

HOUSE BILL NO. 302

INTRODUCED BY F. MANDEVILLE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO HOW A GOVERNING BODY MAY DETERMINE THE IMPROPER USE OF CERTAIN EXEMPTIONS TO THE MONTANA SUBDIVISION AND PLATTING ACT; AMENDING SECTIONS 76-3-201, 76-3-207, AND 76-3-504, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land -- fees for examination of division. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) An exemption under subsection (1)(b) applies:



1 (a) to a division of land of any size;

2 (b) if the land that is divided is not conveyed to any entity other than the financial or lending institution
3 to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien,
4 or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided,
5 to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements
6 of this chapter.

7 (c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the
8 tract of land is subject to the provisions of this chapter if applicable.

9 (4) The governing body may examine a division of land to determine whether or not the requirements
10 of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

11 (5) With respect to establishing that the method of disposition is being adopted for the purpose of
12 evading this chapter, a governing body:

13 (a) has the burden of proof; and

14 (b) may not adopt rebuttable presumptions."

15

16 **Section 2.** Section 76-3-207, MCA, is amended to read:

17 **"76-3-207. Divisions or aggregations of land exempted from review but subject to survey**
18 **requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as
19 provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter,
20 the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot
21 created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying
22 requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to
23 applicable zoning regulations adopted under Title 76, chapter 2:

24 (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines
25 between adjoining properties;

26 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county
27 to each member of the landowner's immediate family;

28 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the
29 parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the
30 governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

- 1 (d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;
- 2 (e) divisions made for the purpose of relocating a common boundary line between a single lot within a
3 platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original
4 platted lot or original unplatted parcel continues to apply to those areas.
- 5 (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the
6 boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are
7 established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply
8 to those areas.
- 9 (2) Notwithstanding the provisions of subsection (1):
- 10 (a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or
11 rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more
12 lots must be reviewed and approved by the governing body before an amended plat may be filed with the county
13 clerk and recorder;
- 14 (b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural
15 purposes subjects the division to review under parts 5 and 6 of this chapter.
- 16 (3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the
17 county treasurer has certified that all real property taxes and special assessments assessed and levied on the
18 land to be divided have been paid.
- 19 (b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the
20 division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the
21 taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property
22 shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before
23 the division of land is made.
- 24 (ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as
25 a partial payment of the total tax that is due.
- 26 (4) The governing body may examine a division or aggregation of land to determine whether or not the
27 requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to
28 exceed \$200, for the examination.
- 29 (5) With respect to establishing that the method of disposition is being adopted for the purpose of
30 evading this chapter, a governing body:

- 1 (a) has the burden of proof; and
2 (b) may not adopt rebuttable presumptions."

3
4 **Section 3.** Section 76-3-504, MCA, is amended to read:
5 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this
6 chapter must, at a minimum:

- 7 (a) list the materials that must be included in a subdivision application in order for the application to be
8 determined to contain the required elements for the purposes of the review required in 76-3-604(1);
9 (b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the
10 governing body an environmental assessment as prescribed in 76-3-603;
11 (c) establish procedures consistent with this chapter for the submission and review of subdivision
12 applications and amended applications;
13 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
14 (e) provide for the identification of areas that, because of natural or human-caused hazards, are
15 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the
16 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures
17 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not
18 include building regulations as defined in 50-60-101 other than those identified by the department of labor and
19 industry as provided in 50-60-901.
20 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year
21 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;
22 (g) prescribe standards for:
23 (i) the design and arrangement of lots, streets, and roads;
24 (ii) grading and drainage;
25 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
26 the:
27 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that
28 will create one or more parcels containing less than 20 acres; and
29 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
30 containing 20 acres or more and less than 160 acres; and

- 1 (iv) the location and installation of public utilities;
- 2 (h) provide procedures for the administration of the park and open-space requirements of this chapter;
- 3 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
4 local, state, and federal government identified during the preapplication consultation conducted pursuant to
5 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review
6 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and
7 the failure of any agency to complete a review of an application may not be a basis for rejection of the application
8 by the governing body.
- 9 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider
10 to:
- 11 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
12 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
13 a legal right to the water and reserve and sever any remaining surface water rights from the land;
- 14 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
15 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
16 administered through a single entity that specifies administration and the rights and responsibilities of landowners
17 within the subdivision who have a legal right and access to the water; or
- 18 (iii) reserve and sever all surface water rights from the land;
- 19 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in
20 the subdivision that:
- 21 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical
22 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for
23 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
24 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision
25 lots;
- 26 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance,
27 and inspection of the ditch; and
- 28 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch
29 easement without the written permission of the ditch owner.
- 30 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

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

4 or

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

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

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

19 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
20 hearings;

21 (o) establish procedures describing how the governing body or its agent or agency will address
22 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

23 (p) establish criteria in accordance with the provisions of 76-3-201(5) and 76-3-207(5) that the governing
24 body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions
25 provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must
26 provide for an appeals process to the governing body if the reviewing authority is not the governing body.

27 (q) establish a preapplication process that:

28 (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that
29 is designated by the governing body to review subdivision applications prior to the subdivider submitting the
30 application;

1 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth
2 policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

3 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
4 state, and federal government, and any other entities that may be contacted for comment on the subdivision
5 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during
6 the review of the application, the agent or agency designated by the governing body contacts a public utility,
7 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or
8 agency shall notify the subdivider of the contact and the timeframe for response.

9 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the
10 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

11 (v) establishes a time limit after a preapplication meeting by which an application must be submitted;

12 (r) require that the written decision required by 76-3-620 must be provided to the applicant within 30
13 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision;

14 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple
15 spaces for recreational camping vehicles or mobile homes.

16 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under
17 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
18 development."

19
20 NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured,
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
22

23 NEW SECTION. **Section 5. Applicability.** [This act] applies to decisions rendered concerning
24 exemptions under 76-3-201 or 76-3-207 on or after [the effective date of this act].
25

- END -