

HOUSE BILL NO. 425
INTRODUCED BY J. SESSO

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EXEMPTIONS FROM CERTAIN SUBDIVISION REVIEW REQUIREMENTS AND REVISING REQUIRED CONTENTS OF SUBDIVISION REGULATIONS; REVISING THE KINDS OF DIVISIONS OF LAND, AGGREGATIONS OF LAND, AND BOUNDARY RELOCATIONS THAT ARE NOT SUBJECT TO REVIEW; CLARIFYING THE DIVISIONS THAT ARE SUBJECT TO CERTAIN SURVEY REQUIREMENTS AND ZONING REGULATIONS; ALLOWING A GOVERNING BODY TO EXAMINE DIVISIONS OF LAND TO VERIFY THAT AN EXEMPTION APPLIES; ALLOWING SUBDIVISION REGULATIONS TO RESTRICT FURTHER CONVEYANCE OF CERTAIN PARCELS THAT WERE CREATED UNDER EXEMPTION PROVISIONS; REQUIRING SUBDIVISION REGULATIONS TO REQUIRE A SUBDIVIDER TO MEET WITH AN AGENT OF THE GOVERNING BODY PRIOR TO SUBMITTAL OF A SUBDIVISION APPLICATION; AMENDING SECTIONS 15-16-102, 76-3-203, 76-3-301, 76-3-504, 76-3-609, AND 76-4-125, MCA; AND REPEALING SECTIONS 76-3-201 AND 76-3-207, MCA."

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

Section 1. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment -- penalty for delinquency. Unless suspended or canceled under the provisions of 10-1-606 or Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added to the

delinquent taxes as a penalty.

(4) (a) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(b) If taxes on property qualifying under the low-income property tax assistance provisions of 15-6-134(1)(c) and 15-6-191 are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due.

(5) (a) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full tax years if taxes for both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(b) A payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of subsection (5)(a) is not a partial payment.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) If the department revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.

(8) The county treasurer may accept a partial payment of centrally assessed property taxes as provided in ~~76-3-207~~ [section 4]."

NEW SECTION. Section 2. Exemptions for divisions of land -- includes divisions creating possessory interest but not tract of record. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of parts 4, 5, and 6 of this chapter do not apply to a division of land that:

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

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

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

(d) is in a location where the state does not have jurisdiction.

(2) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees for the examination.

NEW SECTION. Section 3. Exemption for divisions of land creating security interest -- subject to survey requirements and zoning regulations. (1) (a) Unless the method of disposition is adopted for the purpose of evading this chapter, review under parts 5 and 6 of this chapter is not required for a division of land that, subject to subsections (2) and (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.

(b) A division of land as provided in this subsection (1) is subject to the surveying requirements in 76-3-401 and to applicable zoning regulations adopted under Title 76, chapter 2.

(2) The provisions of subsection (1) apply:

(a) to a division of any size;

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

(c) if the subdivider provides a letter from a registered lending institution governed by Title 32, chapters 1 through 3 and 9, certifying that the parcel that is being created is for the purpose of providing security as provided in subsection (1)(a); and

(d) if the division complies with local regulations adopted under this title.

(3) The governing body may examine a division of land to determine whether or not the requirements of parts 5 and 6 of this chapter apply to the division and may establish reasonable fees for the examination.

NEW SECTION. Section 4. Exemption for other divisions and aggregations of land -- subject to survey requirements and zoning regulations -- conditions on division ordered by court of record -- exceptions. (1) Except as provided in subsections (3) and (4), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions and aggregations of land are exempt from review under parts 5 and 6 of this chapter, are subject to the surveying requirements of 76-3-401, and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

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

(b) divisions made outside of platted subdivisions, created in compliance with this chapter after July 1, 1973, for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties of the transaction enter into a covenant with the governing body that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots;

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside of a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply.

(f) subject to subsection (2), a division created by order of a court of record in this state or by operation of law or a division that, in the absence of an 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, as provided in Title 70, chapter 30;

(g) a division that creates cemetery lots; and

(h) a division created for rights-of-way or utility sites.

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

(b) A division may be created only by a court of record under subsection (1)(f):

(i) if the division does not conflict with local regulations adopted under Title 76; and

(ii) pursuant to the law of eminent domain or in cases of dissolution of marriage, probate, bankruptcy, or irreconcilable differences between the parties.

(3) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in a change in the number of lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder;

(b) a change in the use of the land exempt under subsection (1)(c) to anything other than agriculture subjects the division to review under parts 5 and 6 of this chapter;

(c) a change in the use of the land exempt under subsection (1)(h) to residential, commercial, or industrial use subjects the division to review under parts 5 and 6 of this chapter;

(d) parkland dedicated in compliance with this chapter may not be reduced in area through the use of an exemption, except as provided in 7-16-2324; and

(e) the parcel created by a division under subsection (1)(b) may not be further conveyed for a period of 2 years, or for the period of time specified in regulations adopted under 76-3-504(1)(p), from the date of the

transfer of interest from the grantor to the grantee. The period may be waived by the governing body upon determination by the governing body that the waiver of the period is appropriate.

(4) (a) Subject to subsection (4)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (4)(b) as a partial payment of the total tax that is due.

(5) The governing body may examine a division of land to determine whether or not the requirements of parts 5 and 6 of this chapter apply to the division and may establish reasonable fees for the examination.

(6) For a parcel created by a division of land under this section, there must be demonstrated an ability to extend the utilities to existing utility delivery points and an ability to extend legal and physical access to an existing public roadway.

Section 5. Section 76-3-203, MCA, is amended to read:

"76-3-203. Exemption for certain condominiums. Condominiums constructed on land ~~divided~~ subdivided in compliance with parts 5 and 6 of this chapter are exempt from the provisions of this chapter if:

(1) the approval of the original ~~division~~ subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621 are complied with; or

(2) the condominium proposal is in conformance with applicable local zoning regulations ~~where~~ when local zoning regulations are in effect."

Section 6. Section 76-3-301, MCA, is amended to read:

"76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form unless the plat is located

in an area over which the state does not have jurisdiction.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in ~~76-3-207(1)~~ [section 4(1)].

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of the action must be imposed against the party not prevailing."

Section 7. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner

acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

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

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

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

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

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

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in ~~76-3-201 or 76-3-207~~ [sections 2 through 4] is an attempt to evade the requirements of this chapter. The regulations may restrict the further conveyance of any parcel created under [sections 2 through 4] for a reasonable period of time from the date of the transfer of interest from the grantor to the grantee, and the regulations may provide for a waiver of that period of time. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) ~~allows~~ requires a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the

application;

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

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

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

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

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

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 8. 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~~ [sections 3 and 4] 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.

(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 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 9. 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(6), 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) 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 60 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 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 cited in 76-3-204~~ exemptions provided in [sections 2 and 3] 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 that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), 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."

NEW SECTION. Section 10. Repealer. Sections 76-3-201 and 76-3-207, MCA, are repealed.

NEW SECTION. Section 11. Codification instruction. [Sections 2 through 4] are intended to be codified as an integral part of Title 76, chapter 3, part 2, and the provisions of Title 76, chapter 3, part 2, apply to [sections 2 through 4].

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