

1 H BILL NO. 543
 2 INTRODUCED BY Bradley Meloy Stel den Vincent
 3 BY REQUEST OF THE DEPARTMENT OF COMMUNITY AFFAIRS Hanning
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5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
 6 SUBDIVISION AND PLATTING ACT BY DEFINING TERMS, INCLUDING
 7 "SUBDIVISION"; REQUIRING PUBLIC REVIEW OF ALL
 8 RESUBDIVISIONS; ELIMINATING CERTAIN EXEMPTIONS FROM
 9 SUBDIVISION REGULATION; REQUIRING THAT CERTAIN EXEMPTED
 10 DIVISIONS OF LAND BE SURVEYED; PROVIDING FOR EXPEDITIOUS
 11 REVIEW OF "MINOR SUBDIVISIONS"; MODIFYING REQUIREMENTS FOR
 12 THE DEDICATION OF LAND FOR PARKS; AND AMENDING SECTIONS
 13 11-3861, 11-3862, 11-3863, 11-3864, 11-3866, AND 11-3872,
 14 R.C.M. 1947."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

19 "11-3861. Definitions. As used in this act, unless the
 20 context or subject matter clearly requires otherwise, the
 21 following words or phrases shall have the following
 22 meanings:

23 ~~(1) "Certificate of survey" means a drawing of a~~
 24 ~~field survey prepared by a registered surveyor for the~~
 25 ~~purpose of disclosing facts pertaining to boundary~~

1 locations.
 2 (1) "Certificate of survey" means a record of survey
 3 prepared by a registered land surveyor for filing in the
 4 county clerk and recorder's office for the purpose of
 5 showing a field survey pertaining to boundary locations
 6 whenever approval of the governing body is not required
 7 under this act before the record of survey may be filed.

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

13 (2.1) "Division of land" means the segregation of one
 14 or more parcels of land from a larger tract held in single
 15 or undivided ownership by transferring, or contracting to
 16 transfer, title to ~~or possession of~~ a portion of the tract
 17 or properly filing a certificate of survey or subdivision
 18 plat establishing the identity of the segregated parcels
 19 pursuant to this act. Provided that where required by this
 20 act the land upon which an improvement is situated has been
 21 subdivided in compliance with this act, the sale, rent,
 22 lease or other conveyance of one or more parts of a
 23 building, structure, or other improvement situated on one or
 24 more parcels of land is not a division of land and is not
 25 subject to the terms of this act.

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

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

7 ~~(4.1) "Irregularly shaped tract of land" means a parcel
8 of land other than an aliquot part of the United States
9 government survey section or a United States government lot
10 the boundaries or areas of which cannot be determined
11 without a survey or trigonometric calculation.~~

12 (4.1) "Park plan or policy statement" means an
13 officially adopted document which contains, at a minimum,
14 the number, sizes, and state of development of local parks
15 and playgrounds and a statement of the capability of those
16 parks to meet the needs of the various segments of the local
17 population; a priority listing of areas within the
18 jurisdiction where additional parks may be needed and where
19 current undeveloped parkland should be initially developed;
20 and a listing of priorities for maintenance and operation of
21 parks and playgrounds.

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 (8) "Final plat" means a record of survey which shows
20 the final drawing of a subdivision and dedicated lands and
21 is prepared by a registered land surveyor for filing
22 pursuant to 11-3867 in the county clerk and recorder's
23 office after approval by the governing body.

24 (9) "Registered land surveyor" means a person
25 licensed in conformance with the Montana Professional

1 Engineers' Registration Act (sections 66-2301 through
2 66-2347) to practice surveying in the state of Montana.

3 (10) "Registered professional engineer" means a person
4 licensed in conformance with the Montana Professional
5 Engineers' Registration Act (sections 66-2301 through
6 66-2347) to practice engineering in the state of Montana.

7 ~~(10.1) "Resubdivision" means the alteration of any lot
8 or survey lines within a subdivision which is platted and
9 filed in the clerk and recorder's office and includes
10 redesign, rearrangement, aggregation, or further division of
11 parcels.~~

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

14 (12) "Subdivision" means a division of land, or land so
15 divided, which creates one or more parcels, containing 40
16 acres or less than twenty (20) acres, exclusive of public
17 roadways, ~~in order that the title to or possession of the~~
18 ~~parcels may be sold, rented, leased, or otherwise conveyed,~~
19 ~~and shall include~~ includes any resubdivision; ~~and shall~~
20 ~~further include parcels of 40 acres or less created for rent~~
21 ~~or lease; areas of any size which provide or will provide~~
22 ~~multiple space for recreational camping vehicles or mobile~~
23 ~~homes; and condominiums and any structure which will provide~~
24 ~~space for more than one retail store, professional office,~~
25 ~~or business offering professional or personal services or~~

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

11 ~~(12.1) "Minor subdivision" means a subdivision~~
12 ~~containing five or fewer parcels where proper access to all~~
13 ~~parcels will be provided and no land in the subdivision will~~
14 ~~be dedicated to public use for parks or playgrounds.~~

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

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

19 "11-3862. Surveys required — exceptions — standards
20 for monumentation. (1) All divisions of land ~~for sale~~ other
21 than a subdivision after [the effective date of this ~~act~~
22 ~~act~~], into parcels which cannot be described as ~~4/32~~ 1/16 or
23 larger aliquot parts of a United States government section
24 or a United States government lot must be surveyed by or
25 under the supervision of a registered land surveyor.

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

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

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

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

15 (6) Unless the method of disposition is adopted for
 16 the purpose of evading this act, the following divisions of
 17 land are not subdivisions under this act but are subject to
 18 the surveying requirements of this section for divisions of
 19 land not amounting to subdivisions. Certificates of survey
 20 for divisions of land exempt from review as subdivisions
 21 under this subsection may not be filed by the county clerk
 22 and recorder unless they bear the certificate of the
 23 property owner citing the applicable exemption. The
 24 exemptions from subdivision review contained in this
 25 subsection are not applicable to the resubdivision of

1 parcels within a platted subdivision filed with the county
 2 clerk and recorder. Any resubdivision must be reviewed and
 3 approved by the governing body and an approved amended final
 4 plat thereof must be filed with the county clerk and
 5 recorder. Exempted from review as subdivisions are:

6 (a) ~~Divisions~~ divisions made for the purpose of
 7 relocating common boundary lines between adjoining
 8 properties;

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

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

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

21 (c) divisions ordered by a court of record pursuant to
 22 48-321 or the law of decedents' estates, provided that the
 23 cause number of the order is noted on the certificate of
 24 survey;

25 (d) divisions which could be created pursuant to the

1 law of eminent domain (93-9001 through 93-9226);

2 (e) divisions created to provide security for
 3 construction mortgages, liens, or trust indentures. A
 4 property owner claiming this exemption may not convey
 5 possessory interest in a parcel created hereunder.

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

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

13 ~~(a) which is created by order of any court of record~~
 14 ~~in this state or by operation of law, or which, in the~~
 15 ~~absence of agreement between the parties to the sale, could~~
 16 ~~be created by an order of any court in this state pursuant~~
 17 ~~to the law of eminent domain (sections 93-9001 through~~
 18 ~~93-9926);~~

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

21 ~~(c)~~ (a) which creates an interest in oil, gas,
 22 minerals, or water which is now or hereafter severed from
 23 the surface ownership of real property;

24 ~~(d)~~ (b) which creates cemetery lots; or

25 ~~(e) which is created by the reservation of a life~~

1 ~~estate;~~
 2 ~~(f)(c)~~ which is created by lease or rental for farming
 3 and agricultural purposes.

4 (9) The sale, rent, lease, or other conveyance of one
 5 or more parts of a building, structure, or other improvement
 6 situated on one or more parcels of land is not a division of
 7 land, as that term is defined in this act, and is not
 8 subject to the requirements of this act.

9 (10) The department of community affairs shall, in
 10 conformance with the Montana Administrative Procedure Act
 11 (~~sections~~ 82-4201 through 82-4225), prescribe uniform
 12 standards for monumentation and for the form, accuracy, and
 13 descriptive content of records of survey.

14 (11) It shall be the responsibility of the governing
 15 body to require the replacement of all monuments removed in
 16 the course of construction."

17 Section 3. Section 11-3863, B.C.M. 1947, is amended to
 18 read as follows:

19 "11-3863. Enforcement by governmental subdivisions --
 20 adoption of regulations -- public hearing. (1) The governing
 21 body of every county, city, and town shall, before July 1,
 22 1974, adopt and provide for the enforcement and
 23 administration of subdivision regulations reasonably
 24 providing for the orderly development of their
 25 jurisdictional areas; for the co-ordination of roads within

1 subdivided land with other roads, both existing and planned;
 2 for the dedication of land for roadways and for public
 3 utility easements; for the improvement of roads; for the
 4 provision of adequate open spaces for travel, light, air and
 5 recreation; for the provision of adequate transportation,
 6 water, drainage, and sanitary facilities; for the avoidance
 7 or minimization of congestion; and for the avoidance of
 8 subdivision which would involve unnecessary environmental
 9 degradation; and the avoidance of danger of injury to
 10 health, safety, or welfare by reason of natural hazard or
 11 the lack of water, drainage, access, transportation or other
 12 public services or would necessitate an excessive
 13 expenditure of public funds for the supply of such services.

14 Prior to adopting or amending subdivision regulations
 15 pursuant to this act, the governing body shall submit the
 16 proposed regulations or amendments to the division of
 17 planning ~~and economic development~~ of the department of
 18 community affairs for review.

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

1 the date of the hearing.

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

18 (3) In prescribing the minimum contents of the
19 subdivision regulations, the department of community
20 affairs, through its division of planning, shall require the
21 submission by the subdivider to the governing body of an
22 environmental assessment.

23 (3.1) When a subdivision is proposed in an area for
24 which a master plan has been adopted pursuant to sections
25 11-3801 through 11-3856 and the proposed subdivision will be

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

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

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

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

24 (c) a community impact report containing a statement
25 of anticipated needs of the proposed subdivision for local

1 services, including education and busing, roads and
 2 maintenance, water, sewage, and solid waste facilities, and
 3 fire and police protection; and

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

7 ~~(5) Local subdivision regulations shall include~~
 8 ~~procedures for the summary review and approval of~~
 9 ~~subdivision plats containing five (5) or fewer parcels where~~
 10 ~~proper access to all lots is provided, where no land in the~~
 11 ~~subdivision will be dedicated to public use for parks or~~
 12 ~~playgrounds and which have been approved by the department~~
 13 ~~of health and environmental sciences where such approval is~~
 14 ~~required by sections 69-5001 through 69-5005; provided that~~
 15 ~~reasonable local regulations may contain additional~~
 16 ~~requirements for summary approval. (a) Local subdivision~~
 17 regulations shall provide procedures for the review and
 18 approval of minor subdivisions within 30 days of the
 19 submission of an application for approval. These procedures
 20 shall include waiver of the requirements for holding a
 21 public hearing and preparing an environmental assessment and
 22 may provide for administrative review and recommendation by
 23 an agent designated by the governing body. Local regulations
 24 shall provide procedures for obtaining additional
 25 information when considered necessary to adequately evaluate

1 a proposed minor subdivision and for the extension of the
 2 review period with the consent of the applicant.

3 (b) Only one subdivision of a parcel held in single or
 4 undivided ownership on July 1, 1977, may be reviewed as a
 5 minor subdivision. Any subsequent subdivision must be
 6 reviewed pursuant to 11-3866.

7 (c) Any structure which will provide space for more
 8 than one retail store, professional office, or business
 9 offering professional or personal services or any
 10 combination thereof shall be reviewed as a minor subdivision
 11 if the proposed location of the structure complies with an
 12 adopted zoning ordinance. However, if the proposed location
 13 of the structure is contrary to an adopted zoning ordinance
 14 or if no such ordinance has been adopted for the proposed
 15 site of the structure, the structure must be reviewed
 16 pursuant to 11-3866.

17 (6) Subdivision regulations may authorize the
 18 governing body to grant variances from the regulations when
 19 strict compliance will result in undue hardship and when it
 20 is not essential to the public welfare. Any variance
 21 granted pursuant to this subsection must be based on
 22 specific variance criteria contained in the subdivision
 23 regulations.

24 (7) Local regulations may provide that in lieu of the
 25 completion of the construction of any public improvements

1 prior to the approval of a final plat, the governing body
2 shall require a bond or other reasonable security, in an
3 amount and with surety and conditions satisfactory to it,
4 providing for and securing the construction and installation
5 of such improvements within a period specified by the
6 governing body and expressed in the bonds or other security.

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

16 Section 4. Section 11-3864, R.C.M. 1947, is amended to
17 read as follows:

18 "11-3864. Dedications of portions of subdivisions to
19 the public -- cash donations in lieu of dedications --
20 waivers. ~~(1) A plat of a residential subdivision shall show~~
21 ~~that one ninth (1/9) of the combined area of lots five (5)~~
22 ~~acres or less in size and one twelfth (1/12) of the combined~~
23 ~~area of lots greater than five (5) acres in size, exclusive~~
24 ~~of all other dedications, is forever dedicated to the public~~
25 ~~for parks or playgrounds. No dedication may be required for~~

1 ~~the combined area of those lots in the subdivision which are~~
2 ~~larger than ten (10) acres exclusive of all other~~
3 ~~dedications. The governing body, in consultation with the~~
4 ~~planning board having jurisdiction, may determine suitable~~
5 ~~locations for such parks and playgrounds.~~

6 (1) Within 6 months following the effective date of
7 this act, the governing body shall specify in its local
8 subdivision regulations requirements for the dedication in
9 perpetuity of land to the public for parks or playgrounds
10 designed to serve the residents of a subdivision. Different
11 requirements may be established for subdivisions of
12 different densities, but all requirements must apply
13 uniformly throughout the jurisdiction. Park requirements
14 must be based on a ratio of park area to number of dwelling
15 units of no less than 1,000 square feet per dwelling unit
16 and no more than 4,000 square feet per dwelling unit. Local
17 regulations may not require any dedication of land for parks
18 when the net density of the proposed subdivision is less
19 than one dwelling unit per 10 acres. Until local governing
20 bodies amend their subdivision regulations to comply with
21 this section, the minimum requirements above shall apply.

22 (2) Where, because of size, topography, shape,
23 location, or other circumstances, the dedication of land for
24 parks or playgrounds is undesirable, the governing body may,
25 for good cause shown, make an order to be endorsed and

1 certified on the plat accepting a cash donation in lieu of
 2 all or part of the dedication of land and equal to the fair
 3 market value of the amount of land that would have been
 4 dedicated. For the purpose of this section, the fair market
 5 value is the value of the unsubdivided, unimproved land.
 6 Such cash donation shall be paid into the park fund to be
 7 used for the purchase of additional lands or for the initial
 8 development of parks and playgrounds and up to one-third of
 9 the cash received in lieu of land dedicated under this
 10 section may be used for routine maintenance and upkeep of
 11 existing parks or playgrounds. Park fund moneys shall be
 12 expended according to a park plan or policy statement which
 13 must be adopted by the governing body before expenditure of
 14 the park funds.

15 (3) Local subdivision regulations may not require the
 16 dedication of parkland or the contribution of cash in lieu
 17 thereof for subdivisions which create no additional building
 18 sites or for resubdivisions which create two or less
 19 additional building sites.

20 ~~(2)~~ (2) If the proposed plat provides for a planned
 21 unit development with land permanently set aside for park
 22 and 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)~~ (5) If a tract of land is being developed under
 2 single ownership as a part of an overall plan, and part of
 3 the 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)~~ (6) The local governing body may waive dedication
 10 and 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)~~ (7) The governing body may waive dedication and
 19 cash donation requirements when the subdivider agrees to
 20 create a property owners' association for the proposed
 21 subdivision and to deed to the association land to be held
 22 in perpetuity for use as parks or playgrounds. The area of
 23 land to be deeded to the association shall equal the amount
 24 that would otherwise have been dedicated to public use.

25 ~~(7)~~ (8) The governing body may waive dedication and

1 cash donation requirements for subdivision to be created by
 2 rent or lease where the subdivider agrees to develop parks
 3 or playgrounds within the subdivision for the common use of
 4 the 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 5. Section 11-3866, R.C.M. 1947, is amended to
 8 read as follows:

9 "11-3866. Submission of subdivision plat to governing
 10 body — notice — hearing — approval — disapproval. (1)
 11 Except where a plat is eligible for ~~summary approval~~ review
 12 as a minor subdivision, the subdivider shall present to the
 13 governing body, or the agent or agency designated thereby,
 14 the preliminary plat of the proposed subdivision for local
 15 review. When the proposed subdivision lies within the
 16 boundaries of an incorporated city or town, the preliminary
 17 plat shall be submitted to and approved by the city or town
 18 governing body. When the proposed subdivision is situated
 19 entirely in an unincorporated area the preliminary plat
 20 shall be submitted to and approved by the governing body of
 21 the county; however, if the proposed subdivision lies within
 22 one (1) mile of a third class city or town or within two (2)
 23 miles of a second class city or within three (3) miles of a
 24 first class city the county governing body shall submit the
 25 preliminary plat to the city or town governing body or its

1 designated agent for review and comment. If the proposed
 2 subdivision lies partly within an incorporated city or town,
 3 the proposed plat thereof must be submitted to and approved
 4 by both the city or town and the county governing bodies.
 5 This section does not limit the authority of certain
 6 municipalities to regulate subdivisions beyond their
 7 corporate limits pursuant to section 11-3305.

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

20 (3) The governing body or its authorized agent or
 21 agency shall hold a public hearing on the preliminary plat
 22 and shall consider all relevant evidence relating to the
 23 public health, safety and welfare, including the
 24 environmental assessment, to determine whether the plat
 25 should be approved, conditionally approved, or disapproved

1 by the governing body. Notice of such hearing shall be
 2 given by publication in a newspaper of general circulation
 3 in the county not less than fifteen (15) days prior to the
 4 date of the hearing. The subdivider and each property owner
 5 of record immediately adjoining the land included in the
 6 plat shall also be notified of the hearing by ~~registered~~
 7 certified mail not less than fifteen (15) days prior to the
 8 date of the hearing. When a hearing is held by an agent or
 9 agency designated by the governing body, the agent or agency
 10 shall act in an advisory capacity and recommend to the
 11 governing body the approval, conditional approval, or
 12 disapproval of the plat. This recommendation must be
 13 submitted to the governing body in writing not later than
 14 ten (10) days after the public hearing. Failure of the agent
 15 or agency to take action or to submit a recommendation may
 16 not delay the governing body's action on the plat beyond the
 17 time limit specified. If the governing body rejects or
 18 conditionally approves the preliminary plat, it shall
 19 forward one (1) copy of the plat to the subdivider
 20 accompanied by a letter over the appropriate signature
 21 stating the reason for rejection or enumerating the
 22 conditions which must be met to assure approval of the final
 23 plat.

24 (4) The basis for the governing body's decision to
 25 approve, conditionally approve, or disapprove a subdivision

1 shall be whether the preliminary plat, environmental
 2 assessment, public hearing, planning board recommendations
 3 and additional information demonstrate that development of
 4 the subdivision would be in the public interest. The
 5 governing body shall disapprove any subdivision which it
 6 finds not to be in the public interest. To determine
 7 whether the proposed subdivision would be in the public
 8 interest the governing body shall issue written findings of
 9 fact which weigh the following criteria for public interest:

- 10 (a) the basis of the need for the subdivision;
- 11 (b) expressed public opinion;
- 12 (c) effects on agriculture;
- 13 (d) effects on local services;
- 14 (e) effects on taxation;
- 15 (f) effects on the natural environment;
- 16 (g) effects on wildlife and wildlife habitat, and
- 17 (h) effects on the public health and safety.

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

25 Section 6. Section 11-3872, F.C.M. 1947, is amended to

1 read as follows:

2 "11-3872. Certificate of survey — when required —
3 contents — form. (1) Within one hundred eighty (180) days
4 of the completion of a survey the registered land surveyor
5 responsible for the survey, whether he is privately or
6 publicly employed, shall prepare and ~~file~~ submit for filing
7 for record a certificate of survey in the county in which
8 the survey was made if the survey:

9 (a) provides material evidence not appearing on any
10 map filed with the county clerk and recorder or contained in
11 the records of the United States bureau of land management;

12 (b) reveals a material discrepancy in such map;

13 (c) discloses evidence to suggest alternate locations
14 of lines or points; or

15 (d) establishes one or more lines not shown on a
16 recorded map the positions of which are not ascertainable
17 from an inspection of such map without trigonometric
18 calculations.

19 (2) A certificate of survey will not be required for
20 any survey which is made by the United States bureau of land
21 management or which is preliminary or which will become part
22 of a subdivision plat being prepared for recording under the
23 provisions of this act.

24 (3) Certificates of survey shall be legibly drawn,
25 printed, or reproduced by a process guaranteeing a permanent

1 record and shall conform to monumentation and surveying
2 requirements promulgated under this act."

3 Section 7. Effective date. This act is effective on
4 its passage and approval.

-End-

Natural Resources

Without recommendation

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H BILL NO. 543

INTRODUCED BY Bradley Miley Shelden Vincent
BY REQUEST OF THE DEPARTMENT OF COMMUNITY AFFAIRS Huffman
Wassant Halverson Metcalf

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
SUBDIVISION AND PLATTING ACT BY DEFINING TERMS, INCLUDING
"SUBDIVISION"; REQUIRING PUBLIC REVIEW OF ALL
RESUBDIVISIONS; ELIMINATING CERTAIN EXEMPTIONS FROM
SUBDIVISION REGULATION; REQUIRING THAT CERTAIN EXEMPTED
DIVISIONS OF LAND BE SURVEYED; PROVIDING FOR EXPEDITIOUS
REVIEW OF "MINOR SUBDIVISIONS"; MODIFYING REQUIREMENTS FOR
THE DEDICATION OF LAND FOR PARKS; AND AMENDING SECTIONS
11-3861, 11-3862, 11-3863, 11-3864, 11-3866, AND 11-3872,
R.C.M. 1947."

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

Section 1. 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~~
There are no changes in HB 543, & will not be re-run.

Please refer to white copy for complete text.

SECOND READING

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locations.
(1) "Certificate of survey" means a record of survey
prepared by a registered land surveyor for filing in the
county clerk and recorder's office for the purpose of
showing a field survey pertaining to boundary locations
whenever approval of the governing body is not required
under this act before the record of survey may be filed.
(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
transfer, title to ~~or possession of~~ a portion of the tract
or properly filing a certificate of survey or subdivision
plat establishing the identity of the segregated parcels
pursuant to this act. Provided that where required by this
act the land upon which an improvement is situated has been
subdivided in compliance with this act, the sale, rent,
lease or other conveyance of one or more parts of a
building, structure, or other improvement situated on one or
more parcels of land is not a division of land and is not
subject to the terms of this act.

HB 543

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

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

7 ~~(4.1) "Irregularly shaped tract of land" means a parcel
8 of land other than an aliquot part of the United States
9 government survey section or a United States government lot
10 the boundaries or areas of which cannot be determined
11 without a survey or trigonometric calculation.~~

12 (4.1) "Park plan or policy statement" means an
13 officially adopted document which contains, at a minimum,
14 the number, sizes, and state of development of local parks
15 and playgrounds and a statement of the capability of those
16 parks to meet the needs of the various segments of the local
17 population; a priority listing of areas within the
18 jurisdiction where additional parks may be needed and where
19 current undeveloped parkland should be initially developed;
20 and a listing of priorities for maintenance and operation of
21 parks and playgrounds.

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 (8) "Final plat" means a record of survey which shows
20 the final drawing of a subdivision and dedicated lands and
21 is prepared by a registered land surveyor for filing
22 pursuant to 11-3867 in the county clerk and recorder's
23 office after approval by the governing body.

24 (9) "Registered land surveyor" means a person
25 licensed in conformance with the Montana Professional