

1 Senate BILL NO. 270  
2 INTRODUCED BY Sen.

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
5 11-3862 R.C.M. 1947 TO EXCLUDE EXISTING SUBDIVISIONS FROM  
6 THE SURVEYING REQUIREMENT IN SOME CASES."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 11-3862, R.C.M. 1947, is amended to  
10 read as follows:

11 "11-3862. Surveys required--exceptions--standards for  
12 monumentation. (1) All divisions of land for sale other  
13 than a subdivision after the effective date of this act into  
14 parcels which cannot be described as 1/32 or larger aliquot  
15 parts of a United States government section or a United  
16 States government lot must be surveyed by or under the  
17 supervision of a registered land surveyor; provided,  
18 however, any division of land to which this section would  
19 otherwise apply need not be surveyed if a previous  
20 subdivision plat on file divided the property into regular  
21 rectangular lots and if the proposed division would involve  
22 no more than one division per existing lot and each division  
23 results in a rectangular lot.

24 (2) Any division of an existing certificate of survey  
25 or of more than one lot in an existing subdivision under the

1 provisions of this section must be divided by an amendment  
2 to the original certificate of survey or the original  
3 subdivision plat. No division of an existing certificate of  
4 survey or subdivision may be made under the provisions of  
5 this section that reduces the lot to an area less than that  
6 required by state law at the time the plat was filed.

7 ~~(2)~~ (3) Every subdivision of land after June 30, 1973,  
8 shall be surveyed and platted in conformance with this act  
9 by or under the supervision of a registered land surveyor.  
10 Subdivision plats shall be prepared and filed in accordance  
11 with this act and regulations adopted pursuant thereto. All  
12 division of sections into aliquot parts and retracement of  
13 lines must conform to United States bureau of land  
14 management instructions, and all public land survey corners  
15 shall be filed in accordance with Corner Recordation Act of  
16 Montana (sections 67-2001 through 67-2019). Engineering  
17 plans, specifications, and reports required in connection  
18 with public improvements and other elements of the  
19 subdivision required by the governing body shall be prepared  
20 and filed by a registered engineer or a registered land  
21 surveyor as their respective licensing laws allow in  
22 accordance with this act and regulations adopted pursuant  
23 thereto.

24 ~~(3)~~ (4) The county clerk and recorder of any county  
25 shall not record any instrument which purports to transfer

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1 title to or possession of a parcel or tract of land which is  
 2 required to be surveyed by this act unless the required  
 3 certificate of survey or subdivision plat has been filed  
 4 with the clerk and recorder and the instrument of transfer  
 5 describes the parcel or tract by reference to the filed  
 6 certificate or plat.

7 ~~(4)~~ (5) Instruments of transfer of land which is  
 8 acquired for state highways may refer by parcel and project  
 9 number to state highway plans which have been recorded in  
 10 compliance with section 32-2413, and are exempted from the  
 11 surveying and platting requirements of this act; provided,  
 12 however, that if such parcels are not shown on highway plans  
 13 of record, instruments of transfer of such parcels shall be  
 14 accompanied by and refer to appropriate certificates of  
 15 survey and plats when presented for recording.

16 ~~(5)~~ (6) The provisions of this act shall not apply to  
 17 the division of state-owned land unless the division creates  
 18 a second or subsequent parcel from a single tract for sale,  
 19 rent or lease for residential purposes after July 1, 1974.

20 ~~(6)~~ (7) Unless the method of disposition is adopted  
 21 for the purpose of evading this act, the following divisions  
 22 of land are not subdivisions under this act but are subject  
 23 to the surveying requirements of this section for divisions  
 24 of land not amounting to subdivisions.

25 (a) Divisions made for the purpose of relocating

1 common boundary lines between adjoining properties.

2 (b) Divisions made for the purpose of a gift or sale  
 3 to any member of the landowner's immediate family.

4 (c) Divisions made by sale or agreement to buy and  
 5 sell where the parties to the transaction enter a covenant  
 6 running with the land and revocable only by mutual consent  
 7 of the governing body and the property owner that the  
 8 divided land will be used exclusively for agricultural  
 9 purposes. Any change in use of the land for anything other  
 10 than agricultural purposes subjects the division to the  
 11 provisions of this chapter.

12 (d) A single division of a parcel when the transaction  
 13 is an occasional sale.

14 ~~(7)~~ (8) Subdivisions created by rent or lease are  
 15 exempt from the surveying and filing requirements of this  
 16 act but must be submitted for review and approved by the  
 17 governing body before portions thereof may be rented or  
 18 leased.

19 ~~(8)~~ (9) Unless the method of disposition is adopted  
 20 for the purpose of evading this act, the requirements of  
 21 this act shall not apply to any division of land:

22 (a) which is created by order of any court of record  
 23 in this state or by operation of law, or which, in the  
 24 absence of agreement between the parties to the sale, could  
 25 be created by an order of any court in this state pursuant

1 to the law of eminent domain (sections 93-9901 through  
2 93-9926);

3 (b) which is created by a lien, mortgage, or trust  
4 indenture;

5 (c) which creates an interest in oil, gas, minerals,  
6 or water which is now or hereafter severed from the surface  
7 ownership of real property;

8 (d) which creates cemetery lots;

9 (e) which is created by the reservation of a life  
10 estate;

11 (f) which is created by lease or rental for farming  
12 and agricultural purposes.

13 ~~(9)~~ (10) The sale, rent, lease, or other conveyance of  
14 one or more parts of a building, structure, or other  
15 improvement situated on one or more parcels of land is not a  
16 division of land, as that term is defined in this act, and  
17 is not subject to the requirements of this act.

18 ~~(10)~~ (11) The department of intergovernmental relations  
19 shall, in conformance with the Montana Administrative  
20 Procedure Act (sections 82-4201 through 82-4225), prescribe  
21 uniform standards for monumentation and for the form,  
22 accuracy, and descriptive content of records of survey.

23 ~~(11)~~ (12) It shall be the responsibility of the  
24 governing body to require the replacement of all monuments  
25 removed in the course of construction."

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