

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR GOVERNING BODIES TO FILE AMICUS
5 BRIEFS AND TO INTERVENE IN ACTIONS CHALLENGING SUBDIVISION APPLICATIONS IN DISTRICT
6 COURT; AND AMENDING SECTIONS 76-3-625 AND 76-25-503, MCA."

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

9
10 **Section 1.** Section 76-3-625, MCA, is amended to read:

11 **"76-3-625. Violations -- actions against governing body -- amicus brief -- intervention.** (1) A
12 person who has filed with the governing body an application for a subdivision under this chapter may bring an
13 action in district court to sue the governing body to recover actual damages caused by a final action, decision,
14 or order of the governing body or a regulation adopted pursuant to this chapter within 180 days of the final
15 action, decision, order, or adoption of a regulation. The governing body's decision, based on the record as a
16 whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

17 (2) (a) A party identified in subsection (3) who is aggrieved by a decision of the governing body to
18 approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision may,
19 within 30 days from the date of the written decision, appeal to the district court in the county in which the
20 property involved is located to challenge the approval, imposition of conditions, or denial of the preliminary plat.

21 (b) A party identified in subsection (3) who is aggrieved by any other final decision of the governing
22 body regarding a subdivision may, within 30 days from the date of the written decision, appeal to the district
23 court in the county in which the property involved is located to challenge the decision.

24 (c) A petition allowed in subsections (2)(a) and (2)(b) must specify the grounds upon which the
25 appeal is made. The governing body's decision, based on the record as a whole, must be sustained unless the
26 decision being challenged is arbitrary, capricious, or unlawful.

27 (3) The following parties may appeal under the provisions of subsection (2):

28 (a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) Before issuing an order that interprets a statute in this chapter that is administered by a governing body, the court shall invite any governing body who administers the statute to participate as an amicus curiae and file a brief in the case. The court shall wait a sufficient time after issuing the invitation to allow an interested governing body to file an amicus brief with the court. The court shall allow a governing body, a group of governing bodies, or an association whose membership is composed of governing bodies to file an amicus brief under this subsection.

(5) A nonparty who files a brief as an amicus curiae under subsection (4) may intervene in the case after an order has been issued interpreting a statute in this chapter and may seek a stay of that order pending appeal. The court shall grant the stay until the issue is finally resolved on appeal.

(6) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

Section 2. Section 76-25-503, MCA, is amended to read:

"76-25-503. Appeals -- amicus brief -- intervention. (1) Appeals of any final decisions made pursuant to this chapter must be made in accordance with this section.

(2) For a challenge to the adoption of or amendment to a land use plan, zoning regulation, zoning map, or subdivision regulation, a petition setting forth the basis for the challenge must be presented to the

1 district court within 30 days of the date of the resolution or ordinance adopted by the governing body.

2 (3) (a) Any final administrative land use decision, including but not limited to approval or denial of a
3 zoning permit, preliminary plat or final plat, imposition of a condition on a zoning permit or plat, approval or
4 denial of a variance from a zoning or subdivision regulation, or interpretation of land use regulations or map
5 may be appealed by the applicant or any aggrieved person to the planning commission.

6 (b) An appeal under subsection (3)(a) must be submitted in writing within 15 business days of the
7 challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

8 (c) The planning commission shall hear the appeal de novo. The planning commission is not
9 bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal.
10 The appellant has the burden of proving that the appealed decision was made in error.

11 (d) A decision of the planning commission on appeal takes effect on the date when the planning
12 commission issues a written decision.

13 (4) (a) Any final land use decision by the planning commission may be appealed by the applicant,
14 planning administrator, or any aggrieved person to the governing body.

15 (b) An appeal under subsection (4)(a) must be submitted in writing within 15 business days of the
16 challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

17 (c) The governing body shall hear the appeal de novo. The governing body is not bound by the
18 decision that has been appealed, but the appeal must be limited to the issues raised on appeal. The appellant
19 has the burden of proving that the appealed decision was made in error.

20 (d) A decision of the governing body on appeal takes effect on the date when the governing body
21 issues a written decision.

22 (5) (a) ~~No~~ A person may not challenge in district court a land use decision until that person has
23 exhausted the person's administrative appeal process as provided in this section.

24 (b) Any final land use decision of the governing body may be challenged by presenting a petition
25 setting forth the grounds for review of a final land use decision with the district court within 30 calendar days
26 after the written decision is issued.

27 (c) A challenge in district court to a final land use decision of the governing body is limited to the
28 issues raised by the challenger on administrative appeal.

(d) Before issuing an order that interprets a statute in this chapter that is administered by a governing body, the court shall invite any governing body who administers the statute to participate as an amicus curiae and file a brief in the case. The court shall wait a sufficient time after issuing the invitation to allow an interested governing body to file an amicus brief with the court. The court shall allow a governing body, a group of governing bodies, or an association whose membership is composed of governing bodies to file an amicus brief under this subsection.

(e) A nonparty who files a brief as an amicus curiae under subsection (5)(d) may intervene in the case after an order has been issued interpreting a statute in this chapter and may seek a stay of that order pending appeal. The court shall grant the stay until the issue is finally resolved on appeal.

(6) Every final land use decision made pursuant to this section must be based on the administrative record as a whole and must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(7) Nothing in this chapter is subject to any provision of Title 2, chapter 4."

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