

1 HOUSE BILL NO. 666  
 2 INTRODUCED BY VINCENT *Vincent*  
 3 *Handman*  
 4 *Handman*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A  
 6 GUARANTEE OF IMPROVEMENTS AND COMPENSATION FOR THE COST OF  
 7 SERVICES CREATED BY SUBDIVISIONS; REQUIRING DISAPPROVAL OF  
 8 ANY SUBDIVISIONS IN THE ABSENCE OF A DEMONSTRATED NET PUBLIC  
 9 BENEFIT; PROVIDING FOR EXPANDED CITIZEN LEGAL REVIEW OF  
 10 SUBDIVISION DECISIONS MADE BY THE GOVERNING BODY; AMENDING  
 11 SECTIONS 11-3860 THROUGH 11-3864 AND 11-3866, R.C.M. 1947;  
 12 AND PROVIDING AN EFFECTIVE DATE."

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

16 "11-3860. Statement of purpose. It is the purpose of  
 17 this act to promote the public health, safety, and general  
 18 welfare by regulating the subdivision of land; to prevent  
 19 overcrowding of land; to lessen congestion in the streets  
 20 and highways; to provide for adequate light, air, water  
 21 supply, sewage disposal, parks and recreation areas, ingress  
 22 and egress, and other public requirements; to ~~encourage~~  
 23 require development in harmony with the natural environment;  
 24 to require that approval of any subdivision be contingent  
 25 upon a finding of net public benefit by the governing body;

1 to require that the subdivider assume financial  
 2 responsibility for the completion of improvements and cost  
 3 of services required by the subdivision; and to require  
 4 uniform monumentation of land subdivisions and transferring  
 5 interests in real property by reference to plat or  
 6 certificate of survey."

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

9 "11-3861. Definitions. As used in this act, unless the  
 10 context or subject matter clearly requires otherwise, the  
 11 following words or phrases shall have the following  
 12 meanings:

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

16 (2) "Dedication" means the deliberate appropriation of  
 17 land by an owner for any general and public use, reserving  
 18 to himself no rights which are incompatible with the full  
 19 exercise and enjoyment of the public use to which the  
 20 property has been devoted.

21 (2.1) "Division of land" means the segregation of one  
 22 or more parcels of land from a larger tract held in single  
 23 or undivided ownership by transferring, or contracting to  
 24 transfer, title to or possession of a portion of the tract  
 25 or properly filing a certificate of survey or subdivision

1 plat establishing the identity of the segregated parcels  
 2 pursuant to this act. Provided that where required by this  
 3 act the land upon which an improvement is situated has been  
 4 subdivided in compliance with this act, the sale, rent,  
 5 lease or other conveyance of one or more parts of a  
 6 building, structure, or other improvement situated on one or  
 7 more parcels of land is not a division of land and is not  
 8 subject to the terms of this act.

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

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

15 (4.1) "Irregularly shaped tract of land" means a parcel  
 16 of land other than an aliquot part of the United States  
 17 government survey section or a United States Government lot  
 18 the boundaries or areas of which cannot be determined  
 19 without a survey or trigonometric calculation.

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

1 ownership or use.

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

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

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

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

20 (10) "Registered professional engineer" means a person  
 21 licensed in conformance with the Montana Professional  
 22 Engineers' Registration Act (sections 66-2301 through  
 23 66-2347) to practice engineering in the state of Montana.

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

1 (12) "Subdivision" means a division of land, or land so  
 2 divided, which creates one or more parcels, ~~containing--less~~  
 3 ~~than--twenty--(20)--acres,--exclusive--of--public--roadways~~  
 4 regardless of size, in order that the title to or  
 5 possession of the parcels may be sold, rented, leased, or  
 6 otherwise conveyed, and shall include any resubdivision; and  
 7 shall further include any condominium or area, regardless of  
 8 its size, which provides or will provide multiple space for  
 9 recreational camping vehicles, or mobile homes. A  
 10 subdivision shall comprise only those parcels ~~less-than~~  
 11 ~~twenty--(20)--acres~~ which have been segregated from the  
 12 original tract, and the plat thereof shall show all such  
 13 parcels whether contiguous or not. Provided, however,  
 14 condominiums constructed on land divided in compliance with  
 15 this chapter are exempt from the provisions of this chapter.

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

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

1 certified funds, or other similar surety agreements."

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

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

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

1 accordance with this act and regulations adopted pursuant  
2 thereto.

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

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

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

24 (6) Unless the method of disposition is adopted for the  
25 purpose of evading this act, the following divisions of land

1 are not subdivisions under this act but are subject to the  
2 surveying requirements of this section for divisions of land  
3 not amounting to subdivisions.

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

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

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

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

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

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

25 (a) which is created by order of any court of record in

1 this state or by operation of law, or which, in the absence  
 2 of agreement between the parties to the sale, could be  
 3 created by an order of any court in this state pursuant to  
 4 the law of eminent domain (sections 93-9901 through  
 5 93-9926);

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

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

11 (d) which creates cemetery lots;

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

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

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

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

1 (11) It shall be the responsibility of the governing  
 2 body to require the replacement of all monuments removed in  
 3 the course of construction."

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

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

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

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

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

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

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

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

1 board having jurisdiction exists, the governing body may  
2 grant exemptions as specified in this paragraph.

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

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

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

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

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

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

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

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

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

20 {8} (7) In the event that any governing body has not  
21 adopted subdivision regulations by July 1, 1974, which meet  
22 or exceed the prescribed minimum requirements, the  
23 department shall, through its division of planning, no later  
24 than January 1, 1975, promulgate reasonable regulations to  
25 be enforced by the governing body. If at any time thereafter

1 the governing body adopts its own subdivision regulations,  
 2 these shall supersede those promulgated by the department  
 3 but shall be no less stringent.

4 (8) The additional requirements provided for in this  
 5 act shall take effect upon its passage and approval. The  
 6 department shall modify its minimum requirements to comply  
 7 with this act within thirty (30) days of passage and each  
 8 governing body shall amend its subdivision regulations so as  
 9 to meet or exceed the minimum requirements by July 1, 1975.  
 10 The procedures and time periods provided in subsection (7)  
 11 for departmental review and enforcement in case of  
 12 noncompliance shall apply."

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

15 "11-3864. Dedications of portions of subdivisions to  
 16 the public--cash donations in lieu of dedications--waivers.

17 (1) A plat of a residential subdivision shall show that  
 18 one-ninth (1/9) of the combined area of lots five (5) acres  
 19 or less in size and one-twelfth (1/12) of the combined area  
 20 of lots greater than five (5) acres in size, exclusive of  
 21 all other dedications, is forever dedicated to the public  
 22 for parks or playgrounds. No dedication may be required for  
 23 the combined area of those lots in the subdivision which are  
 24 larger than ten (10) acres exclusive of all other  
 25 dedications. The governing body, in consultation with the

1 planning board having jurisdiction, may determine suitable  
 2 locations for such parks and playgrounds.

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

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

21 (4) If a tract of land is being developed under single  
 22 ownership as a part of an overall plan, and part of the  
 23 tract has been subdivided and sufficient park lands have  
 24 been dedicated to the public from the area that has been  
 25 subdivided to meet the requirements of this section for the



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

4 (5) The local governing body may waive dedication and  
5 cash donation requirements where all of the parcels in a  
6 subdivision are five (5) acres or more in size and where the  
7 subdivider enters a covenant to run with the land and  
8 revocable only by mutual consent of the governing body and  
9 the property owner that the parcels in the subdivision will  
10 never be subdivided into parcels of less than five (5) acres  
11 and that all parcels in the subdivision will be used for  
12 single family dwellings.

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

20 (7) The governing body may waive dedication and cash  
21 donation requirements for subdivision to be created by rent  
22 or lease where the subdivider agrees to develop parks or  
23 playgrounds within the subdivision for the common use of the  
24 residents of the subdivision. The area of land to be  
25 reserved for this purpose shall equal the amount that would

1 otherwise have been dedicated to the public."

2 Section 6. There is a new R.C.M. section numbered  
3 11-3865.1 that reads as follows:

4 11-3865.1. Guarantee of improvements and compensation  
5 for services. (1) No subdivision may be approved until  
6 the subdivider has submitted and the governing body has  
7 approved, one or a combination of the following:

8 (a) a subdivision improvements agreement in which the  
9 subdivider agrees to construct any required public  
10 improvements shown in the plat, together with collateral  
11 which is sufficient, in the judgment of the governing body,  
12 to provide for the completion of those improvements in  
13 accordance with design and time specifications; or

14 (b) other agreements or contracts setting forth the  
15 plan, method, and parties responsible for the construction  
16 of any required public improvements shown in the plat which,  
17 in the judgment of the governing body, will provide for the  
18 completion of those improvements in accordance with design  
19 and time specifications.

20 (2) As improvements are completed, the developer or  
21 his agent may apply to the governing body for a release of  
22 part or all of the collateral deposited with the governing  
23 body. Upon inspection and approval, the governing body  
24 shall release the collateral. If the governing body  
25 determines that any stipulated improvements are not

1 constructed in substantial compliance with specifications,  
 2 it shall furnish the subdivider a list of specific  
 3 deficiencies and may withhold collateral sufficient to  
 4 ensure substantial compliance. If the governing body  
 5 determines that the subdivider will not construct any or all  
 6 of the improvements in accordance with all of the  
 7 specifications, it may withdraw and employ from the deposit  
 8 of collateral any funds necessary to construct the  
 9 improvement or improvements in accordance with the  
 10 specifications.

11 (3) The governing body shall require the subdivider to  
 12 compensate the applicable jurisdiction if the subdivision  
 13 will burden existing local services so as to create a net  
 14 revenue deficit. Compensation shall equal the estimated  
 15 cost of services for the subdivision, when fully developed,  
 16 minus anticipated tax revenues from the developed  
 17 subdivision.

18 Section 7. Section 11-3866, R.C.M. 1947, is amended to  
 19 read as follows:

20 "11-3866. Submission of subdivision plat to governing  
 21 body--notice--hearing--approval--disapproval. (1) Except  
 22 where a plat is eligible for summary approval the subdivider  
 23 shall present to the governing body, or the agent or agency  
 24 designated thereby, the preliminary plat of the proposed  
 25 subdivision for local review. When the proposed subdivision

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

18 (2) The governing body shall approve, conditionally  
 19 approve, or reject the preliminary plat within sixty (60)  
 20 days of its presentation unless the subdivider consents to  
 21 an extension of the review period. The preliminary plat  
 22 shall show all pertinent features of the proposed  
 23 subdivision and all proposed improvements. The governing  
 24 body or its designated agent or agency shall review the  
 25 preliminary plat to determine whether it conforms to the

1 local master plan if one has been adopted pursuant to  
 2 sections 11-3801 through 11-3856 to the provisions of this  
 3 act, and to rules and regulations prescribed or adopted  
 4 pursuant to this act.

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

1 forward one (1) copy of the plat to the subdivider  
 2 accompanied by a letter over the appropriate signature  
 3 stating the reason for rejection or enumerating the  
 4 conditions which must be met to assure approval of the final  
 5 plat.

6 (4) The basis for the governing body's decision to  
 7 approve, conditionally approve, or disapprove a subdivision  
 8 shall be whether the preliminary plat, subdivision  
 9 improvements agreement, environmental assessment, public  
 10 hearing, planning board recommendations and additional  
 11 information demonstrate that development of the subdivision  
 12 will result in a net public benefit to the applicable  
 13 jurisdiction, and surrounding area. If a net public benefit  
 14 is not demonstrated the governing body shall disapprove the  
 15 subdivision. The decision of the governing body shall  
 16 include findings of fact based on the following criteria for  
 17 net public benefit:

- 18 (a) expressed public opinion;  
 19 (b) effects on agriculture;  
 20 (c) effects on local services;  
 21 (d) effects on taxation;  
 22 (e) effects on the natural environment; and  
 23 (f) effects on lifestyles.

24 ~~44~~ (5) Upon approving or conditionally approving a  
 25 preliminary plat, the governing body shall provide the

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

6 Section 8. There is a new R.C.M. section numbered  
 7 11-3877 that reads as follows:

8 11-3877. Citizen legal review. (1) Any person  
 9 aggrieved by a decision or alleged lack of enforcement by  
 10 the governing body under this act may obtain a review of the  
 11 decision by petition, duly verified, to a district court in  
 12 a county where any part of the subdivision is located,  
 13 stating the reasons why the decision or failure to enforce  
 14 is illegal, arbitrary, or otherwise unsupportable in whole  
 15 or in part. This petition shall be presented to the court  
 16 within thirty (30) days after the decision of the governing  
 17 body and shall prescribe the time within which a return to  
 18 the governing body shall be made and notice served upon the  
 19 subdivider's attorney, which shall not be less than ten (10)  
 20 days and may be extended by the court. The allowance of the  
 21 writ shall not stay proceedings upon the decision appealed  
 22 from, but the court may, on application, on notice to the  
 23 governing body, and on good cause shown, grant a restraining  
 24 order.

25 (2) The court shall make its decision on the basis of

1 the record unless it shall appear to the court that  
 2 testimony is necessary for the proper disposition of the  
 3 matter, in which case the court may take evidence or appoint  
 4 a referee to take evidence as it may direct and may direct  
 5 the referee to report the evidence to the court with his  
 6 findings of fact and conclusions of law, which shall  
 7 constitute a part of the proceedings upon which the  
 8 determination of the court shall be made. The court may  
 9 reverse or affirm, wholly or partly, or may modify the  
 10 decision brought up for review.

11 (3) Costs in the district and supreme court shall not  
 12 be allowed against the governing body unless it appears to  
 13 the court that it acted with gross negligence or in bad  
 14 faith, or with malice in making the decision appealed from.

15 Section 9. Severability. If a part of this act is  
 16 invalid, all valid parts that are severable from the invalid  
 17 part remain in effect. If a part of this act is invalid in  
 18 one or more of its applications, the part remains in effect  
 19 in all valid applications that are severable from the  
 20 invalid applications.

21 Section 10. Effective date. This act is effective  
 22 upon passage and approval.

-End-

Approved by Committee  
on Natural Resources

HOUSE BILL NO. 666

INTRODUCED BY VINCENT, MELOY, HUENNEKENS

HALVORSON, JAMES MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A  
GUARANTEE OF IMPROVEMENTS AND COMPENSATION FOR THE COST OF  
SERVICES CREATED BY SUBDIVISIONS; REQUIRING DISAPPROVAL OF  
ANY SUBDIVISIONS IN THE ABSENCE OF A DEMONSTRATED ~~NET PUBLIC~~  
~~BENEFIT~~ PUBLIC INTEREST; ~~PROVIDING FOR EXPANDED CITIZEN~~  
~~LEGAL REVIEW OF SUBDIVISION DECISIONS MADE BY THE GOVERNING~~  
~~BODY~~; AMENDING SECTIONS 11-3860, ~~THROUGH 11-3864~~ 11-3861 AND  
11-3866, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

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

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

"11-3860. Statement of purpose. It is the purpose of  
this act to promote the public health, safety, and general  
welfare by regulating the subdivision of land; to prevent  
overcrowding of land; to lessen congestion in the streets  
and highways; to provide for adequate light, air, water  
supply, sewage disposal, parks and recreation areas, ingress  
and egress, and other public requirements; to ~~encourage~~  
require development in harmony with the natural environment;  
to require that approval of any subdivision be contingent

~~upon a WRITTEN finding of net public benefit PUBLIC INTEREST~~  
~~by the governing body; to require that the subdivider assume~~  
~~financial responsibility for the completion of improvements~~  
~~and cost of services required by the subdivision; and to~~  
require uniform monumentation of land subdivisions and  
transferring interests in real property by reference to plat  
or certificate of survey."

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

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

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

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

(2.1) "Division of land" means the segregation of one  
or more parcels of land from a larger tract held in single  
or undivided ownership by transferring, or contracting to

1 transfer, title to or possession of a portion of the tract  
 2 or properly filing a certificate of survey or subdivision  
 3 plat establishing the identity of the segregated parcels  
 4 pursuant to this act. Provided that where required by this  
 5 act the land upon which an improvement is situated has been  
 6 subdivided in compliance with this act, the sale, rent,  
 7 lease or other conveyance of one or more parts of a  
 8 building, structure, or other improvement situated on one or  
 9 more parcels of land is not a division of land and is not  
 10 subject to the terms of this act.

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

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

17 (4.1) "Irregularly shaped tract of land" means a parcel  
 18 of land other than an aliquot part of the United States  
 19 government survey section or a United States Government lot  
 20 the boundaries or areas of which cannot be determined  
 21 without a survey or trigonometric calculation.

22 (5) "Planned unit development" means a land  
 23 development project consisting of residential clusters,  
 24 industrial parks, shopping centers, or office building  
 25 parks, or any combination thereof which comprises a planned

1 mixture of land uses built in a prearranged relationship to  
 2 each other and having open space and community facilities in  
 3 common ownership or use.

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

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

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

19 (9) "Registered land surveyor" means a person  
 20 licensed in conformance with the Montana Professional  
 21 Engineers' Registration Act (sections 66-2301 through  
 22 66-2347) to practice surveying in the state of Montana.

23 (10) "Registered professional engineer" means a person  
 24 licensed in conformance with the Montana Professional  
 25 Engineers' Registration Act (sections 66-2301 through

1 66-2347) to practice engineering in the state of Montana.

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

4 (12) "Subdivision" means a division of land, or land  
5 so divided, which creates one or more parcels, ~~containing~~  
6 ~~less than twenty (20) acres, exclusive of public roadways~~  
7 regardless of size, in order that the title to or  
8 possession of the parcels may be sold, rented, leased, or  
9 otherwise conveyed, and shall include any resubdivision; and  
10 shall further include any condominium or area, regardless of  
11 its size, which provides or will provide multiple space for  
12 recreational camping vehicles, or mobile homes. A  
13 subdivision shall comprise only those parcels ~~less than~~  
14 ~~twenty (20) acres~~ which have been segregated from the  
15 original tract, and the plat thereof shall show all such  
16 parcels whether contiguous or not. Provided, however,  
17 condominiums constructed on land divided in compliance with  
18 this chapter are exempt from the provisions of this chapter.

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

21 (13) "OCCASIONAL SALE" MEANS ONE SALE OF A DIVISION OF  
22 LAND WITHIN ANY TWELVE (12) MONTH PERIOD.

23 ~~(13) "Subdivision improvements agreement" means one or~~  
24 ~~more security agreements which may be accepted by a~~  
25 ~~governing body to secure the construction of such public~~

1 ~~improvements within the subdivision as are required by~~  
2 ~~subdivision regulations and shall include collateral, such~~  
3 ~~as, but not limited to, performance or property bonds,~~  
4 ~~private or public escrow agreements, loan commitments,~~  
5 ~~assignments of receivables, liens on property, deposit of~~  
6 ~~certified funds, or other similar surety agreements."~~

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

9 ~~11-3862. Surveys required - exceptions - standards~~  
10 ~~for monumentation. (1) All divisions of land for sale other~~  
11 ~~than a subdivision after the effective date of this act into~~  
12 ~~parcels which cannot be described as 1/32 or larger aliquot~~  
13 ~~parts of a United States government section or a United~~  
14 ~~States government lot must be surveyed by or under the~~  
15 ~~supervision of a registered land surveyor.~~

16 ~~(2) Every subdivision of land after June 30, 1973,~~  
17 ~~shall be surveyed and platted in conformance with this act~~  
18 ~~by or under the supervision of a registered land surveyor.~~  
19 ~~Subdivision plats shall be prepared and filed in accordance~~  
20 ~~with this act and regulations adopted pursuant thereto. All~~  
21 ~~division of sections into aliquot parts and retracement of~~  
22 ~~lines must conform to United States bureau of land~~  
23 ~~management instructions, and all public land survey corners~~  
24 ~~shall be filed in accordance with Corner Recordation Act of~~  
25 ~~Montana (sections 67-2001 through 67-2014). Engineering~~

~~plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.~~

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

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

~~(5) The provisions of this act shall not apply to the~~

~~division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.~~

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

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

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

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

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

~~(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing~~



1 ~~body before portions thereof may be rented or leased.~~  
 2 ~~(8) Unless the method of disposition is adopted for~~  
 3 ~~the purpose of evading this act, the requirements of this~~  
 4 ~~act shall not apply to any division of land:~~  
 5 ~~(a) which is created by order of any court of record~~  
 6 ~~in this state or by operation of law, or which, in the~~  
 7 ~~absence of agreement between the parties to the sale, could~~  
 8 ~~be created by an order of any court in this state pursuant~~  
 9 ~~to the law of eminent domain (sections 93-9901 through~~  
 10 ~~93-9926);~~  
 11 ~~(b) which is created by a lien, mortgage, or trust~~  
 12 ~~indenture;~~  
 13 ~~(c) which creates an interest in oil, gas, minerals,~~  
 14 ~~or water which is now or hereafter severed from the surface~~  
 15 ~~ownership of real property;~~  
 16 ~~(d) which creates cemetery lots;~~  
 17 ~~(e) which is created by the reservation of a life~~  
 18 ~~estate;~~  
 19 ~~(f) which is created by lease or rental for farming~~  
 20 ~~and agricultural purposes.~~  
 21 ~~(9) The sale, rent, lease, or other conveyance of one~~  
 22 ~~or more parts of a building, structure, or other improvement~~  
 23 ~~situated on one or more parcels of land is not a division of~~  
 24 ~~land, as that term is defined in this act, and is not~~  
 25 ~~subject to the requirements of this act.~~

1 ~~(10) The department of intergovernmental relations~~  
 2 ~~shall, in conformance with the Montana Administrative~~  
 3 ~~Procedure Act (sections 82-4201 through 82-4225), prescribe~~  
 4 ~~uniform standards for monumentation and for the form,~~  
 5 ~~accuracy, and descriptive content of records of survey.~~  
 6 ~~(11) It shall be the responsibility of the governing~~  
 7 ~~body to require the replacement of all monuments removed in~~  
 8 ~~the course of construction."~~  
 9 ~~Section 4. Section 11-3863, R.C.M., 1947, is amended to~~  
 10 ~~read as follows:~~  
 11 ~~"11-3863. Enforcement by governmental subdivisions—~~  
 12 ~~adoption of regulations—public hearing. (1) The~~  
 13 ~~governing body of every county, city, and town shall, before~~  
 14 ~~July 1, 1974, adopt and provide for the enforcement and~~  
 15 ~~administration of subdivision regulations reasonably~~  
 16 ~~providing for the orderly development of their~~  
 17 ~~jurisdictional areas; for the coordination of roads within~~  
 18 ~~subdivided land with other roads, both existing and planned;~~  
 19 ~~for the dedication of land for roadways and for public~~  
 20 ~~utility easements; for the improvement of roads; for the~~  
 21 ~~provision of adequate open spaces for travel, light, air and~~  
 22 ~~recreation; for the provision of adequate transportation,~~  
 23 ~~water, drainage, and sanitary facilities; for the avoidance~~  
 24 ~~or minimization of congestion; and for the avoidance of~~  
 25 ~~subdivision which would involve unnecessary environmental~~

1 ~~degradation, and the avoidance of danger or injury to~~  
 2 ~~health, safety, or welfare by reason of natural hazard or~~  
 3 ~~the lack of water, drainage, access, transportation or other~~  
 4 ~~public services or would necessitate an excessive~~  
 5 ~~expenditure of public funds for the supply of such services.~~

6 ~~Prior to adopting or amending subdivision regulations~~  
 7 ~~pursuant to this act, the governing body shall submit the~~  
 8 ~~proposed regulations or amendments to the division of~~  
 9 ~~planning and economic development of the department of~~  
 10 ~~intergovernmental relations for review.~~

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

19 ~~(2) Not later than December 31, 1973, the department~~  
 20 ~~of intergovernmental relations, through its division of~~  
 21 ~~planning, shall, in conformance with the Montana~~  
 22 ~~Administrative Procedure Act (sections 82-4201 through~~  
 23 ~~82-4225), prescribe reasonable minimum requirements for~~  
 24 ~~subdivision regulations adopted pursuant to this act. The~~  
 25 ~~minimum requirements shall include detailed criteria for the~~

1 ~~content of the environmental assessment required by this~~  
 2 ~~act. The department shall provide for the review of~~  
 3 ~~preliminary plats by those agencies of state and local~~  
 4 ~~government and affected public utilities having a~~  
 5 ~~substantial interest in a proposed subdivision; provided,~~  
 6 ~~however, that such agency or utility review shall not delay~~  
 7 ~~the governing body's action on the plat beyond the time~~  
 8 ~~limit specified herein, and the failure of any agency to~~  
 9 ~~complete a review of a plat shall not be a basis for~~  
 10 ~~rejection of the plat by the governing body.~~

11 ~~(3) In prescribing the minimum contents of the~~  
 12 ~~subdivision regulations, the department of intergovernmental~~  
 13 ~~relations, through its division of planning, shall require~~  
 14 ~~the submission by the subdivider to the governing body of an~~  
 15 ~~environmental assessment.~~

16 ~~(3.1) When a subdivision is proposed in an area for~~  
 17 ~~which a master plan has been adopted pursuant to sections~~  
 18 ~~11-3801 through 11-3856 and the proposed subdivision will be~~  
 19 ~~in compliance with the plan or and when the subdivision will~~  
 20 ~~contain fewer than ten (10) parcels and less than twenty~~  
 21 ~~(20) acres none of which are larger than one (1) acre in~~  
 22 ~~size, a planning board established pursuant to sections~~  
 23 ~~11-3801 through 11-3856 and having jurisdiction over the~~  
 24 ~~area involved may exempt the subdivider from the completion~~  
 25 ~~of all or any portion of the environmental assessment. When~~

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

8 ~~(4) Where required the environmental assessment shall~~  
 9 ~~accompany the preliminary plat and shall include:~~

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

15 ~~(b) maps and tables showing soil types in the several~~  
 16 ~~parts of the proposed subdivision, and their suitability for~~  
 17 ~~any proposed developments in those several parts;~~

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

23 ~~(d) such additional relevant and reasonable~~  
 24 ~~information as may be required by the department through its~~  
 25 ~~division of planning.~~

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

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

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

25 ~~(8) (7) In the event that any governing body has not~~

1 ~~adopted subdivision regulations by July 1, 1974, which meet~~  
 2 ~~or exceed the prescribed minimum requirements, the~~  
 3 ~~department shall, through its division of planning, no later~~  
 4 ~~than January 1, 1975, promulgate reasonable regulations to~~  
 5 ~~be enforced by the governing body. If at any time thereafter~~  
 6 ~~the governing body adopts its own subdivision regulations,~~  
 7 ~~these shall supersede those promulgated by the department~~  
 8 ~~but shall be no less stringent.~~

9 ~~(8) The additional requirements provided for in this~~  
 10 ~~act shall take effect upon its passage and approval. The~~  
 11 ~~department shall modify its minimum requirements to comply~~  
 12 ~~with this act within thirty (30) days of passage and each~~  
 13 ~~governing body shall amend its subdivision regulations so as~~  
 14 ~~to meet or exceed the minimum requirements by July 1, 1975.~~  
 15 ~~The procedures and time periods provided in subsection (7)~~  
 16 ~~for departmental review and enforcement in case of~~  
 17 ~~noncompliance shall apply."~~

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

20 "11-3864. Dedications of portions of subdivisions to  
 21 the public cash donations in lieu of dedications  
 22 waivers. (1) A plot of a residential subdivision shall show  
 23 that one ninth (1/9) of the combined area of lots five (5)  
 24 acres or less in size and one twelfth (1/12) of the combined  
 25 area of lots greater than five (5) acres in size, exclusive

1 ~~of all other dedications, is forever dedicated to the public~~  
 2 ~~for parks or playgrounds. No dedication may be required for~~  
 3 ~~the combined area of those lots in the subdivision which are~~  
 4 ~~larger than ten (10) acres exclusive of all other~~  
 5 ~~dedications. The governing body, in consultation with the~~  
 6 ~~planning board having jurisdiction, may determine suitable~~  
 7 ~~locations for such parks and playgrounds.~~

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

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

1       ~~(4) If a tract of land is being developed under single~~  
 2 ~~ownership as a part of an overall plan, and part of the~~  
 3 ~~tract has been subdivided and sufficient park lands have~~  
 4 ~~been dedicated to the public from the area that has been~~  
 5 ~~subdivided to meet the requirements of this section for the~~  
 6 ~~entire tract being developed, the governing body shall issue~~  
 7 ~~an order waiving the land dedication and cash donation~~  
 8 ~~requirements for the subsequently platted area.~~

9       ~~(5) The local governing body may waive dedication and~~  
 10 ~~cash donation requirements where all of the parcels in a~~  
 11 ~~subdivision are five (5) acres or more in size and where the~~  
 12 ~~subdivider enters a covenant to run with the land and~~  
 13 ~~revocable only by mutual consent of the governing body and~~  
 14 ~~the property owner that the parcels in the subdivision will~~  
 15 ~~never be subdivided into parcels of less than five (5) acres~~  
 16 ~~and that all parcels in the subdivision will be used for~~  
 17 ~~single family dwellings.~~

18       ~~(6) The governing body may waive dedication and cash~~  
 19 ~~donation requirements when the subdivider agrees to create a~~  
 20 ~~property owners' association for the proposed subdivision~~  
 21 ~~and to deed to the association land to be held in perpetuity~~  
 22 ~~for use as parks or playgrounds. The area of land to be~~  
 23 ~~deeded to the association shall equal the amount that would~~  
 24 ~~otherwise have been dedicated to public use.~~

25       ~~(7) The governing body may waive dedication and cash~~

1       ~~donation requirements for subdivision to be created by rent~~  
 2 ~~or lease where the subdivider agrees to develop parks or~~  
 3 ~~playgrounds within the subdivision for the common use of the~~  
 4 ~~residents of the subdivision. The area of land to be~~  
 5 ~~reserved for this purpose shall equal the amount that would~~  
 6 ~~otherwise have been dedicated to the public."~~

7       ~~Section 6. There is a new R.C.M. section numbered~~  
 8 ~~11-2865.1 that reads as follows:~~

9       ~~11-2865.1. Guarantee of improvements and compensation~~  
 10 ~~for services. (1) No subdivision may be approved until the~~  
 11 ~~subdivider has submitted and the governing body has~~  
 12 ~~approved, one or a combination of the following:~~

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

19       ~~(b) other agreements or contracts setting forth the~~  
 20 ~~plan, method, and parties responsible for the construction~~  
 21 ~~of any required public improvements shown in the plat which,~~  
 22 ~~in the judgment of the governing body, will provide for the~~  
 23 ~~completion of those improvements in accordance with design~~  
 24 ~~and time specifications.~~

25       ~~(2) As improvements are completed, the developer or~~

~~1 his agent may apply to the governing body for a release of~~  
~~2 part or all of the collateral deposited with the governing~~  
~~3 body. Upon inspection and approval, the governing body~~  
~~4 shall release the collateral. If the governing body~~  
~~5 determines that any stipulated improvements are not~~  
~~6 constructed in substantial compliance with specifications,~~  
~~7 it shall furnish the subdivider a list of specific~~  
~~8 deficiencies and may withhold collateral sufficient to~~  
~~9 ensure substantial compliance. If the governing body~~  
~~10 determines that the subdivider will not construct any or all~~  
~~11 of the improvements in accordance with all of the~~  
~~12 specifications, it may withdraw and employ from the deposit~~  
~~13 of collateral any funds necessary to construct the~~  
~~14 improvement or improvements in accordance with the~~  
~~15 specifications.~~

~~16 (3) The governing body shall require the subdivider~~  
~~17 to compensate the applicable jurisdiction if the subdivision~~  
~~18 will burden existing local services so as to create a net~~  
~~19 revenue deficit. Compensation shall equal the estimated~~  
~~20 cost of services for the subdivision, when fully developed,~~  
~~21 minus anticipated tax revenues from the developed~~  
~~22 subdivision.~~

23 Section 3. Section 11-3866, B.C.M. 1947, is amended to  
 24 read as follows:

25 \*11-3866. Submission of subdivision plat to governing

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

24 (2) The governing body shall approve, conditionally  
 25 approve, or reject the preliminary plat within sixty (60)

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

11 (3) The governing body or its authorized agent or  
 12 agency shall hold a public hearing on the preliminary plat  
 13 and shall consider all relevant evidence relating to the  
 14 public health, safety and welfare, including the  
 15 environmental assessment, to determine whether the plat  
 16 should be approved, conditionally approved, or disapproved  
 17 by the governing body. Notice of such hearing shall be given  
 18 by publication in a newspaper of general circulation in the  
 19 county not less than fifteen (15) days prior to the date of  
 20 the hearing. The subdivider and each property owner of  
 21 record immediately adjoining the land included in the plat  
 22 shall also be notified of the hearing by registered mail not  
 23 less than fifteen (15) days prior to the date of the  
 24 hearing. When a hearing is held by an agent or agency  
 25 designated by the governing body, the agent or agency shall

1 act in an advisory capacity and recommend to the governing  
 2 body the approval, conditional approval, or disapproval of  
 3 the plat. This recommendation must be submitted to the  
 4 governing body in writing not later than ten (10) days after  
 5 the public hearing. If the governing body rejects or  
 6 conditionally approves the preliminary plat, it shall  
 7 forward one (1) copy of the plat to the subdivider  
 8 accompanied by a letter over the appropriate signature  
 9 stating the reason for rejection or enumerating the  
 10 conditions which must be met to assure approval of the final  
 11 plat.

12 (4) The basis for the governing body's decision to  
 13 approve, conditionally approve, or disapprove a subdivision  
 14 shall be whether the preliminary plat, subdivision  
 15 improvements--agreement, environmental assessment, public  
 16 hearing, planning board recommendations and additional  
 17 information demonstrate that development of the subdivision  
 18 will result in a net public benefit to the applicable  
 19 jurisdiction and surrounding area. If a net public benefit  
 20 is not demonstrated the governing body shall disapprove the  
 21 subdivision. The decision of the governing body shall  
 22 include findings of fact based on the following criteria for  
 23 net public benefit WOULD BE IN THE PUBLIC INTEREST. THE  
 24 GOVERNING BODY SHALL DISAPPROVE ANY SUBDIVISION WHICH IF  
 25 FINDS NOT TO BE IN THE PUBLIC INTEREST. TO DETERMINE

1 WHETHER THE PROPOSED SUBDIVISION WOULD BE IN THE PUBLIC  
2 INTEREST THE GOVERNING BODY SHALL ISSUE WRITTEN FINDINGS OF  
3 FACT WHICH WEIGH THE FOLLOWING CRITERIA FOR PUBLIC INTEREST:

4 (A) THE BASIS OF THE NEED FOR THE SUBDIVISION:

5 ~~(a)~~ (B) expressed public opinion;

6 ~~(b)~~ (C) effects on agriculture;

7 ~~(c)~~ (D) effects on local services;

8 ~~(d)~~ (E) effects on taxation;

9 ~~(e)~~ (F) effects on the natural environment; and

10 ~~(f)~~ (G) effects on lifestyles, WILDLIFE AND WILDLIFE

11 HABITAT, AND

12 (H) EFFECTS ON THE PUBLIC HEALTH AND SAFETY.

13 ~~(4)~~ (5) Upon approving or conditionally approving a  
14 preliminary plat, the governing body shall provide the  
15 subdivider with a dated and signed statement of approval.  
16 This approval shall be in force for not more than one (1)  
17 calendar year; at the end of this period the governing body  
18 may, at the request of the subdivider, extend its approval  
19 for no more than one (1) calendar year."

20 ~~Section 8. There is a new R.C.M. section numbered~~  
21 ~~11-3877 that reads as follows:~~

22 ~~11-3877. Citizen legal review. (1) Any person~~  
23 ~~aggrieved by a decision or alleged lack of enforcement by~~  
24 ~~the governing body under this act may obtain a review of the~~  
25 ~~decision by petition, duly verified, to a district court in~~

1 ~~a county where any part of the subdivision is located,~~  
2 ~~stating the reasons why the decision or failure to enforce~~  
3 ~~is illegal, arbitrary, or otherwise unupportable in whole~~  
4 ~~or in part. This petition shall be presented to the court~~  
5 ~~within thirty (30) days after the decision of the governing~~  
6 ~~body and shall prescribe the time within which a return to~~  
7 ~~the governing body shall be made and notice served upon the~~  
8 ~~subdivider's attorney, which shall not be less than ten (10)~~  
9 ~~days and may be extended by the court. The allowance of the~~  
10 ~~writ shall not stay proceedings upon the decision appealed~~  
11 ~~from, but the court may, on application, on notice to the~~  
12 ~~governing body, and on good cause shown, grant a restraining~~  
13 ~~order.~~

14 ~~(2) The court shall make its decision on the basis of~~  
15 ~~the record unless it shall appear to the court that~~  
16 ~~testimony is necessary for the proper disposition of the~~  
17 ~~matter, in which case the court may take evidence or appoint~~  
18 ~~a referee to take evidence as it may direct and may direct~~  
19 ~~the referee to report the evidence to the court with his~~  
20 ~~findings of fact and conclusions of law, which shall~~  
21 ~~constitute a part of the proceedings upon which the~~  
22 ~~determination of the court shall be made. The court may~~  
23 ~~reverse or affirm, wholly or partly, or may modify the~~  
24 ~~decision brought up for review.~~

25 ~~(3) Costs in the district and supreme court shall not~~



1 ~~be allowed against the governing body unless it appears to~~  
2 ~~the court that it acted with gross negligence or in bad~~  
3 ~~faith, or with malice in making the decision appealed from.~~

4 Section 4. Severability. If a part of this act is  
5 invalid, all valid parts that are severable from the invalid  
6 part remain in effect. If a part of this act is invalid in  
7 one or more of its applications, the part remains in effect  
8 in all valid applications that are severable from the  
9 invalid applications.

10 Section 5. Effective date. This act is effective upon  
11 passage and approval.

-End-

1 HOUSE BILL NO. 666

2 INTRODUCED BY VINCENT, BELOY, HUENNEKENS

3 HALVORSON, JAMES HOOKE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A  
6 GUARANTEE OF IMPROVEMENTS AND COMPENSATION FOR THE COST OF  
7 SERVICES CREATED BY SUBDIVISIONS; REQUIRING DISAPPROVAL OF  
8 ANY SUBDIVISIONS IN THE ABSENCE OF A DEMONSTRATED ~~NET~~ PUBLIC  
9 ~~OR~~ PUBLIC INTEREST; ~~PROVIDING FOR EXPANDED CITIZEN~~  
10 ~~LEGAL REVIEW OF SUBDIVISION DECISIONS MADE BY THE GOVERNING~~  
11 ~~BODY~~; AMENDING SECTIONS 11-3860, ~~THROUGH 11-3864~~ 11-3861 AND  
12 11-3866, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

17 "11-3860. Statement of purpose. It is the purpose of  
18 this act to promote the public health, safety, and general  
19 welfare by regulating the subdivision of land; to prevent  
20 overcrowding of land; to lessen congestion in the streets  
21 and highways; to provide for adequate light, air, water  
22 supply, sewage disposal, parks and recreation areas, ingress  
23 and egress, and other public requirements; to ~~encourage~~  
24 require development in harmony with the natural environment;  
25 to require that approval of any subdivision be contingent

1 66-2347) to practice engineering in the state of Montana.

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

4 (12) "Subdivision" means a division of land, or land  
5 so divided, which creates one or more parcels, CONTAINING  
6 LESS THAN FORTY (40) ACRES, EXCLUSIVE OF PUBLIC ROADWAYS  
7 ~~containing less than twenty (20) acres, exclusive of public~~  
8 ~~roadways regardless of size,~~ in order that the title to or  
9 possession of the parcels may be sold, rented, leased, or  
10 otherwise conveyed, and shall include any resubdivision; and  
11 shall further include any condominium or area, regardless of  
12 its size, which provides or will provide multiple space for  
13 recreational camping vehicles, or mobile homes. A  
14 subdivision shall comprise only those parcels LESS THAN  
15 FORTY (40) ACRES ~~less than twenty (20) acres~~ which have been  
16 segregated from the original tract, and the plat thereof  
17 shall show all such parcels whether contiguous or not.  
18 Provided, however, condominiums constructed on land divided  
19 in compliance with this chapter are exempt from the  
20 provisions of this chapter.

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

23 (13) "OCCASIONAL SALE" MEANS ONE SALE OF A DIVISION OF  
24 LAND WITHIN ANY TWELVE (12) MONTH PERIOD.

25 ~~(13) "Subdivision improvements agreement" means one of~~

### THIRD READING

H. B. 666 was not run in its entirety. Please refer to  
yellow copy for text. Amendments on page 5 only.

March 19, 1975

SENATE COMMITTEE ON NATURAL RESOURCES AND FISH AND GAME

AMENDMENTS TO HOUSE BILL NO. 666

That House Bill No. 666, third reading, be amended as follows:

1. Amend title, lines 5 through 6 and 7.  
Following: "AN ACT"  
Strike: "TO PROVIDE FOR A GUARANTEE OF IMPROVEMENTS AND  
COMPENSATION FOR THE COST OF SERVICES CREATED  
BY SUBDIVISIONS;"
2. Amend page 5, section 1, lines 5 through 8.  
Following: "parcels,"  
Strike: "CONTAINING LESS THAN FORTY (40) ACRES, EXCLUSIVE  
OF PUBLIC ROADWAYS"  
Insert: "containing less than twenty (20) acres, exclusive  
of public roadways"
3. Amend page 5, section 1, lines 14 and 15.  
Following: "parcels"  
Strike: "LESS THAN FORTY (40) ACRES"  
Insert: "less than twenty (20) acres"

HOUSE BILL NO. 666

INTRODUCED BY VINCENT, MELOY, HOEWBEKENS

HALVORSON, JAMES MOORE

A BILL FOR AN ACT ENTITLED: ~~"AN ACT TO PROVIDE FOR A~~  
~~GUARANTEE OF IMPROVEMENTS AND COMPENSATION FOR THE COST OF~~  
~~SERVICES CREATED BY SUBDIVISIONS, REQUIRING DISAPPROVAL OF~~  
 ANY SUBDIVISIONS IN THE ABSENCE OF A DEMONSTRATED ~~NET PUBLIC~~  
~~BENEFIT PUBLIC INTEREST; PROVIDING FOR EXPANDED CITIZEN~~  
~~LEGAL REVIEW OF SUBDIVISION DECISIONS MADE BY THE GOVERNING~~  
~~BODY;~~ AMENDING SECTIONS 11-3860, ~~THROUGH 11-3864~~ 11-3861 AND  
 11-3866, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

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

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

"11-3860. Statement of purpose. It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to ~~encourage~~  
require development in harmony with the natural environment;  
to require that approval of any subdivision be contingent

~~upon a WRITTEN finding of net public benefit PUBLIC INTEREST~~  
~~by the governing body; to require that the subdivider assume~~  
~~financial responsibility for the completion of improvements~~  
~~and cost of services required by the subdivision; and to~~  
 require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey."

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

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

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

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

(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to

1 transfer, title to or possession of a portion of the tract  
 2 or properly filing a certificate of survey or subdivision  
 3 plat establishing the identity of the segregated parcels  
 4 pursuant to this act. Provided that where required by this  
 5 act the land upon which an improvement is situated has been  
 6 subdivided in compliance with this act, the sale, rent,  
 7 lease or other conveyance of one or more parts of a  
 8 building, structure, or other improvement situated on one or  
 9 more parcels of land is not a division of land and is not  
 10 subject to the terms of this act.

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

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

17 (4.1) "Irregularly shaped tract of land" means a parcel  
 18 of land other than an aliquot part of the United States  
 19 government survey section or a United States Government lot  
 20 the boundaries or areas of which cannot be determined  
 21 without a survey or trigonometric calculation.

22 (5) "Planned unit development" means a land  
 23 development project consisting of residential clusters,  
 24 industrial parks, shopping centers, or office building  
 25 parks, or any combination thereof which comprises a planned

1 mixture of land uses built in a prearranged relationship to  
 2 each other and having open space and community facilities in  
 3 common ownership or use.

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

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

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

19 (9) "Registered land surveyor" means a person  
 20 licensed in conformance with the Montana Professional  
 21 Engineers' Registration Act (sections 66-2301 through  
 22 66-2347) to practice surveying in the state of Montana.

23 (10) "Registered professional engineer" means a person  
 24 licensed in conformance with the Montana Professional  
 25 Engineers' Registration Act (sections 66-2301 through

66-2347) to practice engineering in the state of Montana.

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

(12) "Subdivision" means a division of land, or land so divided, which creates one or more parcels, ~~CONTAINING LESS THAN FORTY (40) ACRES, EXCLUSIVE OF PUBLIC ROADWAYS~~ CONTAINING LESS THAN TWENTY (20) ACRES, EXCLUSIVE OF PUBLIC ROADWAYS ~~regardless of size~~, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels ~~LESS THAN FORTY (40) ACRES~~ LESS THAN TWENTY (20) ACRES which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

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

(13) "OCCASIONAL SALE" MEANS ONE SALE OF A DIVISION OF LAND WITHIN ANY TWELVE (12) MONTH PERIOD.

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

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

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

~~(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States Bureau of Land~~

1 ~~management instructions, and all public land survey corners~~  
 2 ~~shall be filed in accordance with Corner Recordation Act of~~  
 3 ~~Montana (sections 67-2001 through 67-2019). Engineering~~  
 4 ~~plans, specifications, and reports required in connection~~  
 5 ~~with public improvements and other elements of the~~  
 6 ~~subdivision required by the governing body shall be prepared~~  
 7 ~~and filed by a registered engineer or a registered land~~  
 8 ~~surveyor as their respective licensing laws allow in~~  
 9 ~~accordance with this act and regulations adopted pursuant~~  
 10 ~~thereto.~~

11 ~~(3) The county clerk and recorder of any county shall~~  
 12 ~~not record any instrument which purports to transfer title~~  
 13 ~~to or possession of a parcel or tract of land which is~~  
 14 ~~required to be surveyed by this act unless the required~~  
 15 ~~certificate of survey or subdivision plat has been filed~~  
 16 ~~with the clerk and recorder and the instrument of transfer~~  
 17 ~~describes the parcel or tract by reference to the filed~~  
 18 ~~certificate or plat.~~

19 ~~(4) Instruments of transfer of land which is acquired~~  
 20 ~~for state highways may refer by parcel and project number to~~  
 21 ~~state highway plans which have been recorded in compliance~~  
 22 ~~with section 52-2413, and are exempted from the surveying~~  
 23 ~~and platting requirements of this act; provided, however,~~  
 24 ~~that if such parcels are not shown on highway plans of~~  
 25 ~~record, instruments of transfer of such parcels shall be~~

1 ~~accompanied by and refer to appropriate certificates of~~  
 2 ~~survey and plats when presented for recording.~~

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

7 ~~(6) Unless the method or disposition is adopted for~~  
 8 ~~the purpose of evading this act, the following divisions of~~  
 9 ~~land are not subdivisions under this act but are subject to~~  
 10 ~~the surveying requirements of this section for divisions of~~  
 11 ~~land not amounting to subdivisions.~~

12 ~~(a) Divisions made for the purpose of relocating~~  
 13 ~~common boundary lines between adjoining properties.~~

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

16 ~~(c) Divisions made by sale or agreement to buy and~~  
 17 ~~sell where the parties to the transaction enter a covenant~~  
 18 ~~running with the land and revocable only by mutual consent~~  
 19 ~~of the governing body and the property owner that the~~  
 20 ~~divided land will be used exclusively for agricultural~~  
 21 ~~purposes. Any change in use of the land for anything other~~  
 22 ~~than agricultural purposes subjects the division to the~~  
 23 ~~provisions of this chapter.~~

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

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

5 ~~(6) Unless the method of disposition is adopted for~~  
6 ~~the purpose of evading this act, the requirements of this~~  
7 ~~act shall not apply to any division of land:~~

8 ~~(a) which is created by order of any court of record~~  
9 ~~in this state or by operation of law, or which, in the~~  
10 ~~absence of agreement between the parties to the sale, could~~  
11 ~~be created by an order of any court in this state pursuant~~  
12 ~~to the law of eminent domain (sections 93-9501 through~~  
13 ~~93-9926);~~

14 ~~(b) which is created by a lien, mortgage, or trust~~  
15 ~~indenture;~~

16 ~~(c) which creates an interest in oil, gas, minerals,~~  
17 ~~or water which is now or hereafter covered from the surface~~  
18 ~~ownership of real property;~~

19 ~~(d) which creates cemetery lots;~~

20 ~~(e) which is created by the reservation of a life~~  
21 ~~estate;~~

22 ~~(f) which is created by lease or rental for farming~~  
23 ~~and agricultural purposes.~~

24 ~~(g) The sale, rent, lease, or other conveyance of one~~  
25 ~~or more parts of a building, structure, or other improvement~~

1 ~~situated on one or more parcels of land is not a division of~~  
2 ~~land, as that term is defined in this act, and is not~~  
3 ~~subject to the requirements of this act.~~

4 ~~(10) The department of intergovernmental relations~~  
5 ~~shall, in conformance with the Montana Administrative~~  
6 ~~Procedure Act (sections 82-4201 through 82-4225), prescribe~~  
7 ~~uniform standards for nomenclature and for the form,~~  
8 ~~accuracy, and descriptive content of records of survey.~~

9 ~~(11) It shall be the responsibility of the governing~~  
10 ~~body to require the replacement of all monuments removed in~~  
11 ~~the course of construction."~~

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

14 ~~11-3863. Enforcement by governmental subdivisions~~  
15 ~~adoption of regulations public hearing. (1) The~~  
16 ~~governing body of every county, city, and town shall, before~~  
17 ~~July 1, 1974, adopt and provide for the enforcement and~~  
18 ~~administration of subdivision regulations reasonably~~  
19 ~~providing for the orderly development of their~~  
20 ~~jurisdictional areas; for the co-ordination of roads within~~  
21 ~~subdivided land with other roads, both existing and planned;~~  
22 ~~for the dedication of land for roadways and for public~~  
23 ~~utility easements; for the improvement of roads; for the~~  
24 ~~provision of adequate open spaces for travel, light, air and~~  
25 ~~recreation; for the provision of adequate transportation;~~



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

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

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

22 ~~(2) Not later than December 31, 1973, the department~~  
 23 ~~of intergovernmental relations, through its division of~~  
 24 ~~planning, shall, in conformance with the Montana~~  
 25 ~~Administrative Procedure Act (sections 4201 through~~

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

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

19 ~~(3.1) When a subdivision is proposed in an area for~~  
 20 ~~which a master plan has been adopted pursuant to sections~~  
 21 ~~11-3801 through 11-3856 and the proposed subdivision will be~~  
 22 ~~in compliance with the plan or and when the subdivision will~~  
 23 ~~contain fewer than ten (10) parcels and less than twenty~~  
 24 ~~(20) acres some of which are larger than one (1) acre in~~  
 25 ~~size, a planning board established pursuant to sections~~

1 ~~11 3601 through 11 3656 and having jurisdiction over the~~  
 2 ~~area involved may exempt the subdivider from the completion~~  
 3 ~~of all or any portion of the environmental assessment. When~~  
 4 ~~such an exemption is granted, the planning board shall~~  
 5 ~~prepare and certify a written statement of the reasons for~~  
 6 ~~granting the exemption. A copy of this statement shall~~  
 7 ~~accompany the preliminary plat of the subdivision when it is~~  
 8 ~~submitted for review. Where no properly established planning~~  
 9 ~~board having jurisdiction exists, the governing body may~~  
 10 ~~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~~  
 22 ~~of 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 ~~(a) such additional relevant and reasonable~~  
 2 ~~information as may be required by the department through its~~  
 3 ~~division of 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) Subdivision regulations may authorize the~~  
 15 ~~governing body to grant variances from the regulations when~~  
 16 ~~strict compliance will result in undue hardship and when it~~  
 17 ~~is not essential to the public welfare. Any variance granted~~  
 18 ~~pursuant to this subsection must be based on specific~~  
 19 ~~variance criteria contained in the subdivision regulations.~~

20 ~~(7) Local regulations may provide that in lieu of the~~  
 21 ~~completion of the construction of any public improvements~~  
 22 ~~prior to the approval of a final plat, the governing body~~  
 23 ~~shall require a bond or other reasonable security, in an~~  
 24 ~~amount and with curesy and conditions satisfactory to it,~~  
 25 ~~providing for and securing the construction and installation~~

1 of such improvements within a period specified by the  
2 governing body and expressed in the bonds or other security.

3 ~~(8) (7) In the event that any governing body has not~~  
4 ~~adopted subdivision regulations by July 1, 1974, which meet~~  
5 ~~or exceed the prescribed minimum requirements, the~~  
6 ~~department shall, through its division of planning, no later~~  
7 ~~than January 1, 1975, promulgate reasonable regulations to~~  
8 ~~be enforced by the governing body. If at any time thereafter~~  
9 ~~the governing body adopts its own subdivision regulations,~~  
10 ~~these shall supersede those promulgated by the department~~  
11 ~~but shall be no less stringent.~~

12 ~~(8) The additional requirements provided for in this~~  
13 ~~act shall take effect upon its passage and approval. The~~  
14 ~~department shall modify its minimum requirements to comply~~  
15 ~~with this act within thirty (30) days of passage and each~~  
16 ~~governing body shall amend its subdivision regulations so as~~  
17 ~~to meet or exceed the minimum requirements by July 1, 1975.~~  
18 ~~The procedure and time periods provided in subsection (7)~~  
19 ~~for departmental review and enforcement in case of~~  
20 ~~noncompliance shall apply."~~

21 Section 5. Section 11 3664, H.C.R. 1947, is amended to  
22 read as follows:

23 "11 3664. Dedications of portions of subdivisions to  
24 the public cash donations in lieu of dedications  
25 waivers. (1) A plat of a residential subdivision shall show

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

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

23 (3) If the proposed plat provides for a planned unit  
24 development with land permanently set aside for park and  
25 recreational uses sufficient to meet the needs of the

1 persons who will ultimately reside therein, the governing  
2 body may issue an order waiving land dedication and cash  
3 donation requirements.

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

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

21 (6) The governing body may waive dedication and cash  
22 donation requirements when the subdivider agrees to create a  
23 property owners' association for the proposed subdivision  
24 and to deed to the association land to be held in perpetuity  
25 for use as parks or playgrounds. The area of land to be

1 deeded to the association shall equal the amount that would  
2 otherwise have been dedicated to public use.

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

10 Section 6. There is a new R.G.M. section numbered  
11 11-3665.1 that reads as follows:

12 11-3665.1. Guarantee of improvements and compensation  
13 for services. (1) No subdivision may be approved until the  
14 subdivider has submitted and the governing body has  
15 approved, one or a combination of the following:

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

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

1 ~~completion of these improvements in accordance with design~~  
 2 ~~and time specifications.~~

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

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

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

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

1 corporate limits pursuant to section 11-3305.

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

14 (3) The governing body or its authorized agent or  
 15 agency shall hold a public hearing on the preliminary plat  
 16 and shall consider all relevant evidence relating to the  
 17 public health, safety and welfare, including the  
 18 environmental assessment, to determine whether the plat  
 19 should be approved, conditionally approved, or disapproved  
 20 by the governing body. Notice of such hearing shall be given  
 21 by publication in a newspaper of general circulation in the  
 22 county not less than fifteen (15) days prior to the date of  
 23 the hearing. The subdivider and each property owner of  
 24 record immediately adjoining the land included in the plat  
 25 shall also be notified of the hearing by registered mail not

1 less than fifteen (15) days prior to the date of the  
 2 hearing. When a hearing is held by an agent or agency  
 3 designated by the governing body, the agent or agency shall  
 4 act in an advisory capacity and recommend to the governing  
 5 body the approval, conditional approval, or disapproval of  
 6 the plat. This recommendation must be submitted to the  
 7 governing body in writing not later than ten (10) days after  
 8 the public hearing. If the governing body rejects or  
 9 conditionally approves the preliminary plat, it shall  
 10 forward one (1) copy of the plat to the subdivider  
 11 accompanied by a letter over the appropriate signature  
 12 stating the reason for rejection or enumerating the  
 13 conditions which must be met to assure approval of the final  
 14 plat.

15 (4) The basis for the governing body's decision to  
 16 approve, conditionally approve, or disapprove a subdivision  
 17 shall be whether the preliminary plat, subdivision  
 18 improvements agreement, environmental assessment, public  
 19 hearing, planning board recommendations and additional  
 20 information demonstrate that development of the subdivision  
 21 will result in a net public benefit to the applicable  
 22 jurisdiction, and surrounding area. If a net public benefit  
 23 is not demonstrated the governing body shall disapprove the  
 24 subdivision. The decision of the governing body shall  
 25 include findings of fact based on the following criteria for

1 ~~not public benefit~~ WOULD BE IN THE PUBLIC INTEREST. THE  
 2 GOVERNING BODY SHALL DISAPPROVE ANY SUBDIVISION WHICH IT  
 3 FINDS NOT TO BE IN THE PUBLIC INTEREST. TO DETERMINE  
 4 WHETHER THE PROPOSED SUBDIVISION WOULD BE IN THE PUBLIC  
 5 INTEREST THE GOVERNING BODY SHALL ISSUE WRITTEN FINDINGS OF  
 6 FACT WHICH WEIGH THE FOLLOWING CRITERIA FOR PUBLIC INTEREST:

- 7 (A) THE BASIS OF THE NEED FOR THE SUBDIVISION;
- 8 ~~(B)~~ expressed public opinion;
- 9 ~~(C)~~ effects on agriculture;
- 10 ~~(D)~~ effects on local services;
- 11 ~~(E)~~ effects on taxation;
- 12 ~~(F)~~ effects on the natural environment; and
- 13 ~~(G)~~ effects on lifestyles, WILDLIFE AND WILDLIFE  
 14 HABITAT, AND

15 (H) EFFECTS ON THE PUBLIC HEALTH AND SAFETY.  
 16 ~~(4)(5)~~ Upon approving or conditionally approving a  
 17 preliminary plat, the governing body shall provide the  
 18 subdivider with a dated and signed statement of approval.  
 19 This approval shall be in force for not more than one (1)  
 20 calendar year; at the end of this period the governing body  
 21 may, at the request of the subdivider, extend its approval  
 22 for no more than one (1) calendar year."

23 ~~Section 6. There is a new h.c.s. section numbered~~  
 24 ~~11 3877 that reads as follows:~~

25 ~~11 3877. Citizen legal review. (1) Any person~~

1 ~~aggrieved by a decision or alleged lack of enforcement by~~  
 2 ~~the governing body under this act may obtain a review of the~~  
 3 ~~decision by petition, duly verified, to a district court in~~  
 4 ~~a county where any part of the subdivision is located,~~  
 5 ~~stating the reasons why the decision or failure to enforce~~  
 6 ~~is illegal, arbitrary, or otherwise unsupportable in whole~~  
 7 ~~or in part. This petition shall be presented to the court~~  
 8 ~~within thirty (30) days after the decision of the governing~~  
 9 ~~body and shall prescribe the time within which a return to~~  
 10 ~~the governing body shall be made and notice served upon the~~  
 11 ~~subdivider's attorney, which shall not be less than ten (10)~~  
 12 ~~days and may be extended by the court. The allowance of the~~  
 13 ~~writ shall not stay proceedings upon the decision appealed~~  
 14 ~~from, but the court may, on application, on notice to the~~  
 15 ~~governing body, and on good cause shown, grant a restraining~~  
 16 ~~order.~~

17 ~~(2) The court shall make its decision on the basis of~~  
 18 ~~the record unless it shall appear to the court that~~  
 19 ~~testimony is necessary for the proper disposition of the~~  
 20 ~~matter, in which case the court may take evidence or appoint~~  
 21 ~~a referee to take evidence as it may direct and may direct~~  
 22 ~~the referee to report the evidence to the court with his~~  
 23 ~~findings of fact and conclusions of law, which shall~~  
 24 ~~constitute a part of the proceedings upon which the~~  
 25 ~~determination of the court shall be made. The court may~~

1 ~~reverse or affirm, wholly or partly, or may modify the~~  
2 ~~decision brought up for review.~~

3 ~~(3) Courts in the district and supreme court shall not~~  
4 ~~be allowed against the governing body unless it appears to~~  
5 ~~the court that it acted with gross negligence or in bad~~  
6 ~~faith, or with malice in making the decision appealed from.~~

7 Section 4. Severability. If a part of this act is  
8 invalid, all valid parts that are severable from the invalid  
9 part remain in effect. If a part of this act is invalid in  
10 one or more of its applications, the part remains in effect  
11 in all valid applications that are severable from the  
12 invalid applications.

13 Section 5. Effective date. This act is effective upon  
14 passage and approval.

-End-