**** Bill No. **

Introduced By *******

By Request of the ***

EDUCATION & LOCAL GOV'T IC
JUNE 18, 2012
EXHIBIT 2

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; revising certain county zoning protest procedures; amending sections 76-2-205, 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.

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

Section 1. Section 76-2-205, MCA, is amended to read:

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

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must:

(a) state:

(i) the boundaries of the proposed district;

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

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

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

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

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

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

(3) After the public hearing, the board of county

commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

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

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

(a) the boundaries of the proposed district;

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

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

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

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, ~~if~~ <u>the adoption or amendment of a zoning district or zoning regulations is not effective except upon a favorable vote of two-thirds of the</u>

present and voting members of the board of county commissioners if a protest against a change pursuant to subsection (1) is signed by:

(a) 40% of the real property owners within the district whose names appear on the last-completed assessment roll;

(b) or if real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

{*Internal References to 76-2-205: None.*}

Section 2. 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 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 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 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)~~(17) (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:*
x69-5-102 *x76-4-127* *x76-6-203* *x76-7-203* }

Section 3. 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 zoning 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.

(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 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 that is commensurate with the cost of 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 Title 76, chapters 3 and 4."

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

Section 4. 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 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

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 5. 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 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 6. 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, housetrailers, mobile homes, roads, or other structures on or above the ground;

(b) dumping or placing of soil, debris, or other wastes or 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~~,~~ and 76-3-104~~, 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

(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 7. {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: 76-6-203 76-7-203*
Internal References to 76-3-204: 76-4-125 }

NEW SECTION. **Section 8. {standard} Effective date.** [This act] is effective on passage and approval.

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