

1 H BILL NO. 528
 2 INTRODUCED BY Vincent Huennekens
 3 (By Request of Montana League of Cities and Towns) Bradley

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
 5 11-3861 AND 11-3862, R.C.M. 1947, TO PROVIDE THAT DIVISIONS
 6 OF LAND WITHIN THE CORPORATE LIMITS OF A MUNICIPALITY,
 7 REGARDLESS OF SIZE AND REGARDLESS OF THE PERIOD WITHIN WHICH
 8 SOLD, ARE CONSIDERED SUBDIVISIONS."

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

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

13 "11-3861. Definitions. As used in this act, unless the
 14 context or subject matter clearly requires otherwise, the
 15 following words or phrases shall have the following
 16 meanings:

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

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

1 (2.1) "Division of land" means the segregation of one
 2 or more parcels of land from a larger tract held in single
 3 or undivided ownership by transferring, or contracting to
 4 transfer, title to or possession of a portion of the tract
 5 or properly filing a certificate of survey or subdivision
 6 plat establishing the identity of the segregated parcels
 7 pursuant to this act. Provided that where required by this
 8 act the land upon which an improvement is situated has been
 9 subdivided in compliance with this act, the sale, rent,
 10 lease or other conveyance of one or more parts of a
 11 building, structure, or other improvement situated on one or
 12 more parcels of land is not a division of land and is not
 13 subject to the terms of this act.

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

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

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

25 (5) "Planned unit development" means a land

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1 development project consisting of residential clusters,
 2 industrial parks, shopping centers, or office buildings,
 3 parks, or any combination thereof which comprises a planned
 4 mixture of land uses built in a prearranged relationship to
 5 each other and having open space and community facilities in
 6 common ownership or use.

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

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

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

22 (9) "Registered land surveyor" means a person
 23 licensed in conformance with the Montana Professional
 24 Engineers' Registration Act (sections 66-2301 through
 25 66-2347) to practice surveying in the state of Montana.

1 (10) "Registered professional engineer" means a person
 2 licensed in conformance with the Montana Professional
 3 Engineers' Registration Act (sections 66-2301 through
 4 66-2347) to practice engineering in the state of Montana.

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

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

25 (13) "Occasional sale" means one sale of a division of

1 land within any twelve (12) month period."

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

4 "11-3862. Surveys required -- exceptions -- standards
5 for monumentation. (1) All divisions of land for sale other
6 than 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
25 the purpose of evading this act, the following divisions of

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

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

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

8 (c) Divisions made by sale or agreement to buy and
9 sell 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 and the parcel lies outside the
18 corporate limits of a municipality.

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

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

1 (a) which is created by order of any court of record
2 in this state or by operation of law, or which, in the
3 absence of agreement between the parties to the sale, could
4 be created by an order of any court in this state pursuant
5 to the law of eminent domain (sections 93-9901 through
6 93-9926);

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

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

12 (d) which creates cemetery lots;

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

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

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

22 (10) The department of community affairs shall, in
23 conformance with the Montana Administrative Procedure Act
24 (sections 82-4201 through 82-4225), prescribe uniform
25 standards for monumentation and for the form, accuracy, and

1 descriptive content of records of survey.

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

-End-

Natural Resources

Objection Raised to
Adverse Committee Report

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