several additional FTE to implement the program.
2. Revisions to master land use plans and regulations to accommodate economic development will have an additional layer of governmental review and approval. In addition to increase processing time, the additional review and approval process will probably increase local permit fees. Increased processing time and increased permit fees may have detrimental impacts upon economic development.

TECHNICAL NOTES:

If the intent of Section 14 (3) and (4) [page 18] of the proposed legislation is legislative and executive review of rules created by the Planning Advisory Council prior to the July, 1, 1993, applicability date, then the submission date for the council's report to the Environmental Quality Council should be changed from October 1, 1993, to October 1, 1992. Likewise, the submittal date of the report to the Governor and Legislature should be changed to November 1, 1992.

HB 815

APPROVED BY COMM. ON
NATURAL RESOURCES

1 HOUSE BILL NO. 815
2 INTRODUCED BY LEE, HALLIGAN, GILBERT, MEASURE, COHEN,
3 SPRING, BOHARSKI, HARPER, RANEY, B. BROWN, HARDING
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN UNITS
6 OF LOCAL GOVERNMENT TO PREPARE, ADOPT, IMPLEMENT, AND
7 ENFORCE MASTER PLANS AND DEVELOPMENT REGULATIONS; REQUIRING
8 THE DEPARTMENT OF COMMERCE TO REVIEW AND APPROVE REQUIRED
9 MASTER PLANS AND DEVELOPMENT REGULATIONS BEFORE LOCAL
10 GOVERNMENT ADOPTION; ESTABLISHING GUIDELINES AND SPECIFIC
11 AUTHORITY FOR DEPARTMENT RULEMAKING TO IMPLEMENT PROVISIONS
12 OF THIS ACT; CREATING AND ESTABLISHING MEMBERSHIP AND DUTIES
13 FOR A PLANNING ADVISORY COUNCIL; AMENDING SECTIONS 75-7-207,
14 75-7-211, 76-1-103, 76-1-104, 76-1-601, 76-1-602, 76-1-603,
15 76-1-604, 76-1-605, AND 76-1-606, MCA; AND PROVIDING AN
16 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
17

18 STATEMENT OF INTENT

19 A statement of intent is required in order to provide
20 guidance to the department of commerce in adopting rules to
21 implement the provisions of [this act]. The legislature
22 understands that certain areas of Montana are experiencing
23 rapid population growth or land development. In order to
24 protect the health, safety, and welfare of all Montana
25 citizens in these areas, it is the intent of the legislature

1 that these rapidly developing areas prepare, adopt,
2 implement, and enforce reasonable, equitable, and effective
3 master plans and development regulations.

4 The department, by November 1, ~~1993~~ 1992, shall adopt
5 the necessary administrative rules to:

6 (1) identify areas of rapid population growth or land
7 development;

8 (2) establish minimum state standards for the review of
9 required master plans. In conducting this review, the
10 department is prohibited from substituting its judgment for
11 that of the unit of local government as to the detailed
12 content of the master plan and development regulations.

13 (3) establish reasonable time schedules for the
14 submission, review, adoption, and enforcement of the
15 required master plans.

16 When developing the necessary administrative rules, the
17 department shall work in consultation with the planning
18 advisory council created in [section 14]. The council's
19 members, appointed by the governor, shall represent units of
20 local government and the planning, conservation, and
21 development communities in Montana. Council duties include a
22 report to the governor and the legislature by November 1,
23 ~~1993~~ 1992. The report must detail the rulemaking process
24 used by the department in implementing [this act] and
25 include council comments and recommendations regarding the

1 adopted rules. The legislature shall consider this report
 2 when considering what action, if any, to take in the 1993
 3 legislature regarding the department rules adopted under
 4 [this act]. It is the intent of the legislature that this
 5 act not become applicable until after the 1993 legislature
 6 adjourns to ensure that any inappropriate department rules
 7 can be modified by the legislature.

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

10 **Section 1.** Section 76-1-103, MCA, is amended to read:

11 **"76-1-103. Definitions.** As used in this chapter, the
 12 following definitions apply:

13 (1) "Capital budget" means a separate section of a
 14 county's or municipality's annual budget document that
 15 specifies which public facility and public works projects
 16 will be funded in that budget year. In addition to funds
 17 from local revenue sources, the capital budget may include
 18 state or federal grant or loan commitments, private lending
 19 institution commitments, and other sources of committed
 20 funding.

21 (2) "Capital improvements plan" means an overall plan
 22 of needed improvement to public facilities and public works
 23 prepared for at least 5 years into the future that at a
 24 minimum includes:

25 (a) a list of public facility projects in the order of

1 their priority based on need;
 2 (b) the cost of each project;
 3 (c) alternative and preferred methods for funding each
 4 project; and
 5 (d) a time schedule for funding and constructing each
 6 project.

7 (3) "City" includes incorporated cities and towns.
 8 (4) "City council" means the chief legislative body
 9 of a city or incorporated town.

10 (5) "Department" means the department of commerce as
 11 provided in 2-15-1801.

12 (6) "Development regulation" means a regulation adopted
 13 by a county or municipality to implement a master plan and
 14 to control any aspect of the development of land.
 15 Development regulations include but are not limited to the
 16 regulatory measures described in [section 12].

17 (7) "Governing body" or "governing bodies" means the
 18 governing body of any governmental unit represented on a
 19 planning board.

20 (8) "Master plan" means a comprehensive development
 21 plan or any of its parts such as a plan of land use and
 22 zoning, of thoroughfares, of sanitation, of recreation, and
 23 of other related matters.

24 (9) "Mayor" means mayor of a city.

25 (10) "Person" means any individual, firm, or

1 corporation.

2 ~~(7)~~(11) "Planning board" means a city, ~~planning-board-a~~
3 county, ~~planning--board--or---a~~ joint, city-county or
4 consolidated planning board.

5 ~~(8)~~(12) "Plat" means a subdivision of land into lots,
6 streets, and areas, marked upon the earth and represented on
7 paper, and includes replats or amended plats.

8 ~~(9)~~(13) "Public place" means any tract owned by the
9 state or its subdivisions.

10 ~~(10)~~(14) "Streets" includes streets, avenues,
11 boulevards, roads, lanes, alleys, and all public ways.

12 ~~(11)~~(15) "Units of government" means any federal, state,
13 or regional unit of government or any county, city, or town.

14 ~~(12)~~(16) "Utility" means any facility used in rendering
15 service which the public has a right to demand."

16 **NEW SECTION. Section 2. Mandatory planning.** (1) A
17 first-class municipality, as defined in 7-1-4111, based on
18 census estimates; a county that exceeds 30,000 in
19 population, based on census estimates; and a county or
20 municipality that is experiencing rapid population growth or
21 land development, as identified by the department in
22 administrative rules adopted pursuant to [section 13], shall
23 comply with subsection (2).

24 (2) (a) A unit of government identified in subsection
25 (1) shall create a planning board and adopt a master plan as

1 provided in this chapter.

2 (b) While preparing the master plan and development
3 regulations and policies, a unit of government shall
4 establish and enforce interim zoning ordinances or
5 regulations as provided in 76-2-206 and 76-2-306.

6 (c) Upon approval of the plan by the department, as
7 required in [section 8], and adoption of the approved plan
8 by the local governing body, the unit of government shall
9 comply with the plan implementation provisions of [section
10 12].

11 **Section 3.** Section 76-1-104, MCA, is amended to read:

12 **"76-1-104. Procedure to establish county planning board**
13 **-- protest.** (1) Before a county planning board may be
14 created, the board of county commissioners shall by
15 resolution give public notice of their intent to create such
16 planning board and of a public hearing thereon by
17 publication of notice of time and place of hearing on such
18 resolution in each newspaper published in the county not
19 less than 15 or more than 30 days prior to the date of
20 hearing.

21 (2) A Except when a unit of government is required to
22 prepare a master plan under [section 2], a resolution
23 creating a county planning board shall may not be adopted by
24 the board of county commissioners if disapproved in writing,
25 not later than 60 days after such hearing, by a majority of

1 the qualified electors of the county residing outside the
 2 limits of the jurisdictional area of an existing city-county
 3 planning board established pursuant to 76-1-504 through
 4 76-1-507 and outside the incorporated limits of each city
 5 and town in the county."

6 **Section 4.** Section 76-1-601, MCA, is amended to read:

7 "76-1-601. **Master plan -- contents.** The planning board
 8 shall prepare and propose a master plan for the
 9 jurisdictional area. The plan ~~may~~ must propose ordinances or
 10 resolutions for possible adoption by the appropriate
 11 governing body. The plan ~~may~~ must include:

- 12 (1) careful and comprehensive surveys and studies of
- 13 existing conditions and the probable future growth of the
- 14 city and its environs or of the county;
- 15 (2) maps, plats, charts, and descriptive material
- 16 presenting basic information, locations, extent, and
- 17 character of any of the following:
 - 18 (a) history, population, and physical site conditions;
 - 19 (b) land use, including the height, area, bulk,
 - 20 location, and use of private and public structures and
 - 21 premises;
 - 22 (c) population densities;
 - 23 (d) community centers and neighborhood units;
 - 24 (e) blighted and slum areas;
 - 25 (f) streets and highways, including bridges, viaducts,

- 1 subways, parkways, alleys, and other public ways and places;
- 2 (g) sewers, sanitation, and drainage, including
- 3 handling, treatment, and disposal of excess drainage waters,
- 4 sewage, garbage, refuse, and other wastes;
- 5 (h) flood control and prevention;
- 6 (i) public and private utilities, including water,
- 7 light, heat, communication, and other services;
- 8 (j) transportation, including rail, bus, truck, air,
- 9 and water transport and their terminal facilities;
- 10 (k) local mass transit, including motor and trolley
- 11 bus; street, elevated, or underground railways; and
- 12 taxicabs;
- 13 (l) parks and recreation, including parks, playgrounds,
- 14 reservations, forests, wildlife refuges, and other public
- 15 grounds, spaces, and facilities of a recreational nature;
- 16 (m) public buildings and institutions, including
- 17 governmental administration and service buildings,
- 18 hospitals, infirmaries, clinics, penal and correctional
- 19 institutions, and other civic and social service buildings;
- 20 (n) education, including location and extent of
- 21 schools, colleges, and universities;
- 22 (o) land utilization, including areas for manufacturing
- 23 and industrial uses, concentration of wholesale business,
- 24 retail business, and other commercial uses, residential
- 25 uses, and areas for mixed uses;

1 (p) conservation of water, soil, agricultural, and
2 mineral resources;

3 (q) any other factors which are a part of the
4 aesthetic, physical, economic, or social situation within
5 the city or county;

6 (r) policies to conserve and protect lakes as provided
7 in Title 75, chapter 7, part 2; and

8 (s) any other factors identified by the department in
9 administrative rules adopted under [section 13];

10 (3) reports, maps, charts, and recommendations setting
11 forth plans for the development, redevelopment, improvement,
12 extension, and revision of the subjects and physical
13 situations of the city or county set out in subsection (2)
14 so as to substantially accomplish the object of this chapter
15 as set out in 76-1-101 and 76-1-102;

16 (4) a long-range development program of public works'
17 projects, based on the recommended plans of the planning
18 board, for the purpose of eliminating unplanned, unsightly,
19 untimely, and extravagant projects and with a view to
20 stabilizing industry and employment and the keeping of such
21 program up-to-date for all separate taxing units within the
22 city or county, respectively, for the purpose of assuring
23 efficient and economic use of public funds;

24 (5) recommendations setting forth the development,
25 improvement, and extension of areas, if any, to be set aside

1 for use as trailer courts and sites for mobile homes."

2 **Section 5.** Section 76-1-602, MCA, is amended to read:

3 **"76-1-602. Public hearing on proposed master plan.** (1)
4 Prior to the submission of the proposed master plan to the
5 governing bodies, the board shall give notice and hold a
6 public hearing on the plan.

7 (2) At least ~~10~~ 21 days prior to the date set for
8 hearing, the board shall publish in a newspaper of general
9 circulation in the jurisdictional area a notice of the time
10 and place of the hearing."

11 **Section 6.** Section 76-1-603, MCA, is amended to read:

12 **"76-1-603. Adoption of master plan by planning board.**
13 (1) After consideration of the recommendations and
14 suggestions elicited at the public hearing, the planning
15 board shall by resolution recommend the proposed master plan
16 and any proposed ordinances and resolutions for its
17 implementation to the governing bodies of the governmental
18 units represented on the board.

19 (2) For master plans required under [section 2], the
20 governing body shall review the plan and:

21 (a) return the plan to the planning board with
22 suggested modifications; or

23 (b) tentatively approve the plan and forward the plan
24 to the department for review as provided in [section 8]."

25 **Section 7.** Section 76-1-604, MCA, is amended to read:

1 ***76-1-604. Adoption, revision, or rejection of master**
 2 **plan. (1) The Except for plans required under [section 2],**
 3 **the governing bodies shall adopt a resolution of intention**
 4 **to adopt, revise, or reject such proposed plan**

5
 6 (2) If the governing bodies adopt a resolution of
 7 intention to adopt the proposed plan or any of its parts,
 8 they may, in their discretion, submit to the qualified
 9 electors of the jurisdictional area included within the
 10 proposed plan at the next primary or general election or at
 11 a special election the referendum question of whether or not
 12 the plan should be adopted. The provisions of Title 7,
 13 chapter 5, part 1, except as in this section otherwise
 14 provided, shall apply to such referendum election.

15 (3) The governing bodies may adopt, revise, or repeal a
 16 master plan under this section.

17 (4) The qualified electors of the jurisdictional area
 18 included within the master plan may by initiative or
 19 referendum, as provided in 7-5-131 through 7-5-137, adopt,
 20 revise, or repeal a master plan under this section."

21 **NEW SECTION. Section 8. Master plan -- state review.**

22 (1) The department shall review all master plans and
 23 proposed implementing ordinances and regulations submitted
 24 under 76-1-603(2) to ensure compliance with the minimum
 25 standards established by the department under [section 13].

1 In conducting the review, the department shall ascertain
 2 whether the local master plan and development regulations
 3 ~~comply with the~~ reasonable, minimal effort to satisfy the
 4 requirements of this chapter. The department may not
 5 substitute its judgment for that of the unit of government
 6 as to the detailed content of the master plan and
 7 development regulations IF THE PLAN AND REGULATIONS MEET THE
 8 MINIMUM STANDARDS ESTABLISHED PURSUANT TO 76-1-601 AND
 9 [SECTION 12].

10 (2) If the department approves the plan as submitted,
 11 the department shall forward the plan to the unit of
 12 government for public hearing and adoption under [section
 13 9].

14 (3) If the plan does not meet minimum state standards,
 15 the department shall identify the deficiencies in the plan
 16 and return the plan to the unit of government for
 17 modification and a second public hearing under 76-1-602.

18 **NEW SECTION. Section 9. Mandatory adoption of approved**

19 **master plan. (1) Upon approval by the department of a master**
 20 **plan required under [section 2], the governing body shall**
 21 **schedule a public hearing on the approved plan.**

22 (2) At least 21 days prior to the date set for hearing,
 23 the governing body shall publish in a newspaper of general
 24 circulation in the jurisdictional area a notice of the time
 25 and place of the hearing.

1 (3) After consideration of the recommendations and
 2 suggestions made at the public hearing, the governing body
 3 shall adopt the plan or petition the department for plan
 4 modification.

5 (4) The department shall review a petition for
 6 modification submitted under subsection (3) and:

7 (a) grant the petition and forward the approved
 8 modified plan to the governing body for a second public
 9 hearing as provided under subsection (1). The department may
 10 not grant a petition that would result in a plan that does
 11 not meet the minimum state standards established in
 12 administrative rules under [section 13]; or

13 (b) deny the petition. The department may not deny a
 14 petition if that petition would result in a plan that meets
 15 the minimum state standards established in administrative
 16 rules under [section 13].

17 (5) A governing body shall adopt a master plan as
 18 approved by the department if the petition for modification
 19 submitted under subsection (3) is denied.

20 **Section 10.** Section 76-1-605, MCA, is amended to read:

21 **"76-1-605. Use of adopted master plan for unit of**
 22 **government not required to plan.** After adoption of the a
 23 master plan not required under [section 2], the city
 24 council, the board of county commissioners, or other
 25 governing body within the territorial jurisdiction of the

1 board shall be guided by and give consideration to the
 2 general policy and pattern of development set out in the
 3 master plan in the:

4 (1) authorization, construction, alteration, or
 5 abandonment of public ways, public places, public
 6 structures, or public utilities;

7 (2) authorization, acceptance, or construction of water
 8 mains, sewers, connections, facilities, or utilities;

9 (3) adoption of subdivision controls;

10 (4) adoption of zoning ordinances or resolutions."

11 **Section 11.** Section 76-1-606, MCA, is amended to read:

12 **"76-1-606. Effect of master plan on subdivisions and**
 13 **plats.** (1) Where a master plan has been approved, the city
 14 council may shall by ordinance or the board of county
 15 commissioners may shall by resolution require subdivision
 16 plats to conform to the provisions of the master plan.
 17 Certified copies of such ordinance shall be filed with the
 18 city or town clerk and with the county clerk and recorder of
 19 the county.

20 (2) Thereafter:

21 (a) a plat involving lands within the corporate limits
 22 of the city and covered by said master plan shall not be
 23 filed without first presenting it to the planning board,
 24 which shall make a report to the city council advising as to
 25 compliance or noncompliance of the plat with the master

1 plan. The city council shall have the final authority to
 2 approve the filing of such plat pursuant to Title 76,
 3 chapter 3.

4 (b) a plat involving lands outside the corporate limits
 5 of the city and covered by said master plan shall not be
 6 filed without first presenting it to the planning board
 7 which shall make a report to the board of county
 8 commissioners advising as to compliance or noncompliance of
 9 the plat with the master plan. The board of county
 10 commissioners shall have the final authority to approve the
 11 filing of such plat pursuant to Title 76, chapter 3.

12 ~~{3}--Nothing--herein--contained--shall--be--interpreted--to~~
 13 ~~limit--the--present--powers--of--the--city--or--county--governments~~
 14 ~~but--shall--be--an--additional--requirement--before--any--plat--may~~
 15 ~~be--filed--of--record--or--entitled--to--be--recorded."~~

16 NEW SECTION. Section 12. Implementation of mandatory
 17 plans. (1) Master plans required under [section 2] must be
 18 implemented by the adoption and enforcement of appropriate
 19 local regulations and policies on the development of lands
 20 and water within the local government's jurisdiction.

21 (2) Local land development regulations must contain
 22 specific and detailed provisions necessary or desirable to
 23 implement the master plan required under [section 2] and
 24 must as a minimum:

25 (a) regulate the subdivision of land pursuant to Title

1 76, chapters 3 and 4;

2 (b) regulate the use of land and water and ensure the
 3 compatibility of adjacent uses. However, nothing in this
 4 section may conflict with the issuance of water use permits
 5 or the adjudication of water rights under Title 85 or the
 6 powers of conservation districts under Title 75, chapter 7.

7 (c) ensure the protection of environmentally sensitive
 8 land and open space; and

9 (d) include a capital improvements plan and capital
 10 budget.

11 (3) In addition to the requirements in subsection (2),
 12 units of government may adopt and enforce other
 13 implementation measures, including but not limited to
 14 density limits, performance standards, development permit
 15 regulations, sign regulation, natural resource protection
 16 regulations, landscaping and aesthetic standards, site plan
 17 review, impact fee regulations, acquisition of land or
 18 development rights, transfer of development rights, planned
 19 unit development regulations, or other reasonable,
 20 innovative devices or policies.

21 (4) Within 1 year after state approval of a master plan
 22 under [section 8], the unit of government required to plan
 23 shall adopt and enforce land development regulations that
 24 implement and are consistent with the adopted master plan.

25 NEW SECTION. Section 13. Department rulemaking.

1 Working in consultation with the planning advisory council
2 established in [section 14], the department shall adopt
3 administrative rules that consistently and reasonably
4 implement the provisions of this title under the following
5 guidelines:

6 (1) To ensure that all areas of the state accomplish
7 the objectives in 76-1-102, the department shall adopt
8 administrative rules for the identification of units of
9 government experiencing rapid population growth or land
10 development, as provided in [section 2]. Factors the
11 department shall consider as indicators of rapid growth or
12 land development include but are not limited to:

13 (a) census and population data, based on census
14 estimates;

15 (b) the number of certificates of survey or subdivision
16 applications filed under Title 76, chapter 4;

17 (c) the number of building permits issued;

18 (d) the number of electrical, telephone, utility, and
19 sewer connections made;

20 (e) the number of septic system permits issued; and

21 (f) school attendance records.

22 (2) Using the factors in 76-1-601 as guidelines, the
23 department shall establish minimum state standards for
24 department review of master plans under [section 8]. In
25 conducting this review, the department shall ascertain

1 whether the local master plan and development regulations
2 constitute a reasonable, minimal effort to satisfy the
3 requirements of this chapter. The department may not
4 substitute its judgment for that of the unit of government
5 as to the detailed content of the master plan and
6 development regulations IF THE PLAN AND REGULATIONS MEET THE
7 MINIMUM STANDARDS ESTABLISHED PURSUANT TO 76-1-601 AND
8 [SECTION 12].

9 (3) The department shall adopt administrative rules
10 that establish time schedules for the submission and
11 adoption of master plans and implementing regulations and
12 policies as required under this title.

13 NEW SECTION. Section 14. Planning advisory council --
14 establishment, membership, and duties. (1) There is a
15 planning advisory council. The department shall consult with
16 the council on the development of all rules, guidelines, and
17 standards established under [section 13].

18 (2) The council is composed of nine members. The
19 governor shall appoint the members of the council, selecting
20 them on the basis of their knowledge of planning, local
21 government, land conservation, and land development.
22 Representation on the council must be as follows:

23 (a) three persons experienced in local planning;

24 (b) one official from a unit of local government;

25 (c) one person experienced in land conservation;

1 (d) two persons experienced in land development; and
 2 (e) two members of the environmental quality council
 3 established in 5-16-101.

4 (3) The planning advisory council shall report to the
 5 environmental quality council by October 1, ~~1993~~ 1992. The
 6 report must contain:

7 (a) information on the process of adopting rules as
 8 used by the department in establishing the rules,
 9 guidelines, and standards required under [section 13];

10 (b) information regarding public participation in the
 11 rulemaking process and summaries of public comments
 12 received;

13 (c) the final rules, guidelines, and standards as
 14 adopted by the department under [section 13]; and

15 (d) the council's comments and recommendations
 16 regarding the adoption process and the rules, guidelines,
 17 and standards. The council's comments and recommendations
 18 may include but are not limited to:

19 (i) comments on the fairness and efficiency of the
 20 rulemaking process;

21 (ii) comments on the adequacy of opportunity for public
 22 involvement; and

23 (iii) recommendations regarding the appropriate role of
 24 the governor or legislature in implementing, enforcing, or
 25 modifying the rules, guidelines, and standards.

1 (4) The environmental quality council shall forward the
 2 report with appropriate comments and recommendations to the
 3 governor and the legislature by November 1, ~~1993~~ 1992.

4 **Section 15.** Section 75-7-207, MCA, is amended to read:

5 **"75-7-207. Regulations for issuance of permits.** (1)
 6 Before January 1, 1976, every governing body having
 7 jurisdiction over an area containing a lake shall adopt
 8 regulations in the form of criteria for the issuance or
 9 denial of permits for work in lakes.

10 (2) Where a planning board has been created under
 11 [section 2] or 76-1-104 for an area containing a lake, the
 12 governing body shall seek the recommendations of the
 13 planning board as to the regulations to be adopted under
 14 this part.

15 (3) The local governing body may provide a summary
 16 procedure to permit work which it finds has a minimal or
 17 insignificant impact on a lakeshore.

18 (4) A governing body whose area contains more than one
 19 lake may adopt regulations in differing form for the various
 20 lakes, recognizing the physical and social differences
 21 between lakes.

22 (5) The requirements of 75-7-208 are minimum
 23 requirements and do not restrict a local governing body from
 24 adopting such stricter or additional regulations as may be
 25 authorized by other statutes."

1 **Section 16.** Section 75-7-211, MCA, is amended to read:

2 *75-7-211. Consultation with local planning board. (1)
3 Where a planning board has been created under [section 2] or
4 76-1-104 for the area containing the lake in question, the
5 governing body shall seek the recommendation of the planning
6 board as to the compliance of the proposed work with the
7 criteria for the issuance of a permit. The planning board
8 shall report its recommendations to the governing body as to
9 whether the proposed work conforms to the criteria for
10 issuance of a permit and may require the applicant to submit
11 additional information before the board reports its
12 recommendations.

13 (2) In areas where a planning board is not established,
14 the functions of a planning board under this section shall
15 be exercised by the local governing body."

16 NEW SECTION. **Section 17.** Codification instruction.
17 [Sections 2, 8, 9 and 12 through 14] are intended to be
18 codified as an integral part of Title 76, chapter 1, and the
19 provisions of Title 76, chapter 1, apply to [sections 2, 8,
20 9 and 12 through 14].

21 NEW SECTION. **Section 18.** Effective date. [This act] is
22 effective on passage and approval.

23 NEW SECTION. **Section 19.** Applicability. [Section 2]
24 applies to all identified local governments on July 1, 1993.

25 NEW SECTION. **Section 20.** Severability. If a part of

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

-End-

1 HOUSE BILL NO. 815

2 INTRODUCED BY LEE, HALLIGAN, GILBERT, MEASURE, COHEN,
3 SPRING, BOHARSKI, HARPER, RANEY, B. BROWN, HARDING
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN UNITS
6 OF LOCAL GOVERNMENT TO PREPARE, ADOPT, IMPLEMENT, AND
7 ENFORCE MASTER PLANS AND DEVELOPMENT REGULATIONS; REQUIRING
8 THE DEPARTMENT OF COMMERCE TO REVIEW AND APPROVE REQUIRED
9 MASTER PLANS AND DEVELOPMENT REGULATIONS BEFORE LOCAL
10 GOVERNMENT ADOPTION; ESTABLISHING GUIDELINES AND SPECIFIC
11 AUTHORITY FOR DEPARTMENT RULEMAKING TO IMPLEMENT PROVISIONS
12 OF THIS ACT; CREATING AND ESTABLISHING MEMBERSHIP AND DUTIES
13 FOR A PLANNING ADVISORY COUNCIL; AMENDING SECTIONS 75-7-207,
14 75-7-211, 76-1-103, 76-1-104, 76-1-601, 76-1-602, 76-1-603,
15 76-1-604, 76-1-605, AND 76-1-606, MCA; AND PROVIDING AN
16 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
17

18 STATEMENT OF INTENT

19 A statement of intent is required in order to provide
20 guidance to the department of commerce in adopting rules to
21 implement the provisions of [this act]. The legislature
22 understands that certain areas of Montana are experiencing
23 rapid population growth or land development. In order to
24 protect the health, safety, and welfare of all Montana
25 citizens in these areas, it is the intent of the legislature

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.

