

HOUSE BILL NO. 262  
INTRODUCED BY M. JOPEK

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE EXEMPTION FOR A WATER RIGHT PERMIT FOR A WATER ALLOCATION FROM GROUND WATER WHEN THE WITHDRAWAL FROM A WELL OR DEVELOPED SPRING IS 35 GALLONS A MINUTE OR LESS AND 10 ACRE-FEET A YEAR OR LESS FROM THE SAME SOURCE FROM TWO OR MORE WELLS OR DEVELOPED SPRINGS, REGARDLESS OF WHETHER THEIR DIVERSION WORKS ARE PHYSICALLY CONNECTED OR NOT, IN CERTAIN INSTANCES; PROVIDING THAT A WATER RIGHT PERMIT MUST BE OBTAINED FOR ALL PARCELS CREATED BY A MAJOR SUBDIVISION OR A SUBSEQUENT MINOR SUBDIVISION PRIOR TO FINAL PLAT APPROVAL IF THE WATER SUPPLY IS A DOMESTIC WELL; AMENDING SECTIONS 76-3-609, 76-3-611, AND 85-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Purpose.** (1) The purpose of 76-3-609(3) and (4), 76-3-611(1)(c), 85-2-306(9), and this section is to recognize that the regulation and management of surface water and ground water resources should conform to the legal standard that water is a unitary resource by requiring that a permit be obtained for an allocation of water before final plat approval of a major subdivision and any subsequent minor subdivision.

(2) The legislature recognizes that significant changes to water quality and quantity occur because of the subdivision of land and conversion of agricultural land and previously undeveloped land to residential and commercial uses.

(3) The legislature intends that 76-3-609(3) and (4), 76-3-611(1)(c), 85-2-306(9), and this section:

(a) reduce adverse water quality and quantity impacts on existing water users that result from major subdivisions and subsequent minor subdivisions; and

(b) protect the quality and quantity of ground water resources to benefit current and future residential, commercial, industrial, recreational, and instream flow beneficial uses.

**Section 2.** Section 76-3-609, MCA, is amended to read:

**"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application**

**-- governing body to adopt regulations.** (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record 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 an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection (2)(d)(iii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment;

(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and

(iii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in subsection (4), any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, ~~and 76-3-620~~, and Title 85, chapter

2, part 3.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in Title 85, chapter 2, part 3, subsection (2), and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(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."

**Section 3.** Section 76-3-611, MCA, is amended to read:

**"76-3-611. Review of final plat.** (1) The governing body shall examine each final subdivision plat and shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter; ~~and~~

(b) the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid; and

(c) the applicant has received permits for all water right allocations for each parcel located on the final plan through:

(i) an existing municipal supply;

(ii) a new appropriation pursuant to 85-2-302 and 85-2-311; or

(iii) the acquisition of an existing water right through a deed and pursuant to 85-2-402, if applicable.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

(b) A land surveyor may not act as an examining land surveyor in regard to a plat or certificate of survey in which the surveyor has a financial or personal interest."

**Section 4.** Section 85-2-306, MCA, is amended to read:

**"85-2-306. Exceptions to permit requirements.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

- (a) according to a permit received pursuant to 85-2-508; or
- (b) according to the requirements of an order issued pursuant to 85-2-507.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit if the combined appropriation is in a growth county described in subsection (10).

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification as necessary under subsection (1). The original of the

certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

- (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;
- (b) the appropriation is less than 30 acre-feet a year;
- (c) the appropriation is from a source other than a perennial flowing stream; and
- (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) For purposes of this section, a "combined appropriation" includes but is not limited to any ground water development consisting of two or more wells or developed springs, regardless of whether their diversion works are physically connected or not, that are developed in connection with:

(a) any major subdivision, as defined in 76-3-103 and 76-3-104, or that are created pursuant to any applicable provision in Title 76, chapter 3; or

(b) any subsequent minor subdivision as described in 76-3-609.

(10) For purposes of this section, a county is considered a growth county if:

(a) the county has a population greater than 30,000 at the time of the most recent federal decennial census or, in the interim between censuses, the most recent population estimates published by the bureau of the census, United States department of commerce; or

(b) the county has:

(i) a population greater than 15,000 at the time of the most recent federal decennial census or, in the interim between censuses, the most recent population estimates published by the bureau of the census, United States department of commerce; and

(ii) a population increase greater than 10% from the time of the prior census or from the census estimate 10 years prior to the current estimate."

NEW SECTION. Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].

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

NEW SECTION. Section 8. Applicability. [This act] applies to lots that are platted or a certificate of survey that is filed on or after [the effective date of this act].

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