

1 *House* BILL NO. *628*  
 2 INTRODUCED BY *Hemmis* *Commission* *Holubuck*  
 3 *VINCENT* *Scott* *Bardensaw* *FRR*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS  
 5 11-3863 AND 11-3866, R.C.M. 1947, TO PERMIT LOCAL GOVERNING  
 6 BODIES TO INCLUDE IN THEIR SUBDIVISION REGULATIONS  
 7 PROVISIONS CONCERNING THE RESERVATION OF SITES AND LAND  
 8 AREAS AND THE DEDICATION OF SITES AND LAND AREAS FOR  
 9 SCHOOLS; THE GOVERNING BODY TO RECEIVE RECOMMENDATIONS FROM  
 10 SCHOOL DISTRICTS REGARDING ADEQUACY OF SCHOOL SITES."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 13 Section 1. Section 11-3863, R.C.M. 1947, is amended to  
 14 read as follows:

15 "11-3863. Enforcement by governmental subdivisions--  
 16 adoption of regulations--public hearing. (1) The governing  
 17 body of every county, city, and town shall, before July 1,  
 18 1974, adopt and provide for the enforcement and  
 19 administration of subdivision regulations reasonably  
 20 providing for the orderly development of their  
 21 jurisdictional areas; for the co-ordination of roads within  
 22 subdivided land with other roads, both existing and planned;  
 23 for the dedication of land for roadways and for public  
 24 utility easements; for the improvement of roads; for the  
 25 provision of adequate open spaces for travel, light, air and

1 recreation; for the provision of adequate transportation,  
 2 water, drainage, and sanitary facilities; for the avoidance  
 3 or minimization of congestion; and for the avoidance of  
 4 subdivision which would involve unnecessary environmental  
 5 degradation; and the avoidance of danger of injury to  
 6 health, safety, or welfare by reason of natural hazard or  
 7 the lack of water, drainage, access, transportation or other  
 8 public services or would necessitate an excessive  
 9 expenditure of public funds for the supply of such services.

10 Prior to adopting or amending subdivision regulations  
 11 pursuant to this act, the governing body shall submit the  
 12 proposed regulations or amendments to the division of  
 13 planning and economic development of the department of  
 14 intergovernmental relations for review.

15 Before the governing body adopts subdivision  
 16 regulations pursuant to this section it shall hold a public  
 17 hearing thereon and shall give public notice of its intent  
 18 to adopt such regulations and of the public hearing by  
 19 publication of notice of the time and place of the hearing  
 20 in a newspaper of general circulation in the county not less  
 21 than fifteen (15) nor more than thirty (30) days prior to  
 22 the date of the hearing.

23 (2) Not later than December 31, 1973, the department of  
 24 intergovernmental relations, through its division of  
 25 planning, shall, in conformance with the Montana

INTRODUCED BILL

-2- HB 628

1 Administrative Procedure Act (sections 82-4201 through  
 2 82-4225), prescribe reasonable minimum requirements for  
 3 subdivision regulations adopted pursuant to this act. The  
 4 minimum requirements shall include detailed criteria for the  
 5 content of the environmental assessment required by this  
 6 act. The department shall provide for the review of  
 7 preliminary plats by those agencies of state and local  
 8 government and affected public utilities having a  
 9 substantial interest in a proposed subdivision; provided,  
 10 however, that such agency or utility review shall not delay  
 11 the governing body's action on the plat beyond the time  
 12 limit specified herein, and the failure of any agency to  
 13 complete a review of a plat shall not be a basis for  
 14 rejection of the plat by the governing body.

15 (3) In prescribing the minimum contents of the  
 16 subdivision regulations, the department of intergovernmental  
 17 relations, through its division of planning, shall require  
 18 the submission by the subdivider to the governing body of an  
 19 environmental assessment.

20 (3.1) When a subdivision is proposed in an area for  
 21 which a master plan has been adopted pursuant to sections  
 22 11-3801 through 11-3856 and the proposed subdivision will be  
 23 in compliance with the plan or when the subdivision will  
 24 contain fewer than ten (10) parcels and less than twenty  
 25 (20) acres, a planning board established pursuant to

1 sections 11-3801 through 11-3856 and having jurisdiction  
 2 over the area involved may exempt the subdivider from the  
 3 completion of all or any portion of the environmental  
 4 assessment. When such an exemption is granted, the planning  
 5 board shall prepare and certify a written statement of the  
 6 reasons for granting the exemption. A copy of this statement  
 7 shall accompany the preliminary plat of the subdivision when  
 8 it is submitted for review. Where no properly established  
 9 planning board having jurisdiction exists, the governing  
 10 body may grant exemptions as specified in this paragraph.

11 (4) Where required the environmental assessment shall  
 12 accompany the preliminary plat and shall include:

13 (a) a description of every body or stream of surface  
 14 water as may be affected by the proposed subdivision,  
 15 together with available ground water information, and a  
 16 description of the topography, vegetation and wildlife use  
 17 within the area of the proposed subdivision;

18 (b) maps and tables showing soil types in the several  
 19 parts of the proposed subdivision, and their suitability for  
 20 any proposed developments in those several parts;

21 (c) a community impact report containing a statement of  
 22 anticipated needs of the proposed subdivision for local  
 23 services, including education and busing, roads and  
 24 maintenance, water, sewage, and solid waste facilities, and  
 25 fire and police protection;

1 (d) such additional relevant and reasonable information  
2 as may be required by the department through its division of  
3 planning.

4 (5) Local subdivision regulations shall include  
5 procedures for the summary review and approval of  
6 subdivision plats containing five (5) or fewer parcels where  
7 proper access to all lots is provided, where no land in the  
8 subdivision will be dedicated to public use for parks or  
9 playgrounds and which have been approved by the department  
10 of health and environmental sciences where such approval is  
11 required by sections 69-5001 through 69-5005; provided that  
12 reasonable local regulations may contain additional  
13 requirements for summary approval.

14 (6) Local subdivision regulations may include  
15 provisions governing sites and land areas for schools when  
16 they are necessary to serve the future residents of the  
17 proposed subdivision. Such provisions may include:

18 (a) reservation of sites and land areas for  
19 acquisition by the governing body at a cost not to exceed  
20 the subdivider's purchase price;

21 (b) dedication of sites and land areas to the  
22 governing body, or a payment of money not to exceed the full  
23 market value of the sites and land areas. If the governing  
24 body accepts a payment of money instead of a dedication of  
25 land, the funds shall be held by the governing body for the

1 future acquisition of land.

2 ~~(6)~~ (7) Subdivision regulations may authorize the  
3 governing body to grant variances from the regulations when  
4 strict compliance will result in undue hardship and when it  
5 is not essential to the public welfare. Any variance granted  
6 pursuant to this subsection must be based on specific  
7 variance criteria contained in the subdivision regulations.

8 ~~(7)~~ (8) Local regulations may provide that in lieu of  
9 the completion of the construction of any public  
10 improvements prior to the approval of a final plat, the  
11 governing body shall require a bond or other reasonable  
12 security, in an amount and with surety and conditions  
13 satisfactory to it, providing for and securing the  
14 construction and installation of such improvements within a  
15 period specified by the governing body and expressed in the  
16 bonds or other security.

17 ~~(8)~~ (9) In the event that any governing body has not  
18 adopted subdivision regulations by July 1, 1974, which meet  
19 or exceed the prescribed minimum requirements, the  
20 department shall, through its division of planning, no later  
21 than January 1, 1975, promulgate reasonable regulations to  
22 be enforced by the governing body. If at any time thereafter  
23 the governing body adopts its own subdivision regulations,  
24 these shall supersede those promulgated by the department  
25 but shall be no less stringent."

HB 623

1 Section 2. Section 11-3866, R.C.M. 1947, is amended to  
2 read as follows:

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4 body--notice--hearing--approval--disapproval. (1) Except  
5 where a plat is eligible for summary approval the subdivider  
6 shall present to the governing body, or the agent or agency  
7 designated thereby, the preliminary plat of the proposed  
8 subdivision for local review. When the proposed subdivision  
9 lies within the boundaries of an incorporated city or town,  
10 the preliminary plat shall be submitted to and approved by  
11 the city or town governing body. When the proposed  
12 subdivision is situated entirely in an unincorporated area  
13 the preliminary plat shall be submitted to and approved by  
14 the governing body of the county; however, if the proposed  
15 subdivision lies within one (1) mile of a third class city  
16 or town or within two (2) miles of a second class city or  
17 within three (3) miles of a first class city the county  
18 governing body shall submit the preliminary plat to the city  
19 or town governing body or its designated agent for review  
20 and comment. If the proposed subdivision lies partly within  
21 an incorporated city or town, the proposed plat thereof must  
22 be submitted to and approved by both the city or town and  
23 the county governing bodies. This section does not limit the  
24 authority of certain municipalities to regulate subdivisions  
25 beyond their corporate limits pursuant to section 11-3305.

1 (2) The governing body shall approve, conditionally  
2 approve, or reject the preliminary plat within sixty (60)  
3 days of its presentation unless the subdivider consents to  
4 an extension of the review period. The preliminary plat  
5 shall show all pertinent features of the proposed  
6 subdivision and all proposed improvements. The governing  
7 body or its designated agent or agency shall review the  
8 preliminary plat to determine whether it conforms to the  
9 local master plan if one has been adopted pursuant to  
10 sections 11-3801 through 11-3856 to the provisions of this  
11 act, and to rules and regulations prescribed or adopted  
12 pursuant to this act.

13 (3) If the subdivision regulations of the local  
14 governing body include a provision that regulates the  
15 reservation or dedication of sites and land areas for  
16 schools, then upon receipt of a preliminary plat of the  
17 proposed subdivision the governing body shall distribute a  
18 copy of the plat to the appropriate school district. Upon  
19 receipt of the plat the school district shall have twenty  
20 four (24) days in which to submit specific recommendations  
21 to the governing board in relation to the adequacy of the  
22 school sites and school structures included in the proposed  
23 subdivision.

24 ~~(3)~~ (4) The governing body or its authorized agent or  
25 agency shall hold a public hearing on the preliminary plat

1 and shall consider all relevant evidence relating to the  
 2 public health, safety and welfare, including the  
 3 environmental assessment, to determine whether the plat  
 4 should be approved, conditionally approved, or disapproved  
 5 by the governing body. Notice of such hearing shall be given  
 6 by publication in a newspaper of general circulation in the  
 7 county not less than fifteen (15) days prior to the date of  
 8 the hearing. The subdivider and each property owner of  
 9 record immediately adjoining the land included in the plat  
 10 shall also be notified of the hearing by registered mail not  
 11 less than fifteen (15) days prior to the date of the  
 12 hearing. When a hearing is held by an agent or agency  
 13 designated by the governing body, the agent or agency shall  
 14 act in an advisory capacity and recommend to the governing  
 15 body the approval, conditional approval, or disapproval of  
 16 the plat. This recommendation must be submitted to the  
 17 governing body in writing not later than ten (10) days after  
 18 the public hearing. If the governing body rejects or  
 19 conditionally approves the preliminary plat, it shall  
 20 forward one (1) copy of the plat to the subdivider  
 21 accompanied by a letter over the appropriate signature  
 22 stating the reason for rejection or enumerating the  
 23 conditions which must be met to assure approval of the final  
 24 plat.

25 ~~(4)~~ (5) Upon approving or conditionally approving a

1 preliminary plat, the governing body shall provide the  
 2 subdivider with a dated and signed statement of approval.  
 3 This approval shall be in force for not more than one (1)  
 4 calendar year; at the end of this period the governing body  
 5 may, at the request of the subdivider, extend its approval  
 6 for no more than one (1) calendar year."

-End-

HB 628

STATE OF MONTANA

REQUEST NO. 180-75

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 19 75, there is hereby submitted a Fiscal Note for House Bill 628 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

**DESCRIPTION OF PROPOSED LEGISLATION:**

*House Bill 628 permits local governing bodies to include provisions concerning the reservation and dedication of sites and land areas for schools in their subdivision regulations.*

**ASSUMPTIONS:**

*Revised administrative rules for "Minimum Subdivision Requirements" will be developed by the state regulatory agency and could include the changes under the proposed law at no additional costs.*

**FISCAL IMPACT:**

*None*

**LOCAL IMPACT:**

*Future school construction costs would be reduced in certain cases (by the cost of site acquisition) in areas where local governing bodies choose to require dedication of school sites with subdivisions. The costs of the dedication will be borne by the developer of the subdivision.*



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 13, 1975

Objection Raised to  
Adverse Committee Report

HOUSE BILL NO. 628

INTRODUCED BY KEMMIS, HUENNEKENS, HELMBRECHT, VINCENT,  
SOUTH, BARDANOUE, FAGG

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 5 assessment. When such an exemption is granted, the planning  
 6 board shall prepare and certify a written statement of the  
 7 reasons for granting the exemption. A copy of this statement  
 8 shall accompany the preliminary plat of the subdivision when  
 9 it is submitted for review. Where no properly established  
 10 planning board having jurisdiction exists, the governing  
 11 body may grant exemptions as specified in this paragraph.

12 (4) Where required the environmental assessment shall  
 13 accompany the preliminary plat and shall include:

14 (a) a description of every body or stream of surface  
 15 water as may be affected by the proposed subdivision,  
 16 together with available ground water information, and a  
 17 description of the topography, vegetation and wildlife use  
 18 within the area of the proposed subdivision;

19 (b) maps and tables showing soil types in the several  
 20 parts of the proposed subdivision, and their suitability for  
 21 any proposed developments in those several parts;

22 (c) a community impact report containing a statement of  
 23 anticipated needs of the proposed subdivision for local  
 24 services, including education and busing, roads and  
 25 maintenance, water, sewage, and solid waste facilities, and

1 fire and police protection;

2 (d) such additional relevant and reasonable information  
3 as may be required by the department through its division of  
4 planning.

5 (5) Local subdivision regulations shall include  
6 procedures for the summary review and approval of  
7 subdivision plats containing five (5) or fewer parcels where  
8 proper access to all lots is provided, where no land in the  
9 subdivision will be dedicated to public use for parks or  
10 playgrounds and which have been approved by the department  
11 of health and environmental sciences where such approval is  
12 required by sections 69-5001 through 69-5005; provided that  
13 reasonable local regulations may contain additional  
14 requirements for summary approval.

15 (6) Local subdivision regulations may include  
16 provisions governing sites and land areas for schools when  
17 they are necessary to serve the future residents of the  
18 proposed subdivision. Such provisions may include:

19 (a) reservation of sites and land areas for  
20 acquisition by the governing body at a cost not to exceed  
21 the subdivider's purchase price;

22 (b) dedication of sites and land areas to the  
23 governing body, or a payment of money not to exceed the full  
24 market value of the sites and land areas. If the governing  
25 body accepts a payment of money instead of a dedication of

1 land, the funds shall be held by the governing body for the  
2 future acquisition of land SCHOOL LAND OR FOR THE  
3 IMPROVEMENT OF SCHOOL STRUCTURES.

4 ~~(6)~~ (7) Subdivision regulations may authorize the  
5 governing body to grant variances from the regulations when  
6 strict compliance will result in undue hardship and when it  
7 is not essential to the public welfare. Any variance granted  
8 pursuant to this subsection must be based on specific  
9 variance criteria contained in the subdivision regulations.

10 ~~(7)~~ (8) Local regulations may provide that in lieu of  
11 the completion of the construction of any public  
12 improvements prior to the approval of a final plat, the  
13 governing body shall require a bond or other reasonable  
14 security, in an amount and with surety and conditions  
15 satisfactory to it, providing for and securing the  
16 construction and installation of such improvements within a  
17 period specified by the governing body and expressed in the  
18 bonds or other security.

19 ~~(8)~~ (9) In the event that any governing body has not  
20 adopted subdivision regulations by July 1, 1974, which meet  
21 or exceed the prescribed minimum requirements, the  
22 department shall, through its division of planning, no later  
23 than January 1, 1975, promulgate reasonable regulations to  
24 be enforced by the governing body. If at any time thereafter  
25 the governing body adopts its own subdivision regulations,

1 these shall supersede those promulgated by the department  
2 but shall be no less stringent."

3 Section 2. Section 11-3866, R.C.M. 1947, is amended to  
4 read as follows:

5 "11-3866. Submission of subdivision plat to governing  
6 body--notice--hearing--approval--disapproval. (1) Except  
7 where a plat is eligible for summary approval the subdivider  
8 shall present to the governing body, or the agent or agency  
9 designated thereby, the preliminary plat of the proposed  
10 subdivision for local review. When the proposed subdivision  
11 lies within the boundaries of an incorporated city or town,  
12 the preliminary plat shall be submitted to and approved by  
13 the city or town governing body. When the proposed  
14 subdivision is situated entirely in an unincorporated area  
15 the preliminary plat shall be submitted to and approved by  
16 the governing body of the county; however, if the proposed  
17 subdivision lies within one (1) mile of a third class city  
18 or town or within two (2) miles of a second class city or  
19 within three (3) miles of a first class city the county  
20 governing body shall submit the preliminary plat to the city  
21 or town governing body or its designated agent for review  
22 and comment. If the proposed subdivision lies partly within  
23 an incorporated city or town, the proposed plat thereof must  
24 be submitted to and approved by both the city or town and  
25 the county governing bodies. This section does not limit the

1 authority of certain municipalities to regulate subdivisions  
2 beyond their corporate limits pursuant to section 11-3305.

3 (2) The governing body shall approve, conditionally  
4 approve, or reject the preliminary plat within sixty (60)  
5 days of its presentation unless the subdivider consents to  
6 an extension of the review period. The preliminary plat  
7 shall show all pertinent features of the proposed  
8 subdivision and all proposed improvements. The governing  
9 body or its designated agent or agency shall review the  
10 preliminary plat to determine whether it conforms to the  
11 local master plan if one has been adopted pursuant to  
12 sections 11-3801 through 11-3856 to the provisions of this  
13 act, and to rules and regulations prescribed or adopted  
14 pursuant to this act.

15 (3) If the subdivision regulations of the local  
16 governing body include a provision that regulates the  
17 reservation or dedication of sites and land areas for  
18 schools, then upon receipt of a preliminary plat of the  
19 proposed subdivision the governing body shall distribute a  
20 copy of the plat to the appropriate school district. Upon  
21 receipt of the plat the school district shall have  
22 twenty-four (24) days in which to submit specific  
23 recommendations to the governing board in relation to the  
24 adequacy of the school sites and school structures included  
25 in ~~AFFECTED BY~~ the proposed subdivision.

1       ~~43~~ (4) The governing body or its authorized agent or  
 2 agency shall hold a public hearing on the preliminary plat  
 3 and shall consider all relevant evidence relating to the  
 4 public health, safety and welfare, including the  
 5 environmental assessment, to determine whether the plat  
 6 should be approved, conditionally approved, or disapproved  
 7 by the governing body. Notice of such hearing shall be given  
 8 by publication in a newspaper of general circulation in the  
 9 county not less than fifteen (15) days prior to the date of  
 10 the hearing. The subdivider and each property owner of  
 11 record immediately adjoining the land included in the plat  
 12 shall also be notified of the hearing by registered mail not  
 13 less than fifteen (15) days prior to the date of the  
 14 hearing. When a hearing is held by an agent or agency  
 15 designated by the governing body, the agent or agency shall  
 16 act in an advisory capacity and recommend to the governing  
 17 body the approval, conditional approval, or disapproval of  
 18 the plat. This recommendation must be submitted to the  
 19 governing body in writing not later than ten (10) days after  
 20 the public hearing. If the governing body rejects or  
 21 conditionally approves the preliminary plat, it shall  
 22 forward one (1) copy of the plat to the subdivider  
 23 accompanied by a letter over the appropriate signature  
 24 stating the reason for rejection or enumerating the  
 25 conditions which must be met to assure approval of the final

1 plat.

2       ~~44~~ (5) Upon approving or conditionally approving a  
 3 preliminary plat, the governing body shall provide the  
 4 subdivider with a dated and signed statement of approval.  
 5 This approval shall be in force for not more than one (1)  
 6 calendar year; at the end of this period the governing body  
 7 may, at the request of the subdivider, extend its approval  
 8 for no more than one (1) calendar year."

-End-