

**Unofficial Draft Copy**

As of: June 8, 2012 (8:08am)

LCed01

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act clarifying the exemption for the lease or rent of certain buildings, structures, or improvements under the Subdivision and Platting Act; defining "subdivisions for lease or rent"; providing review procedures for the lease or rent of certain buildings or structures; amending sections 76-3-103, 76-3-208, 76-4-125, 76-6-203, and 76-7-203, MCA; repealing sections 76-3-202 and 76-3-204, MCA; and providing an immediate effective date."

WHEREAS, on January 13, 2012, the Montana Attorney General issued an opinion, 54 A.G. Op. 5, stating that section 76-3-204, MCA, which exempts certain actions from the requirements of the Montana Subdivision and Platting Act, "does not apply to the construction or conveyance of more than one building, structure, or improvement on a single tract of record"; and

WHEREAS, limiting the exemption in section 76-3-204, MCA, to a single building or structure places an undue burden of undergoing full subdivision review on property owners and local government officials and staff; and

WHEREAS, it is the intent of the Legislature to clarify that the lease or rent of certain buildings, structures, or improvements should not require full subdivision review.

# Unofficial Draft Copy

As of: June 8, 2012 (8:08am)

LCed01

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

**Section 1.** Section 76-3-103, MCA, is amended to read:

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

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

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

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

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that

# Unofficial Draft Copy

As of: June 8, 2012 (8:08am)

LCed01

was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

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

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

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

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

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

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

(12) "Preliminary plat" means a neat and scaled drawing of a

# Unofficial Draft Copy

As of: June 8, 2012 (8:08am)

LCEd01

proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

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

(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to ~~or possession of~~ the parcels may be sold, ~~rented, leased,~~ or otherwise ~~conveyed~~ transferred and includes any resubdivision and further includes a condominium ~~or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.~~

(16) "Subdivision for lease or rent" means a division of land or land so divided in order that possession of a parcel, building, structure, improvement, or portions thereof may be leased, rented, or otherwise transferred, including an area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes. The term

# Unofficial Draft Copy

As of: June 8, 2012 (8:08am)

LCed01

does not include any other facility, as defined in 15-65-101, that is required by law to charge and collect a lodging facility use tax.

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

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

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

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

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

{Internal References to 76-3-103:

**Unofficial Draft Copy**

As of: June 8, 2012 (8:08am)

LCed01

x69-5-102      x76-4-127      x76-6-203      x76-7-203 }

**Section 2.** Section 76-3-208, MCA, is amended to read:

**"76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions.** (1) Subdivisions for lease or rent are exempt from the provisions of this chapter if the proposal complies with applicable local zoning regulations.

(2) When there are no applicable local zoning regulations, ~~Subdivisions created by rent or lease~~ subdivisions for lease or rent are exempt from the surveying and filing requirements of this chapter but must be submitted for review as provided in this section and the applicable local regulations adopted pursuant to 76-3-504 and approved by the governing body before portions thereof of the subdivision may be ~~rented or leased~~ leased or rented."

(3) (a) Except as provided in subsection (3) (b), the governing body shall approve, conditionally approve, or deny the subdivision for lease or rent within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to extend or suspend the review period, but in no case may the extension or suspension exceed one year.

# Unofficial Draft Copy

As of: June 8, 2012 (8:08am)

LCed01

(c) An application for subdivision for lease or rent must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The requirement to prepare an environmental assessment does not apply to a subdivision for rent or lease.

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a subdivision for lease or rent.

(4) The governing body may adopt regulations that further expedite review of subdivisions for lease or rent.

(5) The governing body may adopt regulations that establish requirements for review of subdivisions for lease or rent of six or more buildings, structures, or improvements or portions thereof that meet or exceed the requirements of subsection (3).

(6) (a) Review and approval, conditional approval, or denial of a subdivision for lease or rent must be based solely upon the regulations in effect at the time an application for subdivision for lease or rent is determined to contain sufficient information for review as provided in subsection (3) (a).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

(7) A governing body may establish a reasonable fee to be paid by the subdivider commensurate with the cost for reviewing a subdivision application pursuant to this section.

(8) Subdivisions for lease or rent that are in existence on or before [the effective date of this act] are not subject to the provisions of this section and are not subject to review for compliance with this chapter.

{Internal References to 76-3-208: None.}

**Section 3.** Section 76-4-125, MCA, is amended to read:

**"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable



# Unofficial Draft Copy

As of: June 8, 2012 (8:08am)

LCed01

state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by 76-4-104(6)(j) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a final decision on the application within 10 days after the local reviewing authority completes its review.

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 55 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the

# Unofficial Draft Copy

As of: June 8, 2012 (8:08am)

LCEd01

proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the ~~exclusions~~ exclusion cited in 76-3-201 ~~and 76-3-204~~;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel

from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

{*Internal References to 76-4-125:*

|           |           |           |             |
|-----------|-----------|-----------|-------------|
| x75-1-208 | x76-3-622 | x76-4-104 | x76-4-121   |
| x76-4-121 | x76-4-122 | x76-4-127 | x76-4-131 } |

**Section 4.** Section 76-6-203, MCA, is amended to read:

**"76-6-203. Types of permissible easements.** Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures--construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill--dumping or placing of soil or other substance

# Unofficial Draft Copy

As of: June 8, 2012 (8:08am)

LCed01

or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation--removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use--surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation--activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land--subdivision of land as defined in 76-3-103, and 76-3-104, ~~and 76-3-202~~;

(8) other acts--other acts or uses detrimental to such retention of land or water areas in their existing conditions."

{*Internal References to 76-6-203: None.*}

**Section 5.** Section 76-7-203, MCA, is amended to read:

**"76-7-203. Permissible easements.** (1) An environmental control easement under this chapter may prohibit or limit the following activities or uses:

(a) constructing or placing of buildings, camping trailers, housetrailer, mobile homes, roads, or other structures on or above the ground;

(b) dumping or placing of soil, debris, or other wastes or

# Unofficial Draft Copy

As of: June 8, 2012 (8:08am)

LCed01

substances as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(c) removing or destroying trees, shrubs, or other vegetation or planting or allowing growth of specific types of vegetation, such as crops for human or animal consumption or undesirable vegetation;

(d) excavating, dredging, or removing of gravel, soil, rock, or other materials or substances;

(e) using the surface of the land in a particular manner, such as for agricultural, residential, commercial, or industrial uses;

(f) subdividing the land, as described in 76-3-103~~7~~ and 76-3-104~~7~~, ~~and 76-3-202~~;

(g) disturbing soil caps, soil surfaces, berms, drainage structures, or other structures or other activities that may cause erosion or migration of hazardous wastes or substances at or from the environmental control site;

(h) drilling or using water wells for potable or nonpotable purposes;

(i) other activities or uses detrimental to or interfering with the remediation or cleanup of the environmental control site or detrimental to the preservation of remedial structures, measures, or technologies employed at the environmental control site; and

(j) other activities or uses that may result in a risk or threat to the public health, safety, or welfare or the environment.

(2) An environmental control easement under this chapter may include or require the following:

(a) maintenance of environmental control site remedial structures or other remedial measures, such as soil surfaces, soil caps, berms, fences, or drainage improvements;

(b) rights in the holder of the easement or others for continuing access to the site as necessary to implement, operate, maintain, and monitor remedial work and technologies, including operation and maintenance, and to ensure implementation and enforcement of the requirements, restrictions, and limitations specified in the easement instrument;

(c) prompt notification to the holder of the easement or others of transfers of all or any portion of an environmental control site or interest in the site or of any proposed changes in land use at the site;

(d) compliance with all requirements of any applicable governmental order;

(e) arrangements for indemnification or for reimbursement of any costs and expenses of the easement holder or others or other methods of allocating costs and expenses for remedial actions, operations and maintenance, or other activities on the environmental control site or with respect to the site;

(f) other obligations that any federal public entity or other public body having jurisdiction over the property determines are necessary to implement, ensure noninterference with, or ensure the protection of remedial work performed under a governmental order; or

**Unofficial Draft Copy**

As of: June 8, 2012 (8:08am)

LCed01

(g) other obligations that are necessary or advisable to reduce or eliminate risks or threats to the public health, safety, or welfare or the environment at environmental control sites."

{Internal References to 76-7-203: None.}

NEW SECTION. **Section 6. {standard} Repealer.** The following sections of the Montana Code Annotated are repealed:

76-3-202. Exemption for structures on complying subdivided lands.

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement.

{Internal References to 76-3-202: x76-6-203 x76-7-203  
Internal References to 76-3-204: x76-4-125 }

NEW SECTION. **Section 7. {standard} Effective date.** [This act] is effective on passage and approval.

- END -

{Name : Helen C. Thigpen  
Title : Attorney  
Agency : Legislative Services Division  
Phone : (406) 444-3804  
E-Mail : hthigpen@mt.gov}