

1 House BILL NO. 652
 2 INTRODUCED BY Hermis Hunsicker Miloy
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
 5 11-3860 THROUGH 11-3864, R.C.M. 1947; TO CLARIFY THE
 6 REGULATION OF SUBDIVISIONS; PROVIDING AN IMMEDIATE EFFECTIVE
 7 DATE."
 8

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

10 Section 1. Section 11-3860, R.C.M. 1947, is amended to
 11 read as follows:

12 "11-3860. Statement of purpose. It is the purpose of
 13 this act to promote the public health, safety, and general
 14 welfare by regulating the subdivision of land; to prevent
 15 overcrowding of land; to lessen congestion in the streets
 16 and highways; to provide for adequate light, air, water
 17 supply, sewage disposal, parks and recreation areas, ingress
 18 and egress, and other public requirements; to encourage
 19 development in harmony with the natural environment; to
 20 require that the subdivider assume financial responsibility
 21 for the completion of improvements and cost of services
 22 required by the subdivision; and to require uniform
 23 monumentation of land subdivisions and transferring
 24 interests in real property by reference to plat or
 25 certificate of survey."

1 Section 2. Section 11-3861, R.C.M. 1947, is amended to
 2 read as follows:

3 "11-3861. Definitions. As used in this act, unless the
 4 context or subject matter clearly requires otherwise, the
 5 following words or phrases shall have the following
 6 meanings:

7 (1) "Certificate of survey" means a drawing of a field
 8 survey prepared by a registered surveyor for the purpose of
 9 disclosing facts pertaining to boundary locations.

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

15 (2.1) "Division of land" means the segregation of one
 16 or more parcels of land from a larger tract held in single
 17 or undivided ownership by transferring, or contracting to
 18 transfer, title to or possession of a portion of the tract
 19 or properly filing a certificate of survey or subdivision
 20 plat establishing the identity of the segregated parcels
 21 pursuant to this act. Provided that where required by this
 22 act the land upon which an improvement is situated has been
 23 subdivided in compliance with this act, the sale, rent,
 24 lease or other conveyance of one or more parts of a
 25 building, structure, or other improvement situated on one or

1 more parcels of land is not a division of land and is not
2 subject to the terms of this act.

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

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

9 (4.1) "Irregularly shaped tract of land" means a
10 parcel of land other than an aliquot part of the United
11 States government survey section or a United States
12 Government lot the boundaries or areas of which cannot be
13 determined without a survey or trigonometric calculation.

14 (5) "Planned unit development" means a land
15 development project consisting of residential clusters,
16 industrial parks, shopping centers, or office building
17 parks, or any combination thereof which comprises a planned
18 mixture of land uses built in a prearranged relationship to
19 each other and having open space and community facilities in
20 common ownership or use.

21 (6) "Plat" means a graphical representation of a
22 subdivision showing the division of land into lots, parcels,
23 blocks, streets, and alleys, and other divisions and
24 dedications.

25 (7) "Preliminary plat" means a neat and scaled drawing

1 of a proposed subdivision showing the layout of streets,
2 alleys, lots, blocks, and other elements of a subdivision
3 which furnish a basis for review by a governing body.

4 (8) "Final plat" means the final drawing of the
5 subdivision and dedication required by this act to be
6 prepared for filing for record with the county clerk and
7 recorder and containing all elements and requirements set
8 forth in this act and in regulations adopted pursuant
9 thereto.

10 (9) "Registered land surveyor" means a person licensed
11 in conformance with the Montana Professional Engineers'
12 Registration Act (sections 66-2301 through 66-2347) to
13 practice surveying in the state of Montana.

14 (10) "Registered professional engineer" means a person
15 licensed in conformance with the Montana Professional
16 Engineers' Registration Act (sections 66-2301 through
17 66-2347) to practice engineering in the state of Montana.

18 (11) "Subdivider" means any person who causes land to
19 be subdivided or who proposes a subdivision of land.

20 (12) "Subdivision" means a division of land, or land
21 so divided, which creates one or more parcels ~~containing~~
22 ~~less--than--twenty--(20)--acres,--exclusive--of--public--roadways~~
23 regardless of size, in order that the title to or possession
24 of the parcels may be sold, rented, leased, or otherwise
25 conveyed, and shall include any resubdivision; and shall

1 further include any condominium or area, regardless of its
 2 size, which provides or will provide multiple space for
 3 recreational camping vehicles, or mobile homes. A
 4 subdivision shall comprise only those parcels ~~less than~~
 5 ~~twenty-(20)--acres~~ which have been segregated from the
 6 original tract, and the plat thereof shall show all such
 7 parcels whether contiguous or not. Provided, however,
 8 condominiums constructed on land divided in compliance with
 9 this chapter are exempt from the provisions of this chapter.

10 ~~(13) "Occasional sale" means one sale of a division of~~
 11 ~~land within any twelve month (12) period.~~

12 (13) "Subdivision improvements agreement" means one or
 13 more security agreements which may be accepted by a
 14 governing body to secure the construction of such public
 15 improvements within the subdivision as are required by
 16 subdivision regulations and shall include collateral, such
 17 as, but not limited to, performance or property bonds,
 18 private or public escrow agreements, loan commitments,
 19 assignments of receivables, liens on property, deposit of
 20 certified funds, or other similar surety agreements."

21 Section 3. Section 11-3862, R.C.M. 1947, is amended to
 22 read as follows:

23 "11-3862. Surveys required--exceptions--standards for
 24 monumentation. (1) All divisions of land for sale other than
 25 a subdivision after the effective date of this act into

1 parcels which cannot be described as 1/32 or larger aliquot
 2 parts of a United States government section or a United
 3 States government lot must be surveyed by or under the
 4 supervision of a registered land surveyor.

5 (2) Every subdivision of land after June 30, 1973,
 6 shall be surveyed and platted in conformance with this act
 7 by or under the supervision of a registered land surveyor.
 8 Subdivision plats shall be prepared and filed in accordance
 9 with this act and regulations adopted pursuant thereto. All
 10 division of sections into aliquot parts and retracement of
 11 lines must conform to United States bureau of land
 12 management instructions, and all public land survey corners
 13 shall be filed in accordance with Corner Recordation Act of
 14 Montana (sections 67-2001 through 67-2019). Engineering
 15 plans, specifications, and reports required in connection
 16 with public improvements and other elements of the
 17 subdivision required by the governing body shall be prepared
 18 and filed by a registered engineer or a registered land
 19 surveyor as their respective licensing laws allow in
 20 accordance with this act and regulations adopted pursuant
 21 thereto.

22 (3) The county clerk and recorder of any county shall
 23 not record any instrument which purports to transfer title
 24 to or possession of a parcel or tract of land which is
 25 required to be surveyed by this act unless the required

1 certificate of survey or subdivision plat has been filed
 2 with the clerk and recorder and the instrument of transfer
 3 describes the parcel or tract by reference to the filed
 4 certificate or plat.

5 (4) Instruments of transfer of land which is acquired
 6 for state highways may refer by parcel and project number to
 7 state highway plans which have been recorded in compliance
 8 with section 32-2413, and are exempted from the surveying
 9 and platting requirements of this act; provided, however,
 10 that if such parcels are not shown on highway plans of
 11 record, instruments of transfer of such parcels shall be
 12 accompanied by and refer to appropriate certificates of
 13 survey and plats when presented for recording.

14 (5) The provisions of this act shall not apply to the
 15 division of state-owned land unless the division creates a
 16 second or subsequent parcel from a single tract for sale,
 17 rent or lease for residential purposes after July 1, 1974.

18 (6) Unless the method of disposition is adopted for
 19 the purpose of evading this act, the following divisions of
 20 land are not subdivisions under this act but are subject to
 21 the surveying requirements of this section for divisions of
 22 land not amounting to subdivisions.

23 (a) Divisions made for the purpose of relocating
 24 common boundary lines between adjoining properties.

25 (b) Divisions made for the purpose of a gift or sale

1 to any member of the landowner's immediate family.

2 (c) Divisions made by sale or agreement to buy and
 3 sell where the parties to the transaction enter a covenant
 4 running with the land and revocable only by mutual consent
 5 of the governing body and the property owner that the
 6 divided land will be used exclusively for agricultural
 7 purposes. Any change in use of the land for anything other
 8 than agricultural purposes subjects the division to the
 9 provisions of this chapter.

10 ~~(d) A single division of a parcel when the transaction~~
 11 ~~is an occasional sale.~~

12 (7) Subdivisions created by rent or lease are exempt
 13 from the surveying and filing requirements of this act but
 14 must be submitted for review and approved by the governing
 15 body before portions thereof may be rented or leased.

16 (8) Unless the method of disposition is adopted for
 17 the purpose of evading this act, the requirements of this
 18 act shall not apply to any division of land:

19 (a) which is created by order of any court of record
 20 in this state or by operation of law, or which, in the
 21 absence of agreement between the parties to the sale, could
 22 be created by an order of any court in this state pursuant
 23 to the law of eminent domain (sections 93-9901 through
 24 93-9926);

25 (b) which is created by a lien, mortgage, or trust

1 indenture;

2 (c) which creates an interest in oil, gas, minerals,
3 or water which is now or hereafter severed from the surface
4 ownership of real property;

5 (d) which creates cemetery lots;

6 (e) which is created by the reservation of a life
7 estate;

8 (f) which is created by lease or rental for farming
9 and agricultural purposes.

10 (9) The sale, rent, lease, or other conveyance of one
11 or more parts of a building, structure, or other improvement
12 situated on one or more parcels of land is not a division of
13 land, as that term is defined in this act, and is not
14 subject to the requirements of this act.

15 (10) The department of intergovernmental relations
16 shall, in conformance with the Montana Administrative
17 Procedure Act (sections 82-4201 through 82-4225), prescribe
18 uniform standards for monumentation and for the form,
19 accuracy, and descriptive content of records of survey.

20 (11) It shall be the responsibility of the governing
21 body to require the replacement of all monuments removed in
22 the course of construction."

23 Section 4. Section 11-3863, R.C.M. 1947, is amended to
24 read as follows:

25 "11-3863. Enforcement by governmental

1 subdivisions--adoption of regulations--public hearing. (1)
2 The governing body of every county, city, and town shall,
3 before July 1, 1974, adopt and provide for the enforcement
4 and administration of subdivision regulations reasonably
5 providing for the orderly development of their
6 jurisdictional areas; for the co-ordination of roads within
7 subdivided land with other roads, both existing and planned;
8 for the dedication of land for roadways and for public
9 utility easements; for the improvement of roads; for the
10 provision of adequate open spaces for travel, light, air and
11 recreation; for the provision of adequate transportation,
12 water, drainage, and sanitary facilities; for the avoidance
13 or minimization of congestion; and for the avoidance of
14 subdivision which would involve unnecessary environmental
15 degradation; and the avoidance of danger or injury to
16 health, safety, or welfare by reason of natural hazard or
17 the lack of water, drainage, access, transportation or other
18 public services or would necessitate an excessive
19 expenditure of public funds for the supply of such services.

20 Prior to adopting or amending subdivision regulations
21 pursuant to this act, the governing body shall submit the
22 proposed regulations or amendments to the division of
23 planning and economic development of the department of
24 intergovernmental relations for review.

25 Before the governing body adopts subdivision

1 regulations pursuant to this section it shall hold a public
 2 hearing thereon and shall give public notice of its intent
 3 to adopt such regulations and of the public hearing by
 4 publication of notice of the time and place of the hearing
 5 in a newspaper of general circulation in the county not less
 6 than fifteen (15) nor more than thirty (30) days prior to
 7 the date of the hearing.

8 (2) Not later than December 31, 1973, the department
 9 of intergovernmental relations, through its division of
 10 planning, shall, in conformance with the Montana
 11 Administrative Procedure Act (sections 82-4201 through
 12 82-4225), prescribe reasonable minimum requirements for
 13 subdivision regulations adopted pursuant to this act. The
 14 minimum requirements shall include detailed criteria for the
 15 content of the environmental assessment required by this
 16 act. The department shall provide for the review of
 17 preliminary plats by those agencies of state and local
 18 government and affected public utilities having a
 19 substantial interest in a proposed subdivision; provided,
 20 however, that such agency or utility review shall not delay
 21 the governing body's action on the plat beyond the time
 22 limit specified herein, and the failure of any agency to
 23 complete a review of a plat shall not be a basis for
 24 rejection of the plat by the governing body.

25 (3) In prescribing the minimum contents of the

1 subdivision regulations, the department of intergovernmental
 2 relations, through its division of planning, shall require
 3 the submission by the subdivider to the governing body of an
 4 environmental assessment.

5 (3.1) When a subdivision is proposed in an area for
 6 which a master plan has been adopted pursuant to sections
 7 11-3801 through 11-3856 and the proposed subdivision will be
 8 in compliance with the plan or and when the subdivision will
 9 contain fewer than ten (10) parcels ~~and less than twenty~~
 10 ~~(20) acres, none of which are larger than one (1) acre in~~
 11 size, a planning board established pursuant to sections
 12 11-3801 through 11-3856 and having jurisdiction over the
 13 area involved may exempt the subdivider from the completion
 14 of all or any portion of the environmental assessment. When
 15 such an exemption is granted, the planning board shall
 16 prepare and certify a written statement of the reasons for
 17 granting the exemption. A copy of this statement shall
 18 accompany the preliminary plat of the subdivision when it is
 19 submitted for review. Where no properly established planning
 20 board having jurisdiction exists, the governing body may
 21 grant exemptions as specified in this paragraph.

22 (4) Where required the environmental assessment shall
 23 accompany the preliminary plat and shall include:

24 (a) a description of every body or stream of surface
 25 water as may be affected by the proposed subdivision,

1 together with available ground water information, and a
2 description of the topography, vegetation and wildlife use
3 within the area of the proposed subdivision;

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

7 (c) a community impact report containing a statement
8 of anticipated needs of the proposed subdivision for local
9 services, including education and busing, roads and
10 maintenance, water, sewage, and solid waste facilities, and
11 fire and police protection;

12 (d) such additional relevant and reasonable
13 information as may be required by the department through its
14 division of planning.

15 (5) Local subdivision regulations shall include
16 procedures for the summary review and approval of
17 subdivision plats containing five (5) or fewer parcels where
18 proper access to all lots is provided, where no land in the
19 subdivision will be dedicated to public use for parks or
20 playgrounds and which have been approved by the department
21 of health and environmental sciences where such approval is
22 required by sections 69-5001 through 69-5005; provided that
23 reasonable local regulations may contain additional
24 requirements for summary approval.

25 (6) Subdivision regulations may authorize the

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

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

14 (7) No subdivision may be approved until the
15 subdivider has submitted and the governing body has
16 approved, one or a combination of the following:

17 (a) a subdivision improvements agreement in which the
18 subdivider agrees to construct any required public
19 improvements shown in the plat together with collateral
20 which is sufficient, in the judgment of the governing body,
21 to provide for the completion of those improvements in
22 accordance with design and time specifications; or

23 (b) other agreements or contracts setting forth the
24 plan, method, and parties responsible for the construction
25 of any required public improvements shown in the plat which,

1 in the judgment of the governing body, will provide for the
 2 completion of those improvements in accordance with design
 3 and time specifications.

4 (8) As improvements are completed, the subdivider or
 5 his agent may apply to the governing body for a release of
 6 part or all of the collateral deposited with the governing
 7 body. Upon inspection and approval, the governing body
 8 shall release the collateral. If the governing body
 9 determines that any of the stipulated improvements are not
 10 constructed in substantial compliance with specifications,
 11 it shall furnish the subdivider a list of specific
 12 deficiencies and shall be entitled to withhold collateral
 13 sufficient to ensure substantial compliance. If the
 14 governing body determines that the subdivider will not
 15 construct any or all of the improvements in accordance with
 16 all of the specifications, it may withdraw and employ from
 17 the deposit of collateral such funds as may be necessary to
 18 construct the improvement or improvements in accordance with
 19 the specifications.

20 (9) The governing body shall require the subdivider to
 21 compensate the applicable jurisdiction if the subdivision
 22 will burden existing local services so as to create a net
 23 revenue deficit. Compensation shall equal the estimated
 24 cost of services for the subdivision, when fully developed,
 25 minus anticipated tax revenues from the developed

1 subdivision. The estimated cost of services shall be based
 2 on information supplied and reviewed in the community impact
 3 report provided for in section 11-3863 (4) (c); and shall
 4 include, but not be limited to, education and busing, roads
 5 and maintenance, water, sewage, solid waste facilities, and
 6 fire and police protection.

7 ~~(8)~~ (10) In the event that any governing body has not
 8 adopted subdivision regulations by July 1, 1974, which meet
 9 or exceed the prescribed minimum requirements, the
 10 department shall, through its division of planning, no later
 11 than January 1, 1975, promulgate reasonable regulations to
 12 be enforced by the governing body. If at any time thereafter
 13 the governing body adopts its own subdivision regulations,
 14 these shall supersede those promulgated by the department
 15 but shall be no less stringent.

16 (11) The additional requirements provided for shall
 17 take effect upon the effective date of this act. The
 18 department shall modify its minimum requirements to comply
 19 with this act within sixty (60) days of passage and each
 20 governing body shall amend its subdivision regulations so as
 21 to meet or exceed the minimum requirements by July 1, 1975.
 22 The procedures and time periods for departmental review and
 23 enforcement in case of noncompliance provided in subsection
 24 (10) shall apply."

25 Section 5. Section 11-3864, R.C.M. 1947, is amended to

1 read as follows:

2 "11-3864. Dedications of portions of subdivisions to
3 the public--cash donations in lieu of dedications--waivers.

4 (1) A plat of a residential subdivision shall show that
5 one-ninth (1/9) of the combined area of lots five (5) acres
6 or less in size and one-twelfth (1/12) of the combined area
7 of lots greater than five (5) acres in size, exclusive of
8 all other dedications, is forever dedicated to the public
9 for parks or playgrounds. No dedication may be required for
10 the combined area of those lots in the subdivision which are
11 larger than ten (10) acres exclusive of all other
12 dedications. The governing body, in consultation with the
13 planning board having jurisdiction, may determine suitable
14 locations for such parks and playgrounds.

15 (2) Where, because of size, topography, shape,
16 location, or other circumstances, the dedication of land for
17 parks or playgrounds is undesirable, the governing body may,
18 for good cause shown, make an order to be endorsed and
19 certified on the plat accepting a cash donation in lieu of
20 the dedication of land and equal to the fair market value of
21 the amount of land that would have been dedicated. For the
22 purpose of this section, the fair market value is the value
23 of the unsubdivided subdivided, unimproved land. Such cash
24 donation shall be paid into the park fund to be used for the
25 purchase of additional lands or for the initial development

1 of parks and playgrounds.

2 (3) If the proposed plat provides for a planned unit
3 development with land permanently set aside for park and
4 recreational uses sufficient to meet the needs of the
5 persons who will ultimately reside therein, the governing
6 body may issue an order waiving land dedication and cash
7 donation requirements.

8 (4) If a tract of land is being developed under single
9 ownership as a part of an overall plan, and part of the
10 tract has been subdivided and sufficient park lands have
11 been dedicated to the public from the area that has been
12 subdivided to meet the requirements of this section for the
13 entire tract being developed, the governing body shall issue
14 an order waiving the land dedication and cash donation
15 requirements for the subsequently platted area.

16 (5) The local governing body may waive dedication and
17 cash donation requirements where all of the parcels in a
18 subdivision are five (5) acres or more in size and where the
19 subdivider enters a covenant to run with the land and
20 revocable only by mutual consent of the governing body and
21 the property owner that the parcels in the subdivision will
22 never be subdivided into parcels of less than five (5) acres
23 and that all parcels in the subdivision will be used for
24 single family dwellings.

25 (6) The governing body may waive dedication and cash

1 donation requirements when the subdivider agrees to create a
2 property owners' association for the proposed subdivision
3 and to deed to the association land to be held in perpetuity
4 for use as parks or playgrounds. The area of land to be
5 deeded to the association shall equal the amount that would
6 otherwise have been dedicated to public use.

7 (7) The governing body may waive dedication and cash
8 donation requirements for subdivision to be created by rent
9 or lease where the subdivider agrees to develop parks or
10 playgrounds within the subdivision for the common use of the
11 residents of the subdivision. The area of land to be
12 reserved for this purpose shall equal the amount that would
13 otherwise have been dedicated to the public."

14 Section 6. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

20 Section 7. Effective date. This act is effective upon
21 passage and approval.

-End-

Approved by Committee
on Natural Resources

1 HOUSE BILL NO. 652

2 INTRODUCED BY KENNIS, HUENNEKENS, MELOY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
5 11-3860 THROUGH 11-3864, R.C.M. 1947; TO CLARIFY THE
6 REGULATION OF SUBDIVISIONS; PROVIDING AN IMMEDIATE EFFECTIVE
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16 and highways; to provide for adequate light, air, water
17 supply, sewage disposal, parks and recreation areas, ingress
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19 development in harmony with the natural environment; ~~to~~
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12 to himself no rights which are incompatible with the full
13 exercise and enjoyment of the public use to which the
14 property has been devoted.

15 (2.1) "Division of land" means the segregation of one
16 or more parcels of land from a larger tract held in single
17 or undivided ownership by transferring, or contracting to
18 transfer, title to or possession of a portion of the tract
19 or properly filing a certificate of survey or subdivision
20 plat establishing the identity of the segregated parcels
21 pursuant to this act. Provided that where required by this
22 act the land upon which an improvement is situated has been
23 subdivided in compliance with this act, the sale, rent,
24 lease or other conveyance of one or more parts of a
25 building, structure, or other improvement situated on one or

1 more parcels of land is not a division of land and is not
2 subject to the terms of this act.

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4 surveyor duly appointed by the governing body to review
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10 parcel of land other than an aliquot part of the United
11 States government survey section or a United States
12 Government lot the boundaries or areas of which cannot be
13 determined without a survey or trigonometric calculation.

14 (5) "Planned unit development" means a land
15 development project consisting of residential clusters,
16 industrial parks, shopping centers, or office building
17 parks, or any combination thereof which comprises a planned
18 mixture of land uses built in a prearranged relationship to
19 each other and having open space and community facilities in
20 common ownership or use.

21 (6) "Plat" means a graphical representation of a
22 subdivision showing the division of land into lots, parcels,
23 blocks, streets, and alleys, and other divisions and
24 dedications.

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18 (11) "Subdivider" means any person who causes land to
19 be subdivided or who proposes a subdivision of land.

20 (12) "Subdivision" means a division of land, or land
21 so divided, which creates one or more parcels ~~containing~~
22 ~~less than twenty (20) acres, exclusive of public roadways~~
23 ~~regardless of size~~, in order that the title to or possession
24 of the parcels may be sold, rented, leased, or otherwise
25 conveyed, and shall include any resubdivision; and shall

1 further include any condominium or area, regardless of its
 2 size, which provides or will provide multiple space for
 3 recreational camping vehicles, or mobile homes. A
 4 subdivision shall comprise only those parcels ~~less than~~
 5 ~~twenty (20) -- acres~~ which have been segregated from the
 6 original tract, and the plat thereof shall show all such
 7 parcels whether contiguous or not. Provided, however,
 8 condominiums constructed on land divided in compliance with
 9 this chapter are exempt from the provisions of this chapter.

10 ~~(13) "Occasional sale" means one sale of a division of~~
 11 ~~land within any twelve month (12) period.~~ (13) "OCCASIONAL
 12 SALE" MEANS ONE SALE OF A DIVISION OF LAND WITHIN ANY
 13 TWELVE-MONTH (12) PERIOD.

14 ~~(13)~~ (14) "Subdivision improvements agreement" means
 15 one or more security agreements which may be accepted by a
 16 governing body to secure the construction of such public
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 24 read as follows:

25 "11-3862. Surveys required--exceptions--standards for

1 monumentation. (1) All divisions of land for sale other than
 2 a subdivision after the effective date of this act into
 3 parcels which cannot be described as 1/32 or larger aliquot
 4 parts of a United States government section or a United
 5 States government lot must be surveyed by or under the
 6 supervision of a registered land surveyor.

7 (2) Every subdivision of land after June 30, 1973,
 8 shall be surveyed and platted in conformance with this act
 9 by or under the supervision of a registered land surveyor.
 10 Subdivision plats shall be prepared and filed in accordance
 11 with this act and regulations adopted pursuant thereto. All
 12 division of sections into aliquot parts and retracement of
 13 lines must conform to United States bureau of land
 14 management instructions, and all public land survey corners
 15 shall be filed in accordance with Corner Recordation Act of
 16 Montana (sections 67-2001 through 67-2019). Engineering
 17 plans, specifications, and reports required in connection
 18 with public improvements and other elements of the
 19 subdivision required by the governing body shall be prepared
 20 and filed by a registered engineer or a registered land
 21 surveyor as their respective licensing laws allow in
 22 accordance with this act and regulations adopted pursuant
 23 thereto.

24 (3) The county clerk and recorder of any county shall
 25 not record any instrument which purports to transfer title

1 to or possession of a parcel or tract of land which is
 2 required to be surveyed by this act unless the required
 3 certificate of survey or subdivision plat has been filed
 4 with the clerk and recorder and the instrument of transfer
 5 describes the parcel or tract by reference to the filed
 6 certificate or plat.

7 (4) Instruments of transfer of land which is acquired
 8 for state highways may refer by parcel and project number to
 9 state highway plans which have been recorded in compliance
 10 with section 32-2413, and are exempted from the surveying
 11 and platting requirements of this act; provided, however,
 12 that if such parcels are not shown on highway plans of
 13 record, instruments of transfer of such parcels shall be
 14 accompanied by and refer to appropriate certificates of
 15 survey and plats when presented for recording.

16 (5) The provisions of this act shall not apply to the
 17 division of state-owned land unless the division creates a
 18 second or subsequent parcel from a single tract for sale,
 19 rent or lease for residential purposes after July 1, 1974.

20 (6) Unless the method of disposition is adopted for
 21 the purpose of evading this act, the following divisions of
 22 land are not subdivisions under this act but are subject to
 23 the surveying requirements of this section for divisions of
 24 land not amounting to subdivisions.

25 (a) Divisions made for the purpose of relocating

1 common boundary lines between adjoining properties.

2 (b) Divisions made for the purpose of a gift or sale
 3 to any member of the landowner's immediate family.

4 (c) Divisions made by sale or agreement to buy and
 5 sell where the parties to the transaction enter a covenant
 6 running with the land and revocable only by mutual consent
 7 of the governing body and the property owner that the
 8 divided land will be used exclusively for agricultural
 9 purposes. Any change in use of the land for anything other
 10 than agricultural purposes subjects the division to the
 11 provisions of this chapter.

12 ~~(d) A single division of a parcel when the transaction~~
 13 ~~is an occasional sale. (D) A SINGLE DIVISION OF A PARCEL~~
 14 WHEN THE TRANSACTION IS AN OCCASIONAL SALE.

15 (7) Subdivisions created by rent or lease are exempt
 16 from the surveying and filing requirements of this act but
 17 must be submitted for review and approved by the governing
 18 body before portions thereof may be rented or leased.

19 (8) Unless the method of disposition is adopted for
 20 the purpose of evading this act, the requirements of this
 21 act shall not apply to any division of land:

22 (a) which is created by order of any court of record
 23 in this state or by operation of law, or which, in the
 24 absence of agreement between the parties to the sale, could
 25 be created by an order of any court in this state pursuant

1 to the law of eminent domain (sections 93-9901 through
2 93-9926);

3 (b) which is created by a lien, mortgage, or trust
4 indenture;

5 (c) which creates an interest in oil, gas, minerals,
6 or water which is now or hereafter severed from the surface
7 ownership of real property;

8 (d) which creates cemetery lots;

9 (e) which is created by the reservation of a life
10 estate;

11 (f) which is created by lease or rental for farming
12 and agricultural purposes.

13 (9) The sale, rent, lease, or other conveyance of one
14 or more parts of a building, structure, or other improvement
15 situated on one or more parcels of land is not a division of
16 land, as that term is defined in this act, and is not
17 subject to the requirements of this act.

18 (10) The department of intergovernmental relations
19 shall, in conformance with the Montana Administrative
20 Procedure Act (sections 82-4201 through 82-4225), prescribe
21 uniform standards for monumentation and for the form,
22 accuracy, and descriptive content of records of survey.

23 (11) It shall be the responsibility of the governing
24 body to require the replacement of all monuments removed in
25 the course of construction."

1 Section 4. Section 11-3863, R.C.M. 1947, is amended to
2 read as follows:

3 "11-3863. Enforcement by governmental subdivisions --
4 adoption of regulations -- public hearing. (1) The governing
5 body of every county, city, and town shall, before July 1,
6 1974, adopt and provide for the enforcement and
7 administration of subdivision regulations reasonably
8 providing for the orderly development of their
9 jurisdictional areas; for the co-ordination of roads within
10 subdivided land with other roads, both existing and planned;
11 for the dedication of land for roadways and for public
12 utility easements; for the improvement of roads; for the
13 provision of adequate open spaces for travel, light, air and
14 recreation; for the provision of adequate transportation,
15 water, drainage, and sanitary facilities; for the avoidance
16 or minimization of congestion; and for the avoidance of
17 subdivision which would involve unnecessary environmental
18 degradation; and the avoidance of danger or injury to
19 health, safety, or welfare by reason of natural hazard or
20 the lack of water, drainage, access, transportation or other
21 public services or would necessitate an excessive
22 expenditure of public funds for the supply of such services.

23 Prior to adopting or amending subdivision regulations
24 pursuant to this act, the governing body shall submit the
25 proposed regulations or amendments to the division of

1 planning and economic development of the department of
2 intergovernmental relations for review.

3 Before the governing body adopts subdivision
4 regulations pursuant to this section it shall hold a public
5 hearing thereon and shall give public notice of its intent
6 to adopt such regulations and of the public hearing by
7 publication of notice of the time and place of the hearing
8 in a newspaper of general circulation in the county not less
9 than fifteen (15) nor more than thirty (30) days prior to
10 the date of the hearing.

11 (2) Not later than December 31, 1973, the department
12 of intergovernmental relations, through its division of
13 planning, shall, in conformance with the Montana
14 Administrative Procedure Act (sections 82-4201 through
15 82-4225), prescribe reasonable minimum requirements for
16 subdivision regulations adopted pursuant to this act. The
17 minimum requirements shall include detailed criteria for the
18 content of the environmental assessment required by this
19 act. The department shall provide for the review of
20 preliminary plats by those agencies of state and local
21 government and affected public utilities having a
22 substantial interest in a proposed subdivision; provided,
23 however, that such agency or utility review shall not delay
24 the governing body's action on the plat beyond the time
25 limit specified herein, and the failure of any agency to

1 complete a review of a plat shall not be a basis for
2 rejection of the plat by the governing body.

3 (3) In prescribing the minimum contents of the
4 subdivision regulations, the department of intergovernmental
5 relations, through its division of planning, shall require
6 the submission by the subdivider to the governing body of an
7 environmental assessment.

8 (3.1) When a subdivision is proposed in an area for
9 which a master plan has been adopted pursuant to sections
10 11-3801 through 11-3856 and the proposed subdivision will be
11 in compliance with the plan ~~or and~~ when the subdivision will
12 contain fewer than ten (10) parcels ~~and less than twenty~~
13 ~~(20) acres, none of which are larger than one (1) acre in~~
14 size, a planning board established pursuant to sections
15 11-3801 through 11-3856 and having jurisdiction over the
16 area involved may exempt the subdivider from the completion
17 of all or any portion of the environmental assessment. When
18 such an exemption is granted, the planning board shall
19 prepare and certify a written statement of the reasons for
20 granting the exemption. A copy of this statement shall
21 accompany the preliminary plat of the subdivision when it is
22 submitted for review. Where no properly established planning
23 board having jurisdiction exists, the governing body may
24 grant exemptions as specified in this paragraph.

25 (4) Where required the environmental assessment shall

1 accompany the preliminary plat and shall include:

2 (a) a description of every body or stream of surface
3 water as may be affected by the proposed subdivision,
4 together with available ground water information, and a
5 description of the topography, vegetation and wildlife use
6 within the area of the proposed subdivision;

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

10 (c) a community impact report containing a statement
11 of anticipated needs of the proposed subdivision for local
12 services, including education and busing, roads and
13 maintenance, water, sewage, and solid waste facilities, and
14 fire and police protection;

15 (d) such additional relevant and reasonable
16 information as may be required by the department through its
17 division of planning.

18 (5) Local subdivision regulations shall include
19 procedures for the summary review and approval of
20 subdivision plats containing five (5) or fewer parcels where
21 proper access to all lots is provided, where no land in the
22 subdivision will be dedicated to public use for parks or
23 playgrounds and which have been approved by the department
24 of health and environmental sciences where such approval is
25 required by sections 69-5001 through 69-5005; provided that

1 reasonable local regulations may contain additional
2 requirements for summary approval.

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

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

17 (7) No subdivision may be approved until the
18 subdivider has submitted and the governing body has
19 approved, one or a combination of the following:

20 (a) a subdivision improvements agreement in which the
21 subdivider agrees to construct any required public
22 improvements shown in the plat together with collateral
23 which is sufficient, in the judgment of the governing body,
24 to provide for the completion of those improvements in
25 accordance with design and time specifications; or

1 (b) other agreements or contracts setting forth the
 2 plan, method, and parties responsible for the construction
 3 of any required public improvements shown in the plat which,
 4 in the judgment of the governing body, will provide for the
 5 completion of those improvements in accordance with design
 6 and time specifications.

7 (8) As improvements are completed, the subdivider or
 8 his agent may apply to the governing body for a release of
 9 part or all of the collateral deposited with the governing
 10 body. Upon inspection and approval, the governing body
 11 shall release the collateral. If the governing body
 12 determines that any of the stipulated improvements are not
 13 constructed in substantial compliance with specifications,
 14 it shall furnish the subdivider a list of specific
 15 deficiencies and shall be entitled to withhold collateral
 16 sufficient to ensure substantial compliance. If the
 17 governing body determines that the subdivider will not
 18 construct any or all of the improvements in accordance with
 19 all of the specifications, it may withdraw and employ from
 20 the deposit of collateral such funds as may be necessary to
 21 construct the improvement or improvements in accordance with
 22 the specifications.

23 (9) The governing body shall require the subdivider to
 24 compensate the applicable jurisdiction if the subdivision
 25 will burden existing local services so as to create a net

1 revenue deficit. Compensation shall equal the estimated
 2 cost of services for the subdivision, when fully developed,
 3 minus anticipated tax revenues from the developed
 4 subdivision. The estimated cost of services shall be based
 5 on information supplied and reviewed in the community impact
 6 report provided for in section 11 2863 (4) (c); and shall
 7 include, but not be limited to, education and housing, roads
 8 and maintenance, water, sewage, solid waste facilities, and
 9 fire and police protection.

10 (8) (9) In the event that any governing body has
 11 not adopted subdivision regulations by July 1, 1974, which
 12 meet or exceed the prescribed minimum requirements, the
 13 department shall, through its division of planning, no later
 14 than January 1, 1975, promulgate reasonable regulations to
 15 be enforced by the governing body. If at any time thereafter
 16 the governing body adopts its own subdivision regulations,
 17 these shall supersede those promulgated by the department
 18 but shall be no less stringent.

19 (10) The additional requirements provided for
 20 shall take effect upon the effective date of this act. The
 21 department shall modify its minimum requirements to comply
 22 with this act within sixty (60) days of passage and each
 23 governing body shall amend its subdivision regulations so as
 24 to meet or exceed the minimum requirements by July 1, 1975.
 25 The procedures and time periods for departmental review and

1 enforcement in case of noncompliance provided in subsection
 2 (10) shall apply."

3 Section 5. Section 11-3864, K.C.M. 1947, is amended to
 4 read as follows:

5 *11-3864. Dedications of portions of subdivisions to
 6 the public—cash donations in lieu of dedications—waivers.

7 (1) A plat of a residential subdivision shall show that
 8 one-ninth (1/9) of the combined area of lots five (5) acres
 9 or less in size and one-twelfth (1/12) of the combined area
 10 of lots greater than five (5) acres in size, exclusive of
 11 all other dedications, is forever dedicated to the public
 12 for parks or playgrounds. No dedication may be required for
 13 the combined area of those lots in the subdivision which are
 14 larger than ten (10) acres exclusive of all other
 15 dedications. The governing body, in consultation with the
 16 planning board having jurisdiction, may determine suitable
 17 locations for such parks and playgrounds.

18 (2) Where, because of size, topography, shape,
 19 location, or other circumstances, the dedication of land for
 20 parks or playgrounds is undesirable, the governing body may,
 21 for good cause shown, make an order to be endorsed and
 22 certified on the plat accepting a cash donation in lieu of
 23 the dedication of land and equal to the fair market value of
 24 the amount of land that would have been dedicated. For the
 25 purpose of this section, the fair market value is the value

1 of the ~~unsubdivided~~ subdivided, unimproved land. Such cash
 2 donation shall be paid into the park fund to be used for the
 3 purchase of additional lands or for the initial development
 4 of parks and playgrounds.

5 (3) If the proposed plat provides for a planned unit
 6 development with land permanently set aside for park and
 7 recreational uses sufficient to meet the needs of the
 8 persons who will ultimately reside therein, the governing
 9 body may issue an order waiving land dedication and cash
 10 donation requirements.

11 (4) If a tract of land is being developed under single
 12 ownership as a part of an overall plan, and part of the
 13 tract has been subdivided and sufficient park lands have
 14 been dedicated to the public from the area that has been
 15 subdivided to meet the requirements of this section for the
 16 entire tract being developed, the governing body shall issue
 17 an order waiving the land dedication and cash donation
 18 requirements for the subsequently platted area.

19 (5) The local governing body may waive dedication and
 20 cash donation requirements where all of the parcels in a
 21 subdivision are five (5) acres or more in size and where the
 22 subdivider enters a covenant to run with the land and
 23 revocable only by mutual consent of the governing body and
 24 the property owner that the parcels in the subdivision will
 25 never be subdivided into parcels of less than five (5) acres

1 and that all parcels in the subdivision will be used for
2 single family dwellings.

3 (6) The governing body may waive dedication and cash
4 donation requirements when the subdivider agrees to create a
5 property owners' association for the proposed subdivision
6 and to deed to the association land to be held in perpetuity
7 for use as parks or playgrounds. The area of land to be
8 deeded to the association shall equal the amount that would
9 otherwise have been dedicated to public use.

10 (7) The governing body may waive dedication and cash
11 donation requirements for subdivision to be created by rent
12 or lease where the subdivider agrees to develop parks or
13 playgrounds within the subdivision for the common use of the
14 residents of the subdivision. The area of land to be
15 reserved for this purpose shall equal the amount that would
16 otherwise have been dedicated to the public."

17 Section 6. Severability. If a part of this act is
18 invalid, all valid parts that are severable from the invalid
19 part remain in effect. If a part of this act is invalid in
20 one or more of its applications, the part remains in effect
21 in all valid applications that are severable from the
22 invalid applications.

23 Section 7. Effective date. This act is effective upon
24 passage and approval.

-End-

1 HOUSE BILL NO. 652

2 INTRODUCED BY KEMMIS, HUENNEKENS, MELOY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
5 11-3860 THROUGH 11-3864, R.C.M. 1947; TO CLARIFY THE
6 REGULATION OF SUBDIVISIONS; PROVIDING AN IMMEDIATE EFFECTIVE
7 DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:10 Section 1. Section 11-3860, R.C.M. 1947, is amended to
11 read as follows:

12 "11-3860. Statement of purpose. It is the purpose of
13 this act to promote the public health, safety, and general
14 welfare by regulating the subdivision of land; to prevent
15 overcrowding of land; to lessen congestion in the streets
16 and highways; to provide for adequate light, air, water
17 supply, sewage disposal, parks and recreation areas, ingress
18 and egress, and other public requirements; to encourage
19 development in harmony with the natural environment; ~~to~~
20 ~~require--that-the-subdivider-assume-financial-responsibility~~
21 ~~for-the-completion-of-improvements--and--cost--of--services~~
22 ~~required--by--the--subdivision,~~ and to require uniform
23 monumentation of land subdivisions and transferring
24 interests in real property by reference to plat or
25 certificate of survey."

1 Section 2. Section 11-3861, R.C.M. 1947, is amended to
2 read as follows:

3 "11-3861. Definitions. As used in this act, unless the
4 context or subject matter clearly requires otherwise, the
5 following words or phrases shall have the following
6 meanings:

7 (1) "Certificate of survey" means a drawing of a field
8 survey prepared by a registered surveyor for the purpose of
9 disclosing facts pertaining to boundary locations.

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

15 (2.1) "Division of land" means the segregation of one
16 or more parcels of land from a larger tract held in single
17 or undivided ownership by transferring, or contracting to
18 transfer, title to or possession of a portion of the tract
19 or properly filing a certificate of survey or subdivision
20 plat establishing the identity of the segregated parcels
21 pursuant to this act. Provided that where required by this
22 act the land upon which an improvement is situated has been
23 subdivided in compliance with this act, the sale, rent,
24 lease or other conveyance of one or more parts of a
25 building, structure, or other improvement situated on one or

1 more parcels of land is not a division of land and is not
2 subject to the terms of this act.

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

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

9 (4.1) "Irregularly shaped tract of land" means a
10 parcel of land other than an aliquot part of the United
11 States government survey section or a United States
12 Government lot the boundaries or areas of which cannot be
13 determined without a survey or trigonometric calculation.

14 (5) "Planned unit development" means a land
15 development project consisting of residential clusters,
16 industrial parks, shopping centers, or office building
17 parks, or any combination thereof which comprises a planned
18 mixture of land uses built in a prearranged relationship to
19 each other and having open space and community facilities in
20 common ownership or use.

21 (6) "Plat" means a graphical representation of a
22 subdivision showing the division of land into lots, parcels,
23 blocks, streets, and alleys, and other divisions and
24 dedications.

25 (7) "Preliminary plat" means a neat and scaled drawing

1 of a proposed subdivision showing the layout of streets,
2 alleys, lots, blocks, and other elements of a subdivision
3 which furnish a basis for review by a governing body.

4 (8) "Final plat" means the final drawing of the
5 subdivision and dedication required by this act to be
6 prepared for filing for record with the county clerk and
7 recorder and containing all elements and requirements set
8 forth in this act and in regulations adopted pursuant
9 thereto.

10 (9) "Registered land surveyor" means a person licensed
11 in conformance with the Montana Professional Engineers'
12 Registration Act (sections 66-2301 through 66-2347) to
13 practice surveying in the state of Montana.

14 (10) "Registered professional engineer" means a person
15 licensed in conformance with the Montana Professional
16 Engineers' Registration Act (sections 66-2301 through
17 66-2347) to practice engineering in the state of Montana.

18 (11) "Subdivider" means any person who causes land to
19 be subdivided or who proposes a subdivision of land.

20 (12) "Subdivision" means a division of land, or land
21 so divided, which creates one or more parcels ~~containing~~
22 ~~less--than--twenty--(20)--acres--exclusive-of-public-roadways~~
23 CONTAINING LESS THAN TWENTY-(20) FORTY (40) ACRES, EXCLUSIVE
24 OF PUBLIC ROADWAYS regardless-of-size, in order that the
25 title to or possession of the parcels may be sold, rented,

1 leased, or otherwise conveyed, and shall include any
 2 resubdivision; and shall further include any condominium or
 3 area, regardless of its size, which provides or will provide
 4 multiple space for recreational camping vehicles, or mobile
 5 homes. A subdivision shall comprise only those parcels ~~less~~
 6 ~~than twenty-(20)-acres~~ LESS THAN TWENTY--(20) FORTY (40)
 7 ACRES which have been segregated from the original tract,
 8 and the plat thereof shall show all such parcels whether
 9 contiguous or not. Provided, however, condominiums
 10 constructed on land divided in compliance with this chapter
 11 are exempt from the provisions of this chapter.

12 ~~{13}--"Occasional sale" means one sale of a division of~~
 13 ~~land within any twelve month-{12}--period.~~ (13) "OCCASIONAL
 14 SALE" MEANS ONE SALE OF A DIVISION OF LAND WITHIN ANY
 15 TWELVE-MONTH (12) PERIOD.

16 ~~{13}~~ (14) "Subdivision improvements agreement" means
 17 one or more security agreements which may be accepted by a
 18 governing body to secure the construction of such public
 19 improvements within the subdivision as are required by
 20 subdivision regulations and shall include collateral, such
 21 as, but not limited to, performance or property bonds,
 22 private or public escrow agreements, loan commitments,
 23 assignments of receivables, liens on property, deposit of
 24 certified funds, or other similar surety agreements."

25 Section 3. Section 11-3862, R.C.M. 1947, is amended to

1 read as follows:

2 "11-3862. Surveys required--exceptions--standards for
 3 monumentation. (1) All divisions of land for sale other than
 4 a subdivision after the effective date of this act into
 5 parcels which cannot be described as 1/32 or larger aliquot
 6 parts of a United States government section or a United
 7 States government lot must be surveyed by or under the
 8 supervision of a registered land surveyor.

9 (2) Every subdivision of land after June 30, 1973,
 10 shall be surveyed and platted in conformance with this act
 11 by or under the supervision of a registered land surveyor.
 12 Subdivision plats shall be prepared and filed in accordance
 13 with this act and regulations adopted pursuant thereto. All
 14 division of sections into aliquot parts and retracement of
 15 lines must conform to United States bureau of land
 16 management instructions, and all public land survey corners
 17 shall be filed in accordance with Corner Recordation Act of
 18 Montana (sections 67-2001 through 67-2019). Engineering
 19 plans, specifications, and reports required in connection
 20 with public improvements and other elements of the
 21 subdivision required by the governing body shall be prepared
 22 and filed by a registered engineer or a registered land
 23 surveyor as their respective licensing laws allow in
 24 accordance with this act and regulations adopted pursuant
 25 thereto.

1 (3) The county clerk and recorder of any county shall
 2 not record any instrument which purports to transfer title
 3 to or possession of a parcel or tract of land which is
 4 required to be surveyed by this act unless the required
 5 certificate of survey or subdivision plat has been filed
 6 with the clerk and recorder and the instrument of transfer
 7 describes the parcel or tract by reference to the filed
 8 certificate or plat.

9 (4) Instruments of transfer of land which is acquired
 10 for state highways may refer by parcel and project number to
 11 state highway plans which have been recorded in compliance
 12 with section 32-2413, and are exempted from the surveying
 13 and platting requirements of this act; provided, however,
 14 that if such parcels are not shown on highway plans of
 15 record, instruments of transfer of such parcels shall be
 16 accompanied by and refer to appropriate certificates of
 17 survey and plats when presented for recording.

18 (5) The provisions of this act shall not apply to the
 19 division of state-owned land unless the division creates a
 20 second or subsequent parcel from a single tract for sale,
 21 rent or lease for residential purposes after July 1, 1974.

22 (6) Unless the method of disposition is adopted for
 23 the purpose of evading this act, the following divisions of
 24 land are not subdivisions under this act but are subject to
 25 the surveying requirements of this section for divisions of

1 land not amounting to subdivisions.

2 (a) Divisions made for the purpose of relocating
 3 common boundary lines between adjoining properties.

4 (b) Divisions made for the purpose of a gift or sale
 5 to any member of the landowner's immediate family.

6 (c) Divisions made by sale or agreement to buy and
 7 sell where the parties to the transaction enter a covenant
 8 running with the land and revocable only by mutual consent
 9 of the governing body and the property owner that the
 10 divided land will be used exclusively for agricultural
 11 purposes. Any change in use of the land for anything other
 12 than agricultural purposes subjects the division to the
 13 provisions of this chapter.

14 ~~(d) A single division of a parcel when the transaction~~
 15 ~~is an occasional sale.~~ (D) A SINGLE DIVISION OF A PARCEL
 16 WHEN THE TRANSACTION IS AN OCCASIONAL SALE.

17 (7) Subdivisions created by rent or lease are exempt
 18 from the surveying and filing requirements of this act but
 19 must be submitted for review and approved by the governing
 20 body before portions thereof may be rented or leased.

21 (8) Unless the method of disposition is adopted for
 22 the purpose of evading this act, the requirements of this
 23 act shall not apply to any division of land:

24 (a) which is created by order of any court of record
 25 in this state or by operation of law, or which, in the

1 absence of agreement between the parties to the sale, could
 2 be created by an order of any court in this state pursuant
 3 to the law of eminent domain (sections 93-9901 through
 4 93-9926);

5 (b) which is created by a lien, mortgage, or trust
 6 indenture;

7 (c) which creates an interest in oil, gas, minerals,
 8 or water which is now or hereafter severed from the surface
 9 ownership of real property;

10 (d) which creates cemetery lots;

11 (e) which is created by the reservation of a life
 12 estate;

13 (f) which is created by lease or rental for farming
 14 and agricultural purposes.

15 (9) The sale, rent, lease, or other conveyance of one
 16 or more parts of a building, structure, or other improvement
 17 situated on one or more parcels of land is not a division of
 18 land, as that term is defined in this act, and is not
 19 subject to the requirements of this act.

20 (10) The department of intergovernmental relations
 21 shall, in conformance with the Montana Administrative
 22 Procedure Act (sections 82-4201 through 82-4225), prescribe
 23 uniform standards for monumentation and for the form,
 24 accuracy, and descriptive content of records of survey.

25 (11) It shall be the responsibility of the governing

1 body to require the replacement of all monuments removed in
 2 the course of construction."

3 Section 4. Section 11-3863, R.C.M. 1947, is amended to
 4 read as follows:

5 "11-3863. Enforcement by governmental subdivisions --
 6 adoption of regulations -- public hearing. (1) The governing
 7 body of every county, city, and town shall, before July 1,
 8 1974, adopt and provide for the enforcement and
 9 administration of subdivision regulations reasonably
 10 providing for the orderly development of their
 11 jurisdictional areas; for the co-ordination of roads within
 12 subdivided land with other roads, both existing and planned;
 13 for the dedication of land for roadways and for public
 14 utility easements; for the improvement of roads; for the
 15 provision of adequate open spaces for travel, light, air and
 16 recreation; for the provision of adequate transportation,
 17 water, drainage, and sanitary facilities; for the avoidance
 18 or minimization of congestion; and for the avoidance of
 19 subdivision which would involve unnecessary environmental
 20 degradation; and the avoidance of danger or injury to
 21 health, safety, or welfare by reason of natural hazard or
 22 the lack of water, drainage, access, transportation or other
 23 public services or would necessitate an excessive
 24 expenditure of public funds for the supply of such services.

25 Prior to adopting or amending subdivision regulations

1 pursuant to this act, the governing body shall submit the
2 proposed regulations or amendments to the division of
3 planning and economic development of the department of
4 intergovernmental relations for review.

5 Before the governing body adopts subdivision
6 regulations pursuant to this section it shall hold a public
7 hearing thereon and shall give public notice of its intent
8 to adopt such regulations and of the public hearing by
9 publication of notice of the time and place of the hearing
10 in a newspaper of general circulation in the county not less
11 than fifteen (15) nor more than thirty (30) days prior to
12 the date of the hearing.

13 (2) Not later than December 31, 1973, the department
14 of intergovernmental relations, through its division of
15 planning, shall, in conformance with the Montana
16 Administrative Procedure Act (sections 82-4201 through
17 82-4225), prescribe reasonable minimum requirements for
18 subdivision regulations adopted pursuant to this act. The
19 minimum requirements shall include detailed criteria for the
20 content of the environmental assessment required by this
21 act. The department shall provide for the review of
22 preliminary plats by those agencies of state and local
23 government and affected public utilities having a
24 substantial interest in a proposed subdivision; provided,
25 however, that such agency or utility review shall not delay

1 the governing body's action on the plat beyond the time
2 limit specified herein, and the failure of any agency to
3 complete a review of a plat shall not be a basis for
4 rejection of the plat by the governing body.

5 (3) In prescribing the minimum contents of the
6 subdivision regulations, the department of intergovernmental
7 relations, through its division of planning, shall require
8 the submission by the subdivider to the governing body of an
9 environmental assessment.

10 (3.1) When a subdivision is proposed in an area for
11 which a master plan has been adopted pursuant to sections
12 11-3801 through 11-3856 and the proposed subdivision will be
13 in compliance with the plan ~~or~~ and when the subdivision will
14 contain fewer than ten (10) parcels ~~and less than twenty~~
15 ~~(20) acres, none of which are larger than one (1) acre in~~
16 size, a planning board established pursuant to sections
17 11-3801 through 11-3856 and having jurisdiction over the
18 area involved may exempt the subdivider from the completion
19 of all or any portion of the environmental assessment. When
20 such an exemption is granted, the planning board shall
21 prepare and certify a written statement of the reasons for
22 granting the exemption. A copy of this statement shall
23 accompany the preliminary plat of the subdivision when it is
24 submitted for review. Where no properly established planning
25 board having jurisdiction exists, the governing body may

1 grant exemptions as specified in this paragraph.

2 (4) Where required the environmental assessment shall
3 accompany the preliminary plat and shall include:

4 (a) a description of every body or stream of surface
5 water as may be affected by the proposed subdivision,
6 together with available ground water information, and a
7 description of the topography, vegetation and wildlife use
8 within the area of the proposed subdivision;

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

12 (c) a community impact report containing a statement
13 of anticipated needs of the proposed subdivision for local
14 services, including education and busing, roads and
15 maintenance, water, sewage, and solid waste facilities, and
16 fire and police protection;

17 (d) such additional relevant and reasonable
18 information as may be required by the department through its
19 division of planning.

20 (5) Local subdivision regulations shall include
21 procedures for the summary review and approval of
22 subdivision plats containing five (5) or fewer parcels where
23 proper access to all lots is provided, where no land in the
24 subdivision will be dedicated to public use for parks or
25 playgrounds and which have been approved by the department

1 of health and environmental sciences where such approval is
2 required by sections 69-5001 through 69-5005; provided that
3 reasonable local regulations may contain additional
4 requirements for summary approval.

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

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

19 (7) No subdivision may be approved until the
20 subdivider has submitted and the governing body has
21 approved, one or a combination of the following:

22 (a) a subdivision improvements agreement in which the
23 subdivider agrees to construct any required public
24 improvements shown in the plat together with collateral
25 which is sufficient, in the judgment of the governing body,

1 to provide for the completion of those improvements in
 2 accordance with design and time specifications; or

3 (b) other agreements or contracts setting forth the
 4 plan, method, and parties responsible for the construction
 5 of any required public improvements shown in the plat which,
 6 in the judgment of the governing body, will provide for the
 7 completion of those improvements in accordance with design
 8 and time specifications.

9 (8) As improvements are completed, the subdivider or
 10 his agent may apply to the governing body for a release of
 11 part or all of the collateral deposited with the governing
 12 body. Upon inspection and approval, the governing body
 13 shall release the collateral. If the governing body
 14 determines that any of the stipulated improvements are not
 15 constructed in substantial compliance with specifications,
 16 it shall furnish the subdivider a list of specific
 17 deficiencies and shall be entitled to withhold collateral
 18 sufficient to ensure substantial compliance. If the
 19 governing body determines that the subdivider will not
 20 construct any or all of the improvements in accordance with
 21 all of the specifications, it may withdraw and employ from
 22 the deposit of collateral such funds as may be necessary to
 23 construct the improvement or improvements in accordance with
 24 the specifications.

25 ~~(9) The governing body shall require the subdivider to~~

1 ~~compensate the applicable jurisdiction if the subdivision~~
 2 ~~will burden existing local services so as to create a net~~
 3 ~~revenue deficit. Compensation shall equal the estimated~~
 4 ~~cost of services for the subdivision when fully developed,~~
 5 ~~minus anticipated tax revenues from the developed~~
 6 ~~subdivision. The estimated cost of services shall be based~~
 7 ~~on information supplied and reviewed in the community impact~~
 8 ~~report provided for in section 11-3863-(4)-(c) and shall~~
 9 ~~include but not be limited to education and busing, roads~~
 10 ~~and maintenance, water, sewage, solid waste facilities, and~~
 11 ~~fire and police protection.~~

12 ~~(9)~~ (9) In the event that any governing body has
 13 not adopted subdivision regulations by July 1, 1974, which
 14 meet or exceed the prescribed minimum requirements, the
 15 department shall, through its division of planning, no later
 16 than January 1, 1975, promulgate reasonable regulations to
 17 be enforced by the governing body. If at any time thereafter
 18 the governing body adopts its own subdivision regulations,
 19 these shall supersede those promulgated by the department
 20 but shall be no less stringent.

21 ~~(10)~~ (10) The additional requirements provided for
 22 shall take effect upon the effective date of this act. The
 23 department shall modify its minimum requirements to comply
 24 with this act within sixty (60) days of passage and each
 25 governing body shall amend its subdivision regulations so as

1 to meet or exceed the minimum requirements by July 1, 1975.
 2 The procedures and time periods for departmental review and
 3 enforcement in case of noncompliance provided in subsection
 4 (10) shall apply."

5 Section 5. Section 11-3864, R.C.M. 1947, is amended to
 6 read as follows:

7 "11-3864. Dedications of portions of subdivisions to
 8 the public--cash donations in lieu of dedications--waivers.

9 (1) A plat of a residential subdivision shall show that
 10 one-ninth (1/9) of the combined area of lots five (5) acres
 11 or less in size and one-twelfth (1/12) of the combined area
 12 of lots greater than five (5) acres in size, exclusive of
 13 all other dedications, is forever dedicated to the public
 14 for parks or playgrounds. No dedication may be required for
 15 the combined area of those lots in the subdivision which are
 16 larger than ten (10) acres exclusive of all other
 17 dedications. The governing body, in consultation with the
 18 planning board having jurisdiction, may determine suitable
 19 locations for such parks and playgrounds.

20 (2) Where, because of size, topography, shape,
 21 location, or other circumstances, the dedication of land for
 22 parks or playgrounds is undesirable, the governing body may,
 23 for good cause shown, make an order to be endorsed and
 24 certified on the plat accepting a cash donation in lieu of
 25 the dedication of land and equal to the fair market value of

1 the amount of land that would have been dedicated. For the
 2 purpose of this section, the fair market value is the value
 3 of the ~~unsubdivided subdivided~~ UNSUBDIVIDED, unimproved
 4 land. Such cash donation shall be paid into the park fund to
 5 be used for the purchase of additional lands or for the
 6 initial development of parks and playgrounds.

7 (3) If the proposed plat provides for a planned unit
 8 development with land permanently set aside for park and
 9 recreational uses sufficient to meet the needs of the
 10 persons who will ultimately reside therein, the governing
 11 body may issue an order waiving land dedication and cash
 12 donation requirements.

13 (4) If a tract of land is being developed under single
 14 ownership as a part of an overall plan, and part of the
 15 tract has been subdivided and sufficient park lands have
 16 been dedicated to the public from the area that has been
 17 subdivided to meet the requirements of this section for the
 18 entire tract being developed, the governing body shall issue
 19 an order waiving the land dedication and cash donation
 20 requirements for the subsequently platted area.

21 (5) The local governing body may waive dedication and
 22 cash donation requirements where all of the parcels in a
 23 subdivision are five (5) acres or more in size and where the
 24 subdivider enters a covenant to run with the land and
 25 revocable only by mutual consent of the governing body and

1 the property owner that the parcels in the subdivision will
2 never be subdivided into parcels of less than five (5) acres
3 and that all parcels in the subdivision will be used for
4 single family dwellings.

5 (6) The governing body may waive dedication and cash
6 donation requirements when the subdivider agrees to create a
7 property owners' association for the proposed subdivision
8 and to deed to the association land to be held in perpetuity
9 for use as parks or playgrounds. The area of land to be
10 deeded to the association shall equal the amount that would
11 otherwise have been dedicated to public use.

12 (7) The governing body may waive dedication and cash
13 donation requirements for subdivision to be created by rent
14 or lease where the subdivider agrees to develop parks or
15 playgrounds within the subdivision for the common use of the
16 residents of the subdivision. The area of land to be
17 reserved for this purpose shall equal the amount that would
18 otherwise have been dedicated to the public."

19 Section 6. Severability. If a part of this act is
20 invalid, all valid parts that are severable from the invalid
21 part remain in effect. If a part of this act is invalid in
22 one or more of its applications, the part remains in effect
23 in all valid applications that are severable from the
24 invalid applications.

25 Section 7. Effective date. This act is effective upon

1 passage and approval.

-End-