

HOUSE BILL NO. 646

Introduced: 02/04/83

Referred to Committee on Natural Resources: 02/04/83

Hearing: 2/11/83

Report: 02/16/83, Do Pass

2nd Reading: 02/19/83, Do Pass

3rd Reading: 02/22/83, Do Pass

Transmitted to Senate: 2/22/83

Referred to Committee on Agriculture, Livestock, & Irrigation:
3/1/83

Hearing: 3/16/83

Report: 03/21/83, Be Not Concurred In, As Amended

Bill Killed

House BILL NO. *646*

INTRODUCED BY

*Long Kecher, Steve Grand Hansen
Walton Belcher*

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING LOCAL GOVERNING BODIES TO ADOPT REGULATIONS THAT FURTHER DEFINE "SUBDIVISIONS" AND RESTRICT THE USE OF EXEMPTIONS; AMENDING SECTIONS 76-3-103, 76-3-104, 76-3-201, 76-3-207, AND 76-3-504, MCA."

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

Section 1. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter, 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.

(3) "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 chapter.

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

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

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

(7) "Occasional sale" means one sale of a division of land within any 12-month period.

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

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

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

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

15 (12) "Registered land surveyor" means a person licensed
16 in conformance with the Montana Professional Engineers'
17 Registration Act (Title 37, chapter 67) to practice
18 surveying in the state of Montana.

19 (13) "Registered professional engineer" means a person
20 licensed in conformance with the Montana Professional
21 Engineers' Registration Act (Title 37, chapter 67) to
22 practice engineering in the state of Montana.

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

25 (15) ~~"Subdivision" Except as provided in 76-3-104.~~

1 ~~"subdivision"~~ means a division of land or land so divided
2 which creates one or more parcels containing less than 20
3 acres, exclusive of public roadways, in order that the title
4 to or possession of the parcels may be sold, rented, leased,
5 or otherwise conveyed and shall include any resubdivision
6 and shall further include any condominium or area,
7 regardless of its size, which provides or will provide
8 multiple space for recreational camping vehicles, or mobile
9 homes."

10 Section 2. Section 76-3-104, MCA, is amended to read:

11 "76-3-104. What constitutes subdivision. ~~(1)~~ A

12 subdivision shall comprise only those parcels less than 20

13 acres which have been segregated from the original tract,

14 and the plat thereof shall show all such parcels whether

15 contiguous or not.

16 ~~(2) Local governing bodies may adopt regulations~~

17 ~~providing for the inclusion of additional divisions of land~~

18 ~~in the definition of a subdivision. Local regulations may~~

19 ~~not be less inclusive than as provided in 76-3-103 and in~~

20 ~~subsection (1) of this section."~~

21 Section 3. Section 76-3-201, MCA, is amended to read:

22 "76-3-201. Exemption for certain divisions of land.

23 ~~(1)~~ Unless the method of disposition is adopted for the

24 purpose of evading this chapter, the requirements of this

25 chapter shall not apply to any division of land which:

~~(1)(a)~~ Is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Title 70, chapter 30);

~~(2)(b)~~ Is created to provide security for construction mortgages, liens, or trust indentures;

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

~~(4)(d)~~ Creates cemetery lots;

~~(5)(e)~~ Is created by the reservation of a life estate;

~~(6)(f)~~ Is created by lease or rental for farming and agricultural purposes.

~~(2) A governing body may adopt regulations:~~

~~(a) restricting the use of the exemptions described in subsection (1) or~~

~~(b) eliminating one or more of the exemptions described in subsection (1)."~~

Section 4. Section 76-3-207, MCA, is amended to read:

"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions. (1) Except as provided in subsection subsections (2) and (3), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not

subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a gift or sale to any member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions 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;

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale;

(e) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by

the governing body, and an amended plat must be filed with the county clerk and recorder;

(D) any change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

~~(3) A governing body may adopt regulations:~~

~~(a) restricting the use of the exemptions described in subsection (1); or~~

~~(b) eliminating one or more of the exemptions described in subsection (1)."~~

Section 5. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations -- ~~stricter local regulations allowed.~~ (1) The subdivision regulations adopted under this chapter shall, at a minimum:

~~(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;~~

~~(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;~~

~~(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;~~

~~(4) provide for the identification of areas which, because of natural or man-caused hazards, are unsuitable for~~

subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

~~(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;~~

~~(6) prescribe standards for:~~

~~(a) the design and arrangement of lots, streets, and roads;~~

~~(b) grading and drainage;~~

~~(c) water supply and sewage and solid waste disposal which, at a minimum, meet the regulations adopted by the department of health and environmental sciences under 76-4-104;~~

~~(d) the location and installation of utilities;~~

~~(7) provide procedures for the administration of the park and open-space requirements of this chapter;~~

~~(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis~~

1 for rejection of the plat by the governing body.
2 (2) Local subdivision regulations may provide for more
3 inclusive definitions of a subdivision as provided in
4 16-3-106 and may restrict or eliminate the use of exemptions
5 as provided in 16-3-201 and 16-3-207."

-End-

Approved by Committee
on Natural Resources

1 *House* BILL NO. *646*
2 INTRODUCED BY *Long Kedar D. Tellepsen Hansen*
3 *Waldron Berthel*
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING LOCAL
5 GOVERNING BODIES TO ADOPT REGULATIONS THAT FURTHER DEFINE
6 "SUBDIVISIONS" AND RESTRICT THE USE OF EXEMPTIONS; AMENDING
7 SECTIONS 76-3-103, 76-3-104, 76-3-201, 76-3-207, AND
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18 disclosing facts pertaining to boundary locations.

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20 land by an owner for any general and public use, reserving
21 to himself no rights which are incompatible with the full
22 exercise and enjoyment of the public use to which the
23 property has been devoted.

24 (3) "Division of land" means the segregation of one or
25 more parcels of land from a larger tract held in single or

1 undivided ownership by transferring or contracting to
2 transfer title to or possession of a portion of the tract or
3 properly filing a certificate of survey or subdivision plat
4 establishing the identity of the segregated parcels pursuant
5 to this chapter.

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

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

12 (6) "Irregularly shaped tract of land" means a parcel
13 of land other than an aliquot part of the United States
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18 land within any 12-month period.

19 (8) "Planned unit development" means a land
20 development project consisting of residential clusters,
21 industrial parks, shopping centers, office building parks,
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6 of a proposed subdivision showing the layout of streets,
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24 be subdivided or who proposes a subdivision of land.

25 (15) ~~"Subdivision" Except as provided in 76-3-104,~~

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3 acres, exclusive of public roadways, in order that the title
4 to or possession of the parcels may be sold, rented, leased,
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6 and shall further include any condominium or area,
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8 multiple space for recreational camping vehicles, or mobile
9 homes."

10 Section 2. Section 76-3-104, MCA, is amended to read:

11 "76-3-104. What constitutes subdivision. (1) A
12 subdivision shall comprise only those parcels less than 20
13 acres which have been segregated from the original tract,
14 and the plat thereof shall show all such parcels whether
15 contiguous or not.

16 ~~(2) Local governing bodies may adopt regulations~~
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18 ~~in the definition of a subdivision. Local regulations may~~
19 ~~not be less inclusive than as provided in 76-3-103 and in~~
20 ~~subsection (1) of this section."~~

21 Section 3. Section 76-3-201, MCA, is amended to read:

22 "76-3-201. Exemption for certain divisions of land.
23 (1) Unless the method of disposition is adopted for the
24 purpose of evading this chapter, the requirements of this
25 chapter shall not apply to any division of land which:

(1)(a) is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Title 70, chapter 30);

(2)(b) is created to provide security for construction mortgages, liens, or trust indentures;

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

(4)(d) creates cemetery lots;

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~~(2) A governing body may adopt regulations:~~

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Section 4. Section 76-3-207, MCA, is amended to read:

"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions. (1) Except as provided in subsections (2) and (3), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not

subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

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(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale;

(e) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by

the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) any change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

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Section 5. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations -- ~~stricter local regulations allowed.~~ (1) The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which, because of natural or man-caused hazards, are unsuitable for

subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

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(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis

1 for rejection of the plat by the governing body.
2 (2) Local subdivision regulations may provide for more
3 inclusive definitions of a subdivision as provided in
4 76-3-104 and may restrict or eliminate the use of exemptions
5 as provided in 76-3-201 and 76-3-201a."

-End-

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 2 INTRODUCED BY *Larry Kedes, Steve Paul Hansen*
 3 *Walden Bellen*
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THIRD READING

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

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(15) "Subdivision" ~~Exempt as provided in 76-3-104.~~

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(3)(c) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

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subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

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(7)(i) the design and arrangement of lots, streets, and roads;

(8)(iii) grading and drainage;

(9)(iii) water supply and sewage and solid waste disposal which, at a minimum, meet the regulations adopted by the department of health and environmental sciences under 76-4-104;

(10)(iv) the location and installation of utilities;

(11)(g) provide procedures for the administration of the park and open-space requirements of this chapter;

(12)(h) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis

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