

1 SENATE BILL NO. 146

2 INTRODUCED BY E. BUTTREY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CRITERIA FOR LOCAL SUBDIVISION REVIEW TO
5 REQUIRE THAT CERTAIN INFORMATION SUBMITTED BY A GOVERNMENTAL ENTITY BE ~~SUPPORTED~~
6 BY USED BY A GOVERNING BODY ONLY IF IT IS SCIENTIFIC INFORMATION; REQUIRING A
7 GOVERNMENTAL ENTITY THAT HAS BEEN INVOLVED IN CERTAIN PROPERTY ACQUISITION EFFORTS
8 TO DISCLOSE THAT INFORMATION TO THE LOCAL GOVERNING BODY; AMENDING SECTION 76-3-608,
9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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13 **Section 1.** Section 76-3-608, MCA, is amended to read:
14 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to
15 approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary
16 plat, applicable environmental assessment, public hearing, planning board recommendations, or additional
17 information demonstrates that development of the proposed subdivision meets the requirements of this chapter.
18 A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts
19 on educational services or based solely on parcels within the subdivision having been designated as
20 wildland-urban interface parcels under 76-13-145.

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

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

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

27 (b) compliance with:

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

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

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

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

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

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

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

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

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

18 (7) A governing body may not require as a condition of subdivision approval that a property owner waive
19 a right to protest the creation of a special improvement district or a rural improvement district for capital
20 improvement projects that does not identify the specific capital improvements for which protest is being waived.
21 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
22 subdivision plat is filed with the county clerk and recorder.

23 (8) If a federal, OR state, or local governmental entity submits a written OR ORAL comment or an opinion
24 regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose
25 of assisting a governing body's review, the governmental entity shall provide the best available COMMENT OR
26 OPINION MAY BE INCLUDED IN THE GOVERNING BODY'S WRITTEN STATEMENT UNDER 76-3-620 ONLY IF THE COMMENT OR
27 OPINION PROVIDES scientific information OR A PUBLISHED STUDY that supports the comment or opinion. A
28 governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest
29 in the real property identified in the subdivision application shall disclose that the entity has been involved in that
30 effort prior to submitting a comment, an opinion, or information as provided in this subsection."

