

1 SENATE BILL NO. 209

2 INTRODUCED BY B. TUTVEDT

3
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; PROHIBITING
6 THE INTRODUCTION OF INFORMATION OBTAINED BY A MEMBER OF A GOVERNING BODY DURING A
7 SUBDIVISION APPLICATION HEARING; PROHIBITING A MEMBER OF A GOVERNING BODY FROM
8 OFFERING TESTIMONY DURING A HEARING ON A SUBDIVISION APPLICATION; REQUIRING A
9 GOVERNING BODY TO DISREGARD OPINIONS BY FEDERAL, STATE, OR LOCAL GOVERNMENT
10 AGENCIES THAT ARE NOT SUPPORTED BY A FORMAL WRITTEN OPINION; PROHIBITING A GOVERNING
11 BODY FROM CONSIDERING THE CUMULATIVE IMPACT OF THE SUBDIVISION WHEN REVIEWING
12 CERTAIN CRITERIA; PROVIDING THAT INFORMATION PERTAINING TO MITIGATION BY THE SUBDIVIDER
13 MAY NOT BE CONSIDERED NEW INFORMATION; REQUIRING THE DISTRICT COURT TO AWARD
14 REASONABLE COSTS AND ATTORNEY FEES TO A SUBDIVIDER WHO PREVAILS ON APPEAL TO THE
15 DISTRICT COURT; AMENDING SECTIONS 76-3-504, 76-3-604, 76-3-605, 76-3-608, 76-3-615, AND 76-3-625,
16 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

- 19
20 **Section 1.** Section 76-3-504, MCA, is amended to read:
- 21 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this
22 chapter must, at a minimum:
- 23 (a) list the materials that must be included in a subdivision application in order for the application to be
24 determined to contain the required elements for the purposes of the review required in 76-3-604(1);
- 25 (b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the
26 governing body an environmental assessment as prescribed in 76-3-603;
- 27 (c) establish procedures consistent with this chapter for the submission and review of subdivision
28 applications and amended applications;
- 29 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
- 30 (e) provide for the identification of areas that, because of natural or human-caused hazards, are

1 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the
2 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures
3 authorized under 76-3-608~~(4)~~(6) and ~~(5)~~ (7). Approved construction techniques or other mitigation measures may
4 not include building regulations as defined in 50-60-101 other than those identified by the department of labor
5 and industry as provided in 50-60-901.

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

8 (g) prescribe standards for:

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

10 (ii) grading and drainage;

11 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
12 the:

13 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that
14 will create one or more parcels containing less than 20 acres; and

15 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
16 containing 20 acres or more and less than 160 acres; and

17 (iv) the location and installation of public utilities;

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

19 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
20 local, state, and federal government identified during the preapplication consultation conducted pursuant to
21 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review
22 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and
23 the failure of any agency to complete a review of an application may not be a basis for rejection of the application
24 by the governing body.

25 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider
26 to:

27 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
28 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
29 a legal right to the water and reserve and sever any remaining surface water rights from the land;

30 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to

1 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
2 administered through a single entity that specifies administration and the rights and responsibilities of landowners
3 within the subdivision who have a legal right and access to the water; or

4 (iii) reserve and sever all surface water rights from the land;

5 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in
6 the subdivision that:

7 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical
8 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for
9 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
10 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision
11 lots;

12 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance,
13 and inspection of the ditch; and

14 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch
15 easement without the written permission of the ditch owner.

16 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

17 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
18 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
19 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;
20 or

21 (B) the water rights are removed or the process has been initiated to remove the water rights from the
22 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
23 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
24 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall
25 document that intent, when applicable, in agreements and legal documents for related sales transactions.

26 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
27 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
28 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
29 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
30 historic and legal rights;

1 (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision
2 on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow
3 the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility
4 services within the subdivision.

5 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
6 hearings;

7 (o) establish procedures describing how the governing body or its agent or agency will address
8 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

9 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
10 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade
11 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
12 the reviewing authority is not the governing body.

13 (q) establish a preapplication process that:

14 (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that
15 is designated by the governing body to review subdivision applications prior to the subdivider submitting the
16 application;

17 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth
18 policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

19 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
20 state, and federal government, and any other entities that may be contacted for comment on the subdivision
21 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during
22 the review of the application, the agent or agency designated by the governing body contacts a public utility,
23 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or
24 agency shall notify the subdivider of the contact and the timeframe for response.

25 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the
26 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

27 (v) establishes a time limit after a preapplication meeting by which an application must be submitted as
28 provided in 76-3-604;

29 (r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30
30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.

1 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under
2 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
3 development.

4 (3) The governing body may establish deadlines for submittal of subdivision applications."
5

6 **Section 2.** Section 76-3-604, MCA, is amended to read:

7 **"76-3-604. Review of subdivision application -- review for required elements and sufficiency of**
8 **information -- information obtained by member of governing body.** (1) (a) Within 5 working days of receipt
9 of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and
10 receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall determine
11 whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the
12 subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's
13 determination.

14 (b) For the purpose of subsection (1)(a), the 5-working-day period commences on the date of the receipt
15 of the subdivision application by the reviewing agent or agency. The application is considered to be received on
16 the date of delivery to the reviewing agent or agency. The date of delivery means the date the subdivision
17 application is hand-delivered by the subdivider or the subdivider's representative to the reviewing agent or agency
18 or the date of the return receipt if the subdivision application is delivered by certified mail, return receipt
19 requested.

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

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

28 (b) If the reviewing agent or agency determines (b) that information in the application is not sufficient to allow
29 for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information
30 in its notification.

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

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

6 (a) a determination is made that the application contains the required elements and sufficient information;

7 and

8 (b) the subdivider or the subdivider's agent is notified.

9 (4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an
10 application contains sufficient information as provided in subsection (2), the governing body shall approve,
11 conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the
12 proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms
13 to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

14 (a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review
15 period, not to exceed 1 year; or

16 (b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

17 (5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body
18 shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to
19 exceed the total amount of the subdivision review fee collected by the governing body for the subdivision
20 application, until the governing body denies, approves, or conditionally approves the subdivision.

21 (b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended
22 pursuant to subsection (4).

23 (6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the
24 subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

25 (7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding
26 the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the
27 comments submitted available to the subdivider within 30 days after conditional approval or approval of the
28 subdivision application and preliminary plat.

29 (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the
30 comments or the summary provided by the governing body to the:

1 (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more
2 parcels containing less than 20 acres; and

3 (ii) local health department or board of health for proposed subdivisions that will create one or more
4 parcels containing 20 acres or more and less than 160 acres.

5 (8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres,
6 the governing body may require approval by the department of environmental quality as a condition of approval
7 of the final plat.

8 (b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the
9 governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622,
10 that there is an adequate water source and at least one area for a septic system and a replacement drainfield
11 for each lot.

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

15 (b) If regulations change during the review periods provided in subsections (1) and (2), the determination
16 of whether the application contains the required elements and sufficient information must be based on the new
17 regulations.

18 (10) The governing body may not consider information or evidence obtained directly or indirectly by a
19 member of the governing body during the subdivision application review process."

20

21 **Section 3.** Section 76-3-605, MCA, is amended to read:

22 **"76-3-605. Hearing on subdivision application -- testimony by member of governing body.** (1)

23 Except as provided in 76-3-609 and 76-3-616 and subject to the regulations adopted pursuant to 76-3-504(1)(o)
24 and 76-3-615, at least one public hearing on the subdivision application must be held by the governing body, its
25 authorized agent or agency, or both and the governing body, its authorized agent or agency, or both shall
26 consider all relevant evidence relating to the public health, safety, and welfare, including the environmental
27 assessment if required, to determine whether the subdivision application should be approved, conditionally
28 approved, or denied by the governing body.

29 (2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body
30 of the municipality shall hold joint hearings on the subdivision application and annexation whenever possible.

1 (3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county
 2 not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose
 3 property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract
 4 for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the
 5 hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

6 (4) When a hearing is held by an agent or agency designated by the governing body, the agent or
 7 agency shall act in an advisory capacity and recommend to the governing body the approval, conditional
 8 approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body
 9 in writing not later than 10 working days after the public hearing.

10 (5) The governing body may not allow the introduction or consideration of information or evidence
 11 obtained directly or indirectly by a member of the governing body during a hearing under this section or a
 12 subsequent hearing in which new information is considered under 76-3-615. A member of the governing body
 13 may not offer testimony during a hearing under 76-3-615 or this section."

14
 15 **Section 4.** Section 76-3-608, MCA, is amended to read:

16 **"76-3-608. Criteria for local government review -- opinion by government agency -- cumulative**
 17 **impact.** (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed
 18 subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public
 19 hearing, planning board recommendations, or additional information demonstrates that development of the
 20 proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a
 21 proposed subdivision based solely on the subdivision's impacts on educational services.

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

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

25 (a) except when the governing body has established an exemption pursuant to subsection ~~(6)~~ (8) of this
 26 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
 27 subdivision on agriculture surrounding agricultural operations, agricultural water user facilities, local services, the
 28 natural environment, wildlife, wildlife habitat, and public health and safety;

29 (b) compliance with:

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

- 1 (ii) the local subdivision regulations provided for in part 5 of this chapter; and
2 (iii) the local subdivision review procedure provided for in this part;
- 3 (c) the provision of easements within and to the proposed subdivision for the location and installation
4 of any planned utilities; and
5 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the
6 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.
- 7 (4) If a governing body seeks the opinion of a federal, state, or local government agency in evaluating
8 the primary review criteria under subsection (3)(a), the governing body shall disregard any portion of an opinion
9 not supported by a formal written study or investigation completed by a person qualified to render the opinion.
10 The governing body may not consider the opinion of a federal, state, or local government agency that is or has
11 been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the
12 subdivision application.
- 13 (5) A governing body may not consider the cumulative impact of a subdivision when assessing the
14 criteria provided in subsection (3)(a).
- 15 ~~(4)(6)~~ The governing body may require the subdivider to design the proposed subdivision to reasonably
16 minimize potentially significant adverse impacts identified through the review required under subsection (3). The
17 governing body shall issue written findings to justify the reasonable mitigation required under this subsection ~~(4)~~.
- 18 ~~(5)(7)~~ (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under
19 subsection ~~(4)~~ (6), a governing body may not unreasonably restrict a landowner's ability to develop land, but it
20 is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable
21 and will preclude approval of the subdivision.
- 22 (b) When requiring mitigation under subsection ~~(4)~~ (6), a governing body shall consult with the subdivider
23 and shall give due weight and consideration to the expressed preference of the subdivider.
- 24 ~~(6)(8)~~ A governing body may conditionally approve or deny a proposed subdivision as a result of the
25 water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604
26 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing
27 subdivision, zoning, or other regulations that the governing body has the authority to enforce.
- 28 ~~(7)(9)~~ A governing body may not require as a condition of subdivision approval that a property owner
29 waive a right to protest the creation of a special improvement district or a rural improvement district for capital
30 improvement projects that does not identify the specific capital improvements for which protest is being waived.

1 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
2 subdivision plat is filed with the county clerk and recorder."
3

4 **Section 5.** Section 76-3-615, MCA, is amended to read:

5 **"76-3-615. Subsequent hearings -- consideration of new information -- requirements for**
6 **regulations.** (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this
7 section.

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

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

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

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

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

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

23 (4) Information pertaining to mitigation by the subdivider pursuant to 76-3-608(6) may not be considered
24 new information under subsection (2)(b) of this section.

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

1 approve, or deny the proposed subdivision."

2

3 **Section 6.** Section 76-3-625, MCA, is amended to read:

4 **"76-3-625. Violations -- actions against governing body.** (1) A person who has filed with the
5 governing body an application for a subdivision under this chapter may bring an action in district court to sue the
6 governing body to recover actual damages caused by a final action, decision, or order of the governing body or
7 a regulation adopted pursuant to this chapter that is arbitrary or capricious.

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

12 (3) The following parties may appeal under the provisions of subsection (2):

13 (a) the subdivider;

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

17 (c) the county commissioners of the county where the subdivision is proposed; and

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

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

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

24 (4) If a subdivider prevails on appeal to the district court, the district court shall award the subdivider
25 reasonable costs and attorney fees.

26 ~~(4)~~(5) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific
27 personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and
28 injuriously affected by the decision."

29

30 NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
2 remains in effect in all valid applications that are severable from the invalid applications.

3

4 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

5

6 NEW SECTION. **Section 9. Applicability.** [This act] applies to subdivision applications submitted on
7 or after [the effective date of this act].

8

- END -