

Senate Local Govt. Comm.
Exhibit No. 11
Date 3-18-2011
Bill No. HB 542

MONTANA SMART GROWTH COALITION

P.O. Box 543, Helena, Montana

March 17, 2011

Senate Local Government Committee: Senators Sonju, Wittich, Augare, Gallus, Moss, Lundby, Tutvedt, Vuckovich, Buttrey, & A. Olson.

Montana Senate

P.O. Box 200500

Helena MT 59620-0500

RE: HB 542 (J. Esp) revision of subdivision and platting act

Dear Senators:

After waiting on Monday 3/14 through the long hearing on the LGBT discrimination bill, I was not able to speak on HB542 because of a meeting of the Helena City Commission, of which I am a member.

I write on behalf of the Montana Smart Growth Coalition to ask you to reject HB542. I submitted written testimony at the March 14 hearing. (See back)

One thing I was not able to tell you: Section 76-3-215 MCA, which would be undermined by page 6, lines 16-17 of HB542, resulted from a *consensus* of a 2005 interim study involving MT Association of Realtors, MT Building Industry Association, and MT Smart Growth Coalition. This provision provides the ability to hold an additional hearing on new information.

In essence, it is an anti-sandbagging provision that makes the process more fair for public and applicant alike. For the Realtors and builders to support undermining this consensus now is disconcerting.

I hope you will read my testimony, which elaborates on the effect this amendment would have.

Thank you.

Sincerely,



Dick Thweatt

FACT SHEET: HB 542

Undermining the MT Subdivision & Platting Act

HB 542 is a very unbalanced bill which stacks the deck in subdivision review in favor of the subdivider and against the public.

How does HB 542 undermine the purposes of the Act?

- Denies the public the opportunity to review and comment on how the subdivider proposes to mitigate adverse impacts. (Page 6, Lines 16 - 17).

In 2005, the Legislature enacted 76-3-215 MCA to ensure that the public had a reasonable opportunity to examine and comment upon any information upon which the governing body will rely in making its decision. Mitigation measures are often the most critical information. If this information is presented for the first time at the hearing before the governing body, the public is denied the right to effectively participate in that decision contrary to the Montana Constitution.

- Deprives local government of the best available information on natural hazards, wildlife, and other important subjects by requiring governmental entities to submit “scientific, peer-reviewed information” which:
 - will often not be available for site-specific issues, and
 - would require laymen to evaluate scientific literature. (Page 5, Lines 18 - 21)

Courts of law commonly rely on the opinions of experts based on the qualifications of the experts and the testimony of other experts. That is a better model for local governing bodies than this provision.

- May deprive governing bodies of the best sources of information on lands with the highest natural resource values for protecting water quality, fisheries, and wildlife habitat.

DFWP and other governmental agencies sometimes try to conserve the most critically important habitat values through purchase of conservation easements. Personnel from such agencies are often the best source of information on these values. To exclude such testimony from consideration because of possible bias ignores the possible bias of engineers and other experts hired by the subdivider.

*This fact sheet has been prepared by Dick Thweatt, attorney at law and vice-chair of the **Montana Smart Growth Coalition**. The Montana Smart Growth Coalition (MSGC) is a coalition of forty organizations formed in 1999 for the purpose of promoting economically efficient and environmentally sustainable development in the state of Montana. For over ten years, MSGC has worked constructively with the Montana Legislature and members of the development community to improve Montana's land use laws.*