

SENATE BILL NO. 131

INTRODUCED BY F. MANDEVILLE, G. HERTZ, C. FRIEDEL, D. ZOLNIKOV, J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT REVIEW REQUIREMENTS OF EXEMPT DIVISIONS AND AGGREGATIONS OF LAND; REQUIRING THE GOVERNING BODY TO COMPLETE REVIEWS WITHIN 20 WORKING DAYS; PROHIBITING THE IMPOSITION OF CERTAIN NEW CRITERIA FOR APPROVAL; AND AMENDING SECTIONS 76-3-201 AND 76-3-207, MCA."

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 (4), 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) An exempt division of land as provided in subsection (1)(a) is not considered a subdivision

1 under this chapter if not more than four new lots or parcels are created from the original lot or parcel.

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

5 (4) An exemption under subsection (1)(b) applies:

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

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

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

14 (5) If a parcel of land was divided pursuant to subsection (1)(b) and one of the parcels created by
15 the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the
16 conveyance of the remaining parcel is not subject to the requirements of this chapter.

17 (6) The governing body:

18 (a) may examine a division of land to determine whether or not the requirements of this chapter
19 apply to the division ~~and~~;

20 (b) may establish reasonable fees, not to exceed \$200, for the examination;

21 (c) shall complete the examination and approve or deny the application for a division of land under
22 this section within 20 working days of the receipt of an application containing all materials and information
23 required by the governing body to complete the examination under regulations adopted pursuant to 76-3-
24 504(1)(p); and

25 (d) may not impose conditions on the approval of a division of land under this section except for
26 conditions necessary to ensure compliance with the survey requirements of Title 76, chapter 3, part 4."

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

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

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

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

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

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

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

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

24 (2) Notwithstanding the provisions of subsection (1), within a platted subdivision filed with the
 25 county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the
 26 number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the
 27 governing body before an amended plat may be filed with the county clerk and recorder.

28 (3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless

1 the county treasurer has certified that all real property taxes and special assessments assessed and levied on
2 the land to be divided have been paid.

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

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

10 (4) The governing body:

11 (a) may examine a division or aggregation of land to determine whether or not the requirements of
12 this chapter apply to the division or aggregation and;

13 (b) may establish reasonable fees, not to exceed \$200, for the examination;

14 (c) shall complete the examination and approve or deny the application for a division or
15 aggregation of land under this section within 20 working days of the receipt of an application containing all
16 materials and information required by the governing body to conduct its review under regulations adopted
17 pursuant to 76-3-504(1)(p); and

18 (d) may not impose conditions on the approval of a division or aggregation of land under this
19 section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter
20 3, part 4."

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