

Reasons why the Water Policy Interim Committee should clarify that the cross-reference to 76-3-501 in §76-3-511, MCA, should be amended to read “76-3-501(7).”

Presented by Myra L. Shults, Consultant Land Use Attorney
to MACo’s Joint Powers Insurance Authority
April 30, 2008

Section 76-3-511 was added to the law in 1995 as part of House Bill 521, Chapter 471, Section 5. Attached as **Exhibit 1** is the preamble to Chapter 471. The statement of intent is to provide guidance to the board of health and environmental sciences (now the Board of Environmental Review [BER]), the department of health and environmental sciences (now DEQ) and local units of government.

Attached as **Exhibit 2** are copies of the first page of the introduced bill and of Sections 5, 17 and 18 of a discussion draft of HB 521.

- The title of the bill on the first page demonstrates what was introduced includes no reference to local units of government.
- The second two pages are Section 5 [which was codified as §76-3-511].
- The fourth page is Section 17, which amends 76-3-501 in accordance with Section 5.
- The fifth page is Section 18, which amends 76-3-504 in accordance with Section 5.

Attached as **Exhibit 3** is a copy of 76-3-511 in 1995--the codified version of Section 5 of HB 521. On the second page the Compiler’s Comments state that Section 5 applies to local units of government when they attempt to regulate the control and disposal of sewage from private and public buildings.

Attached as **Exhibit 4** is a copy of both 76-3-501 and 76-3-504 in 1995, which are a codification of Sections 17 and 18 of HB 521.

At the top of Exhibit 4 is a copy of 76-3-501 in 1995. Note that there are only two subsections in that code section.

Attached as **Exhibit 5** is a copy of 76-3-501 in 2005 which shows the former subsection (1) on Exhibit 4 is now divided into 9 subsections and subsection (2) on Exhibit 4 was deleted.

Attached as **Exhibit 6** is a copy of the testimony of representatives of Montana Chamber of Commerce, the Montana Building Industry Association (MBIA) and the Montana Association of Realtors (MAR), before the Senate Natural Resources Committee, indicating their support of HB 521, which only included restrictions on regulations related to environmental concerns, and for the Montana Subdivision and Platting Act, for regulations related to water, septic and solid waste.

Request to the Committee. Because LC 5014 includes a correction to the incorrect cross-reference to 76-3-504(1)(f)(iii), in 76-3-511, as set forth in Section 2 of the discussion draft bill, I am asking that this Committee also clarify the reference to 76-3-501 by adding “(7)” after that code section, in accordance with the original intent of HB 521 (1995).

The reason for this request is because attorneys and judges are misinterpreting the scope of §76-3-511, MCA.

In Lewis and Clark County a judge in his order suggested that §76-3-511 might be used for fire regulations (possibly because an attorney suggested it).

In Gallatin County an attorney in a lawsuit claimed that the County could not adopt regulations regarding remainder parcels because such a regulation would violate §76-3-511.

Cascade County faced a challenge to its proposed subdivision regulations because of a claim certain provisions, other than those relating to water, septic and solid waste, violated §76-3-511.

Flathead County has been sued by a Realtor claiming that many provisions, other than those addressing water, septic and solid waste, in its subdivision regulations are more stringent than comparable state regulations and/or guidelines [*see* subsection (1) of 76-3-511], including the requirement for posted notice of a subdivision application. The County has also received a threatening letter from an attorney for MBIA claiming the same thing, and trying to extend §76-3-511 to challenge such items in the subdivision regulations as the requirement for bear-proof containers, landscaping requirements and weed control.

By clarifying the cross-reference to 76-3-501 in Section 2 of LC 5014, this Committee will merely reflect the intent of the original bill.

Thank You

(2) The department of administration is expressly prohibited from preparing *may not prepare* working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed \$25,000 \$75,000."

Section 2. Effective date. [This act] is effective July 1, 1995.

Approved April 14, 1995

CHAPTER NO. 471

[HB 521]

AN ACT REQUIRING CERTAIN STATE ADMINISTRATIVE AND LOCAL AGENCIES TO JUSTIFY THE ADOPTION OF RULES THAT ARE MORE STRINGENT THAN CORRESPONDING FEDERAL REGULATIONS; REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, AND LOCAL UNITS OF GOVERNMENT TO REVIEW AND REVISE CERTAIN RULES TO ENSURE COMPLIANCE WITH THIS ACT; AMENDING SECTIONS 50-2-116, 75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103, 75-10-204, 75-10-405, 75-10-603, 76-3-501, 76-3-504, 76-4-104, AND 80-15-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY PROVISIONS.

WHEREAS, the federal government frequently regulates areas that are also subject to state regulation; and

WHEREAS, differing state and federal policy goals and unique state prerogatives frequently result in different levels of regulation, different standards, and different requirements being imposed by state and federal programs covering the same subject matter; and

WHEREAS, Montana must simultaneously move toward reducing redundant and unnecessary regulation that dulls the state's competitive advantage while being ever vigilant in the protection of the public's health, safety, and welfare; and

WHEREAS, Montana's administrative agencies should consider applicable federal standards when adopting, readopting, or amending rules with analogous federal counterparts; and

WHEREAS, Montana's administrative agencies should analyze whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana's citizens; and

WHEREAS, as part of the formal rulemaking process, the public should be advised of the agencies' conclusions about whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana citizens.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences, the department of health and

environment act].

The legis existing law a publication a in question c or requireme

If the rul finding must an analysis th state standar state and tha harm to the p technology. Th is inadequate information f community di

Be it enacted l

Section regulations provided in su may not adopt comparable circumstances regulations or

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(b) the sta the public heal

(3) The w scientific studi conclusion. The record regardi attributable to

(4) (a) A per and before (the stringent than board to review than comparab this section by guidelines or b within a reason

environmental sciences, and local units of government in complying with [this act].

The legislature intends that in addition to all requirements imposed by existing law and rules, the board or the department include as part of the initial publication and all subsequent publications of a rule a written finding if the rule in question contains any standards or requirements that exceed the standards or requirements imposed by comparable federal law.

If the rules are more stringent than comparable federal law, the written finding must include but is not limited to a discussion of the policy reasons and an analysis that supports the board's or department's decision that the proposed state standards or requirements protect public health or the environment of the state and that the state standards or requirements to be imposed can mitigate harm to the public health or the environment and are achievable under current technology. The department is not required to show that the federal regulation is inadequate to protect public health. The written finding must also include information from the hearing record regarding the costs to the regulated community directly attributable to the proposed state standard or requirement.

Be it enacted by the Legislature of the State of Montana:

Section 1. State regulations no more stringent than federal regulations or guidelines. (1) After [the effective date of this act], except as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before [the effective date of this act] that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the

House BILL NO. 521

INTRODUCED BY

ORR

Wagner
Slits *Burtless* *Cobb* *Mundata* *Grady* *Jim Nelson* *for*
Beck *HARP*

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING CERTAIN STATE ADMINISTRATIVE AGENCY RULES FROM BEING MORE STRINGENT THAN CORRESPONDING FEDERAL REGULATIONS; REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW AND REVISE CERTAIN RULES TO ENSURE COMPLIANCE WITH THIS ACT; CREATING AN AFFIRMATIVE DEFENSE FOR VIOLATIONS OF CERTAIN RULES MORE STRINGENT THAN CORRESPONDING FEDERAL RULES; AMENDING SECTIONS 75-2-111, 75-2-301, 75-2-503, 75-3-201, 75-5-201, 75-5-311, 75-6-103, 75-10-204, 75-10-405, AND 75-10-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the federal government frequently regulates areas that are also subject to state regulation; and

WHEREAS, differing state and federal policy goals and unique state prerogatives frequently result in different levels of regulation, different standards, and different requirements being imposed by state and federal programs covering the same subject matter; and

WHEREAS, Montana must simultaneously move toward reducing redundant and unnecessary regulation that dulls the state's competitive advantage while being ever vigilant in the protection of the public's health, safety, and welfare; and

WHEREAS, Montana's administrative agencies should consider applicable federal standards when adopting, readopting, or amending rules with analogous federal counterparts; and

WHEREAS, Montana's administrative agencies should analyze whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana's citizens; and

WHEREAS, as part of the formal rulemaking process, the public should be advised of the agencies' conclusions about whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana citizens.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and

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

10 (b) A person may also petition the local board for a rule review
11 under subsection (4) (a) if the local board adopts a rule after January
12 1, 1990 where no state regulation or guideline existed and the state
13 government subsequently establishes a comparable regulation or
14 guideline that is less stringent than the previously adopted local
15 board rule.

16

17 NEW SECTION. Section 5. Local regulations no more stringent
18 than state regulations or guidelines. (1) After [the effective date
19 of this act], except as provided in subsections (2) through (4) and
20 unless required by state law, a governing body may not adopt a rule
21 under 76-3-501 or 76-3-504(5)(c) that is more stringent than the
22 comparable state regulations or guidelines that address the same
23 circumstances. The governing body may incorporate by reference
24 comparable state regulations or guidelines.

25 (2) The governing body may adopt a rule to implement 76-3-501
26 or 76-3-504(5)(c) that is more stringent than comparable state
27 regulations or guidelines only if the governing body makes a written
28 finding after a public hearing and public comment and based on
29 evidence in the record that:

30 (a) the proposed local standard protects public health or the
31 environment; and

1 (b) that the local board standard or requirement to be imposed
2 can mitigate harm to the public health or environment and is
3 achievable under current technology.

4 (3) The written finding must reference information and any peer
5 reviewed scientific study contained in the record that forms the basis
6 for the governing body's conclusion. The written finding must also
7 include information from the hearing record regarding the costs to the
8 regulated community directly attributable to the proposed local
9 standard.

10 (4) (a) A person affected by a rule of the governing body
11 adopted after January 1, 1990 and before [the effective date of this
12 act] that that person believes to be more stringent than comparable
13 state regulations or guidelines may petition the governing body to
14 review the rule. If the governing body determines that the rule is
15 more stringent than comparable state regulations or guidelines, the
16 governing body shall comply with this section by either revising the
17 rule to conform to the state regulation or guideline or by making the
18 written finding as provided under subsection (2) within a reasonable
19 period of time not to exceed 12 months after receiving the petition.
20 A petition under this section does not relieve the petitioner of the
21 duty to comply with the challenged rule. The governing body may
22 charge a petition filing fee in an amount not to exceed \$250.

23 (b) A person may also petition the governing body for a rule
24 review under subsection (4)(a) if the governing body adopts a rule
25 after January 1, 1990 where no state regulation or guideline existed
26 and the state government subsequently establishes a comparable
27 regulation or guideline that is less stringent than the previously
28 adopted governing body rule.

29

30 **Section 6. Section 50-2-116, MCA, is amended to read:**

31 **50-2-116. Powers and duties of local boards. (1) Local boards shall:**

1 maintenance of the removal and remedial actions agreed upon for the
2 expected life of the actions;

3 (b) a hazardous waste disposal facility is available to the
4 state of Montana that meets the specifications of the president and
5 complies with the requirements of subtitle C of the federal Solid
6 Waste Disposal Act for necessary offsite storage, destruction,
7 treatment, or secure disposition of the hazardous substances; and

8 (c) the state of Montana will pay or assure ensure payment of
9 a share of the costs of the remedial action, including all future
10 maintenance."

11 **Section 17.** Section 76-3-501, MCA, is amended to read:

12 "76-3-501. Local subdivision regulations. (1) Before July 1,
13 1974, the governing body of every county, city, and town shall adopt
14 and provide for the enforcement and administration of subdivision
15 regulations reasonably providing for the orderly development of their
16 jurisdictional areas; for the coordination of roads within subdivided
17 land with other roads, both existing and planned; for the dedication
18 of land for roadways and for public utility easements; for the
19 improvement of roads; for the provision of adequate open spaces for
20 travel, light, air, and recreation; for the provision of adequate
21 transportation, water, and drainage, and ; subject to the provisions
22 of [section 5], for the regulation of sanitary facilities; for the
23 avoidance or minimization of congestion; and for the avoidance of
24 subdivision which would involve unnecessary environmental degradation
25 and the avoidance of danger of injury to health, safety, or welfare
26 by reason of natural hazard or the lack of water, drainage, access,
27 transportation, or other public services or would necessitate an
28 excessive expenditure of public funds for the supply of such services.

29 (2) Review and approval or disapproval of a subdivision under
30 this chapter may occur only under those regulations in effect at the
31 time an application for approval of a preliminary plat or for an

1 extension under 76-3-610 is submitted to the governing body."
2

3 **Section 18.** Section 76-3-504, MCA, is amended to read:

4 "76-3-504. **Minimum requirements for subdivision regulations.** The
5 subdivision regulations adopted under this chapter shall, at a
6 minimum:

7 (1) require the subdivider to submit to the governing body an
8 environmental assessment as prescribed in 76-3-603;

9 (2) establish procedures consistent with this chapter for the
10 submission and review of subdivision plats;

11 (3) prescribe the form and contents of preliminary plats and the
12 documents to accompany final plats;

13 (4) provide for the identification of areas which, because of
14 natural or ~~man-caused~~ human-caused hazards, are unsuitable for
15 subdivision development and prohibit subdivisions in these areas
16 unless the hazards can be eliminated or overcome by approved
17 construction techniques;

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

22 (6) prescribe standards for:

23 (a) the design and arrangement of lots, streets, and roads;

24 (b) grading and drainage;

25 (c) subject to the provisions of [section 5], water supply and
26 sewage and solid waste disposal which that, at a minimum, meet the
27 regulations adopted by the department of health and environmental
28 sciences under 76-4-104;

29 (d) the location and installation of utilities;

30 (7) provide procedures for the administration of the park and
31 open-space requirements of this chapter;

76-3-510. Payment for extension of capital facilities. A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

History: En. Sec. 8, Ch. 468, L. 1995.

Compiler's Comments

Applicability: Section 13, Ch. 468, L. 1995, provided: "Funds in a park fund that exceed \$10,000 as of [the effective date of this act] [October 1, 1995] must be used for park land acquisition and initial development. Funds in a

park fund up to \$10,000 as of [the effective date of this act] [October 1, 1995] may be used for park maintenance in accordance with a formally adopted park plan."

76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a rule under ~~76-3-501~~ or ~~76-3-504(5)(c)~~ that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504(5)(c) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

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

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the rule. If the governing body determines that the rule is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a rule review under subsection (4)(a) if the governing body adopts a rule after January 1, 1990, in

an area in which no state regulation government subsequently establishes that are less stringent than the previous.

History: En. Sec. 5, Ch. 471, L. 1995.

Compiler's Comments

Effective Date: Section 23, Ch. 471, L. 1995, provided that this section is effective on passage and approval. Approved April 14, 1995.

Applicability: Section 22(2) and (3), Ch. 471, L. 1995, provided: "(2) [Sections 4 and 5] [50-2-130 and 76-3-511] apply to local units of

Local Rev

76-3-601. Submission of pro when a plat is eligible for summary the governing body or to the agent of the preliminary plat of the proposed preliminary plat must show all pertinent proposed improvements.

(2) (a) When the proposed incorporated city or town, the approved by the city or town governing body of the county.

(b) When the proposed subdivided area, the preliminary plat to the governing body of the county. How 1 mile of a third-class city or town within 3 miles of a first-class city, preliminary plat to the city or town review and comment. If the proposed school district, as described in

(c) If the proposed subdivision town, the proposed plat must be reviewed by the town and the county governing body.

(d) When a proposed subdivision municipality, the governing body subdivision review and annexation hearings, reports, and other required information.

(3) The provisions of 76-3-601 and this section do not limit the subdivisions beyond their corporate boundaries.

History: En. Sec. 8, Ch. 500, L. 498, L. 1975; amd. Sec. 1, Ch. 555, 89, L. 1981; amd. Sec. 4, Ch. 506, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 506 inserted third sentence regarding a governing body providing an information on a preliminary subdivision plat to school district.

capital facilities. A local government may not require payment for part or all of the costs of public health and safety, sewer lines, water supply lines, and other lines, and the charges shall reasonably reflect the expected costs. A local government may not require payment for part or all of the costs of public health and safety, sewer lines, water supply lines, and other lines, and the charges shall reasonably reflect the expected costs.

up to \$10,000 as of [the effective date of this act] [October 1, 1995] may be used for maintenance in accordance with a formally adopted park plan."

more stringent than state regulations. A governing body may not adopt regulations more stringent than the comparable state regulations or regulations of an incorporated city or town, unless the governing body finds, in a written finding, after a public hearing, that the proposed regulations or guidelines are necessary to protect public health or safety.

imposed can mitigate harm to the public under current technology. The governing body may, on the basis of information and peer-reviewed studies, include information from the community that are directly related to the proposed regulations or guidelines.

governing body adopted after a public hearing, a person believes to be more stringent than the guidelines may petition the governing body to determine that the proposed regulations or guidelines, the governing body may, either revising the rule to make the written finding, a reasonable period of time, not to exceed 90 days, after the effective date of this section does not challenge the rule. The amount not to exceed

body for a rule review under this section after January 1, 1990, in

an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body rule.

History: En. Sec. 5, Ch. 471, L. 1995.

Compiler's Comments

Effective Date: Section 23, Ch. 471, L. 1995, provided that this section is effective on passage and approval. Approved April 14, 1995.

Applicability: Section 22(2) and (3), Ch. 471, L. 1995, provided: "(2) [Sections 4 and 5] [50-2-130 and 76-3-511] apply to local units of

government when they attempt to regulate the control and disposal of sewage from private and public buildings.

(3) [This act] does not apply to the establishment of fees or public participation requirements."

Part 6

Local Review Procedure

76-3-601. Submission of preliminary plat for review. (1) Except when a plat is eligible for summary approval, the subdivider shall present to the governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981; amd. Sec. 4, Ch. 506, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 506 in (2)(b) inserted third sentence regarding a county governing body providing an informational copy of a preliminary subdivision plat to school district

trustees; and made minor changes in style. Amendment effective April 15, 1995.

(3) For purposes of this section, "irrigation district" means a district established pursuant to Title 85, chapter 7.
History: En. Sec. 1, Ch. 136, L. 1993.

Part 5 Local Regulations

76-3-501. Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage; subject to the provisions of 76-3-511, for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985; amd. Sec. 17, Ch. 471, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 471 in (1), near middle after "drainage", inserted "subject to the provisions of 76-3-511"; and made minor changes in style. Amendment effective April 14, 1995.

Applicability: Section 22(3), Ch. 471, L. 1995, provided: "(3) [This act] does not apply to the establishment of fees or public participation requirements."

76-3-502. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501, it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

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

(6) prescribe standards for:

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

(b) grading and drainage;

(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

(d) the location and installation of utilities;

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

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 in (6)(c) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 471 in (6)(c), at beginning, inserted "subject to the provisions of 76-3-511";

and made minor changes in style. Amendment effective April 14, 1995.

Applicability: Section 22(3), Ch. 471, L. 1995, provided: "(3) [This act] does not apply to the establishment of fees or public participation requirements."

76-3-505. Provision for summary review of subdivisions. Local subdivision regulations must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels when proper access to all lots is provided, when no land in the subdivision will be dedicated to public use for parks or playgrounds, and when the plats have been approved by the department of environmental quality whenever approval is required by part 1 of chapter 4; however, reasonable local regulations may contain additional requirements for summary approval.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5); amd. Sec. 1, Ch. 579, L. 1985; amd. Sec. 1, Ch. 256, L. 1987; amd. Sec. 239, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 near end of first clause substituted "department of envi-

ronmental quality" for "department of health and environmental sciences"; and made minor

Copied from the 2005 Annotated Code:

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

- (1) the orderly development of their jurisdictional areas;
- (2) the coordination of roads within subdivided land with other roads, both existing and planned;
- (3) the dedication of land for roadways and for public utility easements;
- (4) the improvement of roads;
- (5) the provision of adequate open spaces for travel, light, air, and recreation;
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
- (8) the avoidance or minimization of congestion; and
- (9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985; amd. Sec. 17, Ch. 471, L. 1995; amd. Sec. 2, Ch. 298, L. 2005.

Compiler's Comments:

2005 Amendment: Chapter 298 in introductory clause at beginning deleted "Before July 1, 1974"; in (9) near beginning after "environmental degradation and" deleted "the avoidance of"; deleted former (2) that read: "(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body"; and made minor changes in style. Amendment effective April 19, 2005.

sufficient evidence to prove the permit was revoked in retaliation.

Mr. Johnson said the County Health Department completed their review and said it looked good. DHES denied his application on grounds that the nitrate levels in his well were too high. State law requires nitrate levels to be below 2.5, his level was 1.4. DHES said that was too high and was approaching 2.5. As a result he has paid \$800 in attorney fees, and \$10,000 of improvements to the house and no permit. The cost of the test to get his permit reissued would be from \$10,000 to \$25,000. He said if he performed that test, he was sure they would find another reason to deny his application. He reviewed a letter he received from the DHES denying his permit. See EXHIBIT 3 for testimony, and phone conversation. He felt HB 521 would require state and county government to be accountable for their actions.

David Owen, Montana Chamber of Commerce, said in traveling the state he had talked to gas station owners that had paid \$10,000 to \$30,000 to replace tanks and cap off floor drains. He had also talked to dry cleaners who paid \$25,000 in fees. An implement dealer in the Bozeman area who was building a wash basin to wash tractors before he worked on them, told him it cost \$300,000. Businesses ask "tell us what the rules are, and why." The fiscal note makes it seem it is more expensive to justify rules than it would be to write them to begin with.

Steve Turkiewicz, Montana Automobile Dealers Association, said they support HB 521. If Montana government entities finds it too cumbersome or too expensive to justify in writing standards more stringent than federal rules, how can Montanans be required to comply or afford the costs?

Riley Johnson, National Federation Independent Businesses, said contrary to what a lot of people may believe, small businesses are not in favor of rape and pillage of the environment such as the water, air, etc. However, they do want accountability, and to "tell us why."

Chris Racicot, Executive Director, Montana Building Industry Association, said the building industry deals with state and local regulations. There were increased regulations and a void of any checks and balances that had almost gotten out of control. For the reasons already stated, they support HB 521.

Ken Williams, representing the Montana Power Company, said it was important to remember that federal standards were adopted to protect the environment, so when the state of Montana chooses to go beyond federal standards, the regulated community has a right to know the scientific basis for more stringent standards. They urge a do pass on HB 521.

Gail Abercrombie, Executive Director, Montana Petroleum Association, said that HB 521 was a good bill. It will create

business and regulatory efficiencies by allowing flexibilities to accommodate special situations in Montana. The bill would give Montana the opportunity to apply further science to meet their concerns.

Tom Ebzery, Attorney for Exxon, in Billings, said HB 521 had been subject to 4 subcommittee meetings and a suitable compromise was worked out. A lot of changes were made, and the bill provides provisions that probably won't be acceptable to all, but that was often true in a compromise. The bill doesn't strip any environmental laws, but for a rule to be more stringent than a federal rule they have to justify it through a findings process. There was a look-back provision that provided a petition mechanism for an affected party to obtain a review of an existing rule adopted after January 1, 1990. **Mr. Ebzery** said HB 521 represents a lot of work and recommends a do pass.

Charles Brooks, Billings Chamber of Commerce, said they asked the committee to consider a cost analysis of any environmental regulations. The bill would protect private property rights, and insure that proposed mandates were fully funded by the legislature. The EPA in setting their standards, goes through a very scientific analysis and review by independent scientists. **Mike Murphy, representing Montana Water Resources Association,** said they wish to go on record in support of HB 521.

Eric Williams, Pegasus Gold, said they support HB 521 as amended.

Tom Daubert, representing Ash Grove Cement Company, said they support the legislation. If anyone suggests that the bill would allow Ash Grove Cement Company to petition the state to review the rules and roll them back to make them weaker than they were, anyone who would say that, doesn't understand the legislation. If the Legislature directs a state agency to adopt rules that were stricter than the federal rules, the agency may do so. The bill does not interfere with that provision.

John Schontz, representing the Montana Association of Realtors, said their association supports the legislation. The bill would do a lot to make sure that good science was used, and that unfunded mandates on private citizens do not occur without good reason.

Don Allen, representing Montana Wood Products Association, said they were in support of HB 521. It is important that local governments were involved, because they too should be able to justify requirements beyond the federal government.

Lorna Frank, representing the Montana Farm Bureau Federation, said they support HB 521 because it was a good bill.

Rex Manuel, representing Cenex Petroleum Division, Laurel, said there was a lot of work that went into the bill and they support the bill as presented in the House.