

HOUSE BILL NO. 681

INTRODUCED BY J. FITZPATRICK, K. WALSH, R. MINER, G. OBLANDER, J. DARLING

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO LOCAL AND STATE REGULATION OF SUBDIVISIONS AND DETERMINATIONS OF WATER AVAILABILITY; REVISING SUBDIVISION REVIEW CRITERIA INVOLVING THE AVAILABILITY OF WATER; CLARIFYING THE DEFINITION OF "WATER RIGHT"; REVISING PROCESSES FOR ISSUANCE OF A CERTIFICATE OF WATER RIGHT FOR AN APPROPRIATION OF GROUNDWATER THAT IS EXEMPT FROM PERMITTING REQUIREMENTS; AMENDING SECTIONS 76-3-501, 76-3-604, 76-3-608, 76-3-622, 76-4-104, 85-2-102, AND 85-2-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. (1) The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (a) the orderly development of their jurisdictional areas;
- (b) the coordination of roads within subdivided land with other roads, both existing and planned;
- (c) the dedication of land for roadways and for public utility easements;
- (d) the improvement of roads;
- (e) the provision of adequate open spaces for travel, light, air, and recreation;
- (f) the provision of adequate transportation, water, and drainage;
- (g) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
- (h) the avoidance or minimization of congestion; and
- (i) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would

appropriation or water distribution facility or the application of water to anything but a beneficial use.

(28) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(29) "Water division" means a drainage basin as defined in 3-7-102.

(30) "Water judge" means a judge as provided for in Title 3, chapter 7.

(31) "Water master" means a master as provided for in Title 3, chapter 7.

(32) (a) "Water right" means the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact.

(b) The term does not include an authorized notice of intent to appropriate groundwater pursuant to 85-2-306.

(33) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(34) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 7. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the

works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, emergency fire training, and emergency fire-related operations, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

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

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

(v) for a parcel that received a certificate of subdivision approval from the department of environmental quality and a predetermination letter from the department of natural resources and conservation prior to [the effective date of this act] when the purpose of the use does not change and the volume of the

appropriation does not exceed the volume identified for the parcel in the predetermination letter from the department of natural resources and conservation.

(b) (i) Before appropriating groundwater by means of a well or developed spring pursuant to subsection (3)(a)(iii) or (3)(a)(iv), a person shall file with the department, on a form provided by the department, a correct and complete notice of intent to appropriate groundwater.

(ii) The department shall notify the person of any defects in the notice of intent to appropriate groundwater within 10 business days.

(iii) A notice of intent to appropriate groundwater that is not corrected and completed within 60 days of a notice of defects is terminated.

(iv) Within 10 business days of determining that a notice of intent to appropriate groundwater is correct and complete, the department shall review the notice for compliance with subsection (3)(a) and shall authorize or deny the notice of intent to appropriate groundwater. If the department denies the notice of intent to appropriate groundwater, the department shall include the reasons for the denial.

(v) Unless extended by the department, an appropriation under subsection (3) must be completed within 5 years from the date the notice of intent to appropriate groundwater is authorized. One extension may be granted by the department for up to 5 additional years. The request for an extension must be filed on a form provided by the department and must demonstrate that progress has been made toward putting the water to beneficial use.

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

(ii) Water use by a public water supply system subject to Title 75, chapter 6, part 1, is considered perfected and the appropriation of water for beneficial use complete when construction of the public water supply system is finished, at which time a notice of completion may be filed and must include a copy of the approval of the public water supply system by the department of environmental quality. All water use by a public water supply system pursuant to subsection (3)(a)(iii) or (3)(a)(iv) must be measured using a totalizing metering device, and measurements must be reported annually on a form prescribed by the department. Noncompliance with metering and reporting requirements may result in a fine determined by the department.

1 ~~(ii)(iii)~~ Upon-On receipt of the notice of completion, the department shall review the notice and may,
2 before issuing a certificate of water right, return a defective notice for correction or completion, together with the
3 reasons for returning it. A correct and complete notice of completion for an appropriation under subsection
4 (3)(a)(iii) or (3)(a)(iv) must establish that the appropriation was completed in substantial accordance with the
5 notice of intent to appropriate groundwater authorized by the department under subsection (3)(b). A notice does
6 not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department
7 within ~~30-60~~ days of notification of defects ~~or within a further time as the department may allow, not to exceed 6~~
8 ~~months.~~

9 ~~(iii)(iv)~~ If a notice is not corrected and completed within the time allowed, ~~the priority date of~~
10 ~~appropriation is the date of refileing a correct and complete notice with the department~~ authorization expires and
11 a new notice of intent to appropriate groundwater is required to use water under subsection (3)(a)(iii) or
12 (3)(a)(iv).

13 ~~(e)(d)~~ A certificate of water right may not be issued until a correct and complete notice has been filed
14 with the department, including proof of landowner notification or a written federal special use authorization as
15 necessary under subsection (1). The original of the certificate must be sent to the appropriator and a duplicate
16 must be maintained in the department's centralized database. ~~The department shall keep a copy of the~~
17 ~~certificate in its office in Helena.~~ The date of filing of the notice of completion is the date of priority of the right.

18 ~~(d) — (i)~~ ~~Construction of a water supply system subject to Title 75, chapter 6, part 1, and use of a~~
19 ~~permit exception for the appropriation of water pursuant to this section is proof of beneficial use.~~

20 ~~(ii) — The department shall allocate a volume of 10 acre feet a year to the system and issue a~~
21 ~~certificate of water right after the conditions in subsection (3)(d)(i) are met.~~

22 ~~(iii) — The department shall consider a water right as perfected after the conditions in subsection~~
23 ~~(3)(d)(i) are met.~~

24 ~~(iv) — When the appropriation is for a water supply system that is subject to Title 75, chapter 6, part 1,~~
25 ~~and is located outside of a stream depletion zone and does not exceed 10 acre feet a year:~~

26 ~~(A) — For the purposes of subsection (3)(b)(i), the appropriation will be considered perfected upon~~
27 ~~completion of construction of the water supply system.~~

28 ~~(B) — A copy of the department of environmental quality approval for the water supply system must~~

~~be submitted with the notice of completion. This section does not preclude the public water supply developer or any subsequent owners from expanding the water system or from revising the water use restrictions within the subdivision, provided that the total amount does not exceed 10 acre-feet per year.~~

~~(C) — Water appropriated under this exception must be measured and reported annually to the department.~~

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

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

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

- (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;
- (b) the appropriation is less than 30 acre-feet a year;
- (c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than a perennial flowing stream; and
- (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely

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1 affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make
2 the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights
3 of other appropriators.

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

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

10 (9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior
11 boundaries of the Flathead Indian reservation."

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13 **NEW SECTION. Section 8. Effective date.** [This act] is effective January 1, 2026.

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15 **NEW SECTION. Section 9. Applicability.** [This act] applies to subdivisions that are reviewed
16 pursuant to Title 76, chapter 3, on or after [the effective date of this act].

17 - END -