

MINUTES OF THE MEETING  
SENATE LOCAL GOVERNMENT COMMITTEE  
MARCH 19, 1981

The meeting of the Local Government Committee was called to order by Chairman George McCallum on the above date in Room 405 at 12:30 p.m.

ROLL CALL: All members were present with Senators Hammond and Ochsner coming in late due to other meetings.

CONSIDERATION OF HOUSE JOINT RESOLUTION 28:

RESOLUTION URGING LOCAL GOVERNING BODIES  
TO EXERCISE RESTRAINT AND SOUND BUSINESS  
JUDGMENT IN THE CONSIDERATION AND APPROVAL  
OF INDUSTRIAL DEVELOPMENT REVENUE BONDS.

Representative Sales, District 79, said the Business and Industry Committee is the sponsor of this resolution. Their concern is based on the same thing we have been reading in the newspapers - the use of tax preferred bonds. There have been abuses in issuing the bonds. Congress has been looking at, over a period of 3 years, proposed national legislation that severely limits or restricts use of the bonds. The committee hopes that does not occur. They are asking that the local governmental units that have power to issue these bonds look closely at the public interest of the bond and not accept anything that walks through the door. The intention of the Business and Industry Committee of the House is to send copies to each local government of what the legislature feels are abuses and thus protect financing.

There were no opponents of the resolution appearing before the committee.

There were no questions from the committee.

CONSIDERATION OF HOUSE BILL 770:

AN ACT TO RECONCILE CONFLICTS REGARDING  
MUNICIPAL ORDINANCE, RESOLUTION, AND  
INITIATIVE AND REFERENDUM PROCEDURES BY  
SPECIFYING THE APPLICABILITY OF TITLE  
7, CHAPTER 5, PART 42.

Representative Lory, District 99, said this bill was requested by the city of Missoula to clear up a legal problem. Conflicts arose in the recodification of codes regarding municipal ordinance, resolution and initiative and referendum procedures. The bill allows the city to state whether they are using Part 1 or Part 42 of Title 7, Chapter 5.

There were no opponents of the bill appearing before the committee.

There were no questions from the committee.

CONSIDERATION OF HOUSE BILL 715:

AN ACT TO REVISE THE MONTANA SUBDIVISION  
AND PLATTING ACT AND RELATED LAND-USE  
STATUTES; EXEMPTING CERTAIN SUBDIVISIONS  
FROM REVIEW; REDEFINING SUBDIVISIONS; AND  
MAKING CERTAIN CHANGES.

Representative Lory, District 99, gave some history of the bill. Senate Joint Resolution 43 in the 1977 Legislature requested a study on subdivision laws. An interim committee was appointed and they felt there were serious problems with subdivision laws. Occasional sales and family splits were put in, there was also a provision that subdivisions over 20 acres would require no review. Most subdivisions are taking place through these exemptions. Approximately 90% of the subdivisions in Missoula have not gone through the review process, 81% are never reviewed but automatically approved. The committee devised House Bill 46 in the 1979 Legislature which is very close to this bill. The bill provides that if a city or county wants a master plan, that plan should have a land-use plan and a statement of the philosophy of its overall uses. Division of land which is made to provide security for mortgages or liens, land for gas or oil leases, or land for cemeteries are not considered subdivisions under this law. Some subdivisions do not require a review but do require a survey. If minor subdivisions take place in an area where it would cause trouble with school lands, they are subject to a full review. This bill allows for occasional sale and family split and gets away from land being poorly subdivided. (See attached Exhibit A.)

Senator Dover, District 24, worked on this bill. One problem is developing heavily populated areas. People do not want anyone telling them what to do with their land. Subdivisions require some sort of planning. The interim committee tried to get public exposure from all segments of society to get their views. They wanted as much public input as they possibly could get. They tried to put rhyme and reason into the development of an area. This bill helps the developer but the city will have some voice in the matter. There were three areas the committee was constantly hearing testimony on: abuses on occasional sales, the 20-acre limitation and family conveyance. They tried to make provisions for all three areas. You can have minor subdivisions, subdivisions with a master plan and a subdivision of five lots or more with no master plan. With five lots or more you submit a drawing to the local government showing how you are going to do it. You must provide utility easement and proper access. They have left it up to the review committee to determine if it should have further review or not. Divisions smaller than 40 acres that are to be used for agricultural purposes require only a survey.

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This protects the landowner.

Rose Leavitt, League of Women Voters, spoke in support of the bill. She also submitted amendments to the committee. (See attached Exhibit B.)

Gale Allen, Butte-Silver Bow Planning Board, passed around pictures to the committee of different subdivisions. He supports this bill, it makes an attempt to pursue the original intent of the law and has guidelines to follow. Lending institutions are refusing to issue loans where the access is by private road. General taxpayers suffer for costly roads and utilities. This bill slightly increases costs to the developer but provides for safer development.

Don Snow, staff coordinator for the Environmental Information Center, spoke in support of the bill. (See attached Exhibit C.)

Vicki Byrd Rinck, Flathead Conservation District, spoke in favor of the bill. (See attached Exhibit D.)

Dave Adkisson spoke in support of the bill. He was involved in the Environmental Information Center's 1980 Missoula County Subdivision Inventory Report. (See attached Exhibit E.)

Bill Rinck, member of the Flathead County Planning Board, accountant and landowner, spoke in support of the bill. (See attached Exhibit F.)

Jean Wilcox, deputy county attorney in Missoula, was also representing the Missoula County commissioners. They are in full support of this bill. County attorneys face a lot of problems with the current framework of the law. It is a policy impossible to implement. The current laws allow for certain exemptions; unless your purpose is to obey the purposes of the law, you can use the exemptions. That is where the impossibility lies. Having a review can insure a road is properly graded with adequate width. There is a good purpose in the subdivision law but the way it has been used is defeating its purpose. A change is necessary and that change must come from the legislature. This bill solves a lot of problems by using exemptions.

Joan Bird, Citizens for Orderly Development in Kalispell, said they are trying to solve development problems. The Flathead is growing faster than any other county in the state. They have no way to stop impacts that are occurring. We need planning. People feel the process is too strict and too severe. We need to streamline the process.

Senator McCallum then called for opponents of the bill.

Cliff Christian, Montana Association of Realtors, spoke in opposition of the bill. (See attached Exhibit G.) He is amazed that the proponents think that review of subdivisions guarantees they will be free of all problems. He submitted articles on the costs of planning. (See attached Exhibit H.) He hopes the committee will consider an amendment to the acreage definition to define subdivisions of less than 5 acres in size.

Representative Stobie, District No. 23, opposes the bill. He read a letter from Laurence J. McCarthy, Sanders County surveyor, which expresses his thoughts. (See attached Exhibit I.)

Senator Manley, District No. 14, opposes the bill. They have gone completely backwards regarding the 5 acre subdivisions and this bill will make it worse. There is no answer in the bill to the problem. The bill does not provide that the planners must come up with a plan, they should have a detailed plan. This legislation will only add to the problem and it will happen twice as fast.

Bill Romine, Montana Land Title Association, said the bill will not do what the proponents say it will do. This will take land out of agriculture. There will be automatic 35-day denials. People cannot afford 40-acre parcels. We do not need more regulation and we do need to get back to less than 5 acres.

Jerry Hamlin, home builder, served on a planning board for 5 years and has been a developer for 8 years. The master plan is the major thing they wanted to accomplish on the planning board, there was federal money available to compile the plan. They paid an engineering and consulting firm \$20,000 and the plan was never implemented. The county is too large to master plan every section. He is developing a subdivision in the Helena valley. It contains 14 lots with a land base cost of \$2,000 plus \$4,000 per lot in development cost. He was developing these lots to be sold to people obtaining federal loans. The loans require that there be paved roads, curbs and gutters, central water and sewer - those are not economically feasible. It was supposedly agricultural land but there is nothing on it but sagebrush. His 14 \$6,000 lots amount to a little more than \$3 per lot with the costs he has incurred.

Scott Currey, Montana Association of Realtors, spoke in opposition of the bill. (See attached Exhibit J.)

Ethel Harding, clerk and recorder from Lake County, spoke in opposition of the bill. (See attached Exhibit K.)

Julie Hacker, Missoula, was representing herself. She has been trying to find out the master plan for Missoula County. There doesn't seem to be any documentation of it. Land use is a moral issue as well as financial. The Missoula County Attorney is writing up a subdivision plan.

Gordon Darlington, Agriculture Preservation Association in Gallatin County, opposes the bill. If the bill is carried out to the letter, nearly all land will be included in this bill in later years. There is no right of private ownership. We should make agriculture more profitable so they do not have to sell farmland. The 40 acres is a step backwards, it should be 5 or even 1 acre.

George Johnston, ASARCO, was speaking on behalf of some of the employees that are concerned with the bill. Too often government does to us what we do not want done.

Craig Winterburn, past president of the Lewis & Clark Planning Board, said basically the law we have been working with is not working. What we are doing here is expanding to include more land into something that is not working. This is not going to solve any of the problems.

Lawson Lowe, CPA and former member of the Missoula Planning Board and also a former developer in Helena, tried to work with the system about a year ago. They tried to plan for a Pioneer Park Subdivision. They submitted a conceptual plan to different agencies for them to look at to give ideas of how to solve some of their problems but still develop the land. The conceptual plan was accepted and they were given approval and submitted a preliminary plan. Because of agricultural purposes, they ruled against subdivision. After the staff recommended denial, they went to the planning board and they approved it. The commissioners, after a year of planning and thousands of dollars, denied it. There must be a more clearly defined plan. He urges a do not pass for this bill. He submitted a series of newspaper articles from the Independent Record on the subdivision. (See attached Exhibit L.)

Bernie Swift, Hamilton, said we must start looking at the economics of farming. House Bill 715 is nothing more than the same thing we had before but this is worse. He read part of Article 7 of the Bill of Rights to the committee.

Tom Westen, Helena Home Builders Association, said he attended a meeting with the Lewis & Clark County Planning office on September 30, 1980. The subject is explained in attached document. (See attached Exhibit M.) One problem under the current situation is they are devoting between 85 and 90 percent of their time to current planning, subdivision review and land-use changes so about 10 or 15 percent of their time is left for long-range planning. One question with this bill is if planning staffs are to be expected to review subdivisions, where are they going to get the time? A typical 50-unit subdivision costs \$4,425 in staff time. Minor subdivisions are about \$2,900 in staff review time. Taxpayers are absorbing the cost.

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Jerry Ditto, property owner in Teton County, opposes the bill. The only people for the bill work for the government. Landowners are against it.

Tom Harrison, Montana Homebuilders Association, said each figure from 5 to 40 acres has been a loophole. They will be back each year to keep raising the figure. We need accurate figures.

Representative Lory, in closing, said the 40-acre figure has been misunderstood. This does not address the problem of subdividing agricultural land. This is offering a middle path.

There were no questions from the committee.

There being no further business before the committee, the meeting was adjourned at 3:00 p.m.

  
Chairman George McCallum

gs

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3/19/81

NAME	PRESENT	ABSENT	EXCUSED
Senator George McCallum	✓		
Senator Jesse O'Hara	✓		
Senator H. W. Hammond	✓		
Senator J. Donald Ochsner	✓		
Senator Bill Thomas	✓		
Senator Max Conover	✓		
Senator Fred Van Valkenburg	✓		

Each day attach to minutes.

MARCH 19, 1981

BILL NO. HJR28

[illegible]

(Please leave prepared statement with Secretary)

DATE

MARCH 19, 1981

COMMITTEE ON

LOCAL GOVERNMENT

BILL NO. HB715

## VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
WM F. GOWEN	MONTANA LAND TITLE ASSN		✓
S. BARKMEYER	HELENA ABSTRACT & TITLE CO		✓
Per H. S. Ditt	My self		✓
William W. Hall	My self		✓
Terrell G. Swift	Myself		✓
May I Olive	Self		✓
Walter Eversley	Self		✓
BILL RINCK	Flathead County Planning Board	✓	
Mike Byrd Park	FLATHEAD CONSERVATION DISTRICT	✓	
John E. WETSCH	Montana Home Builders Assoc		✓
Thomas J. Weston	Helena Home Builders Assoc		✓
Tracy M. Meedy	STEVENSVILLE Mt		
Cliff Christian	MT ASSN OF REALTORS		✓
Joe Fawcett	Myself		✓
Lonnie Gumbard	" "		✓
Raul Erickson	MARLS & Myself		✓
John Harker	Case Ranch & Myself		✓
John Cabana	Trails Co. Truckloaders		✓
Rose Leavitt	LWV of Montana	✓	
Janey Guthrie	Self		✓
Edith M. Medley	Lab. Co. Clerk & Recorder		✓
Blaine A. Wilson	" " Chief Dep. Clerk & Rec		✓
Janson M. Love	Myself - Maltbie, Inc.		✓
Jerry Hamlin	Self		✓
Jeff D. Halen	Self		✓
Joe Todd	Rep Hemmons		

(Please leave prepared statement with Secretary)

DATE

MARCH 19, 1981

COMMITTEE ON LOCAL GOVERNMENT

BILL NO. HB715

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## VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Tom Hamlin	Mont. Homebuilders Assoc		✓
Ed. Kelly Jr.	Self		
Ed. Kelly Jr.	Representative Dist 8	✓	
Ed. Kelly Jr.	Mont. Manufacturing Homebuilders		✓
Ed. Kelly Jr.	Mont. Assoc. Plan.	✓	
George S. Phelan	Crane		✓
Don Snow	EIC	✓	
Ruth Sjelmick	self	✓	
Mary Williams	self	✓	
Walt Seles	HTD 79	✓	
David Sear	self	✓	
Arthur A.	self		✓
Pat Tustin	self		✓
BILL SPILKER	self		✓
David B. McKisson	Self	✓	
Jean Wilcox	Missoula Co. Commrs. & Atty's office	✓	
Scott Curry	MT. ASSOC. OF REALTORS		✓
JOAN BIRD	CITIZENS FOR ORDERLY DEVELOPMENT	✓	
Long Lee	self		✓
Pat M. Sordover	Senate Dist #22 (Self)		✓
William R. Raine	Mont. Land & Title Assoc		✓
Jim Richard	DCA	✓	
Mary Winterburn	Panther Park Pres Lewis Clark (Whisper Board)		✓

(Please leave prepared statement with Secretary)



NAME: Rose Lewitt DATE: 3/19/81

ADDRESS: 318 Harrison - Helena

PHONE: 443-4783 home 443 4540 office

REPRESENTING WHOM? League of Women Voters

APPEARING ON WHICH PROPOSAL: HB 715

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENTS: see prepared statement + amendments

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Gale Allen DATE: \_\_\_\_\_

ADDRESS: Belle Me B-SB Plan Bd.

PHONE: 723-8262 Ex 220

REPRESENTING WHOM? Mont. Asso. Planners

APPEARING ON WHICH PROPOSAL: HB 715

DO YOU: SUPPORT? ☒ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bill Rock DATE: 3/19/81

ADDRESS: 187 6th Ave E.N. Columbia Falls, MT

PHONE: 892-3765

REPRESENTING WHOM? Flathead County

APPEARING ON WHICH PROPOSAL: HB 715

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENTS: HB 715 would effectively close most of the  
Leapholes which have caused great problems in Montana's  
Endangered population County. IT would Bring men  
Land Divisions under Government Review - which would give  
our County Commissioners control over the development of  
prime farm land and properly planned subdivisions free  
from existing services. Of the 87,000 acres developed in  
Flathead in the Flathead over the past 8 years, over 90% of  
it has escaped public review. This has added greatly  
to the TAX Burden of our County - As Taxes don't seem  
to rise fast enough to keep up with the increase in services.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME William L. Rennie BILL No. H.B. 715  
ADDRESS P.O. Box 1691 Helena DATE 3-19-81  
WHOM DO YOU REPRESENT Mont. Land Title Assoc.  
SUPPORT \_\_\_\_\_ OPPOSE x AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: This bill will create more delays in the transferring of land. Since basically all divisions of land will require some type of review, it fairly certain that many delays will occur, or many more people will have to be hired to take on the extra load. Even in the area of the minor review, it would appear that automatic denials will be the norm. Since this application is automatically approved if not denied within 35 days, and since it is doubtful the reviews can occur within such a time frame, a denial will be the answer. In addition, this bill will result in more & more agricultural property being taken out of use. There will be more & more 40 acre subdivisions. People will be buying property for \$80,000 to \$100,000, just for the land. It is anticipated that there will be more & more defaults on contracts as people are unable to meet the high monthly payments. This will create more clouds upon title and resulting quiet title actions to clear titles. We will experience a rise in Bank foreclosures. Cost to the consumer will go up at all levels of subdivisions. Survey fees will increase dramatically, because engineering capabilities will be required. Finally, title insurance does not include gov. regulations. Since there will be more & more regulatory actions, people will have a larger area of their title subject to not being insured.

NAME: Evelyn Harding DATE: 3-19-81  
ADDRESS: Lake County Courthouse, Palsar, MT 59860  
PHONE: 883-6211 Ext 245  
REPRESENTING WHOM? Lake County Clerk and Recorder  
APPEARING ON WHICH PROPOSAL: HB 715  
DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? ☒

COMMENTS: \_\_\_\_\_

Written testimony submitted.  
Thank you.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Robert Lee Kelly

DATE: 3-19-81

ADDRESS: 5415 N. 1st - Phoenix, Arizona 85018

PHONE: 244-5531

REPRESENTING WHOM? *2*

APPEARING ON WHICH PROPOSAL: *1-10-45*

DO YOU: SUPPORT? AMEND? OPPOSE? ☒

**COMMENTS:**

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Gordon D. Dillman DATE: 3-19-81

ADDRESS: Three Forks, Mt

PHONE: 285-6719

REPRESENTING WHOM? Aggravated Prosecution Case

APPEARING ON WHICH PROPOSAL: 4715

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? X

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Lawson M. Lave DATE: 3/20/81

ADDRESS: P.O. Box 2579 MISSOULA, MT 59806

PHONE: 721-5840

REPRESENTING WHOM? Mel Lave, Inc

APPEARING ON WHICH PROPOSAL: House Bill 715

DO YOU: SUPPORT?            AMEND?            OPPOSE? ✓

COMMENTS: I am a developer in Lewis & Clark County,  
a former member of Missoula County Planning  
Board and a CPA for Anderson ZurMuehlen  
and Co (Missoula)

Please see attached information

Exhibit "L"

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bernie A. Swift DATE: 3/19/81

ADDRESS: SE 906 Rose Lane, Hamilton, Mt. 59840

PHONE: 313-2172

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: N.P. 715

DO YOU: SUPPORT?            AMEND?            OPPOSE? ✓ Strongly

COMMENTS: Do not agree with need for changing present Subdivision  
and Platting Act - Current ~~Act~~ Law already USURPS Landowner  
rights and this will further erode further same plus the fact  
that it is no more than a mere guest, make work proposals  
totally disagree with the recommendation of "a 1/1 Land Division",  
the restriction on anyone conveying land to family members, the  
cessional sale and the fact that Section, 76-1-606 (3), (a)  
mandates and Forces zoning without Landowner representation!  
The Bill should be killed completely and never leave  
Committee.

Bernie A. Swift

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: 12500 Ditt DATE: 7-19-81

ADDRESS: 111 #1 Cambridge, MA 02142

PHONE: 617-552-5554

REPRESENTING WHOM? Mp. 4 - Form 1000 career

APPEARING ON WHICH PROPOSAL: 245-715

DO YOU: SUPPORT?            AMEND?            OPPOSE? X

COMMENTS: I do not oppose it

because it is a good idea

and it is a good idea

to have a good idea

and it is a good idea

to have a good idea

and it is a good idea

and it is a good idea

and it is a good idea

and it is a good idea

and it is a good idea

and it is a good idea

and it is a good idea

and it is a good idea

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: George S. White DATE: 3-14-81

ADDRESS: 775 11th Street, N.W.

PHONE: 312-8250

REPRESENTING WHOM? United Brotherhood of Carpenters

APPEARING ON WHICH PROPOSAL: 219-5

DO YOU: SUPPORT?        AMEND?        OPPOSE? X

COMMENTS: KEEP PURSUEMENTS OUT

OF THE PRIVATE SECTOR

AND

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

**NAME :**

**DATE:**

**ADDRESS :**

**PHONE :**

## REPRESENTING WHOM?

**APPEARING ON WHICH PROPOSAL:**

**DO YOU:**

**SUPPORT?**

**AMEND?**

**OPPOSE?**

**COMMENTS:**

**PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.**

NAME: J S BARKMEYER

DATE: 3-19-81

ADDRESS: P.O. Box 486; Helena MT

PHONE: 442-5080

REPRESENTING WHOM? HELENA ABSTRACT & TITLE CO

APPEARING ON WHICH PROPOSAL: H.B. 715

DO YOU: SUPPORT?            AMEND?            OPPOSE?            ✓

COMMENTS: H.B. 715 technically eliminates the gift to a member  
of immediate family by language that says said conveyance must go  
to such member.

The "commutation effect" section appearing as a new section on  
page 15 is inequitable & unfair treatment to all citizens because the  
first party proposing minor subdivision is reviewed as such but if  
a subsequent party proposes an adjacent minor sub the second minor  
sub receives major review. It is unfair because a subdivision  
adjacent to a city must be reviewed by both the city and the county.  
The 40 acre limit will NOT restrict the subdividing of Helena  
land but instead it will waste our land.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Serrano, Raul DATE: Nov. 19, 1980

ADDRESS: 1000 G. Rd. Canton, MS

PHONE: 755-1234

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: 2A 75

DO YOU: SUPPORT? ✓ AMEND?            OPPOSE?           

COMMENTS: \_\_\_\_\_

**PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.**

NAME: Nora Cahoon DATE: Mar 19, 80

ADDRESS: Spa Inn - Bonner Mt.

PHONE: 244-5550

REPRESENTING WHOM? Nolan Co. Fishholders

APPEARING ON WHICH PROPOSAL: H.B. - 715

DO YOU: SUPPORT?            AMEND?            OPPOSE? X

COMMENTS: The cost to the tappers - for permits  
needed almost doubled - added costs only  
increase the cost of land. The here is  
just as bad as it was 5 yrs ago. It  
is costly - cumbersome. I am a guide.  
That the House Local Gov't Com. passed  
this law - they are so cost conscious when  
control by the landowner is concerned  
but when gov't control enters the  
picture - cost is of no concern.

Cliff & Secretary Murphy said it all

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Walter Everly, DATE: 3-19-81

ADDRESS: 826 W Park St. Butte, Montana

PHONE: 792-1738

REPRESENTING WHOM? Everly & Associates, Consulting Engineers & Land Surveyors

APPEARING ON WHICH PROPOSAL: H.B. 715

DO YOU: SUPPORT?            AMEND? ✓ OPPOSE? ✓

COMMENTS: Removal of 20 Acre limit & "family  
tract" legal avoidance will, in most cases,  
increase the cost of a small tract to  
an individual greatly - especially in  
Counties who have full-time Planning  
Directors who are being encouraged to  
prepare ever-increasing restrictions on the  
sale of property by the State Department of  
Community Affairs & other State Agencies.  
State & local regulations are becoming  
very restrictive & oppressive & costly!!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Wm. F. GOWEN DATE: 19 Mar '81

ADDRESS: 805 MILL RD

PHONE: 442-5080

REPRESENTING WHOM? MONTANA LAND TITLE ASSN.

APPEARING ON WHICH PROPOSAL: HB 715

DO YOU: SUPPORT?            AMEND?            OPPOSE? ✓

COMMENTS: This bill will impede the timely transfer of land  
due to the additional review and will restrict the land  
owner in the sale of his land. It will take more  
land out of farm production by raising the  
acreage limitation to 40 acres. Record keeping  
is already a problem and this will increase  
the need for more record keeping with reference  
to surveys and plats. The review of good, well  
planned subdivisions have been so slow in many cases  
that developers have abandoned good plans and sold  
large tracts.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME Joe Jakobson

BILL NO. 715

ADDRESS 7516 North Montana

DATE 3/19/81

WHOM DO YOU REPRESENT \_\_\_\_\_

SUPPORT \_\_\_\_\_

OPPOSE ☒

AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I believe I should be able to sell my land when I want to and to whom I want to. I have a 70 acre farm, that you can not make a living on. I have a housing unit to the north of me, a housing unit on the west, plus a school house that will want to buy more of my ground someday. On the east side of this property is a store. On the south side of this property is a Montana Power Sub Station. How can you keep this as a farming parcel? I am opposed to this bill.

NAME: Paul T. Keller DATE: 3/19/1981

ADDRESS: Helena Montana

PHONE: 742-0230

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB 715

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? ☒

COMMENTS: Minimum acreage should be decreased  
instead of being increased before  
a 40 acre limit only increases  
the use of land. Another solution must  
be found to stop subdivision. The  
present system makes the costs  
of land so expensive that young  
people can't afford to own a home

NAME: Thelma Wandy DATE: 3 - 19 - 81

ADDRESS: Stucksville 5751 East side Young Mt.

PHONE: 777 8758

REPRESENTING WHOM? myself & people of the Bitterroot Valley

APPEARING ON WHICH PROPOSAL: HB 715

DO YOU: SUPPORT?            AMEND?            OPPOSE? X

COMMENTS: I am intensely opposed to this Bill. As  
they have kept it a secret from us. and  
It is purely communistic in Dictator ship.  
It takes away all the basic women  
Constitutional rights.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Sam Elmer Severson DATE: 3/19

ADDRESS: Stevensville TX.

PHONE: 442-0288

REPRESENTING WHOM? Self.

APPEARING ON WHICH PROPOSAL: 715

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? ✓

COMMENTS: \_\_\_\_\_

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Elmer Severson

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

3/19/81

2031 H-L Ave

442-99 9A

Most Manufactured Goods Assoc.

HR 715



**COMMENTS:**

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TO: MEMBERS OF SENATE LOCAL GOVERNMENT COMMITTEE

FROM: MAE NAN ELLINGSON, MISSOULA DEPUTY CITY ATTORNEY

RE: HOUSE BILL NO. 770

DATE: MARCH 19, 1981

Dear Legislators:

The City of Missoula requested that Representatives Lory and Eudaily introduce a bill to clear up some inconsistencies that exist in the local government statutes. The inconsistencies are quite obvious ones and cause people dealing with local government laws a fair amount of consternation.

By way of illustration, I have attached for each of you a copy of the two code parts that are inconsistent. If you will look at Section 7-5-123, M.C.A., you will see that resolutions are effective immediately; if you look at Section 7-5-4203, you will see that ordinances and resolutions do not become effective until 30 days after passage. This type of inconsistency is found throughout the parts.

Most of Part 42 has been in existence since 1895 and 1907 and the provisions contained therein are the ones under which cities with general government powers have conducted their affairs. In 1977, Senator Lockrem introduced a bill containing the provisions now codified as Part 1, Title 7, Chapter 5. The bill was introduced after observing that House Bill No. 22, the Local Government Code bill, was not going to be adopted. The intent of the bill was to establish some procedures for the conduct of business by local governments that adopted alternative forms of government in 1976.

Since recodification, the legislative history of Part 1 has disappeared and no reference is contained anywhere within the statutes to indicate whether cities should conform to Part 1 or Part 42 of the Code. Several conflicting opinions have been issued by different agencies because of the existence of Part 1 and Part 42.

Two years ago, the Missoula County Attorney's Office issued an opinion to the effect that the Part 1 provisions concerning local initiatives and referendums did not apply to the City of Missoula since Missoula had not adopted an alternative form of government. The opinion further concluded that since the 1979 Legislature inadvertently repealed the initiative and referendum sections contained in Part 42, there were no initiative and referendum procedures for general government cities like Missoula.

An Attorney General's Opinion, No. 37, in 1979 held that the initiative and referendum provisions of Part 1 applied to all local governments but did not attempt to reconcile the conflicts between Part 1 and Part 42. After the Opinion was released, I spoke with the Attorney General's Office about the Opinion and discovered that they were essentially unaware of Part 42.

There are undoubtedly several ways of resolving this conflict, and House Bill 770 represents a reasonable approach.

The bill basically provides that Part 42 will govern the conduct of City business, unless there are specific provisions contained elsewhere in local government law, such as the S.I.D. or zoning law, or unless Part 42 does not address the procedure, or unless the City chooses to adopt provisions of Part 1 that conflict with Part 42.

Very truly yours,

*Mae Nan Ellingson*  
Mae Nan Ellingson

Missoula Deputy City Attorney

MNE/id

1                    HOUSE    BILL NO.    770  
2    INTRODUCED BY Rep. Eide  
3  
4    A BILL FOR AN ACT ENTITLED: "AN ACT TO RECONCILE CONFLICTS  
5    REGARDING MUNICIPAL ORDINANCE, RESOLUTION, AND INITIATIVE  
6    AND REFERENDUM PROCEDURES BY SPECIFYING THE APPLICABILITY OF  
7    TITLE 7, CHAPTER 5, PART 42."  
8  
9    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10        Section 1. Applicability of part. (1) Except as  
11    provided in subsection (2), the provisions of this part  
12    govern the adoption procedures and effect of municipal  
13    ordinances, resolutions, and initiatives and referenda.  
14        (2) The following provisions apply to adoption  
15    procedures and effect of municipal ordinances, resolutions,  
16    and initiatives and referenda notwithstanding the provisions  
17    of this part:  
18        (a) provisions of law not within Title 7, chapter 5,  
19    parts 1 and 42;  
20        (b) sections of Title 7, chapter 5, part 1, that are  
21    in conflict with the provisions of this part which a  
22    municipality by ordinance adopts for governing its  
23    procedures or effects; and  
24        (c) sections of Title 7, chapter 5, part 1, that  
25    address procedures or effects which are neither addressed by

1    this part nor in conflict with any provision of this part.  
2        Section 2. Codification instruction. Section 1 is  
3    intended to be codified as an integral part of Title 7,  
4    chapter 5, part 42, and the provisions of section 1 apply to  
5    Title 7, chapter 5, part 42.

-End-

7-5-4142. Attendance at meetings and conventions by municipal officers and employees.

**Part 42 — Ordinances, Resolutions,  
and Municipal Initiative and Referendum**

- 7-5-4201. Municipal ordinances.
- 7-5-4202. Incorporation of technical codes by reference.
- 7-5-4203. Effective date of ordinances and resolutions.
- 7-5-4204. Details relating to emergency measures.
- 7-5-4205. Powers of mayor related to ordinances and resolutions.
- 7-5-4206. Procedure to veto ordinance or resolution.
- 7-5-4207. Penalties for violation of municipal ordinances.  
Sections 7-5-4208 through 7-5-4210 reserved.
- 7-5-4211 through 7-5-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

**Part 43 — Municipal Contracts and Franchises**

- 7-5-4301. Power to enter and execute contracts.
- 7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.
- 7-5-4303. Exemptions from bidding or advertising requirements for certain contracts.
- 7-5-4304. Certain contracts to be submitted to voters.
- 7-5-4305. Prohibition on division of contracts to circumvent bidding requirements.
- 7-5-4306. Use of installment purchase contract.
- 7-5-4307. Sale or trade-in of old supplies or equipment.
- 7-5-4308. Procedure to modify contract.
- 7-5-4309. Oath of contractor required for payment.  
Sections 7-5-4310 through 7-5-4320 reserved.
- 7-5-4321. Grant of franchise — election required.
- 7-5-4322. Election on question of granting franchise.

**Part 44 — Municipal Elections**

- 7-5-4401. Division of municipalities into wards.
- 7-5-4402 through 7-5-4409. Repealed. Sec. 407, Ch. 571, L. 1979.

**Part 1**

**Local Government Ordinances, Resolutions,  
and Initiatives and Referendum**

**7-5-101. Definition.** As used in this part, "chief executive" means the elected executive in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

History: En. 47A-3-101 by Sec. 13, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-101.

**7-5-102. Construction of certain sections.** Sections 7-5-103 through 7-5-107 merely provide a procedure for the adoption of ordinances and shall not be construed as granting authority to adopt ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(10).

**7-5-103. Ordinance requirements.** (1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) No ordinance passed shall contain more than one comprehensive subject, which shall be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies made available to the public.

(4) After passage and approval, all ordinances shall be signed by the chairman of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(1) thru (3), (5).

**7-5-104. Emergency ordinance.** In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(4).

**7-5-105. Effective date of ordinance.** No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(6).

**7-5-106. Ordinance veto procedure.** If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to the next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(7).

**7-5-107. Register of ordinances and codification.** (1) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.

(2) (a) No later than 1980 and at 5-year intervals thereafter, appropriate ordinances shall be compiled into a uniform code and published.

(b) The recodification is not effective until approved by the governing body.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(8), (9).

**7-5-108. Adoption and amendment of codes by reference.** (1) Any local government may adopt or repeal an ordinance which incorporates

by reference the provisions of any code or portions of any code or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and kept there, available for public use, inspection, and examination. The filing requirements prescribed in this section shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) The filing requirement of subsection (1) shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, and inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

History: En. 47A-3-103 by Sec. 6, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-103.

**7-5-109. Penalty for violation of ordinance.** A local government may fix penalties for the violation of an ordinance which do not exceed a fine of \$500 or 6 months' imprisonment or both the fine and imprisonment.

History: En. 47A-3-104 by Sec. 7, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-104.

**7-5-110 through 7-5-120 reserved.**

**7-5-121. Resolution requirements.** (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.

(3) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(1), (2), (4).

**7-5-122. Resolution veto procedure.** If the plan of government allows the chief executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the chief executive fails to act, the resolution is approved. If the chief executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

**History:** En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(3); amd. Sec. 1, Ch. 311, L. 1979.

**7-5-123. Effective date of resolutions.** All resolutions shall be immediately effective unless a delayed effective date is specified.

**History:** En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(5).

**7-5-124 through 7-5-130 reserved.**

**7-5-131. Right of initiative and referendum.** (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-137.

(2) The powers of initiative shall not extend to the following:

- (a) the annual budget;
- (b) bond proceedings, except for ordinances authorizing bonds;
- (c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; or
- (d) the levy of special assessments pledged for the payment of principal and interest on bonds.

**History:** En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(1), (2).

**7-5-132. Procedure to exercise right of initiative or referendum.** (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum shall:

- (a) embrace only a single comprehensive subject;
- (b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;
- (c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; and

(d) contain the signatures of 15% of the registered electors of the local government.

**History:** En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(3) thru (5); amd. Sec. 299, Ch. 571, L. 1979.

**Compiler's Comments**

*Transition.* Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

**7-5-133. Processing of petition.** (1) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(2) If the governing body does not within 60 days take the proposed action, then the question shall be submitted to the electors at the next school, primary, or general election or a special election called for that purpose.

**History:** En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part).

**7-5-134. Determination of number of signatures required for petition.** In order to determine the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors shall be the number of individuals registered to vote at the preceding general election for the local government.

**History:** En. 47A-3-107 by Sec. 10, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-107.

**7-5-135. Suit to determine validity and constitutionality of petition and proposed action.** (1) Before submitting the question to the electors, the governing body may direct that a suit be brought in district court by the local government to determine whether the petition is regular in form and has sufficient signatures and whether the proposed action would be valid and constitutional.

(2) The complaint shall name as defendants not less than 10 or more than 20 of the petitioners. In addition to the names of the defendants, to the caption of the complaint there shall be added the words: "And all petitioners whose names appear on the petition for an ordinance filed on the ... day of ..., in the year ...", stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein and in addition shall be published.

**History:** En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part).

**7-5-136. Submission of question to electors.** (1) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(b) the governing body calls for a special election on the question.

(2) A special election may not be held sooner than 60 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

(5) The question shall be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(7); amd. Sec. 300, Ch. 571, L. 1979.

**7-5-137. Effect of repeal or enactment of ordinance by initiative or referendum.** If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative at any time to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(6)(d).

## Part 2

### Operation of Consolidated Units of Local Government

**7-5-201. Operation of self-government consolidated units of local government.** (1) Whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where such units are subject to state law under 7-1-111 through 7-1-114.

(a) the membership fees and dues in any organization of city and town officials when the purpose of the organization is improvement of laws relating to city and town government and their better and more economical administration; and

(b) the necessary expenses of any regular officer or employee of the city or town in attending any convention or meeting of such organization upon the direction of the governing body by order upon its minutes, stating that the public interest requires such attendance.

(2) The payment of membership fees, dues, and/or expenses is to be made from such fund of the city or town as the governing body shall direct in the order, with the claim presented, audited, and allowed as are other claims against the city or town.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(3); amd. Sec. 5, Ch. 311, L. 1979.

**7-5-4142. Attendance at meetings and conventions by municipal officers and employees.** Unless otherwise provided by law, no city officer or employee may receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gathering as the officer or employee may by virtue of his office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 6, Ch. 311, L. 1979.

## Part 42

### Ordinances, Resolutions, and Municipal Initiative and Referendum

**7-5-4201. Municipal ordinances.** (1) The style of ordinances may be as follows: "Be it ordained by the council of the city of .... (or town of ....)", and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in his stead and must be recorded in a book kept by the clerk, called "The Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or codified.

(3) No ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

History: (1)En. Sec. 4804, Pol. C. 1895; re-en. Sec. 3264, Rev. C. 1907; re-en. Sec. 5055, R.C.M. 1921; re-en. Sec. 5055, R.C.M. 1935; Sec. 11-1101, R.C.M. 1947; (2), (3)En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd.

Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; Sec. 11-1102, R.C.M. 1947; R.C.M. 1947, 11-1101, 11-1102(part).

**7-5-4202. Incorporation of technical codes by reference.** (1) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference.

(2) At least 15 days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town. Three copies of the code or part to be adopted shall be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code or part of a code is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code or part of a code adopted.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(2), (3).

→ **7-5-4203. Effective date of ordinances and resolutions:** No ordinance or resolution passed by the council of any city or town may become effective until 30 days after its passage except:

(1) general appropriation ordinances providing for the ordinary and current expenses of the city or town; and

(2) emergency measures.

History: (1) En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; Sec. 11-1106, R.C.M. 1947; (2) En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; Sec. 11-1102, R.C.M. 1947; R.C.M. 1947, 11-1102(part), 11-1106(part); amd. Sec. 7, Ch. 311, L. 1979.

**7-5-4204. Details relating to emergency measures.** In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances, the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety and shall not include:

(1) a franchise or license to a corporation or individual;

(2) any provisions for the sale of real estate;

(3) any lease or letting of any property for a period exceeding 1 year; or

(4) the purchase or sale of personal property exceeding \$5,000 in value.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; R.C.M. 1947, 11-1106(part).

**7-5-4205. Powers of mayor related to ordinances and resolutions.** The mayor has power to:

(1) cause the ordinances of the city or town to be executed;

(2) approve all ordinances and resolutions of the council adopted by it;

(3) veto any objectionable part of a resolution or ordinance and approve the other parts.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

HB 715

1977 SSR-43

Interim Comm. Ttee.

History of Subdivision regulation

1895 enacted the original statutes regulating plotting of cities

1917 Port dedication

1921 Plot requirement broadened.

1973 - <sup>Turnage</sup> SB 208 as Monterey Subdivision and Plotting Act

1974 HB 1017 (Sheldahl) less than 20 acres  
adding occasional sale.

1975 HB 666 Vint must be in the public interest

1977 three bills by Senator Stong relaxation of  
common lot lines, aggregation of lots  
increased lots must be reviewed

requiring environmental assessment and  
public interest when a subdivision is in an  
area covered by a master plan

requiring expedited review of first minor  
subdivision from a tract

### Master Plan

When a master plan has been approved, containing  
three provisions:

1. land use plan geographic areas  
suitable for residential, commercial or industrial  
community policy regarding quality or location  
of urban development

- 2 Housing plan that identifies the existing housing units by type and number and the estimated availability of housing by type and number of units.
- 3 a public services plan that identifies existing public services and facilities including but not limited to water systems, sewage treatment and solid waste disposal, parks and recreation, schools, roads and bridges and police and fire protection.

- A 1 Exemptions of certain divisions of lands requirements do not apply to
- a creation to provide security for construction mortgages, liens or trust indentures
  - 2 creation an interest in oil, gas or minerals or water which is severed from the surface ownership of real property
  - 3 creates cemetery plots

B

### Section 5

Subdivisions exempted from review but subject to survey requirements

a divisions made outside of platted subdivisions.

for the purpose of relocating common boundary lines between adjoining properties

b, A single division of a parcel by an owner of land which has been held continuously for a period of 3 years and which is outside of a platted subdivision if the Transaction is a gift

or sale to each member of the landowners immediate family. Any further division of the exempted parcel shall be reviewed by the governing body.

- c. Division made outside of a plotted subdivision by sale when the parties to the transaction enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the land will be used exclusively for agricultural purposes and that residential commercial and industrial uses or structures will be excluded on parcels of less than 40 acres.
- d. a single division of a parcel to which title or contract for deed as recorded in a notice of purchasers interest filed with the clerk and recorder has been held continuously for a period of 3 years and which is outside of a plotted subdivision if the transaction is an occasional sale. Any further division of the exempted parcel shall be reviewed by the governing body.
- e. For 5 or fewer lots within a plotted subdivision relocation of common boundaries and the aggregation of lots if the survey is filed with the county clerk and recorder as an amended plat.

- f divisions ordered by a court of record pursuant to Uniform Marriage and Divorce Act or pursuant to the law of decedent's estate. if the case number of the order is noted on the certificates of survey.
- g divisions that could be created pursuant to the law of eminent domain.
- h Divisions used for utility siting or easements provided no structure requiring water or sewage disposal is erected on the parcel.

### Section 7 Provision for Summary review of subdivisions.

- a a minor subdivision (5 lots per lot more)
- b consisting exclusively of parcels larger than 40 acres in size.
- c lying within the corporate boundaries or lying within areas for which a master plan has been adopted and to which the subdivisions conform.

### Section 9

Except where a plot is eligible for summary ~~review~~ approval the subdivider shall present to the governing body or the agent making the preliminary plat of the proposed subdivision for local review.

- a. When proposed subdivisions within boundaries of an incorporated city or town, to the city or town governing body for approval
- b. When the proposed subdivision is situated entirely in an unincorporated area to the governing body of the County
- c. If the proposed subdivision is within 1 mile of a third class town or city or within 2 miles of a second class city or within 3 miles of a first class city, the County governing body shall submit the preliminary plat to the city or town governing body for review and comment.
- d. If the proposed subdivision is contiguous to the boundary of an incorporated city or town or is separated by only a public road. The approval by the County governing body shall be contingent upon and are then finding by the city that the design and location of any roads or central water and sewer facilities will be compatible with the existing facilities of the municipality.
- e. If the proposed subdivision lies partly within an incorporated city or town the plat

must be submitted to both city and county governing bodies for approval.

- 2 The governing body shall approve, conditionally approve or deny the preliminary plat within 60 days of its presentation. If the governing body fails to act within the prescribed time period the subdivision is approved.

#### Section 11

- a. Governing body shall hold a public hearing.  
i. Notice of such hearing shall be given by a publication in a newspaper of general circulation not less than 15 days prior to the date of the hearing. Owners of land adjoining the land included on the plat will be notified by certified mail not less than 15 days of the proposed hearing.

#### Section 12 Summary review for minor subdivisions

Subdividers will submit preliminary plat. The governing body shall act on the plat within 35 days of submittal. If it fails to act within 35 days of submittal the subdivision is approved.

the requirements for holding a public hearing and preparing an environmental assessment and finding that the subdivision is in the public interest do not apply to the first minor subdivision created from a tract of record, second and subsequent subdivisions from a tract of record shall have a full review

2 <sup>subdivisions</sup> for ~~public~~ subdivisions consisting exclusively of parcels larger than 40 acres.

(a) subdivider shall submit either a preliminary plat or a final plat the body shall act within 35 days of submittal. If it fails to act within 35 days the subdivision is approved,

(b) public hearing and environmental assessment and finding that the subdivision is in the public interest do not apply.

(c) the governing body's review and approval shall be limited to a written determination that appropriate access and any easements are properly provided.

3 For subdivisions within the corporate boundaries of a municipality or within areas covered by a master plan, environmental assessment and a finding in the public interest do not apply. If the body fails to act within 60 days of submittal, the preliminary plat is approved.

### Section 13

When so many minor subdivisions are proposed for the same general area that the governing body believes their cumulative effect on the provision of public services or natural environment may be significant it shall require an environmental assessment and a public hearing to address the overall impact of the subdivisions.

10.11.15

To: Senate Committee on Local Government  
From: League of Women Voters of Montana  
Re: HB 715

The League of Women Voters would like to state our support of HB 715 in its attempt to rectify some of the problems created by the many loopholes and inadequacies in the laws regulating subdivisions in Montana.

We approve the tightening of the use of the occasional sale and family conveyance (pp. 8 and 9). These changes should cut down somewhat on the more questionable uses of these exemptions.

We also are pleased to see the exemption for parcels of more than 20 acres in size eliminated. This provision has created unreviewed land divisions of 20 acres in size throughout many Montana counties. These 20 acre splits are often further subdivided through the other exemptions.

We have reservations, however, about the provisions for summary review. We believe that the category of "minor subdivisions" created by the law is based on the false premise that these subdivisions have very little impact. In fact, in many parts of the state, the law has created a large sub-class of scattered development subject to minimal review.

HB 715 proposes to make that review even more minimal by exempting the first minor subdivision created from a tract of record from the finding that the subdivision is in the public interest (p. 16). It would seem equally, if not more, important that the public interest criteria apply to the first subdivision than to the subsequent divisions.

Section 13 (p. 18) implicitly recognizes the serious problems created by minor subdivisions. While the intent of this section is laudable, we fear that it might be unworkable in practice. The terms of the section are imprecise and it is not clear how separate developments with separate owners would be treated as a major subdivision. This section could invite lawsuits from all sides and would require a potentially arbitrary decision from the governing body.

The cumulative effect of minor subdivisions is a huge problem and must be dealt with, but we fear that HB 715 provides an inadequate answer to the problems created by loopholes. It would be far better to eliminate the loopholes themselves. At the very least all minor subdivisions should receive adequate review, including findings that they are in the public interest.

Finally, we have another question about provisions of this bill. Might not the automatic approval (in 35 days for minor subdivisions and 40 acre parcels and in 60 days for major subdivisions) create a "pocket approval" which could be abused by officials who didn't want to explain their decisions?

We thank you for this opportunity to comment.

Suggested amendments to HB 715 by League of Women Voters of Montana

Page 2 - Section (a) - line 18 - after the word "for" and before "residential" insert "agricultural".

Page 2 - Section (a) - lines 19 and 20 - after "quality" insert ", densities," and delete "urban". Also on line 19 change last "or" to "and".

Page 11- Section 7 - line 12 - insert new (1) as follows: "Eligibility for summary review: Minor subdivisions or subdivisions consisting exclusively of parcels larger than 40 acres may be eligible for summary review if the governing body determines prior to the submittal of the preliminary plat that they will not have a major impact. Reasonable local regulations shall set criteria for this determination." Current (1) will then become (2).

Page 14- Section (2) - lines 17, 18, and 19, strike beginning with "If the governing body - - -"

Page 16- Lines 23 and 24 - strike "and finding that the subdivision is in the public interest".

Page 16- Lines 15 and 16; page 17 - lines 14 and 15; and page 18 - lines 6 and 7 - strike all references to automatic approvals.

Page 18- Strike entire New Section - Section 13.

If suggested amendments on page 11, section 7 are not accepted we wish to leave in Section 13.

Thank you for your time and consideration.

Testimony in Support of HB 715

before

The Senate Local Government Committee

Mr. Chairman, members of the Committee, my name is Don Snow. I am Staff Coordinator of the Montana Environmental Information Center, a citizens' organization with 1,300 members and an 18-member Board of Directors. I am here today in support of HB 715. We believe that this bill is a reasonable compromise among the various interests in Montana who struggle to solve the the land use dilemmas presented by residential and commercial land development.

Dr. Lory alluded to studies that have show how much subdivided land is escaping review in Western Montana counties. EIC produced one of those studies, which focused on four Western counties, Missoula, Ravalli, Flathead, and Gallatin. Since the most thorough and comprehensive part of the study pertained to Missoula County, I'll focus most of my brief remarks there.

The papers I've passed out to you are exerpts from the "Missoula County Subdivision Inventory Final Report," published in October of 1980. I've included a full copy of the report for the hearings record. Very briefly, our year-long Missoula County survey showed that of the total acreage subdivided in the County between 1973 and 1979, 91.3% was subdivided without review, using the Certificate of Survey rather than the Plat. The numbers showing this are on Table 4 in the packet you have. Of the total number of lots created through subdivision, 49% were created through Certificates of Survey. Figure 6, the second page in your packet graphically shows the differences between numbers of Plats and numbers of Certificates of Survey filed in Missoula County.

In the House, the question arose about why the difference between Platted subdivisions and Certificate of Survey land splits is significant. It's significant for the same reasons outlined in the Saturday Missoulian article I've given you, and for the reasons expressed by residents in Flathead, Missoula, Ravalli, Gallatin, and recently Park Counties. The simple fact is that because of the loopholes that exist in the Subdivision and Platting Act, relatively few subdivisions that are

created to become housing developments receive any review of any kind. That was not what the original Act envisioned.

Table 2, the fourth page in your packet, shows the amounts of Certificate of Survey "subdivisions" that would have been reviewable under the Act had the developers elected to go through the review process. Notice that while 91 "minor subdivisions" were processed, 1,526 COS "minor subdivisions" escaped review over the seven years covered by our study.

Later speakers will offer some details on why reviews are desirable and necessary. I would like to point out in closing that Rep. Lory's bill will not impede development, will not burden landowners who have legitimate claims to occasional sales and family conveyances, and will not endow planners and local officials with enormous new powers. HB 715 will provide for quick summary reviews of subdivisions that are obviously constituting the vast majority of new land developments in this state. We believe that it is a good compromise bill that deserves a Do Pass recommendation from this Committee.

Thank you for your attention.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Don Snow", is written over a horizontal line.

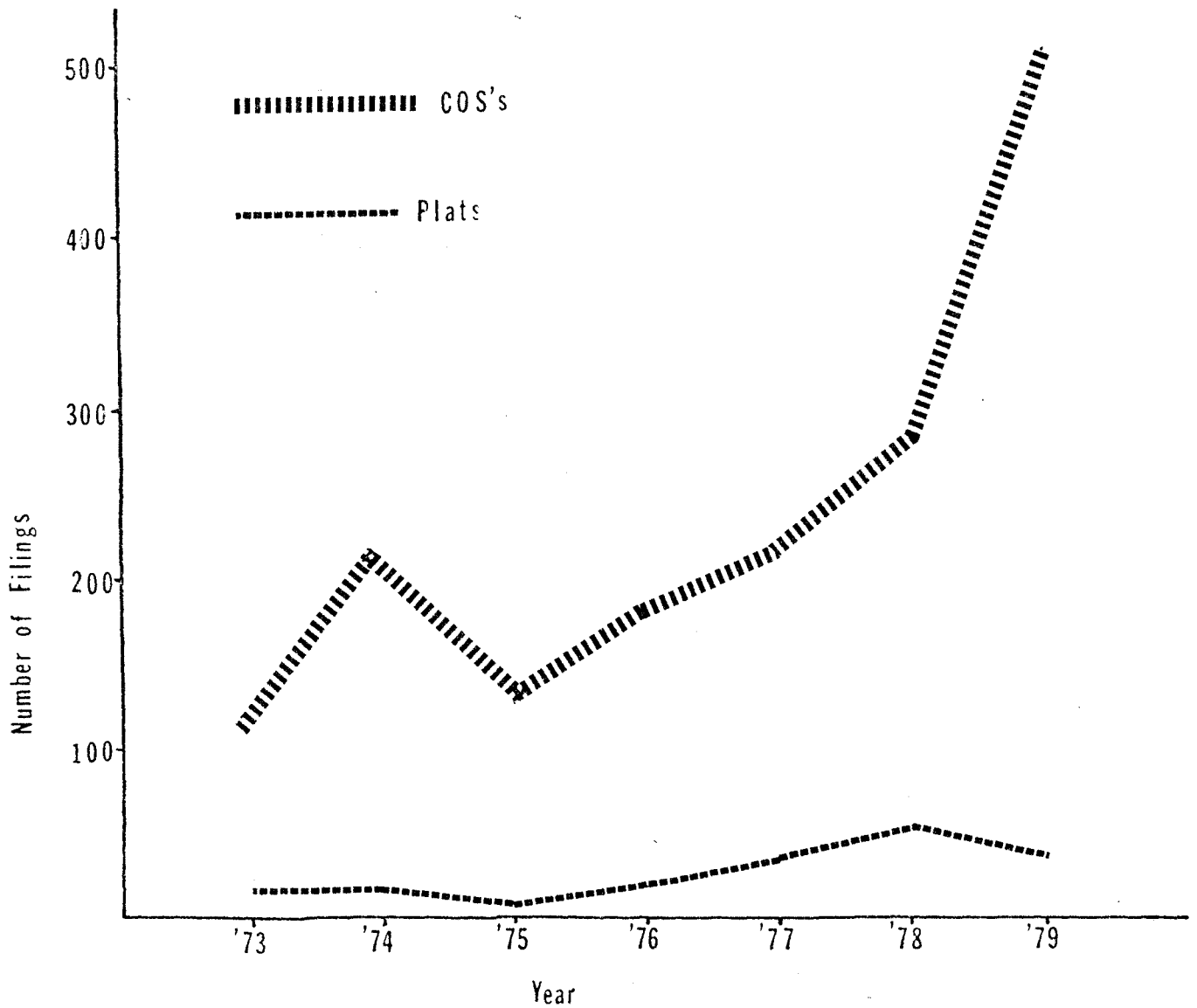
Don Snow  
EIC Staff

In the following table, yearly COS lot and acreage figures were divided by total number of lots and acres subdivided per year to determine the percentage being created without review.

Table 4  
Total Lots Created and  
Subdivided Average with  
Percentage Unreviewed

<u>Year</u>	<u>Total Lots Created (Plat &amp; COS)</u>	<u>% COS</u>	<u>Total Acreage Subdivided (Plat &amp; COS)</u>	<u>% COS</u>
1973	990	34.9%	5,719.49	81.1%
1974	697	81.2%	8,857.05	99.2%
1975	370	48.3%	1,914.94	94.5%
1976	389	57.0%	2,640.20	95.8%
1977	938	42.6%	5,864.87	93.1%
1978	1,777	34.2%	9,373.53	90.5%
1979	<u>1,427</u>	<u>63.6%</u>	<u>8,252.94</u>	<u>87.2%</u>
TOTALS	6,588 lots	49%	42,623.02 acres	91.3%

### Graph of Number of Plats & COS's Filed Each Year



# Western Montana

## Sanders draftsman raps subdivision laws

By Kayla Weiner  
Correspondent

THOMPSON FALLS — Unless all exemptions are removed from the subdivision laws, and all subdivided units are brought under county review, the laws are ineffective either as protection for buyers or as a vehicle for counties to forecast their future revenues, services needs, land use and economic growth.

That is one of the conclusions of a report prepared at the request of the Sanders County commissioners. County Draftsman Chris Huck recently reviewed the completed report with the commissioners.

Land parcels of 20 acres or more — and thus exempted from subdivision review — that were created in the past 10 years total 10,628 acres or 3 percent of the total available private land in the county, according to the report. Other exemptions created 1,090 acres of subdivided land while reviewed parcels totaled only 328 acres.

"Since the passage of the Subdivision Act in 1973, 74.7 percent of new parcels created failed to go through local review: 250 lots have received

local approval, 212 lots have been created under the occasional sale and other exemptions in the law, and 527 lots under the acreage exemption," the report says. "Local government as a result of state law has a say in only one out of every four subdivided parcels in Sanders County."

There currently are 900 unsold subdivided lots in Sanders County. In 1980, there were over five times more lots created than needed for building purposes. Occasional sales alone account for all needed lots, the report says.

If homes are built on subdivision lots at the same rate as countywide, Sanders County will gain a thousand new residents over the next 10 years assuming no more subdivisions are added, the report says.

With minor exceptions, all of the subdividing in the county is taking place west of the town of Plains, according to the report.

To prepare the report, Huck analyzed 34 of the principal subdivisions in the county including seven developed before the Subdivision and Platting Act, 12 since the passage of the act up to 1979, and 15 of the large-

est subdivisions that were not reviewed by the county because the size of the parcels exceeded statutory definitions.

Information analyzed, along with on-site inspection of all property, included ownership records, taxes due, sales, building activity, land use, local services and roads. A comparison sample of one out of every five ownerships from the school districts west of Plains also were analyzed.

The report says that about 70 percent of the reviewed subdivisions were developed by local residents but only 13 percent of unreviewed parcels were created by local residents. In 21 of 34 subdivisions the buyers came from the same market area the sellers lived in.

"Sales of both approved and unreviewed parcels to non-local buyers are important, and a mixed blessing. Absentee owners are far less likely to build ... Absentee owners pay taxes while requiring little in local services. But the land is unused, often neither growing houses nor crops. When the owners do move in, the result is added population and added strain on an unhealthy local economy," the report concludes.

Huck told the commissioners that his analysis indicates that a need does not exist for new homesites.

"Need is often equated with demand. Demand is subsequently equated with ability to sell ... Utilization is a better measure of demand than sales ... A subdivision which will attract residents quickly can do more for the county's taxes paid to cost of services ratio," the report says.

The report recommends that "any development not within a mile or so of a town (incorporated) should probably be confined to the one to five acres size class, since there is a marked preference in both purchasing and building for larger lots in the outlying areas."

A chart detailing the taxes and tax payment delinquency rates of subdivided units with an overall county sample and a sample of 20 percent of rural parcels was included in the report. Figures indicate that the delinquency rate is much higher in subdivisions than in general. "Taxes went delinquent almost 50 percent more often than on other comparable parcels and tripled the county-wide rate," according to the report. In addition, the aver-

age subdivision taxpayer paid only 64 percent of the taxes of the sampling of rural residents.

Huck told the commissioners he was not able to analyze the cost of services to subdivided areas because he could not devise a means to adequately compute the cost of police, road maintenance, government and other similar services.

However, an analysis of the cost of educating a child as compared to taxes received was computed. From the figures presented, Huck concluded that only two subdivisions paid more than half of local costs of sending their children to school. Other subdivisions paid far less.

Examination of the roads in all subdivisions showed that subdivision review had a positive effect on the quality of the roads, Huck said.

Huck's report includes several recommendations. The county can influence tax revenue while reducing local service demands by:

- Requiring improvements and generally higher standards. The county would force an increase in lot prices, thus increasing the tax base.

- Requiring initially better roads to reduce the cost of road maintenance and repair.

- Favoring subdivisions closer to town and service centers.

- Favoring subdivisions designed for retirement and second-home development.

- Writing and enforcing forest fire and flood protection standards to reduce the potential need for disaster services.

- Authorizing special improvement districts to ensure that the cost of improvement is directly borne by those who benefit from it.

The county can influence a subdivision in favor of good land use, environmental protection and public health through the design standards of regulation, the report says. Establishing specific areas and land forms that are unsuitable for subdivisions will help.

Indicators of potential problems in individual subdivision, as listed by Huck, are topography, water table and vegetation. This information should be included in all applications, he said. Copies of the report are available at the county warehouse.

A copy of the "Missoula County Subdivision  
Inventory Report" is contained  
in the original set of minutes.

### Number of Plats and Certificates of Survey Compared

This table compares the number of plats filed per year since 1973 with the number of certificates of survey. The plats were counted from July 1, 1973, for comparison since certificates of survey were first filed on that date. A total number of certificates is listed per year, then a figure for only those which were subdivisions. They were also placed in major and minor subdivision categories according to the legal six lot/five lot definition for comparison with the plats even though the certificates of survey parcels are not legally subdivisions.

Table 2

#### Numbers of Plats and Certificates of Survey Compared

<u>Year</u>	<u>Number Suddiv. Plats</u>	<u>Number Major Subdiv.</u>	<u>Number Minor Subdiv.</u>	<u>Total Number of COS's</u>	<u>Number of "Subdiv." COS's</u>	<u>Major COS "Subdiv."</u>	<u>Minor COS "Subdiv."</u>
1973	15	10	5	165	113	17	96
1974	13	10	3	351	234	20	214
1975	5	4	1	240	132	2	130
1976	17	10	7	298	178	2	176
1977	34	11	23	318	210	10	200
1978	52	17	35	380	276	19	257
1979	<u>33</u>	<u>16</u>	<u>17</u>	<u>494</u>	<u>477</u>	<u>24</u>	<u>453</u>
TOTALS	169	78 Major Subd.	91	2,246	1,620	94 Major COS "Subdiv."	1,526

The following graph compares the number of subdivision plats with the number of COS's creating subdivisions.

Letter V

March 17, 1981

Senator George McCallum  
Chairman of Senate Local Government Committee  
Capitol Station  
Helena, MT. 59601

The Flathead Conservation District has its number one goal  
in their long range plan -  
Preserve Productive Farmland

Subject: H.B. 715

H.B. 715 is a move in the right direction by narrowing down  
the too large holes that are in the present law. We feel that  
at this time that something has to be done to protect the agricultural  
base of our communities and country. Often subdivisions with  
are located on agricultural land which is easier and less expensive  
to develop.

The statistics and projections presented in the recently com-  
pleted National Agricultural Land Study bear out the fact that  
we do not have productive agriculture land to squander.

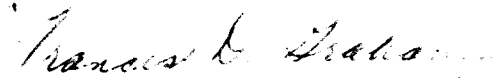
We would like to see more changes in H.B. 715 to cause all land  
splits to come under a review process with an environmental  
assessment where there is not a master plan. The possibility of  
tracts of land 40 acres and larger in size should be fully re-  
viewed as well as commercial and industrial developments where  
there is no detailed master plan.

In Flathead County there are 120,000 acres of important land of  
which there are 21,956 acres developed or platted for development.  
In the last 3 years from Oct. 1977 to Aug. 1980 - 800 lots for  
a total of 20,771 acres have been established by the 20 acre  
split. Occasional sales have helped 2695 lots to be established.  
Family transfers 474 lots, and mortgage exempts 113 lots in the  
same above period.

McCallum/Farmlands  
pg. #2, 3-17-81

Altogether there were many more thousands of acres broken up prior to this last 3 year period resulting in an approximate total of 80,000 acres of our valley.

The local governments need a law to help slow down this trend. Flathead Conservation District urges you to consider these facts and give us a measure that will conserve our agricultural industry.



Francis D. Graham, Chairman  
Flathead Conservation District

cc: Senator Jesse O'Hara, Vice Chairman  
Senator Max Conover  
Senator Donald Ochsner  
Senator Pete Story  
Senator Bill Thomas  
Senator Fred Valkenburg

Testimony Prepared for Hearing on HB715

Senate Local Government Committee

March 19, 1981

My name is David Adkisson. I live in Missoula and I am here to present the views of an associate, Jean Parodi, and myself, which will point out some of the dramatic problems that are occurring in western Montana valleys, in particular Missoula County, due to the unreviewed subdividing of land. Our perspective comes from having gathered data for the Montana Environmental Information Center, 1980 Missoula County Subdivision Inventory Report, which was completed last August. I am going to quickly summarize these findings and give a few examples. I would be happy to answer any questions you might have following this summary.

Without going into the methodology of how this study was done, it will suffice to say that a comprehensive documentation on total number, size, how divisions occurred, and other facts revealed that since 1973 (when the Subdivision and Platting Act was enacted) 91.3 percent of the subdivided land in Missoula County was split using unreviewed certificates of survey. A majority of these COS's used the exemptions for occasional sale, family conveyance and the acreage exemption for divisions larger than 20 acres. Another significant number of parcels resulted from the "remainder" left over when divisions were made by other means.

Typically, someone who wishes to avoid review can use the acreage exemption to first divide a large piece of land into 20 acre plots and then, through a fairly simple maneuvering with other exemptions, chop a 20 acre plot into lot sized parcels. In the last seven years, 94 major "subdivisions" were created by unreviewed COS while only 78 were platted and reviewed.

A good many problems occur because of this helter-skelter division of land and the associated settlement patterns that result along with it. People end up living in areas of likely fire hazard, wildlife is pushed out of winter grazing ranges, the county is unable to build and maintain its own roads without large sums of revenue sharing funds, school officials have great difficulty in planning for education needs, and much of our precious little agricultural land is removed from potential production.

The Forest Service's Northern Fire Lab in Missoula has developed a fire hazard classification system based on forest fuel loads and fire behavior. All private

lands adjoining national forest in Missoula County were mapped and classified. Several subdivided areas lie in Extreme and High fire hazard zones. For example, the unreviewed development on the west fork of Petty Creek has only one way in, no escape route, and the likelihood of burning hot and quick when it does. Often times lot buyers don't make themselves aware of these problems and aesthetic reasoning wins out over more practical considerations. Many people buy lots, move into an area, and then decide they need services - services that should be accounted for in the first place.

The Houle Creek area near Frenchtown is a good example of this happening. After people moved into this area, they discovered their access road was too steep for fire trucks and school buses during the winter. After years of complaints, Missoula County officials appropriated funds to improve the road. When subdivisions are not reviewed, roads may become the responsibility of local government, as developers are not required to provide them and have little economic incentive to do so. One ingenious developer near Potomac split his land by COS, sold lots, and kept the roads in his name. He later defaulted on the taxes so the County would have to take over the roads. However, the County has refused to assume maintenance responsibility because the roads were not built to County standards. The local residents pay for road maintenance now. This arrangement is suitable assuming people know the situation before buying lots in an area. Developers and home buyers should pay for site- and user-specific roads rather than dispersing the costs throughout the community by subsidizing them with public money. School systems also have problems with uncontrolled growth and development because of unreviewed land splits. Accurate enrollments are hard to predict and this makes planning for the future difficult leaving schools short on space and personnel.

Poorly located developments can also have serious effects on wildlife. Animal herds tend to establish very specific winter ranges and are often unable to relocate and survive when houses, fences, people and dogs encroach. The unreviewed subdivision on the west fork of Petty Creek is winter range for elk, deer, and bighorn sheep. These animals are already competing with each other for food and cover. The added stress from residential development will undoubtedly mean smaller elk and deer herds and probable extinction for bighorn sheep in the area.

Finally, unreviewed subdivisions take their toll on agriculture - destroying both a way of life and our potential for food production in the future. Granted, one can make more money in growing houses than crops now-a-days. Only three small scale farming operations are currently functioning in Missoula County. (Although according to local agricultural officials, at least seven to eight million dollars worth of produce could be grown locally.) Yet, only one of those three truck-farms remains financially successful without outside income. This is a gross departure from what was once truly the "garden" city, an area that raised produce for distribution throughout Montana. But, as energy costs soar and along with it, transportation costs, it would be wise for society to retain our food production potential close at hand. Only a small amount of Missoula County's total area is prime agricultural soil, nine-tenths of one percent. Important farmlands make up another 1.1 percent. When the subdivision inventory was completed the figures indicated that a shocking 48 percent of our prime soils were already built on or divided to lot size. Thirty-three percent of the important farmland soils were in that situation. Recently, however the Soil Conservation Service was able to classify other soils into these categories of prime and important soils. Fortunately, revised figures indicate that we have only subdivided 20 percent of our prime soils and 12 percent of the important farmland. Still, there is no need to celebrate. The point is we have very little of these soils in the first place - they must be used wisely. Development in the wrong areas destroy this vital resource - soil - as it is disturbed by house, driveway and road construction.

We feel HB715 would allow for controlled growth of residential development in our area and still provide people the flexibility to legitimately divide their land as they may wish and yet take into account the interest of society at large. We urge your support of this legislation.

Thank you,

  
\_\_\_\_\_  
David B. Adkisson

  
\_\_\_\_\_  
Jean Parodi

MISSOULA COUNTY

Public land or large holdings by single owners. . . . . 81%  
Land available for private ownership. . . . . 19%

1973 - 1979

Total area subdivided . . . . . 42,623.02 acres  
Total area reviewed platted parcels . . . . . 8.7% - 3,699.91 acres  
Total area unreviewed COS parcels . . . . . 91.3% - 38,923.11 acres  
Acreage exemptions. . . . . 44.0%  
Occasional sale . . . . . 23.0%  
Family conveyance . . . . . 14.0%  
Remainder . . . . . 17.0%

Agricultural Impact Figures

\*Total amount prime agricultural soils . . . . . 14,577 acres  
Total amount important farmland. . . . . 18,697 acres  
Currently subdivided prime agricultural soils. . . . . 20.0%  
Currently subdivided important farmland. . . . . 12.0%  
7,055 acres

\*Nationwide prime agricultural soils (Class I & II) comprise only 20 percent of the total land area. Missoula County prime soils fall into the Class II division and require irrigation.

Dm 7 F

HB 715--Senate Local Gov't Com.--March 19, 1981--12:30

Introduction: Bill Rinck, W.Chr. Flathead County Planning Board, accountant, own 130 acres in valley. Representing FCPB.

General Statement: The FCPB and the County Commissioners for which our Board serves in an advisory capacity, are committed to good land use planning. Our Board is made up of a large cross section of County residents--farmers, developers, a forester, geologist, accountant, building contractor, and a retired construction contractor and businessman. It is the policy of our board to carry out the wishes of the majority of the people residing within our jurisdiction. With this in mind our Board supports HB 715.

Background: Over the past several years our Planning staff has conducted surveys and put together a Comp.Land Use Plan for FC which saw thousands of people involved in public hearings--along with the formation of 23 individual Planning Units. From this our Board has formed the following Policy:

1. to encourage development in existing developed areas to minimize the increased demand on local services.
2. discourage devel. on Class I-IV soils (of over 1,000 residents surveyed 94% felt good ag. land should be preserved).
3. discourage devel. that would degrade the environment, and
4. to preserve the general nature of communities' life style.

The effectiveness of our Board in carrying out this policy has been negated by the existing loopholes in the law--most notably: the 20 acre split and the occasional sale which escape the review and authority of our CC. These loopholes have caused great problems in FC:

1. Over the past 20 years nearly 30% of FC's ag. land has been developed or platted for SD.
2. An increased Property Tax Burden caused by "leapfrog"SD not paying their way--spreading their cost to all taxpayers of FC.
3. And, a developer using these loopholes can avoid Public Opinion--greatly altering an entire community's lifestyle.

Statistics: Of nearly 87,000 acres divided into parcels from July, 1973-August, 1980, over 90%--79,000 acres was SD without public review. Over the past three years, 56% of the acreage avoiding review came from the 20 acre split; while 38% came from the occasional sale. A total of 94% of the acreage avoiding review came from these two loopholes. HB 715 would help rectify this.

Situation: In the past our board has turned down SDs for good reasons--and then watched as the same parcels were cut up through the loopholes. Our Board and CC have had to pass bad SDs because the alternative--turning them down--would have even created a worse development through the 20 acre split and occasional sale. Our Board has had developers of poorly planned SDs threaten us with the loopholes, if the Board were to turn them down. As a result our Board doesn't plan, we react!

Taxes: FC has yet to see a SD that will pay its way taxwise--The increased cost for schools, roads, road maintenance, law enforcement, fire protection, and other services is becoming an insupportable burden during this time of tax revolt.

HB 715--page two

The taxpayers of FC are forced to subsidize poorly planned developments, or developments with no planning at all. We do not subscribe to a no growth philosophy. On the contrary, a large part of our economy relies on tourism. Our board welcomes well planned development close to existing communities. But our officials need some control over developments that either, by being poorly planned, or too distant from existing services, result in inefficient and uneconomic use of public funds.

Summary: Passage of HB 715 would enable our Board and CC to effectively implement the policy our residents have directed us to, and in so doing would enable us to preserve our communities' lifestyle and ag. land--and save our taxpayers a great deal of money. Thank you.

Bill Rinck  
Vice Chairman  
Flathead County Planning Board



MONTANA  
ASSOCIATION  
OF REALTORS®

Exhibit G  
EXECUTIVE OFFICE  
600 NORTH PARK  
HELENA, MONTANA 59601  
TELEPHONE:  
(406) 443-4032

COMMENTS ON H.B. 715

CLIFF CHRISTIAN

MONTANA ASSOCIATION OF REALTORS

H.B. 715 HAS SOME PROVISIONS THAT PURPORT TO STREAMLINE THE REVIEW PROCESS FOR SUBDIVISIONS. HOWEVER, THOSE PROVISIONS ARE MINOR COMPARED TO THE INCREASED ACREAGE DEFINITION THAT STATES THAT ANY DIVISION OF LAND IS A SUBDIVISION, THE LIMITS PLACED ON THE OCCASIONAL SALE AND GIFT TO THE FAMILY EXEMPTIONS, PLUS THE ADDITION OF A "CUMMULATIVE EFFECT" SECTION BEGINNING ON PAGE 18, LINE 4.

IN OUR OPINION, THE MAJOR DEFECT IN THIS BILL IS THAT VIRTUALLY EVERY LAND DIVISION WILL HAVE SOME TYPE OF REVIEW (EXCEPT THE SEVERELY RESTRICTED EXEMPTION SECTION) BY THE LOCAL PLANNING BOARDS AND GOVERNING BODIES. THERE IS NO WAY THAT THEY ARE EQUIPPED TO HANDLE ALL THESE REVIEWS IN A TIMELY MANNER. THE DCA CLAIMS THAT TODAY THE PLANNING BOARDS ARE ONLY REVIEWING 10-15% OF THE LAND DIVISIONS. YET, EVEN WITH THESE FIGURES THEY SEEM TO BE SWAMPED. DELAYS ARE THE ORDER OF THE DAY, RATHER THAN THE EXCEPTION. WE SUBMIT THAT, UNDER CURRENT OPERATING PROCEDURES THE PLANNING BOARDS HAVE NEITHER THE MANPOWER OR THE BUDGETS TO DO WHAT THIS BILL ASKS THEM TO DO. AND, AT BEST, THE STATE DIVISION OF PLANNING WILL ONLY BE ABLE TO GIVE MINIMUM ASSISTANCE TO LOCAL GOVERNMENTS, WHO WILL MOST CERTAINLY BE PLEADING FOR HELP AND GUIDANCE. WITHOUT STRONG GUIDANCE, WE WILL PROBABLY END UP WITH 56 DIFFERENT COUNTIES INTERPRETING THIS ACT 56 DIFFERENT WAYS.

WE WERE SUCCESSFUL IN GETTING THE AUTOMATIC APPROVAL SECTIONS INTO H.B. 715. WE HAD TO BECAUSE OF THE TERRIBLE TIME DELAYS WE ARE CURRENTLY EXPERIENCING IN SOME AREAS. THESE TIME DELAYS ARE COSTLY, NOT AS YOU MIGHT EXPECT-TO THE DEVELOPER- BUT TO MONTANANS, BUYING THE LAND FOR A HOME. WE HOPE THESE TIME PERIODS REMAIN IN H.B. 715. HOWEVER, THEY REALLY DON'T MEAN MUCH. THE PLANNING BOARDS CAN STILL REQUEST THE DEVELOPER TO WAIVE THE LIMITS IMPOSED. THE DEVELOPER WILL AGREE TO LIFTING THE TIME LIMITS EVERY TIME, BECAUSE THE ALTERNATIVE, IS THE DENIAL OF THE SUBDIVISION, ON SUCH NEBULOUS GROUNDS AS THE ADVERSE EFFECT ON WILDLIFE OR AGRICULTURE.

THE SECOND MAJOR DEFECT (AND ITS A BIG ONE) DEALS WITH WHERE A PERSON CAN USE THE OCCASIONAL SALE OR FAMILY EXEMPTIONS. IF THIS BILL PASSES AS IS, EVERY DIVISION OF LAND WILL BE DEFINED AS A PLATTED SUBDIVISION. THE EXEMPTION SECTIONS FOR THE OCCASIONAL SALE AND GIFT TO THE FAMILY (PAGE 8 AND PAGE 9) STATE THAT YOU CAN USE THESE EXEMPTIONS ONLY OUTSIDE PLATTED SUBDIVISIONS. IN EFFECT, THESE LEGITIMATE EXEMPTIONS WILL BE WIPED OUT.

ANOTHER MAJOR CONCERN IS THE "CUMMULATIVE EFFECT" SECTION FOUND ON PAGE 18 BEGINNING ON LINE 4. THIS SECTION STATES THAT AFTER THE FIRST MINOR SUBDIVISION OF 5 PARCELS OR LESS, THE GOVERNING BODY CAN REVIEW ANY ADDITIONAL MINOR SUBDIVISIONS AS IF THEY WERE MAJOR SUBDIVISIONS. I'LL BET MY ENTIRE YEARS SALARY THAT EVERY MINOR SUBDIVISION, AFTER THE FIRST ONE, WILL BE REVIEWED AS MAJOR SUBDIVISIONS. THE ENVIORNMENTALISTS, THE PLANNERS AND THE LEAGUE OF WOMEN VOTERS WILL SEE TO THAT.

WE CONTEND THAT THIS SECTION DOES NOT ALLOW EQUAL TREATMENT UNDER THE LAW. THE FIRST DEVELOPER SUBMITTING A MINOR SUBDIVISION SHALL BE GIVEN ALL THE BENEFITS (35 DAY REVIEW, NO PUBLIC HEARING, WAIVER OF THE PUBLIC

INTEREST CRITERIA, ETC.). YET THE SECOND LANDOWNER WITH THE SAME TYPE OF MINOR SUBDIVISION COULD BE FORCED TO UNDERGO A FULL BLOWN REVIEW. WE FEEL, THERE ARE SERIOUS LEGAL QUESTIONS REGARDING FAIR AND EQUAL TREATMENT UNDER THIS SECTION.

AS MENTIONED BEFORE, H.B. 715 STATES THAT ANY DIVISION OF LAND IS A SUBDIVISION. HOWEVER, FOR PARCELS GREATER THAN 40 ACRES, THE REVIEW IS ONLY FOR ACCESS AND EASEMENTS. IF THE ACREAGE DEFINITION PASSES AS IS, WE CAN MOST ASSUREDLY GUARANTEE YOU THAT THE 40 PLUS ACRE SUBDIVISIONS WILL BE COMMONPLACE. THAT, IS HORRID LAND USE PLANNING. NEVERTHELESS, 40 ACRE SUBDIVISIONS WILL BE THE ORDER OF THE DAY. PAST HISTORY PROVIDES POSITIVE PROOF THAT EVERY TIME THE ACREAGE DEFINITION IS INCREASED, SO ARE THE SIZES OF THE INDIVIDUAL PARCELS. SOME LANDOWNERS WILL ALWAYS TAKE THE LEAST FORM OF RESISTANCE, REGARDLESS OF WHAT TYPE OF LAND PLAN RESULTS. AND, WE DON'T CONDEMN THOSE LANDOWNERS FOR TAKING THE LEAST FORM OF RESISTANCE. EACH ONE OF US CAN RELATE, EITHER A PERSONAL STORY, OR ONE OF A FRIEND, WHO ATTEMPTED TO FIGHT THEIR WAY THROUGH THE RED TAPE JUNGLE OF THE SUBDIVISION AND PLATTING ACT.

EACH AND EVERY LEGISLATIVE YEAR THIS ACT IS AMENDED DRASTICALLY. THE NEW CHANGES ARE ADOPTED THE FOLLOWING JULY. THEN, THE NEW RULES AND REGULATIONS ARE BROUGHT ON LINE; AND BY THE TIME THE PLANNING BOARDS AND THE PUBLIC BEGIN TO UNDERSTAND WHAT IS REQUIRED, A NEW LEGISLATURE HAS CONVENED, WITH MAJOR CHANGES AGAIN PROPOSED. BY PROPOSING TO MAKE EVERY DIVISION OF LAND A SUBDIVISION, SUBJECT TO SOME TYPE OF REVIEW BY GOVERNMENT, WE WILL FORCE EVEN MORE LANDOWNERS TO FIND THE LEAST FORM OF RESISTANCE - WHICH AS STATED BEFORE, DESTROYS THE VERY PURPOSE OF THIS ACT - GOOD LAND USE PLANNING.

PLEASE VOTE NO ON H.B. 715.

SINCERELY,

A handwritten signature in cursive script, appearing to read "Cliff Christian".

CLIFF CHRISTIAN, EXECUTIVE VICE PRESIDENT

MONTANA ASSOCIATION OF REALTORS

Due to the volume of this material, copies were not made for this copy of the minutes. If interested in the articles, please see the original set of the Senate Local Government Committee Minutes.

The articles include:

"Up, Up, and Away...", REALTORS Review.

"Effects of Regulation on Housing Costs: Two Case Studies", a report prepared by the Research Division of the Urban Land Institute, 1200 18th Street, N. W., Washington, DC.

"Government Regulations and Housing Costs", a study conducted for the Smith-Richardson Foundation by Rutgers University.

"Final Report of the Task Force on Housing Costs", conducted by the Department of Housing and Urban Development.

Mr. Chris Stobie  
House of Rep.  
Helena, Mt.

Subject: HB 715 Local Government Committees  
State Senate  
March 19, 1981

Dear Mr. Stobie:

Unfortunately, I am unable to attend the Senate hearing on March 19, 1981, considering HB 715 which is intended to amend the Subdivision Planning Act, but you have agreed to present my views at this hearing.

As you know, I am the Sanders County Surveyor and Chairman of the Sanders' Co. Subdivision Regulation Review Committee.

As I read HB 715, it is intended primarily to remove any acreage limitation or land splits subject to local review and to restrict the use of both the Family Transfer Exemption and the Occasional Sale Exemption.

The pressure for these changes was generated in Western Montana, primarily in the Missoula area, by studies conducted by the Environmental Information Center and the subsequent press coverage of EIC conclusions. In my view EIC studies are totally flawed by reporting that over 90% of all subdivision activity goes unreviewed, when by legal definition no land split over 20 acres is a subdivision, and acreage totals were used instead of housing units. In addition no clear distinction is drawn between local review and State Dept. of Health review of all subdivide parcels of less than 20 acres. No clear logical connection is made between the many horrors imagined and the existing review process over the majority of the state. The Western Montana Press has sensationalized this issue to the extent of reporting that since Missoula County has 90% subdivision activity without review, so also does Flathead County even though their study was still in process at the time of the press report.

In Sanders County, I do not see the need for these amendments, and I think that the counties with abuses can adopt county regulations to control them without resorting to statewide statutory authority which is an unneeded burden to most of the state. I don't at present find that the proposed amendments provide a substantive benefit to the public to counter the adverse affect on their activities because of this increased regulation. Best regards.

Your Sincerely,

Laurence J. McCarthy

1.41 bit 2

MEMORANDUM

March 17, 1981

TO: MONTANA SENATE

RE: HB 715 -- LEGAL PROBLEMS

If passed, HB 715 could produce a number of legal problems. The purpose of this memo is to review some of those problems.

1. Agricultural Leases. In its present form the Montana Subdivision and Platting Act (76-3-201, MCA) states that:

"Exemption for Certain Divisions of Land.  
Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which: (6) is created by lease or rental for farming and agricultural purposes."

HB 715 would delete the above language. (HB 715, page 7, lines 16 and 17). This means that all agricultural leases would have to meet the same review requirements of other subdivisions before they could be finalized. In fact, the rental or lease of real property for any purpose, under HB 715, would be reviewed. (See definition of "subdivision" 76-3-103(16)). If more than forty acres is leased, a plat must be submitted. Realistically, this means the property must be surveyed. To comply with HB 715, the subdivider, in this instance the lessor of agricultural land must:

"submit either a preliminary plat that complies with local regulations or a final plat that complies with local regulations and the Department of Community Affairs Uniform Standards for Final Subdivision Plats." (HB 715, page 17, lines 7 through 11).

Finally, the lease must also comply with that area's master plan and any other local regulations concerning subdivisions.

If the leased property consists of less than forty acres a subdivider, in this instance the lessor, must go through the same procedure; however, he must have owned the land for three years and may only lease this particular tract once without major subdivision review. If a tract less than forty acres is leased for agricultural purposes by Farmer A to Farmer B for one year, and if, at the end of that year, the farmers wish to renew the lease, they must get approval as if the lease were a major subdivision, including the preparing of an environmental assessment and a finding that the lease is in the public interest.

2. Family Sale or Gift. Present law (76-3-207, MCA) states:

" . . . unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for division of lands not amounting to subdivisions: (b) divisions made outside of platted subdivisions for the purpose of a gift or sale to any member of the landowner's immediate family;"

HB 715 would greatly limit a landowner's ability to gift or sell land to family members. HB 715 (page 8, lines 7 through 16) states:

"The following divisions of land are not subdivisions under this chapter . . . (b) a single division of a parcel to which title or contract for deed as recorded in a notice of purchaser's interest filed with the clerk and recorder has been held continuously by the person proposing to divide the parcel for a period of three years and which is outside of platted subdivisions if the transaction is a gift or sale to each member of the landowner's immediate family."

Apparently, under HB 715 in order for the family exception to be valid, the landowner must gift or sell a portion of his land to each family member. This means that legally he would be unable to sell or give land to only one member of his family.

3. Estate Planning. The above mentioned exception of divisions of land made for the purpose of a gift or sale to a member of the landowner's immediate family can be very useful in estate and tax planning. If, for instance, a rancher purchases additional hay land, the title to that land could be put in the name of a son or daughter. This way, any income received from the purchased hay land would be the income of the son and not the father, thus putting the rancher in a lower tax bracket. This "income spreading" can be used very effectively to limit income and estate taxes. Under HB 715, the rancher in the above example would not be able to use this method of income spreading for three years after he bought the property. And then he must sell or gift a portion of the hay land to each member of his immediate family. Any further divisions, for tax purposes, would have to be reviewed as a major subdivision.

4. Occasional Sales. Present law (76-3-207(1)(d), MCA) allows for occasional sales of real property without review. HB 715 (page 8, line 25) states that:

" . . . The following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:  
(d) a single division of a parcel to which title or contract for deed as recorded in a notice of purchaser's interest filed with the clerk and recorder has been held continuously by the person proposing to divide the parcel for a period of three years and which is outside of platted subdivisions, if the transaction is an occasional sale . . . "

Proponents of HB 715 will argue that the occasional sale is still allowed under this bill, the only limitation being that the owner must own the land for three years before subdividing. However, due to the amended definition of "occasional sale" the passing of HB 715 would make it impossible to conduct an unreviewed occasional sale. As stated above, HB 715 would require a landowner to own the property for three years and that the transaction be an occasional sale. However, the amended definition of "occasional sale" reads as follows:

" 'Occasional sale' means one division of land for conveyance within any twelve months following the time of conveyance. "

On one hand, HB 715 requires the landowner to hold the property for three years; on the other, he must sell it within twelve months of the time of purchase. This inconsistency makes any unreviewed occasional sale impossible.

Exhibit K

TESTIMONY  
HOUSE BILL 175

Under consideration by the Senate Local Government Committee

Mr. Chairman and Members of the Committee:

My name is Ethel Harding. I am the Clerk and Recorder in Lake County. I am here today to present my views on H.B. 715.

Our 20% population growth rate has placed extra pressures on my land services department. Statistics show that from 1973 (the date of passage of the Subdivision and Platting Act) to 1979, 2010 divisions of land were recorded in my office, via the formal subdivision process, the occasional sale exemption and the family transfer exemption. Subdivision accounted for 733 of these parcels. 2,018 parcels were created through the above-mentioned exemptions to the act. Of these exemptions approximately 50, or 4% were questioned by our staff as possibly being used to evade the subdivision laws. In each case fact finding sessions occurred, many legal jousts were traded and a few tempers boiled over. In each case, the monkey of responsibility ultimately ended on my back. I'm here today to convey to you my belief that county clerks are not omnipotent beings and express to you my doubt that this bill, as proposed, will defy our powers and eliminate the occasional unscrupulous developer. I believe in the subdivision process.

I believe in protecting the public, our land and natural resources. I also believe that man's attempt to employ mortal means to protect immortally granted resources has, throughout time been crowned with more failure than success.

While this bill may provide a stop gap for a few undesirable land development practices, it also may prevent quite a few honest people from dividing and conveying their parcels in an intelligent and necessary way. They won't be mad at the legislature, the County Commissioners, the Planner, the Attorney or the Surveyor. They'll plop their displeasure on my desk, hire an attorney to sue me and be on my conscience.

For these reasons, I urge the committee to scrutinize two important aspects of this bill as proposed:

1. The 40 acre limitation is too large and will pre-empt many legitimate land transfers of smaller acreages.
2. The 3 year limitation on uses of the family transfer and occasional sale exemptions is too long. It will likewise negatively effect honest individuals in relieving financial problems, estate difficulties and the like.

Please consider these points. In closing, I would like to say that problems of County Clerks in rapidly growing counties are very real. I would encourage any of you who doubt this to become residents of Lake County and run for my job during the next election.

Sincerely,



Ethel M. Harding  
CLERK AND RECORDER  
LAKE COUNTY, MONTANA  
March 19, 1981

EXHIBIT L

Due to the size of maps and volume of articles, copies were not made for this copy of the minutes. If interested in the information, please see the original set of the Senate Local Government Committee Minutes.

EXHIBIT M

Due to the volume of the "Lewis and Clark Areawide Planning Organization", a copy was included with this set of minutes. If you are interested in the report, please see the original set of Senate Local Government Committee minutes.

# MISSOULA COUNTY

MISSOULA PLANNING OFFICE · 301 West Alder · Missoula, Montana 59801  
(406) 721-5700

## Testimony Prepared for Hearing on HB715

Senate Local Government Committee

March 19, 1981

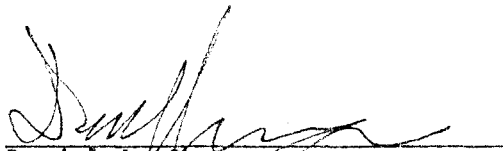
These comments are offered in support of HB715 and the EIC subdivision inventory of Missoula County. This office was involved in the design of the inventory method. I can assure you every effort was made to provide an accurate picture of the land division inventory for Missoula County. There were several steps taken to eliminate errors.

One step was to assure correct identification of the types of parcel created and the method of creation. Since one objective of the inventory was to determine the land division activity which was occurring through the exemptions to the Montana Subdivision and Platting Act, care was taken to separate out the subdivision activity and the land division activity prior to 1973, from the exempted land division activity since 1973.

Another important step was the plotting of all divisions on County maps. Mapping of the divisions would prevent duplication in counting parcels.

In addition, the findings of the inventory verified trends the Staff had identified in land development. The main concern of the Staff was that over half the lots created had little or no review for such concerns as road access and maintenance responsibility, traffic, fire, police and emergency services being provided for public safety, environmental impact on soil and water, air, vegetation and wildlife, and impact on public costs of providing necessary services and utilities.

House Bill 715 offers local government a means to address these public concerns in a reasonable manner. I urge your support of HB715.



Daniel A. Obermeyer  
Interim Planning Director

DAO:cw

PRESIDENT  
Denis Applebury  
Route 1, Box 47  
Victor, MT 59875

SECRETARY-TREASURER  
Charles Wright  
Route 2, Box 7  
Stevensville, MT 59870



PRESIDENT-ELECT  
Mike Foley  
103 Commercial Drive  
Bozeman, MT 59715

VICE PRESIDENT  
Don Ebbutt  
321 Speedway Avenue  
East Missoula, MT 59801

P. O. Box 4112  
Missoula, Montana 59806

MARCH 18, 1981

TO: The 1981 Montana State Legislature  
Local Government Committee  
State Capitol Bldg.  
Helena, Montana .

Dear Sirs:


The Montana Association of Registered Land Surveyors would like take this opportunity to address the Local Government Committee regarding House Bill no. 715.

The annual conference of MARLS is being conducted at this moment in Great Falls. Amendments to H.B. 715 are currently being discussed, and various changes are to be put before the general membership on Friday morning. Several of the points which the membership will be addressing have already been discussed with representatives of the Department of Community Affairs and the Montana Association of Planners in an attempt to arrive at a compromise language for the bill. The results of the Friday morning meeting could be placed before this committee on Saturday or Monday.

MARLS, therefore, would like to request that the committee continue their hearing on H.B. 715 until Monday, March 23, 1981, so that an appropriate response can be made to the committee.

It is the firm conviction of the association that a comprehensive, reasonable, and orderly management and review of the development of Montana's lands is necessary, and is fundamental to the protection of the rights of Montana landowners, and the public health, safety, and welfare in general. MARLS believes that the current law is neither effectual nor reasonable; and we believe that the current Montana Subdivision and Platting Act is in need of revision, if not complete reconstruction. Further, MARLS finds that H.B. 715, as proposed, makes little progress toward addressing the problems inherent in the existing act, while creating many new vague and ambiguous problems.

Therefore, due to the poor language and ambiguity of the proposed H.B. 715, the Montana Association of Registered Land Surveyors must go on record as being opposed to House Bill 715 as it is currently proposed. We request a continuance by this committee of the review of H.B. 715 until appropriate comments or amendments can be presented by MARLS for the committee's consideration.

  
\_\_\_\_\_  
Denis L. Applebury, President

CHARTER MEMBER OF WESTERN FEDERATION OF PROFESSIONAL LAND SURVEYORS

AFFILIATE MEMBER OF AMERICAN CONGRESS ON SURVEYING AND MAPPING

Suggested amendments to HB 715 by League of Women Voters of Montana

Page 2 - Section (a) - line 18 - after the word "for" and before "residential" insert "agricultural".

Page 2 - Section (a) - lines 19 and 20 - after "quality" insert ", densities," and delete "urban". Also on line 19 change last "or" to "and".

Page 11- Section 7 - line 12 - insert new (1) as follows: "Eligibility for summary review: Minor subdivisions or subdivisions consisting exclusively of parcels larger than 40 acres may be eligible for summary review if the governing body determines prior to the submittal of the preliminary plat that they will not have a major impact. Reasonable local regulations shall set criteria for this determination." Current (1) will then become (2).

Page 14- Section (2) - lines 17, 18, and 19, strike beginning with "If the governing body - - -"

Page 16- Lines 23 and 24 - strike "and finding that the subdivision is in the public interest".

Page 16- Lines 15 and 16; page 17 - lines 14 and 15; and page 18 - lines 6 and 7 - strike all references to automatic approvals.

Page 18- Strike entire New Section - Section 13.

If suggested amendments on page 11, section 7 are not accepted we wish to leave in Section 13.

Thank you for your time and consideration.

THELMA MOODY , STEVENSVILLE, MONTANA.

3-19-1981.

( LAND OWNER, TAXPAYER, VOTER, LAND DEVELOPER, SUBDIVIDER.)

COMMENTS 4B H.B. 715

HOW MANY PEOPLE IN THIS UNITED STATES WANTS TO BE UNDER COMMUNISUM RULE?

H.B. 715, IS A BLATANT WAY OF PUSHING ALL THE LAND OWNERS INTO COMMUNISUM.

IN THE FIRST PLACE THE PUBLIC WAS NOT MADE AWARE THERE WAS SUCH A COMMUNISTIC EPISTOL BEING PERPUTRATED AGAINST THE TAX PAYERS OF THIS STATE. WHY?

THE LEAGUE OF WOMEN VOTERS SAID THEY ARE TRYING TO PUT THIS H.B.715 through for the tax payers.

US TAX PAYERS "WHICH ARE THE PEOPLE WHO OWN PROPERTY AND HOMES AND BUSINESSES AND FARMS WISH TO \_ H - THEY WOULD MIND THEIR OWN BUSINESS. IF WE WANT TO SAVE THE TAX PAYERS SOMETHING LETS GET RID OF THIS PLANNING BUSINESS, THE BIG HEALTH DEPARTMENT, "WHO COULDN'T CARE LESS A ABOUT YOUR HEALTH"), THE DEPARTMENT OF COMMUNITY AFFAIRS, AND ABOUT HALF OF THE HIGHWAY DEPARTMENT.

THEN WE WOULD HAVE ENOUGH OF THE TAX PAYERS MONEY TO DO THE THINGS WE REALLY NEED TO DO.

I DO NOT THINK IT IS RIGHT FOR THIS PARASITE GROUPE TO PERPETRATE A JOB FOR THE PLANNERS AND MAKE A BOOME FOR THESE LEACHES.

I CANNOT THINK OF ONE GOOD THING THAT THE PLANNING DEPARTMENT HAS DONE FOR THIS STATE. WE HAD ALL THE LAWS WE NEEDED BEFORE IT WAS EVER CREATED. THE ONLY THING THEY DO IS RIP PEOPLE OFF AND CAUSE HOMES TO BECOME SO EXPENSIVE THAT NO ONE CAN BUY THEM.

THIS H.B. 715 WILL PUT COUNTLESS PEOPLE OUT OF WORK AND ANY OF OUR CHILDREN WHO NEED A FUTURE HOME W LL PAY VERY DEARLY FOR IT.

WE DO NOT NEED ALL THIS GOVERNMENT CONTROL. THE PEOPLE ARE FED UP TO THEIR EARS WITH IT.

LOOK AT WHAT A MESS THE ENVIORNMENTLISTS AND PLANERS AND THAT LEAGUE OF WOMEN VOTERS HAVE ALREADY DONE TO OUR STATE.

THERE IS NOTHING FAIR ABOUT H.B.715

IT IS MEARLY A RIP OF OF PEOPLE WHO HAVE OR WANT PROPERTY, IN ORDER FOR THESE LEACHES OT KEEP THEMSELVES IN A JOB THEY CAN ONLY EXIST BY STEALING OTHER PEOPLES PROPERTY OR RIGHTS.

LASTLY H.B.715, TAKES ALL THE CONSTITUTIONAL RIGHTS FROM THE PEOPLE WHO OWN PROPERTY. IF THEY CAN TAKE YOUR LAND AND YOU HAVE NO RIGHT TO SAY WHAT YOU WANT TO DO WITH IT, THEY WILL BE ABLE TO TAKE YOUR HOUSEHOLD GOODS OR CARS OR ANYTHING ELSE.

CONSTITUTION AMENDMENT 14. XIV  
SECTION I.

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES ARE SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES, AND OF THE STATES WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES. NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW: NOR DENY TO ANY PERSON WITHIN JURISDICTION THE EQUAL PROTECTION OF LAWS.

ARTICLE VI

THIS CONSTITUTION AND THE LAWS OF THE UNITED STATES WHICH SHALL BE MADE IN PURSUANCE THEREOFF SHALL BE THE SUPREME LAW OF THE LAND: AND THE JUDGES IN EVERY STATE SHALL BE BOUND THEREBY.

I RECCMEND DO NOT PASS THIS MONOSTROSITY H.B. 715, as it is unconstitutional.