

## 1 SENATE BILL NO. 41

2 INTRODUCED BY E. BUTTREY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A GOVERNING BODY FROM CONSIDERING THE  
5 IMPACTS OF POTENTIAL FUTURE SUBDIVISIONS WHEN REVIEWING SUBDIVISION APPLICATIONS;  
6 AMENDING SECTION 76-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
7 APPLICABILITY DATE."

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

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11 **Section 1.** Section 76-3-608, MCA, is amended to read:

12 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to  
13 approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary  
14 plat, applicable environmental assessment, public hearing, planning board recommendations, or additional  
15 information demonstrates that development of the proposed subdivision meets the requirements of this chapter.  
16 A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts  
17 on educational services or based solely on parcels within the subdivision having been designated as  
18 wildland-urban interface parcels under 76-13-145.

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

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

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

25 (b) compliance with:

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

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

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

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

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

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

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

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

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

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

21 (8) A governing body may not consider the MITIGATION OF AN impact of a subdivision under review in  
22 conjunction with the impact of a future subdivision or subdivisions for which an application has not yet been filed  
23 SUBMITTED, EXCEPT WHEN THE SUBDIVISIONS ARE PART OF THE SAME PHASED DEVELOPMENT. THE PROVISIONS OF THIS  
24 SUBSECTION DO NOT LIMIT THE AUTHORITY OF A LOCAL GOVERNING BODY TO ENFORCE SUBDIVISIONS REGULATIONS  
25 PURSUANT TO 76-3-501."

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27 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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29 NEW SECTION. Section 3. Applicability. [This act] applies to subdivision applications submitted on  
30 or after July 1, 2013.

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