

## HOUSE BILL NO. 542

INTRODUCED BY J. ESP

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~GENERALLY REVISING THE MONTANA SUBDIVISION AND~~  
5 ~~PLATTING ACT; CLARIFYING THE TIME FOR REVIEW OF SUBDIVISION APPLICATIONS~~ PROVISIONS  
6 GOVERNING CRITERIA FOR LOCAL GOVERNMENT REVIEW OF PROPOSED SUBDIVISIONS AND  
7 INFORMATION PROVIDED AS PART OF A REVIEW; REQUIRING INFORMATION FROM A GOVERNMENTAL  
8 ENTITY TO BE SUPPORTED BY ~~A SCIENTIFIC, PEER-REVIEWED REPORT~~ INFORMATION; PROHIBITING  
9 CONSIDERATION OF INFORMATION PROVIDED BY A GOVERNMENTAL ENTITY THAT IS OR HAS BEEN  
10 INVOLVED IN AN EFFORT TO ACQUIRE OR ASSIST OTHERS IN ACQUIRING AN INTEREST IN THE REAL  
11 PROPERTY UNDER REVIEW; PROHIBITING A GOVERNING BODY FROM CONSIDERING THE IMPACT OF  
12 A SUBDIVISION UNDER REVIEW IN CONJUNCTION WITH THE IMPACTS OF POTENTIAL FUTURE  
13 SUBDIVISIONS; PROVIDING THAT INFORMATION PERTAINING TO MITIGATION BY THE SUBDIVIDER MAY  
14 NOT BE CONSIDERED NEW INFORMATION; ~~REQUIRING THE DISTRICT COURT TO AWARD~~  
15 ~~REASONABLE COSTS AND ATTORNEY FEES TO A SUBDIVIDER WHO PREVAILS ON APPEAL TO THE~~  
16 ~~DISTRICT COURT~~; AMENDING SECTIONS ~~76-3-604~~; 76-3-608; AND 76-3-615, ~~AND 76-3-625~~; MCA; AND  
17 PROVIDING AN IMMEDIATE EFFECTIVE DATE ~~AND AN APPLICABILITY DATE.~~"

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20  
21 ~~Section 1. Section 76-3-604, MCA, is amended to read:~~

22 ~~"76-3-604. Review of subdivision application -- review for required elements and sufficiency of~~  
23 ~~information. (1) (a) Within 5 working days of receipt of a subdivision application submitted~~ The subdivider or the  
24 subdivider's agent shall contact the reviewing agent or agency to schedule a meeting for application submittal  
25 TO SUBMIT AN APPLICATION in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of  
26 the review fee submitted as provided in 76-3-602; ~~the~~ The reviewing agent or agency shall schedule and hold  
27 the meeting for SUBMITTAL OF THE application submittal within 10 working days of the subdivider's request. Within  
28 5 working days after the date of the meeting for application submittal OF THE APPLICATION, the reviewing agent or  
29 agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a)  
30 and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing

1 agent's or agency's determination.

2 ~~—— (b) If the reviewing agent or agency fails to schedule and hold the meeting for application submittal or~~  
 3 ~~THE APPLICATION as provided in subsection (1)(a), the 5-working-day review period commences on the date of~~  
 4 ~~the receipt of the subdivision application by the reviewing agent or agency. The application is considered to be~~  
 5 ~~received on the date of delivery to the reviewing agent or agency. The date of delivery means the date the~~  
 6 ~~subdivision application is hand-delivered by the subdivider or the subdivider's agent to the reviewing agent or~~  
 7 ~~agency or the date of the return receipt if the subdivision application is delivered by certified mail, return receipt~~  
 8 ~~requested.~~

9 ~~—— (b)(c) If the reviewing agent or agency determines that elements are missing from the application, the~~  
 10 ~~reviewing agent or agency shall identify those elements in the notification.~~

11 ~~—— (2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the~~  
 12 ~~subdivider's agent that the application contains all of the required elements as provided in subsection (1), the~~  
 13 ~~reviewing agent or agency shall determine whether the application and required elements contain detailed,~~  
 14 ~~supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions~~  
 15 ~~of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with~~  
 16 ~~the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.~~

17 ~~—— (b) If the reviewing agent or agency determines that information in the application is not sufficient to allow~~  
 18 ~~for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information~~  
 19 ~~in its notification.~~

20 ~~—— (c) A determination that an application contains sufficient information for review as provided in this~~  
 21 ~~subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the~~  
 22 ~~governing body and does not limit the ability of the reviewing agent or agency or the governing body to request~~  
 23 ~~additional information during the review process.~~

24 ~~—— (3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:~~

25 ~~—— (a) a determination is made that the application contains the required elements and sufficient information;~~  
 26 ~~and~~

27 ~~—— (b) the subdivider or the subdivider's agent is notified.~~

28 ~~—— (4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an~~  
 29 ~~application contains sufficient information as provided in subsection (2), the governing body shall approve,~~  
 30 ~~conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the~~

1 proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms  
2 to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:  
3 ~~—— (a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review~~  
4 ~~period, not to exceed 1 year; or~~  
5 ~~—— (b) a subsequent public hearing is scheduled and held as provided in 76-3-615.~~  
6 ~~—— (5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body~~  
7 ~~shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to~~  
8 ~~exceed the total amount of the subdivision review fee collected by the governing body for the subdivision~~  
9 ~~application, until the governing body denies, approves, or conditionally approves the subdivision.~~  
10 ~~—— (b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended~~  
11 ~~pursuant to subsection (4).~~  
12 ~~—— (6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the~~  
13 ~~subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.~~  
14 ~~—— (7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding~~  
15 ~~the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the~~  
16 ~~comments submitted available to the subdivider within 30 days after conditional approval or approval of the~~  
17 ~~subdivision application and preliminary plat.~~  
18 ~~—— (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the~~  
19 ~~comments or the summary provided by the governing body to the:~~  
20 ~~—— (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more~~  
21 ~~parcels containing less than 20 acres; and~~  
22 ~~—— (ii) local health department or board of health for proposed subdivisions that will create one or more~~  
23 ~~parcels containing 20 acres or more and less than 160 acres.~~  
24 ~~—— (8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres,~~  
25 ~~the governing body may require approval by the department of environmental quality as a condition of approval~~  
26 ~~of the final plat.~~  
27 ~~—— (b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the~~  
28 ~~governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622,~~  
29 ~~that there is an adequate water source and at least one area for a septic system and a replacement drainfield~~  
30 ~~for each lot.~~

1 ~~———— (9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter~~  
 2 ~~may occur only under those regulations in effect at the time a subdivision application is determined to contain~~  
 3 ~~sufficient information for review as provided in subsection (2).~~

4 ~~———— (b) If regulations change during the review periods provided in subsections (1) and (2), the determination~~  
 5 ~~of whether the application contains the required elements and sufficient information must be based on the new~~  
 6 ~~regulations."~~

7

8 **Section 1.** Section 76-3-608, MCA, is amended to read:

9 **"76-3-608. Criteria for local government review -- information from governmental entity --**

10 **consideration of future subdivisions.** (1) The basis for the governing body's decision to approve, conditionally  
 11 approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable  
 12 environmental assessment, public hearing, planning board recommendations, or additional information  
 13 demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing  
 14 body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational  
 15 services.

16 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as  
 17 applicable.

18 (3) A subdivision proposal must undergo review for the following primary criteria:

19 (a) except when the governing body has established an exemption pursuant to subsection (6) of this  
 20 section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact ~~on~~ of the proposed  
 21 subdivision on agriculture surrounding agricultural operations, agricultural water user facilities, local services, the  
 22 natural environment, wildlife, wildlife habitat, and public health and safety;

23 (b) compliance with:

24 (i) the survey requirements provided for in part 4 of this chapter;

25 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

26 (iii) the local subdivision review procedure provided for in this part;

27 (c) the provision of easements within and to the proposed subdivision for the location and installation  
 28 of any planned utilities; and

29 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the  
 30 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

1 (4) The governing body may require the subdivider to design the proposed subdivision to reasonably  
 2 minimize potentially significant adverse impacts identified through the review required under subsection (3). The  
 3 governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

4 (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under  
 5 subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is  
 6 recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and  
 7 will preclude approval of the subdivision.

8 (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider  
 9 and shall give due weight and consideration to the expressed preference of the subdivider.

10 (6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water  
 11 and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on  
 12 the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing  
 13 subdivision, zoning, or other regulations that the governing body has the authority to enforce.

14 (7) A governing body may not require as a condition of subdivision approval that a property owner waive  
 15 a right to protest the creation of a special improvement district or a rural improvement district for capital  
 16 improvement projects that does not identify the specific capital improvements for which protest is being waived.  
 17 A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final  
 18 subdivision plat is filed with the county clerk and recorder.

19 (8) If a federal, state, or local governmental entity submits a written comment, information, or an opinion  
 20 regarding WILDLIFE, WILDLIFE HABITAT, OR THE NATURAL ENVIRONMENT RELATING TO a subdivision application for the  
 21 purpose of assisting a governing body's review of a subdivision application, the governmental entity shall provide  
 22 a THE BEST AVAILABLE scientific, peer-reviewed report INFORMATION that supports the comment, information, or  
 23 opinion. The governing body may not consider information from a A governmental entity that is or has been  
 24 involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the  
 25 subdivision application SHALL DISCLOSE THAT THE ENTITY HAS BEEN INVOLVED IN THAT EFFORT PRIOR TO SUBMITTING  
 26 A COMMENT, AN OPINION, OR INFORMATION AS PROVIDED IN THIS SUBSECTION.

27 (9) A governing body may not consider the impact of a subdivision under review in conjunction with the  
 28 impact of a future subdivision or subdivisions for which an application is pending or has not yet been filed."

29

30 **Section 2.** Section 76-3-615, MCA, is amended to read:

1           **"76-3-615. Subsequent hearings -- consideration of new information -- requirements for**  
 2 **regulations.** (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this  
 3 section.

4           (2) The governing body shall determine whether public comments or documents presented to the  
 5 governing body at a hearing held pursuant to 76-3-605 constitute:

6           (a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that  
 7 the public has had a reasonable opportunity to examine and on which the public has had a reasonable  
 8 opportunity to comment; or

9           (b) new information regarding a subdivision application that has never been submitted as evidence or  
 10 considered by either the governing body or its agent or agency at a hearing during which the subdivision  
 11 application was considered.

12           (3) If the governing body determines that the public comments or documents constitute the information  
 13 described in subsection (2)(b), the governing body may:

14           (a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the  
 15 new information if the governing body determines that the new information is either irrelevant or not credible; or

16           (b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of  
 17 only the new information that may have an impact on the findings and conclusions that the governing body will  
 18 rely upon in making its decision on the proposed subdivision.

19           (4) Information pertaining to mitigation by the subdivider pursuant to 76-3-608(4) may not be considered  
 20 new information under subsection (2)(b) of this section.

21           ~~(4)~~(5) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period  
 22 required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the  
 23 governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit  
 24 resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on  
 25 the subdivision application can be provided. The governing body may not consider any information regarding the  
 26 subdivision application that is presented after the hearing when making its decision to approve, conditionally  
 27 approve, or deny the proposed subdivision."  
 28

29 ~~Section 4. Section 76-3-625, MCA, is amended to read:~~

30 ~~"76-3-625. Violations -- actions against governing body. (1) A person who has filed with the~~

1 governing body an application for a subdivision under this chapter may bring an action in district court to sue the  
 2 governing body to recover actual damages caused by a final action, decision, or order of the governing body or  
 3 a regulation adopted pursuant to this chapter that is arbitrary or capricious.

4 ~~———— (2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve,~~  
 5 ~~conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision~~  
 6 ~~plat may, within 30 days from the date of the written decision, appeal to the district court in the county in which~~  
 7 ~~the property involved is located. The petition must specify the grounds upon which the appeal is made.~~

8 ~~———— (3) The following parties may appeal under the provisions of subsection (2):~~

9 ~~———— (a) the subdivider;~~

10 ~~———— (b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner~~  
 11 ~~with property within the county or municipality where the subdivision is proposed if that landowner can show a~~  
 12 ~~likelihood of material injury to the landowner's property or its value;~~

13 ~~———— (c) the county commissioners of the county where the subdivision is proposed; and~~

14 ~~———— (d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of~~  
 15 ~~its limits;~~

16 ~~———— (ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of~~  
 17 ~~its limits; and~~

18 ~~———— (iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1~~  
 19 ~~mile of its limits.~~

20 ~~———— (4) If a subdivider prevails on appeal to the district court, the district court shall award the subdivider~~  
 21 ~~reasonable costs and attorney fees.~~

22 ~~———— (4)(5) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific~~  
 23 ~~personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and~~  
 24 ~~injuriously affected by the decision."~~

25  
 26 **NEW SECTION. Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
 27 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
 28 remains in effect in all valid applications that are severable from the invalid applications.

29  
 30 ~~———— **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.~~

