

## 1 HOUSE BILL NO. 528

2 INTRODUCED BY J. DOOLING

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PLANNING, ZONING, AND  
5 SUBDIVISION REGULATION LAWS; PROVIDING ADDITIONAL GROWTH POLICY AND ZONING  
6 REGULATION CRITERIA AND ELEMENTS; REQUIRING ADDITIONAL PUBLIC INPUT BEFORE A HEARING  
7 ON THE ADOPTION OF ZONING REGULATIONS; PROVIDING ADDITIONAL CRITERIA THAT A LOCAL  
8 GOVERNING BODY SHALL CONSIDER WHEN ADOPTING SUBDIVISION REGULATIONS; SUPERSEDING  
9 THE UNFUNDED MANDATE LAWS; AMENDING SECTIONS 76-1-102, 76-1-103, 76-1-601, 76-2-203, 76-2-  
10 205, 76-2-216, 76-3-103, 76-3-501, 76-3-511, AND 76-8-101, MCA; AND PROVIDING AN IMMEDIATE  
11 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
15 **Section 1.** Section 76-1-102, MCA, is amended to read:

16 **"76-1-102. Purpose.** (1) It is the object of this chapter to encourage local units of government to  
17 improve the present health, safety, convenience, and welfare of their citizens and to plan for the future  
18 development of their communities to the end that highway systems be carefully planned; that new community  
19 centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs  
20 of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy  
21 surroundings for family life; ~~and that the growth of the community be commensurate with and promotive of the~~  
22 efficient and economical use of public funds; and that property rights and individual preferences for housing and  
23 land use are respected.

24 (2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in  
25 an advisory capacity to presently established boards and officials."

26  
27 **Section 2.** Section 76-1-103, MCA, is amended to read:

28 **"76-1-103. Definitions.** As used in this chapter, the following definitions apply:

1           (1) "Best evidence" means evidence that provides the best empirically based explanatory power, the  
2 most compelling, equitable argument, and the least bias.

3           ~~(2)~~ "City" includes incorporated cities and towns.

4           ~~(2)(3)~~ "City council" means the chief legislative body of a city or incorporated town.

5           ~~(3)(4)~~ "Governing body" or "governing bodies" means the governing body of any governmental unit  
6 represented on a planning board.

7           ~~(4)(5)~~ "Growth policy" means a comprehensive development plan, master plan, or comprehensive  
8 plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to  
9 this chapter on or after October 1, 1999.

10          ~~(5)(6)~~ "Land use management techniques and incentives" include but are not limited to zoning  
11 regulations, subdivision regulations, and market incentives.

12          ~~(6)(7)~~ "Market incentives" may include but are not limited to an expedited subdivision review process  
13 authorized by 76-3-609, reductions in parking requirements, and a sliding scale of development review fees.

14          ~~(7)(8)~~ "Mayor" means mayor of a city.

15          ~~(8)(9)~~ "Neighborhood plan" means a plan for a geographic area within the boundaries of the  
16 jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

17          ~~(9)(10)~~ "Person" means any individual, firm, or corporation.

18          ~~(10)(11)~~ "Planning board" means a city planning board, a county planning board, or a joint city-county  
19 planning board.

20          ~~(11)(12)~~ "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and  
21 includes replats or amended plats.

22          (13) "Property right" means the interest of an individual to use their property to the highest and best  
23 use, provided that it does not materially interfere with public health, safety, or welfare.

24          ~~(12)(14)~~ "Public place" means any tract owned by the state or its subdivisions.

25          ~~(13)(15)~~ "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

26          ~~(14)(16)~~ "Utility" means any facility used in rendering service that the public has a right to demand."  
27

28           **Section 3.** Section 76-1-601, MCA, is amended to read:

1           **"76-1-601. Growth policy -- contents.** (1) A growth policy may cover all or part of the jurisdictional  
2 area.

3           (2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full  
4 discretion of the governing body.

5           (3) A growth policy must include:

6           (a) community goals and objectives;

7           (b) maps and text describing an inventory of the existing characteristics and features of the  
8 jurisdictional area, including:

9           (i) land uses;

10          (ii) population;

11          (iii) housing needs;

12          (iv) economic conditions;

13          (v) local services;

14          (vi) public facilities;

15          (vii) natural resources;

16          (viii) sand and gravel resources; ~~and~~

17          (ix) housing affordability;

18          (x) housing preferences;

19          (xi) potential economic and social impact of land use regulations and growth patterns on various types  
20 of businesses;

21          (xii) potential impact of growth and land use regulations on property rights;

22          (xiii) an analysis of current lot sizes and their potential to be subdivided or developed;

23          (xiv) an analysis of the economic impact of various density requirements in cities and unincorporated  
24 areas;

25          (xv) discussion of a regulatory approach that will least interfere with property use and value while still  
26 achieving necessary regulatory goals; and

27          ~~(ix)~~(xvi) other characteristics and features proposed by the planning board and adopted by the  
28 governing bodies;

- 1 (c) projected trends for the life of the growth policy for each of the following elements:
- 2 (i) land use;
- 3 (ii) population;
- 4 (iii) housing needs;
- 5 (iv) economic conditions;
- 6 (v) local services;
- 7 (vi) natural resources; and
- 8 (vii) other elements proposed by the planning board and adopted by the governing bodies;
- 9 (d) a description of policies, regulations, and other measures to be implemented in order to achieve
- 10 the goals and objectives established pursuant to subsection (3)(a);
- 11 (e) a strategy for development, maintenance, and replacement of public infrastructure, including
- 12 drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection
- 13 facilities, roads, and bridges;
- 14 (f) an implementation strategy that includes:
- 15 (i) a timetable for implementing the growth policy;
- 16 (ii) a list of conditions that will lead to a revision of the growth policy; and
- 17 (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if
- 18 necessary;
- 19 (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that
- 20 explains:
- 21 (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the
- 22 county in which the city or town is located on matters related to the growth policy;
- 23 (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities
- 24 and towns located within the county's boundaries on matters related to the growth policy;
- 25 (h) a statement explaining how the governing bodies will:
- 26 (i) define the criteria in 76-3-608(3)(a); and
- 27 (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-
- 28 608(3)(a);

- 1 (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted;
- 2 ~~and~~
- 3 (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or
- 4 not there is a need to:
- 5 ~~(i) delineate the wildland-urban interface; and~~
- 6 ~~(ii) adopt regulations requiring:~~
- 7 ~~(A) (i) defensible space around structures;~~
- 8 ~~(B) (ii) adequate ingress and egress to and from structures and developments to facilitate fire~~
- 9 ~~suppression activities; and~~
- 10 ~~(C) (iii) adequate water supply for fire protection;~~
- 11 (k) an analysis of how the evidence presented in the growth plan is the best evidence available and
- 12 how future growth plans will explicitly consider alternative evidence;
- 13 (l) an analysis of how potential changes may manifest with regard to land use regulations and growth
- 14 management practices discussed in growth policy; and
- 15 (m) a broad social, economic, and environmental analysis of the potential immediate and indirect
- 16 impacts of implementing the growth policy.
- 17 (4) A growth policy may:
- 18 (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth
- 19 policy.
- 20 (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
- 21 (c) establish an infrastructure plan that, at a minimum, includes:
- 22 (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential,
- 23 commercial, and industrial units over the next 20 years;
- 24 (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place
- 25 outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate
- 26 infrastructure planning with the county or counties where growth is likely to take place;
- 27 (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities
- 28 that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

1 (iv) for cities, a land use map showing where projected growth will be guided and at what densities  
2 within city boundaries;

3 (v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to  
4 cities showing where projected growth will be guided and at what densities;

5 (vi) using maps and text, a description of existing and future public facilities necessary to efficiently  
6 serve projected development and densities within infrastructure planning areas, including, whenever feasible,  
7 extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other  
8 municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection  
9 (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer  
10 systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public  
11 access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency  
12 services;

13 (vii) a description of proposed land use management techniques and incentives that will be adopted to  
14 promote development within cities and in an infrastructure planning area, including land use management  
15 techniques and incentives that address issues of housing affordability;

16 (viii) a description of how and where projected development inside municipal boundaries for cities and  
17 inside designated joint infrastructure planning areas for cities and counties could adversely impact:

18 (A) threatened or endangered wildlife and critical wildlife habitat and corridors;

19 (B) water available to agricultural water users and facilities;

20 (C) the ability of public facilities, including schools, to safely and efficiently service current residents  
21 and future growth;

22 (D) a local government's ability to provide adequate local services, including but not limited to  
23 emergency, fire, and police protection;

24 (E) the safety of people and property due to threats to public health and safety, including but not  
25 limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

26 (F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel  
27 resources, streams, rivers, lakes, wetlands, and ground water; and

28 (G) agricultural lands and agricultural production; and

1 (ix) a description of measures, including land use management techniques and incentives, that will be  
2 adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

3 (d) include any elements required by a federal land management agency in order for the governing  
4 body to establish coordination or cooperating agency status as provided in 76-1-607.

5 (5) The planning board may propose and the governing bodies may adopt additional elements of a  
6 growth policy in order to fulfill the purpose of this chapter."

7

8 **Section 4.** Section 76-2-203, MCA, is amended to read:

9 **"76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

10 (a) made in accordance with the growth policy; and

11 (b) designed to:

12 (i) secure safety from fire and other dangers;

13 (ii) promote public health, public safety, and general welfare; ~~and~~

14 (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other  
15 public requirements; and

16 (iv) allow a property owner to use and enhance the value of property with limited interference while still  
17 considering the public good.

18 (2) In the adoption of zoning regulations, the board of county commissioners shall consider:

19 (a) reasonable provision of adequate light and air;

20 (b) the effect on motorized and nonmotorized transportation systems;

21 (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the  
22 areas around municipalities;

23 (d) the character of the district and its peculiar suitability for particular uses; ~~and~~

24 (e) conserving the value and use of buildings and land and encouraging the most appropriate use of  
25 land throughout the jurisdictional area;

26 (f) property rights and the impact of zoning regulations on property values and use;

27 (g) the broad social, economic, and environmental impact of specific zoning and land use regulations;

28 and

1           (h) the regulatory burden of land use and zoning regulations on business and property value and use.  
 2           ~~(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of~~  
 3 ~~nearby municipalities."~~

4

5           **Section 5.** Section 76-2-205, MCA, is amended to read:

6           **"76-2-205. Procedure for adoption of regulations and boundaries.** (1) The board of county  
 7 commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning  
 8 districts and in the adoption or amendment of zoning regulations:

9           (2) Before a public hearing is held, the board of county commissioners shall:

10           (a) conduct a detailed social, economic, and environmental analysis of the impact of proposed zoning  
 11 regulations; and

12           (b) mail to each property owner within the boundaries of a proposed zoning district:

13           (i) a map of the boundaries of the proposed zoning district; and

14           (ii) a survey to seek public input and to determine factors, including but not limited to:

15           (A) lot sizes;

16           (B) restrictions on land use, building, or other material restrictions; and

17           (C) social, economic, and environmental considerations.

18           ~~(4)~~(3) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the  
 19 zoning district must:

20           (a) state:

21           (i) the boundaries of the proposed district;

22           (ii) the general character of the proposed zoning regulations;

23           (iii) the time and place of the public hearing;

24           (iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk  
 25 and recorder;

26           (b) be posted not less than 45 days before the public hearing in at least five public places, including  
 27 but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; and

28           (c) be published once a week for 2 weeks in a newspaper of general circulation within the county.



1           ~~(2)~~(4) At the public hearing, the board of county commissioners shall give the public an opportunity to  
2 be heard regarding the proposed zoning district and regulations.

3           ~~(3)~~(5) After the public hearing, the board of county commissioners shall review the proposals of the  
4 planning board and shall make any revisions or amendments that it determines to be proper.

5           ~~(4)~~(6) The board of county commissioners may pass a resolution of intention to create a zoning  
6 district and to adopt zoning regulations for the district.

7           ~~(5)~~(7) The board of county commissioners shall publish notice of passage of the resolution of intention  
8 once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

9           (a) the boundaries of the proposed district;

10           (b) the general character of the proposed zoning regulations;

11           (c) that the proposed zoning regulations are on file for public inspection at the office of the county  
12 clerk and recorder;

13           (d) that for 30 days after first publication of this notice, the board of county commissioners will receive  
14 written protests to the creation of the zoning district or to the zoning regulations from persons owning real  
15 property within the district whose names appear on the last-completed assessment roll of the county.

16           ~~(6)~~(8) Within 30 days after the expiration of the protest period, the board of county commissioners  
17 may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for  
18 the district. However, if 40% of the real property owners within the district whose names appear on the last-  
19 completed assessment roll or if real property owners representing 50% of the titled property ownership whose  
20 property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title  
21 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board  
22 of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for  
23 the district for a period of 1 year."

24

25           **Section 6.** Section 76-2-216, MCA, is amended to read:

26           **"76-2-216. Wholly surrounded county property -- change of use -- hearing.** (1) If a county parcel  
27 for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an  
28 allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all

1 owners of municipal property within 300 feet of the county property of the change of use.

2 (2) Upon request of either the municipality or at least 10% of the property owners in the municipality  
3 who have received the notice, the county governing body shall hold a hearing on the change of use.

4 (3) If the county governing body determines, based on testimony provided at the hearing, that the  
5 regulations in the county district are no longer ~~as compatible as possible~~ with the municipal zoning ordinances  
6 ~~as provided in 76-2-203(3)~~, the county governing body may initiate a revision to the zoning district or  
7 amendments to the regulations as provided in this part."

8

9 **Section 7.** Section 76-3-103, MCA, is amended to read:

10 **"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires  
11 otherwise, the following definitions apply:

12 (1) "Best evidence" means evidence that provides the best empirically based explanatory power, the  
13 most compelling, equitable argument, and the least bias.

14 (2) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the  
15 purpose of disclosing facts pertaining to boundary locations.

16 ~~(2)(3)~~ (3) "Cluster development" means a subdivision with lots clustered in a group of five or more lots  
17 that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs  
18 for infrastructure through the use of concentrated public services and utilities, while allowing other lands to  
19 remain undeveloped.

20 ~~(3)(4)~~ (4) "Dedication" means the deliberate appropriation of land by an owner for any general and public  
21 use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the  
22 public use to which the property has been devoted.

23 ~~(4)(5)~~ (5) "Division of land" means the segregation of one or more parcels of land from a larger tract held  
24 in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly  
25 filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to  
26 this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous  
27 division of land is not a division of land.

28 ~~(5)(6)~~ (6) "Examining land surveyor" means a registered land surveyor appointed by the governing body

1 to review surveys and plats submitted for filing.

2 ~~(6)~~(7) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to  
3 be prepared for filing for record with the county clerk and recorder and containing all elements and  
4 requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

5 ~~(7)~~(8) "Governing body" means a board of county commissioners or the governing authority of a city  
6 or town organized pursuant to law.

7 ~~(8)~~(9) "Immediate family" means a spouse, children by blood or adoption, and parents.

8 ~~(9)~~(10) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

9 ~~(10)~~(11) "Phased development" means a subdivision application and preliminary plat that at the time of  
10 submission consists of independently platted development phases that are scheduled for review on a schedule  
11 proposed by the subdivider.

12 ~~(11)~~(12) "Planned unit development" means a land development project consisting of residential  
13 clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land  
14 uses built in a prearranged relationship to each other and having open space and community facilities in  
15 common ownership or use.

16 ~~(12)~~(13) "Plat" means a graphical representation of a subdivision showing the division of land into lots,  
17 parcels, blocks, streets, alleys, and other divisions and dedications.

18 ~~(13)~~(14) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the  
19 layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a  
20 governing body.

21 ~~(14)~~(15) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this  
22 chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title  
23 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems  
24 established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

25 ~~(15)~~(16) "Subdivider" means a person who causes land to be subdivided or who proposes a  
26 subdivision of land.

27 ~~(16)~~(17) "Subdivision" means a division of land or land so divided that it creates one or more parcels  
28 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States

1 government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise  
 2 transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its  
 3 size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or  
 4 mobile homes will be placed.

5 ~~(47)(18)~~ (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be  
 6 identified by legal description, independent of any other parcel of land, using documents on file in the records of  
 7 the county clerk and recorder's office.

8 (b) Each individual tract of record continues to be an individual parcel of land unless the owner of the  
 9 parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

10 (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal  
 11 description that describes the resulting single parcel and in which the owner expressly declares the owner's  
 12 intention that the tracts be merged; or

13 (ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have  
 14 been expunged and depicts the boundaries of the larger aggregate parcel.

15 (c) An instrument of conveyance does not merge parcels of land under subsection ~~(47)(b)(i)~~ (18)(b)(i)  
 16 unless the instrument states, "This instrument is intended to merge individual parcels of land to form the  
 17 aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of  
 18 the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."  
 19

20 **Section 8.** Section 76-3-501, MCA, is amended to read:

21 **"76-3-501. Local subdivision regulations.** The governing body of every county, city, and town shall  
 22 adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- 23 (1) the orderly development of their jurisdictional areas;
- 24 (2) the coordination of roads within subdivided land with other roads, both existing and planned;
- 25 (3) the dedication of land for roadways and for public utility easements;
- 26 (4) the improvement of roads;
- 27 (5) the provision of adequate open spaces for travel, light, air, and recreation;
- 28 (6) the provision of adequate transportation, water, and drainage;

- 1 (7) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
- 2 (8) the avoidance or minimization of congestion; ~~and~~
- 3 (9) the avoidance of subdivisions that would involve unnecessary environmental degradation and
- 4 danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and
- 5 wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would
- 6 necessitate an excessive expenditure of public funds for the supply of the services; and
- 7 (10) when adopting regulations allowed in this section, the governing body shall use the best evidence
- 8 available and create a rebuttable presumption that adopted regulations are based on the best evidence."
- 9

10 **Section 9.** Section 76-3-511, MCA, is amended to read:

11 **"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except

12 as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a

13 regulation under 76-3-501 or 76-3-504(1)(g)(iii) that is more stringent than the comparable state regulations or

14 guidelines that address the same circumstances. The governing body may incorporate by reference

15 comparable state regulations or guidelines.

16 (2) The governing body may adopt a regulation to implement 76-3-501 or 76-3-504(1)(g)(iii) that is

17 more stringent than comparable state regulations or guidelines only if the governing body makes a written

18 finding, after a public hearing and public comment and based on evidence in the record, that:

19 (a) the proposed local standard or requirement protects public health or the environment; and

20 (b) the local standard or requirement to be imposed can mitigate harm to the public health or

21 environment and is achievable under current technology.

22 (3) The written finding must reference information and peer-reviewed scientific studies and other

23 relevant scientific analysis that provides the best evidence of the specific and broad impacts contained in the

24 record that forms the basis for the governing body's conclusion. The conclusion must be based on the best

25 evidence available and create a rebuttable presumption that the evidence used is the best evidence for the

26 regulation. The written finding must also include information from the hearing record regarding the costs to the

27 regulated community that are directly attributable to the proposed local standard or requirement.

28 (4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and

1 before April 14, 1995, that that person believes to be more stringent than comparable state regulations or  
 2 guidelines may petition the governing body to review the regulation. If the governing body determines that the  
 3 regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply  
 4 with this section by either revising the regulation to conform to the state regulations or guidelines or by making  
 5 the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12  
 6 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to  
 7 comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to  
 8 exceed \$250.

9 (b) A person may also petition the governing body for a regulation review under subsection (4)(a) if  
 10 the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or  
 11 guidelines existed and the state government subsequently establishes comparable regulations or guidelines  
 12 that are less stringent than the previously adopted governing body regulation."  
 13

14 **Section 10.** Section 76-8-101, MCA, is amended to read:

15 **"76-8-101. Definitions.** As used in this part, the following definitions apply:

16 (1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls for  
 17 the permanent or temporary housing or enclosure of persons or property or for the operation of a business.  
 18 Except as provided in 76-3-103~~(16)~~(17), the term includes a recreational camping vehicle, mobile home, or cell  
 19 tower. The term does not include a condominium or townhome.

20 (2) "Department" means the department of environmental quality provided for in 2-15-3501.

21 (3) "Governing body" means the legislative authority for a city, town, county, or consolidated city-  
 22 county government.

23 (4) "Landowner" means an owner of a legal or equitable interest in real property. The term includes  
 24 an heir, successor, or assignee of the ownership interest.

25 (5) "Local reviewing authority" means a local department or board of health that is approved to  
 26 conduct reviews under Title 76, chapter 4.

27 (6) "Supermajority" means:

28 (a) an affirmative vote of at least two-thirds of the present and voting members of a city or town

1 council;

2 (b) a unanimous affirmative vote of the present and voting county commissioners in counties with  
3 three county commissioners;

4 (c) an affirmative vote of at least four-fifths of the present and voting county commissioners in  
5 counties with five commissioners;

6 (d) an affirmative vote of at least two-thirds of the present and voting county commissioners in  
7 counties with more than five commissioners; or

8 (e) an affirmative vote of at least two-thirds of the present and voting members of the governing body  
9 of a consolidated city-county government.

10 (7) "Tract" means an individual parcel of land that can be identified by legal description, independent  
11 of any other parcel of land, using documents on file in the records of the county clerk and recorder's office."

12

13 **NEW SECTION. Section 11. Unfunded mandate laws superseded.** The provisions of [this act]  
14 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

15

16 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.

17

18 **NEW SECTION. Section 13. Retroactive applicability.** [Sections 3 and 4] apply retroactively, within  
19 the meaning of 1-2-109, to existing growth policies adopted pursuant to Title 76, chapter 1, and zoning  
20 regulations adopted pursuant to Title 76, chapter 2. Existing growth policies and zoning regulations must be  
21 reviewed and revised if necessary to incorporate the additional requirements of [sections 3 and 4] no less than  
22 3 years after the passage of [this act].

23

- END -