

1 SENATE BILL NO. 231

2 INTRODUCED BY M. BLASDEL, J. ELLSWORTH, W. GALT, C. KNUDSEN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PROVIDING A
 5 ~~WATER RIGHT EXEMPTION FOR FAMILY TRANSFER~~ DIVISION OF LAND; CLARIFYING THAT DIVISIONS
 6 OF LAND BY GIFT, SALE, OR AGREEMENT ARE SUBJECT TO REVIEW UNDER TITLE 76, CHAPTERS 5
 7 AND 6; CLARIFYING THAT DIVISIONS OF LAND TRANSFERRED TO THE LANDOWNER'S IMMEDIATE
 8 FAMILY ARE SUBJECT TO CERTAIN ZONING REGULATIONS AND MINIMUM LOT SIZES; PROHIBITING
 9 SUBSEQUENT TRANSFERS OF DIVISIONS OF LAND FROM A LANDOWNER'S IMMEDIATE FAMILY FOR
 10 2 YEARS; PROVIDING A PENALTY; AMENDING SECTIONS 76-3-105 AND 76-3-207 ~~AND 85-2-306~~, MCA;
 11 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE ~~AND A RETROACTIVE APPLICABILITY DATE.~~"

12

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

14

15 **SECTION 1.** SECTION 76-3-105, MCA, IS AMENDED TO READ:

16 **"76-3-105. Violations.** ~~Any~~ Except as provided in 76-3-207, any person who violates any provision of
 17 this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable
 18 by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3
 19 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in
 20 violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a
 21 separate and distinct offense."

22

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

24 **"76-3-207. Divisions or aggregations of land exempted from review but subject to survey**
 25 **requirements and zoning regulations -- exceptions -- fees for examination of division -- limits on**
 26 **transfer.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose
 27 of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the
 28 resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are

1 subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions
 2 and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

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

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

7 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which
 8 the landowner enters into a covenant for the purposes of this chapter with the governing body that runs with the
 9 land and provides that the divided land will be used exclusively for agricultural purposes, subject to the
 10 provisions of 76-3-211;

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

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

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

19 (2) ~~(A)~~ Notwithstanding the provisions of subsection (1)~~);~~ :

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

24 ~~(b) as provided in 76-3-211, a division of land exempted under subsection (1)(c) that is changed from~~
 25 ~~agricultural purposes is subject to review under parts 5 and 6 of this chapter; and~~

26 ~~(c) a A a division of land MADE OUTSIDE A PLATTED SUBDIVISION AND exempted under subsection (1)(b)~~
 27 ~~THAT IS ALSO LOCATED IN AN APPLICABLE ZONING DISTRICT WITH SIZE LIMITATIONS LARGER THAN 5 ACRES PER PARCEL~~
 28 ~~FOR RESIDENTIAL USE is:~~

1 ~~(i) subject to zoning regulations for residential, commercial, industrial, or agricultural use within an~~
 2 ~~applicable zoning district unless a variance is granted; and~~

3 ~~(ii) allowed IF:~~

4 ~~(I) THE PARCEL TO BE DIVIDED IS NOT LESS THAN 10 ACRES; AND~~

5 ~~(II) THE EACH FAMILY TRANSFER PARCEL CREATED BY THE DIVISION IS A MINIMUM OF 5 ACRES IN SIZE AND~~
 6 ~~CONFORMS WITH ALL ZONING REGULATIONS IN PLACE AT THE TIME THE DIVISION IS MADE to be at least 2 acres in size~~
 7 ~~if subject to zoning regulations for residential use within an applicable zoning district.~~

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

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

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

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

21 ~~(5) A person AN IMMEDIATE FAMILY MEMBER who receives a division of land pursuant to subsection~~
 22 ~~(1)(b) may not transfer or otherwise convey the division of land to a nonimmediate family member for a~~
 23 ~~minimum PERIOD of 2 years after the date of the division unless the person demonstrates to the governing body~~
 24 ~~a documented financial, medical, or other hardship requiring the sale or other conveyance of the division of land~~
 25 ~~THE GOVERNING BODY SETS A PERIOD OF LESS THAN 2 YEARS. A GOVERNING BODY MAY AUTHORIZE VARIANCES FROM~~
 26 ~~THESE REQUIREMENTS TO ADDRESS HARDSHIP SITUATIONS.~~

27 ~~(6) A person who knowingly attempts~~ IF A GOVERNING BODY CAN PROVE BY DOCUMENTED EVIDENCE IN A
 28 ~~COURT OF COMPETENT JURISDICTION THAT A PERSON HAS KNOWINGLY ATTEMPTED to evade subdivision regulations~~

1 through the use of a division of land pursuant to subsection (1)(b), THAT PERSON is subject to a civil penalty of
 2 \$5,000 for each division of land, payable to the 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),~~
 6 ~~ground water may be appropriated only by a person who has a possessory interest in the property where the~~
 7 ~~water is 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~~
 9 ~~with the written consent of the person with those property rights or, if the ground water development works are~~
 10 ~~on national forest system lands, with any prior written special use authorization required by federal law to~~
 11 ~~occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage,~~
 12 ~~transportation, 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,~~
 26 ~~chapter 33, and the appropriation is used only for emergency fire protection, emergency fire training, and~~
 27 ~~emergency fire-related operations, which may include enclosed storage;~~

28 (ii) ~~when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive~~

1 geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the
 2 same source aquifer, and the distance between the extraction well and both the nearest existing well and the
 3 hydraulically connected surface waters is more than twice the distance between the extraction well and the
 4 injection well;

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

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

13 ~~(v) when the appropriation is on a new lot or parcel created by a family transfer division of land~~
 14 ~~provided for in 76-3-207(1)(b) and:~~

15 ~~(A) is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-~~
 16 ~~feet a year, and only one well or developed spring under this subsection (3)(a)(v) is located on the lot or parcel;~~
 17 ~~or~~

18 ~~(B) is inside a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet~~
 19 ~~a year, and only one well or developed spring under this subsection (3)(a)(v) is located on the lot or parcel.~~

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

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

28 ~~(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation~~

1 is the date of refiling a correct and complete notice with the department.

2 (c) A certificate of water right may not be issued until a correct and complete notice has been filed
3 with the department, including proof of landowner notification or a written federal special use authorization as
4 necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department
5 shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date
6 of priority of the right.

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

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

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

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

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

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

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

26 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a
27 permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete
28 application for a stock water provisional permit, the department shall automatically issue a provisional permit. If

1 the department determines after a hearing that the rights of other appropriators have been or will be adversely
 2 affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make
 3 the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights
 4 of other appropriators. [For purposes of an adverse effects determination under this subsection, the department
 5 may not consider adverse effects on any water right identified in a written consent to approval filed pursuant to
 6 85-2-311.]

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

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

13 (9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries
 14 of the Flathead Indian reservation. (Bracketed language in subsection (7)(a) terminates September 30, 2023--
 15 sec. 8, Ch. 243, L. 2017.)"

16

17 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

18

19 NEW SECTION. Section 4.—Retroactive applicability. [This act] applies retroactively, within the
 20 meaning of 1-2-109, to lots or parcels created by family transfer divisions of land on or after October 20, 2014.

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- END -