

SENATE BILL NO. 248

INTRODUCED BY M. BLASDEL, E. BUTTREY, P. CONNELL, S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN EXEMPT WELL PERMIT IS NOT REQUIRED FOR USE ON A LOT OR PARCEL CREATED BY A FAMILY TRANSFER DIVISION OF LAND; ESTABLISHING A FEE TO BE PAID WITH A NOTICE OF COMPLETION LIMITS ON SALES OF LAND DIVIDED BY FAMILY TRANSFER; PROVIDING A PENALTY FOR EVADING SUBDIVISION REGULATIONS; AMENDING SECTION SECTIONS 76-3-207 AND 85-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

SECTION 1. SECTION 76-3-207, MCA, IS AMENDED TO READ:

"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division -- limits on resale -- penalty. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions 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 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 to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

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

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

1 platted lot or original unplatted parcel continues to apply to those areas.

2 (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the
3 boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are
4 established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply
5 to those areas.

6 (2) Notwithstanding the provisions of subsection (1):

7 (a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or
8 rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more
9 lots must be reviewed and approved by the governing body before an amended plat may be filed with the county
10 clerk and recorder;

11 (b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural
12 purposes subjects the division to review under parts 5 and 6 of this chapter.

13 (3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the
14 county treasurer has certified that all real property taxes and special assessments assessed and levied on the
15 land to be divided have been paid.

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

21 (ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as
22 a partial payment of the total tax that is due.

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

26 (5) (a) A person who receives a division of land pursuant to subsection (1)(b) may not transfer or
27 otherwise convey the division of land to a nonimmediate family member for a minimum of 2 years after the date
28 of the division unless the person demonstrates to the governing body a documented financial, medical, or other
29 hardship requiring the sale or other conveyance of the division of land.

30 (b) A person who knowingly attempts to evade subdivision regulations through the use of a division of

1 land pursuant to subsection (1)(b) is subject to a civil penalty of \$5,000 per division of land, payable to the
 2 governing body."

3

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

5 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground
 6 water may be appropriated only by a person who has a possessory interest in the property where the water is
 7 to be put to beneficial use and exclusive property rights in the ground water development works.

8 (b) If another person has rights in the ground water development works, water may be appropriated with
 9 the written consent of the person with those property rights or, if the ground water development works are on
 10 national forest system lands, with any prior written special use authorization required by federal law to occupy,
 11 use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation,
 12 withdrawal, use, or distribution of water under the certificate.

13 (c) If the person does not have a possessory interest in the real property from which the ground water
 14 may be appropriated, the person shall provide to the owner of the real property written notification of the works
 15 and the person's intent to appropriate ground water from the works. The written notification must be provided to
 16 the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are
 17 proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice
 18 requirement only and does not create an easement in or over the real property where the ground water
 19 development works are located.

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

21 (a) according to a permit received pursuant to 85-2-508; or

22 (b) according to the requirements of a rule promulgated pursuant to 85-2-506.

23 (3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before
 24 appropriating ground water by means of a well or developed spring:

25 (i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter
 26 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

27 (ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal
 28 heating or cooling exchange applications, all of the water extracted is returned without delay to the same source
 29 aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically
 30 connected surface waters is more than twice the distance between the extraction well and the injection well;

1 (iii) except as provided in subsection (3)(a)(v), when the appropriation is outside a stream depletion zone,
 2 is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation
 3 from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow
 4 rate, requires a permit; or

5 (iv) except as provided in subsection (3)(a)(v), when the appropriation is within a stream depletion zone,
 6 is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from
 7 the same source by two or more wells or developed springs exceeding this limitation requires a permit; or

8 ~~(v) when the appropriation is 35-20 gallons a minute or less, does not exceed 10-2 acre-feet a year, and~~
 9 ~~is for use on a lot or parcel created by a family transfer division of land provided for in 76-3-207(1)(b). UNDER THIS~~
 10 ~~SUBSECTION (3)(A)(V), ONLY ONE WELL OR DEVELOPED SPRING MAY BE LOCATED ON A PARCEL CREATED BY A FAMILY~~
 11 ~~TRANSFER DIVISION OF LAND PROVIDED FOR IN 76-3-207(1)(B).~~

12 ~~(V) WHEN THE APPROPRIATION IS FROM ONE WELL OR DEVELOPED SPRING ON EACH ON A NEW LOT OR PARCEL~~
 13 ~~CREATED BY A FAMILY TRANSFER DIVISION OF LAND PROVIDED FOR IN 76-3-207(1)(B) AND:~~

14 ~~(A) IS OUTSIDE A STREAM DEPLETION ZONE, IS 35 GALLONS A MINUTE OR LESS, AND DOES NOT EXCEED 10~~
 15 ~~ACRE-FEET A YEAR, AND ONLY ONE WELL OR DEVELOPED SPRING UNDER THIS SUBSECTION (3)(A)(V) IS LOCATED ON THE~~
 16 ~~LOT OR PARCEL; OR~~

17 ~~(B) IS INSIDE A STREAM DEPLETION ZONE, IS 20 GALLONS A MINUTE OR LESS, AND DOES NOT EXCEED 2~~
 18 ~~ACRE-FEET A YEAR, AND ONLY ONE WELL OR DEVELOPED SPRING UNDER THIS SUBSECTION (3)(A)(V) IS LOCATED ON THE~~
 19 ~~LOT OR PARCEL.~~

20 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water
 21 for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the
 22 department through its offices AND PAY A FEE OF \$15.

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

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

30 (c) A certificate of water right may not be issued until a correct and complete notice has been filed with

1 the department, including proof of landowner notification or a written federal special use authorization as
2 necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department
3 shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date
4 of priority of the right.

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

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

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

18 (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

19 (b) the appropriation is less than 30 acre-feet a year;

20 (c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than
21 a perennial flowing stream; and

22 (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned
23 or under the control of the applicant and that is 40 acres or larger.

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

1 (b) If the impoundment or pit is on national forest system lands, an application is not correct and
 2 complete under this section until the applicant has submitted proof of any written special use authorization
 3 required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,
 4 impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

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

7 (9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of
 8 the Flathead Indian reservation."
 9

10 NEW SECTION. SECTION 3. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
 11 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
 12 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
 13 APPLICATIONS.

14
 15 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

16
 17 NEW SECTION. Section 5. Retroactive applicability. ~~[This act]~~ [SECTION 2] applies retroactively, within
 18 the meaning of 1-2-109, to lots or parcels created by family transfer divisions of land on or after October 20, 2014.

19

20

- END -