

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

INTRODUCED BY

House BILL NO. 450
McDermott

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE SUBDIVISION AND PLATTING ACT; AMENDING SECTIONS 76-3-103, 76-3-104, AND 76-3-401, 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 the landowner no rights that 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 of record 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) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant ~~thereto~~ to this chapter.

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

(7) "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

1 cannot be determined without a survey or trigonometric calculation.

2 (8) "Legal description" means:

3 (a) a metes and bounds or quasi metes and bounds description;

4 (b) an aliquot part or government lot created in accordance with the United States rectangular
5 survey system;

6 (c) a small tract, such as a homestead entry survey or mineral survey, as defined by the bureau
7 of land management manual of surveying instructions;

8 (d) a lot or lot and block created by and shown on a platted subdivision;

9 (e) a parcel, tract, or lot created by and shown on a certificate of survey; or

10 (f) proportional, area, residual, or exception parcels referenced in a deed of record.

11 ~~(8)~~(9) "Planned unit development" means a land development project consisting of residential
12 clusters, industrial parks, shopping centers, or office building parks that comprise a planned mixture of land
13 uses built in a prearranged relationship to each other and having open space and community facilities in
14 common ownership or use.

15 ~~(9)~~(10) "Plat" means a graphical representation of a subdivision showing the division of land into
16 lots, parcels, blocks, streets, alleys, and other divisions and dedications.

17 ~~(10)~~(11) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the
18 layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review
19 by a governing body.

20 ~~(11)~~(12) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter
21 67, to practice surveying in the state of Montana.

22 ~~(12)~~(13) "Registered professional engineer" means a person licensed in conformance with Title 37,
23 chapter 67, to practice engineering in the state of Montana.

24 ~~(13)~~(14) "Subdivider" means a person who causes land to be subdivided or who proposes a
25 subdivision of land.

26 ~~(14)~~(15) "Subdivision" means a division of land or land so divided that creates one or more parcels
27 containing less than 160 acres from a tract of record that cannot be described as a one-quarter aliquot part
28 of a United States government section, exclusive of public roadways, in order that the title to or possession
29 of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and
30 further includes a condominium or area, regardless of its size, that provides or will provide multiple space

1 for recreational camping vehicles or mobile homes.

2 ~~(15)~~(16) (a) "Tract of record" means:

3 (i) a parcel of land, irrespective of ownership, that can be identified by legal description,
4 independent of any other parcel of land, using documents on file in the records of the county clerk and
5 recorder's office or federal repository and includes a quarter quarter section or government lot created by
6 an approved survey conducted under federal law;

7 (ii) each individual parcel of land identified by a legal description unless the parcel has been joined
8 with one or more other parcels has a legal description that describes the resulting single larger parcel; and

9 (iii) a single larger parcel created pursuant to subsection (16)(a)(ii) that is shown and described on
10 a certificate of survey on file in the office of clerk and recorder setting forth the single larger parcel.

11 (b) The term does not apply to multiple parcels shown on a single deed or other instrument."

12

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

14 **"76-3-104. What constitutes subdivision.** A subdivision comprises only those parcels containing
15 less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government
16 section that have been segregated from a tract of record when the parcels have been segregated from the
17 original tract. The subdivision plat must show all the parcels whether contiguous or not. A survey or
18 transfer of one of several contiguous quarter quarter sections or government lots does not constitute a
19 subdivision."

20

21 **Section 3.** Section 76-3-401, MCA, is amended to read:

22 **"76-3-401. Survey requirements for lands other than subdivisions.** All divisions of land for sale
23 other than a subdivision after July 1, 1974, into parcels ~~which~~ that cannot be described as ~~1/32~~ 1/16 or
24 larger aliquot parts of a United States government section or a United States government lot must be
25 surveyed by or under the supervision of a registered land surveyor. Surveys required under this section
26 must comply with the requirements of 76-3-406."

27

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

29

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0450, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising the subdivision and platting act.

ASSUMPTIONS:

1. It is assumed that all 56 county and 128 municipal governments would need to revise their local subdivision regulations to reflect the changes required by this bill. Local governments are required to adopt subdivision regulations under 76-3-501, MCA.
2. It is assumed that this bill would establish each 40 acre quarter/quarter section as a separate tract of record which may be conveyed without local government review. This may result in the creation of many unreviewed parcels of land for sale in Montana.
3. It is assumed that this bill would divide, into separate tracts, without survey or local government review, many small parcels, referred to as government lots.
4. HB 450 would create new unsurveyed and unreviewed lots wherever a currently existing parcel is transected by a section, quarter section or quarter/quarter section line.

FISCAL IMPACT:

Passage of HB 450 would have no fiscal impact on the state.


EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The cost of revising local subdivision regulations for the 56 county governments and 128 municipal governments is estimated to total \$137,000. These estimates are derived from approximate costs incurred by county and municipal governments to update subdivision regulations to conform to amendments passed by the 1993 Legislature. The analysis was based on a survey of county and municipal governments conducted in 1995 on a comparable bill (HB 473).

(Note: The survey taken by The Department of Commerce estimated total cost of \$348,000, which included local government staff time. OBPP feels that staff time of \$211,000 is not an out-of-pocket cost, and therefore not a cost of this bill.)

TECHNICAL NOTES:

1. The phrase "proportional, area, residual, or exemption parcels referenced in a deed of record" used on line 10, page 2 in reference to "legal description" may be unclear.
2. New subsection (16)(a) amends the current definition of "tract of record" to include quarter/quarter sections (page 3, line 5) which nominally contain 40 acres. The effect of this change is to modify the Act's definition of "subdivision" (page 2, line 27) and 76-3-104, MCA "What constitutes subdivision" (page 3, line 14) from 160 acres to 40 acres. However, the bill does not propose to make a corresponding change in these two definitions. These three provisions should be reconciled to eliminate ambiguity.
3. It is unclear as to whether the new subsections (I), (ii), and (iii) (page 3, lines 3 through 10) are independent of one another or must be applied collectively to define "tract of record."

 2-11-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DANIEL MCGEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0450, as introduced

HB 450