

HOUSE BILL NO. 827

2/15 Introduced
2/15 Referred to Natural Resources
2/23 Hearing
2/25 Committee Report-No Recommendation
2/25 Statement of Intent Attached
2/27 2nd Reading Do Not Pass
2/27 Bill Killed

1 HOUSE BILL NO. 827
 2 INTRODUCED BY Loy Dan Lewis Hager Eckel
 3 Waldron
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA
 5 SUBDIVISION AND FLATTING ACT TO REDEFINE "SUBDIVISION",
 6 MODIFY EXEMPTIONS, AND MODIFY REVIEW FOR MINOR SUBDIVISIONS;
 7 AMENDING SECTIONS 76-3-103, 76-3-104, 76-3-201, 76-3-207,
 8 AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 9 DATE."

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

11 Section 1. Section 76-3-103, MCA, is amended to read:
 12 "76-3-103. Definitions. As used in this chapter,
 13 unless the context or subject matter clearly requires
 14 otherwise, the following words or phrases shall have the
 15 following meanings:
 16

17 (1) "Certificate of survey" means a drawing of a field
 18 survey prepared by a registered surveyor for the purpose of
 19 disclosing facts pertaining to boundary locations.

20 (2) "Dedication" means the deliberate appropriation of
 21 land by an owner for any general and public use, reserving
 22 to himself no rights which are incompatible with the full
 23 exercise and enjoyment of the public use to which the
 24 property has been devoted.

25 (3) "Division of land" means the segregation of one or

1 more parcels of land from a larger tract held in single or
 2 undivided ownership by transferring or contracting to
 3 transfer title to or possession of a portion of the tract or
 4 properly filing a certificate of survey or subdivision plat
 5 establishing the identity of the segregated parcels pursuant
 6 to this chapter.

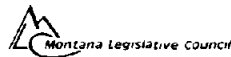
7 (4) "Examining land surveyor" means a registered land
 8 surveyor duly appointed by the governing body to review
 9 surveys and plats submitted for filing.

10 (5) "Governing body" means a board of county
 11 commissioners or the governing authority of any city or town
 12 organized pursuant to law.

13 (6) "Irregularly shaped tract of land" means a parcel
 14 of land other than an aliquot part of the United States
 15 government survey section or a United States government lot,
 16 the boundaries or areas of which cannot be determined
 17 without a survey or trigonometric calculation.

18 (7) "Occasional sale" means one ~~sale of a division of~~
 19 land--within--any--12-month--period division of land for
 20 purposes of conveyance within a 24-month period following
 21 the time of filing a certificate of survey for the division
 22 of land.

23 (8) "Planned unit development" means a land
 24 development project consisting of residential clusters,
 25 industrial parks, shopping centers, office building parks,



1 or any combination thereof which comprises a planned mixture
2 of land uses built in a prearranged relationship to each
3 other and having open space and community facilities in
4 common ownership or use.

5 (9) "Plat" means a graphical representation of a
6 subdivision showing the division of land into lots, parcels,
7 blocks, streets, alleys, and other divisions and
8 dedications.

9 (10) "Preliminary plat" means a neat and scaled drawing
10 of a proposed subdivision showing the layout of streets,
11 alleys, lots, blocks, and other elements of a subdivision
12 which furnish a basis for review by a governing body.

13 (11) "Final plat" means the final drawing of the
14 subdivision and dedication required by this chapter to be
15 prepared for filing for record with the county clerk and
16 recorder and containing all elements and requirements set
17 forth in this chapter and in regulations adopted pursuant
18 thereto.

19 (12) "Registered land surveyor" means a person licensed
20 in conformance with the Montana Professional Engineers'
21 Registration Act (Title 37, chapter 67) to practice
22 surveying in the state of Montana.

23 (13) "Registered professional engineer" means a person
24 licensed in conformance with the Montana Professional
25 Engineers' Registration Act (Title 37, chapter 67) to

1 practice engineering in the state of Montana.

2 (14) "Subdivider" means any person who causes land to
3 be subdivided or who proposes a subdivision of land.

4 (15) "Subdivision" means a division of land or land so
5 divided which creates one or more parcels containing less
6 than 20 acres, exclusive of public roadways, in order that
7 the title to or possession of the parcels may be sold,
8 rented, leased, or otherwise conveyed and shall include any
9 resubdivision and shall further include any condominium or
10 area, regardless of its size, which provides or will provide
11 multiple space for recreational camping vehicles, or mobile
12 homes, and any parcels, regardless of size, which are part
13 of a series of exempt transactions or divisions or which are
14 multiple lots or tracts contiguous by point or line, joined
15 by a common road system, or connected to a common sewer or
16 water system."

17 Section 2. Section 76-3-104, MCA, is amended to read:

18 "76-3-104. What constitutes subdivision. A subdivision
19 shall comprise only those parcels ~~less than 20 acres~~ meeting
20 the definition of "subdivision" under 76-3-103 which have
21 been segregated from the original tract, and the plat
22 thereof shall show all such parcels whether contiguous or
23 not."

24 Section 3. Section 76-3-201, MCA, is amended to read:

25 "76-3-201. Exemption for certain divisions of land.

1 Unless the method of disposition is adopted for the purpose
2 of evading this chapter, the requirements of this chapter
3 shall not apply to any division of land which:

4 ~~{1}--is-created-by-order-of-any-court-of-record-in-this~~
5 ~~state-or-by-operation-of-law-or-which,-in-the-absence-of~~
6 ~~agreement-between-the-parties-to-the-sale,-could-be-created~~
7 ~~by-an-order-of-any-court-in-this-state-pursuant-to-the-law~~
8 ~~of-eminent-domain-{Title-70,-chapter-30};~~

9 {2}(1) is created to provide security, when required
10 by a bank, other financial institution, or other mortgagor,
11 for construction mortgages, liens, or trust indentures,
12 except that this exemption may be used only if foreclosure
13 occurs, and this restriction must be shown on the face of
14 the certificate of survey;

15 {3}(2) creates an interest in oil, gas, minerals, or
16 water which is now or hereafter severed from the surface
17 ownership of real property;

18 {4}(3) creates cemetery lots;

19 {5}(4) is created by the reservation of a life estate;

20 {6}(5) is created by lease or rental for farming and
21 agricultural purposes."

22 Section 4. Section 76-3-207, MCA, is amended to read:

23 "76-3-207. Subdivisions exempted from review but
24 subject to survey requirements -- exceptions. (1) Except as
25 provided in subsection (2), unless the method of disposition

1 is adopted for the purpose of evading this chapter, the
2 following divisions of land are not subdivisions under this
3 chapter but are subject to the surveying requirements of
4 76-3-401 for divisions of land not amounting to
5 subdivisions:

6 (a) divisions made outside of platted subdivisions for
7 the purpose of relocating common boundary lines between
8 adjoining properties, if no additional parcels are created;

9 (b) divisions a single division made outside of
10 platted subdivisions for the purpose of a-gift-or-sale one
11 transfer to any each member of the landowner's immediate
12 family, if the landowner has held title or contract for
13 deed to the property, as recorded in the office of county
14 clerk and recorder, continuously for a period of 3 years.
15 Any further division of any parcel of less than 20 acres
16 resulting from use of this exemption must be reviewed by the
17 governing body as a subdivision under the provisions of this
18 chapter.

19 (c) divisions made outside of platted subdivisions by
20 sale or agreement to buy and sell where the parties to the
21 transaction enter a covenant running with the land and
22 revocable only by mutual consent of the governing body and
23 the property owner that the divided land will be used
24 exclusively for agricultural purposes, provided that only
25 structures related to agricultural production are permitted

1 on the divided land;

2 (d) a single division of a parcel outside of platted
 3 subdivisions when the transaction is an occasional sale, if
 4 the landowner has held title or contract for deed to the
 5 property, as recorded in the office of county clerk and
 6 recorder, continuously for a period of 3 years. Any further
 7 division of any parcel of less than 20 acres resulting from
 8 use of this exemption must be reviewed by the governing body
 9 as a subdivision under the provisions of this chapter.

10 (e) for five or fewer lots within a platted
 11 subdivision, relocation of common boundaries and the
 12 aggregation of lots, if the survey showing the relocation
 13 or aggregation is filed with the county clerk and recorder
 14 as an amended plat;

15 (f) divisions created by order of any court of record
 16 in this state or by the operation of law or which, in the
 17 absence of agreement between the parties to the sale, could
 18 be created by an order of any court in this state pursuant
 19 to the laws of eminent domain under Title 70, chapter 30.

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

21 (a) within a platted subdivision filed with the county
 22 clerk and recorder, any division of lots which results in an
 23 increase in the number of lots or which redesigns or
 24 rearranges six or more lots must be reviewed and approved by
 25 the governing body, and an amended plat must be filed with

1 the county clerk and recorder;

2 (b) any change in use of the land exempted under
 3 subsection (1)(c) for anything other than agricultural
 4 purposes subjects the division to the provisions of this
 5 chapter.

6 (3) For each land division exempted from subdivision
 7 review under subsection (1):

8 (a) the landowner shall provide evidence of legal
 9 access or easements for ingress, egress, and utility
 10 extensions and evidence that appropriate state and county
 11 road approach permits will be obtained;

12 (b) all resulting parcels of less than 20 acres must
 13 be surveyed and shown on a certificate of survey recorded in
 14 accordance with this chapter; and

15 (c) the county treasurer shall certify that no real
 16 property taxes assessed and levied on the land to be divided
 17 are delinquent.

18 (4) Each land division that is exempted from
 19 subdivision review under subsection (1) and is located
 20 within a legally zoned area must conform to the applicable
 21 zoning regulations relating to lot design, access, and
 22 installation of improvements, and the appropriate governing
 23 body or designated agent shall certify to that conformance
 24 on the face of the survey or plat."

25 Section 5. Section 76-3-609, MCA, is amended to read:

1 "76-3-609. Review procedure for minor subdivisions.
 2 Subdivisions containing five or fewer parcels where proper
 3 access to all lots is provided and in which no land is to be
 4 dedicated to the public for parks or playgrounds are to be
 5 reviewed as follows:

6 (1) The governing body must approve, conditionally
 7 approve, or disapprove the first such subdivision from a
 8 tract of record within 35 days of the submission of an
 9 application for approval thereof.

10 (2) The governing body shall state in writing the
 11 conditions which must be met if the subdivision is
 12 conditionally approved or what local regulations would not
 13 be met by the subdivision if it disapproves the subdivision.

14 (3) The requirements for holding a public hearing, and
 15 preparing an environmental assessment, finding that the
 16 subdivision is in the public interest, and donating land or
 17 money for parks or playgrounds shall not apply to the first
 18 such minor subdivision created from a tract of record.

19 (4) The basis of the governing body's decision to
 20 approve, conditionally approve, or disapprove the first
 21 minor subdivision from a tract of record shall be whether
 22 the subdivision conforms to the local subdivision
 23 regulations and the effect on local services and the public
 24 health and safety.

25 ~~†4~~(5) Subsequent Second and subsequent minor

1 subdivisions and resubdivision of a first minor subdivision
 2 from a tract of record shall be reviewed under 76-3-505 and
 3 regulations adopted pursuant to that section."

4 NEW SECTION. Section 6. Severability. If a part of
 5 this act is invalid, all valid parts that are severable from
 6 the invalid part remain in effect. If a part of this act is
 7 invalid in one or more of its applications, the part remains
 8 in effect in all valid applications that are severable from
 9 the invalid applications.

10 NEW SECTION. Section 7. Effective date. This act is
 11 effective on passage and approval.

-End-

HB 0827/02
COMM. ON
NATURAL RESOURCES
AS AMENDED
WITHOUT RECOMMENDATION

HOUSE BILL NO. 827

INTRODUCED BY LORY, BRANDEWIE,
HARPER, ECK, HALLIGAN, WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA
SUBDIVISION AND PLATTING ACT TO REDEFINE "SUBDIVISION",
MODIFY EXEMPTIONS, AND MODIFY REVIEW FOR MINOR SUBDIVISIONS;
AMENDING SECTIONS 76-3-103, 76-3-104, 76-3-201, 76-3-207,
76-3-402, AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

Section 1. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter,
unless the context or subject matter clearly requires
otherwise, the following words or phrases shall have the
following meanings:

(1) "Certificate of survey" means a drawing of a field
survey prepared by a registered surveyor for the purpose of
disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of
land by an owner for any general and public use, reserving
to himself no rights which are incompatible with the full
exercise and enjoyment of the public use to which the
property has been devoted.

(3) "Division of land" means the segregation of one or
more parcels of land from a larger tract held in single or
undivided ownership by transferring or contracting to
transfer title to or possession of a portion of the tract or
properly filing a certificate of survey or subdivision plat
establishing the identity of the segregated parcels pursuant
to this chapter.

(4) "Examining land surveyor" means a registered land
surveyor duly appointed by the governing body to review
surveys and plats submitted for filing.

(5) "Governing body" means a board of county
commissioners or the governing authority of any city or town
organized pursuant to law.

(6) "Irregularly shaped tract of land" means a parcel
of land other than an aliquot part of the United States
government survey section or a United States government lot,
the boundaries or areas of which cannot be determined
without a survey or trigonometric calculation.

(7) "Occasional sale" means one ~~sale-of-a-division-of~~
land--within--any--12-month--period division of land for
purposes of conveyance within a 24-month period following
the time of filing a certificate of survey for the division
of land.

(8) "Planned unit development" means a land
development project consisting of residential clusters,



1 industrial parks, shopping centers, office building parks,
2 or any combination thereof which comprises a planned mixture
3 of land uses built in a prearranged relationship to each
4 other and having open space and community facilities in
5 common ownership or use.

6 (9) "Plat" means a graphical representation of a
7 subdivision showing the division of land into lots, parcels,
8 blocks, streets, alleys, and other divisions and
9 dedications.

10 (10) "Preliminary plat" means a neat and scaled drawing
11 of a proposed subdivision showing the layout of streets,
12 alleys, lots, blocks, and other elements of a subdivision
13 which furnish a basis for review by a governing body.

14 (11) "Final plat" means the final drawing of the
15 subdivision and dedication required by this chapter to be
16 prepared for filing for record with the county clerk and
17 recorder and containing all elements and requirements set
18 forth in this chapter and in regulations adopted pursuant
19 thereto.

20 (12) "Registered land surveyor" means a person licensed
21 in conformance with the Montana Professional Engineers'
22 Registration Act (Title 37, chapter 67) to practice
23 surveying in the state of Montana.

24 (13) "Registered professional engineer" means a person
25 licensed in conformance with the Montana Professional

1 Engineers' Registration Act (Title 37, chapter 67) to
2 practice engineering in the state of Montana.

3 (14) "Subdivider" means any person who causes land to
4 be subdivided or who proposes a subdivision of land.

5 (15) "Subdivision" means a division of land or land so
6 divided which creates:

7 (A) one or more parcels containing less than 20 acres,
8 exclusive of public roadways, in order that the title to or
9 possession of the parcels may be sold, rented, leased, or
10 otherwise conveyed and shall include any resubdivision and
11 shall further include any condominium or area, regardless of
12 its size, which provides or will provide multiple space for
13 recreational camping vehicles, or mobile homes; and any

14 (B) TWO OR MORE ADDITIONAL parcels, regardless of
15 size, which are part-of-a-series-of-exempt-transactions-or
16 divisions-or-which-are-multiple-lots-or-tracts contiguous by
17 point or line, joined by a common road system, or connected
18 to a common sewer or water system."

19 Section 2. Section 76-3-104, MCA, is amended to read:

20 "76-3-104. What constitutes subdivision. A subdivision
21 shall comprise only those parcels less-than-20-acres meeting
22 the definition of "subdivision" under 76-3-103 which have
23 been segregated from the original tract, and the plat
24 thereof shall show all such parcels whether contiguous or
25 not."

Section 3. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land.

Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which:

~~{1}--is-created-by-order-of-any-court-of-record-in-this state-or-by-operation-of-law-or-which,--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-eminant-domain-(Title-70,--chapter-30);~~

{2}(1) is created to provide security, when required by a bank, other financial institution, or other mortgagor, for construction mortgages, liens, or trust indentures, except that this exemption may be used only if foreclosure occurs, and this restriction must be shown on the face of the certificate of survey;

{3}(2) creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

{4}(3) creates cemetery lots;

{5}(4) is created by the reservation of a life estate;

{6}(5) is created by lease or rental for farming and agricultural purposes."

Section 4. Section 76-3-207, MCA, is amended to read:

"76-3-207. Subdivisions exempted from review but

subject to survey requirements -- exceptions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties, if no additional parcels are created;

(b) divisions a single division made outside of platted subdivisions for the purpose of a-gift-or-sale one transfer to any each member of the landowner's immediate family; ~~if-the-landowner-has-held-title-or-contract-for deed-to-the-property,--as-recorded-in-the-office-of-county clerk--and--recorder,--continuously-for-a-period-of-3-years;~~ WITHIN A 24-MONTH PERIOD FOLLOWING THE TIME OF FILING A CERTIFICATE OF SURVEY FOR THE DIVISION OF LAND. Any further division of any parcel of less than 20 acres resulting from use of this exemption must be reviewed by the governing body as a subdivision under the provisions of this chapter.

(c) divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and

1 the property owner that the divided land will be used
 2 exclusively for agricultural purposes, provided that only
 3 structures related to agricultural production are permitted
 4 on the divided land;

5 (d) a single division of a parcel outside of platted
 6 subdivisions when the transaction is an occasional sale, ~~if~~
 7 ~~the landowner has held title or contract for deed to the~~
 8 ~~property, as recorded in the office of county clerk and~~
 9 ~~recorder, continuously for a period of 3 years.~~ Any further
 10 division of any parcel of less than 20 acres resulting from
 11 use of this exemption must be reviewed by the governing body
 12 as a subdivision under the provisions of this chapter.

13 (e) for five or fewer lots within a platted
 14 subdivision, relocation of common boundaries and the
 15 aggregation of lots, if the survey showing the relocation
 16 or aggregation is filed with the county clerk and recorder
 17 as an amended plat;

18 (f) divisions created by order of any court of record
 19 in this state or by the operation of law or which, in the
 20 absence of agreement between the parties to the sale, could
 21 be created by an order of any court in this state pursuant
 22 to the laws of eminent domain under Title 70, chapter 30.

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

24 (a) within a platted subdivision filed with the county
 25 clerk and recorder, any division of lots which results in an

1 increase in the number of lots or which redesigns or
 2 rearranges six or more lots must be reviewed and approved by
 3 the governing body, and an amended plat must be filed with
 4 the county clerk and recorder;

5 (b) any change in use of the land exempted under
 6 subsection (1)(c) for anything other than agricultural
 7 purposes subjects the division to the provisions of this
 8 chapter.

9 (3) For each land division exempted from subdivision
 10 review under subsection (1):

11 (a) the landowner shall provide evidence of legal
 12 access or easements for ingress, egress, and utility
 13 extensions and evidence that appropriate state and county
 14 road approach permits will be obtained;

15 (b) all resulting parcels of less than 20 acres must
 16 be surveyed and shown on a certificate of survey recorded in
 17 accordance with this chapter; and

18 (c) the county treasurer shall certify that no real
 19 property taxes assessed and levied on the land to be divided
 20 are delinquent.

21 (4) Each land division that is exempted from
 22 subdivision review under subsection (1) and is located
 23 within a legally zoned area must conform to the applicable
 24 zoning regulations relating to lot design, access, and
 25 installation of improvements, and the appropriate governing

1 body or designated agent shall certify to that conformance
 2 on the face of the survey or plat."

3 SECTION 5. SECTION 76-3-402, MCA, IS AMENDED TO READ:

4 "76-3-402. Survey and platting requirements for
 5 subdivided lands. (1) Every subdivision of land after June
 6 30, 1973, except those subdivisions that can be described as
 7 one-sixteenth or larger aliquot parts of a United States
 8 government section or a United States government lot, shall
 9 be surveyed and platted in conformance with this chapter by
 10 or under the supervision of a registered land surveyor.

11 (2) Subdivision plats shall be prepared and filed in
 12 accordance with this chapter and regulations adopted
 13 pursuant thereto.

14 (3) All division of sections into aliquot parts and
 15 retracement of lines must conform to United States bureau of
 16 land management instructions, and all public land survey
 17 corners shall be filed in accordance with Corner Recordation
 18 Act of Montana (Title 70, chapter 22, part 1). Engineering
 19 plans, specifications, and reports required in connection
 20 with public improvements and other elements of the
 21 subdivision required by the governing body shall be prepared
 22 and filed by a registered engineer or a registered land
 23 surveyor as their respective licensing laws allow in
 24 accordance with this chapter and regulations adopted
 25 pursuant thereto."

1 Section 6. Section 76-3-609, MCA, is amended to read:

2 "76-3-609. Review procedure for minor subdivisions.
 3 Subdivisions containing five or fewer parcels where proper
 4 access to all lots is provided and in which no land is to be
 5 dedicated to the public for parks or playgrounds are to be
 6 reviewed as follows:

7 (1) The governing body must approve, conditionally
 8 approve, or disapprove the first such subdivision from a
 9 tract of record within 35 days of the submission of an
 10 application for approval thereof.

11 (2) The governing body shall state in writing the
 12 conditions which must be met if the subdivision is
 13 conditionally approved or what local regulations would not
 14 be met by the subdivision if it disapproves the subdivision.

15 (3) The requirements for holding a public hearing, and
 16 preparing an environmental assessment, finding that the
 17 subdivision is in the public interest, and donating land or
 18 money for parks or playgrounds shall not apply to the first
 19 such minor subdivision created from a tract of record.

20 (4) The basis of the governing body's decision to
 21 approve, conditionally approve, or disapprove the first
 22 minor subdivision from a tract of record shall be whether
 23 the subdivision conforms to the local subdivision
 24 regulations and the effect on local services and the public
 25 health and safety.

1 †4) (5) Subsequent Second and subsequent minor
2 subdivisions and resubdivision of a first minor subdivision
3 from a tract of record shall be reviewed under 76-3-505 and
4 regulations adopted pursuant to that section."

5 NEW SECTION. Section 7. Severability. If a part of
6 this act is invalid, all valid parts that are severable from
7 the invalid part remain in effect. If a part of this act is
8 invalid in one or more of its applications, the part remains
9 in effect in all valid applications that are severable from
10 the invalid applications.

11 NEW SECTION. Section 8. Effective date. This act is
12 effective on passage and approval.

-End-