

SENATE BILL NO. 340  
INTRODUCED BY GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A GROWTH POLICY IS NOT A REGULATION; REQUIRING THE GOVERNING BODY TO GIVE CONSIDERATION TO AN APPROVED GROWTH POLICY IN THE ADOPTION OF SUBDIVISION REGULATIONS; ELIMINATING THE REQUIREMENT THAT SUBDIVISION REGULATIONS BE IN ACCORDANCE WITH THE GOALS AND OBJECTIVES OF THE GROWTH POLICY WITHIN 1 YEAR OF ADOPTION OF A GROWTH POLICY; AND AMENDING SECTIONS 76-1-605, 76-1-606, AND 76-3-504, MCA."

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

**Section 1.** Section 76-1-605, MCA, is amended to read:

**"76-1-605. Use of adopted growth policy.** ~~(1) After~~ Subject to subsection (2), after adoption of ~~the~~ a growth policy, the ~~city council, board of county commissioners, or other~~ governing body within the ~~territorial jurisdiction of the board~~ area covered by the growth policy must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

~~(1)(a)~~ (a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

~~(2)(b)~~ (b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

~~(3)(c)~~ (c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy does not:

(i) require any action by a governing body that is not otherwise ~~required~~ AUTHORIZED by law; or

(ii) confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter."

**Section 2.** Section 76-1-606, MCA, is amended to read:

**"76-1-606. Effect of growth policy on subdivision regulations.** When a growth policy has been

approved, the governing body shall give consideration to the growth policy in the adoption of subdivision regulations adopted pursuant to chapter 3 of this title ~~must be made in accordance with the growth policy.~~"

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

**"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) except as provided in 76-3-210, 76-3-509, or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

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

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

(d) 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;

(e) 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;

(f) prescribe standards for:

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

(ii) grading and drainage;

(iii) 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;

(iv) the location and installation of utilities;

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

(h) 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.

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

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

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

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

(j) except as provided in this subsection, require the subdivider to establish ditch easements in the subdivision that are in locations of appropriate topographic characteristics and sufficient width, to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots; are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner. Establishment of easements pursuant to this subsection (1)(j) is not required if:

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

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

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

~~(l) if the governing body has adopted a growth policy pursuant to chapter 1 of this title, be made in accordance with the goals and objectives established in the growth policy that are within the scope of 76-3-501 within 1 year of adoption of the growth policy;~~

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

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

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