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HOUSE BILL 1083

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

EARLENE ROBERTS

AN ACT

RELATING TO SUBDIVISIONS; CHANGING CERTAIN WATER PERMIT
REQUIREMENTS; AMENDING SECTIONS OF THE NEW MEXICO SUBDIVISION
ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973,
Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS. -- As used in the New Mexico
Subdivision Act:

A. "immediate family member" means a husband, wife,
father, stepfather, mother, stepmother, brother, stepbrother,
sister, stepsister, son, stepson, daughter, stepdaughter,
grandson, stepgrandson, granddaughter, stepgranddaughter, nephew
and niece, whether related by natural birth or adoption;

B. "lease" means to lease or offer to lease land;

1 C. "parcel" means land capable of being described by
2 location and boundaries and not dedicated for public or common
3 use;

4 D. "person" means any individual, estate, trust,
5 receiver, cooperative association, club, corporation, company,
6 firm, partnership, joint venture, syndicate or other entity;

7 E. "final plat" means a map, chart, survey, plan or
8 replat certified by a licensed, registered land surveyor
9 containing a description of the subdivided land with ties to
10 permanent monuments prepared in a form suitable for filing of
11 record;

12 F. "preliminary plat" means a map of a proposed
13 subdivision showing the character and proposed layout of the
14 subdivision and the existing conditions in and around it and
15 need not be based upon an accurate and detailed survey of the
16 land;

17 G. "sell" means to sell or offer to sell land;

18 H. "subdivide" means to divide a surface area of
19 land into a subdivision;

20 I. "subdivider" means any person who creates or who
21 has created a subdivision individually or as part of a common
22 promotional plan or any person engaged in the sale, lease or
23 other conveyance of subdivided land; however, "subdivider" does
24 not include any duly licensed real estate broker or salesperson
25 acting on another's account;

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1 J. "subdivision" means the division of a surface
2 area of land, including land within a previously approved
3 subdivision, into two or more parcels for the purpose of sale,
4 lease or other conveyance or for building development, whether
5 immediate or future; but "subdivision" does not include:

6 (1) the sale, lease or other conveyance of any
7 parcel that is thirty-five acres or larger in size within any
8 twelve-month period, provided that the land has been used
9 primarily and continuously for agricultural purposes, in
10 accordance with Section 7-36-20 NMSA 1978, for the preceding
11 three years;

12 (2) the sale or lease of apartments, offices,
13 stores or similar space within a building;

14 (3) the division of land within the boundaries
15 of a municipality;

16 (4) the division of land in which only gas,
17 oil, mineral or water rights are severed from the surface
18 ownership of the land;

19 (5) the division of land created by court order
20 where the order creates no more than one parcel per party;

21 (6) the division of land for grazing or farming
22 activities; provided the land continues to be used for grazing
23 or farming activities;

24 (7) the division of land resulting only in the
25 alteration of parcel boundaries where parcels are altered for

1 the purpose of increasing or reducing the size of contiguous
2 parcels and where the number of parcels is not increased;

3 (8) the division of land to create burial plots
4 in a cemetery;

5 (9) the division of land to create a parcel
6 that is sold or donated as a gift to an immediate family member;
7 however, this exception shall be limited to allow the seller or
8 donor to sell or give no more than one parcel per tract of land
9 per immediate family member;

10 (10) the division of land created to provide
11 security for mortgages, liens or deeds of trust; provided that
12 the division of land is not the result of a seller-financed
13 transaction;

14 (11) the sale, lease or other conveyance of
15 land that creates no parcel smaller than one hundred forty
16 acres;

17 (12) the division of land to create a parcel
18 that is donated to any trust or nonprofit corporation granted an
19 exemption from federal income tax, as described in Section 501
20 (c)(3) of the United States Internal Revenue Code of 1986, as
21 amended; school, college or other institution with a defined
22 curriculum and a student body and faculty that conducts classes
23 on a regular basis; or ~~[to any]~~ church or group organized for
24 the purpose of divine worship, religious teaching or other
25 specifically religious activity; ~~[or]~~

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1 (13) the sale, lease or other conveyance of a
2 single parcel from a tract of land, except from a tract within a
3 previously approved subdivision, within any five-year period;
4 provided that a second or subsequent sale, lease or other
5 conveyance from the same tract of land within five years of the
6 first sale, lease or other conveyance shall be subject to the
7 provisions of the New Mexico Subdivision Act; provided further
8 that a survey shall be filed with the county clerk indicating
9 the five-year holding period for both the original tract and the
10 newly created tract; or

11 (14) the division of land to create a parcel to
12 be used for facilities to gather, process or transport gas, oil,
13 minerals or water or to distribute public utilities;

14 K. "terrain management" means the control of floods,
15 drainage and erosion and measures required for adapting proposed
16 development to existing soil characteristics and topography;

17 L. "time of purchase, lease or other conveyance"
18 means the time of signing any document obligating the person
19 signing the document to purchase, lease or otherwise acquire a
20 legal interest in land;

21 M. "common promotional plan" means any plan or
22 scheme of operation, undertaken by a single subdivider or a
23 group of subdividers acting in concert, to offer for sale or
24 lease parcels of land where such land is either contiguous or
25 part of the same area of land or is known, designated or

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1 advertised as a common unit or by a common name;

2 N. "type-one subdivision" means any subdivision
3 containing five hundred or more parcels, any one of which is
4 less than ten acres in size;

5 O. "type-two subdivision" means any subdivision
6 containing not fewer than twenty-five but not more than four
7 hundred ninety-nine parcels, any one of which is less than ten
8 acres in size;

9 P. "type-three subdivision" means any subdivision
10 containing not more than twenty-four parcels, any one of which
11 is less than ten acres in size;

12 Q. "type-four subdivision" means any subdivision
13 containing twenty-five or more parcels, each of which is ten
14 acres or more in size; and

15 R. "type-five subdivision" means any subdivision
16 containing not more than twenty-four parcels, each of which is
17 ten acres or more in size. "

18 Section 2. Section 47-6-11.2 NMSA 1978 (being Laws 1995,
19 Chapter 212, Section 13) is amended to read:

20 "47-6-11.2. WATER PERMIT REQUIRED FOR FINAL PLAT
21 APPROVAL. -- [A. ~~Until July 1, 1997, before approving the final~~
22 ~~plat for a subdivision containing twenty or more parcels, any~~
23 ~~one of which is two acres or less in size, the board of county~~
24 ~~commissioners shall require that the subdivider provide a copy~~
25 ~~of a permit obtained from the state engineer, issued pursuant to~~

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1 ~~Section 72-5-1, 72-5-23 or 72-5-24 NMSA 1978, or if the~~
2 ~~subdivision is located within a declared underground water~~
3 ~~basin, provide a copy of a permit obtained from the state~~
4 ~~engineer issued pursuant to those sections or to Section 72-12-3~~
5 ~~or 72-12-7 NMSA 1978 for the subdivision water use. In acting~~
6 ~~on the permit application, the state engineer shall determine~~
7 ~~whether the amount of water permitted is sufficient in quantity~~
8 ~~to fulfill the maximum annual water requirements of the~~
9 ~~subdivision, including water for indoor and outdoor domestic~~
10 ~~uses. The board of county commissioners shall not approve the~~
11 ~~final plat unless the state engineer has so issued a permit for~~
12 ~~the subdivision water use.~~

13 B. ~~On or after July 1, 1997]~~ Before approving the
14 final plat for a subdivision containing twenty or more parcels,
15 any one of which is two acres or less in size, the board of
16 county commissioners may require that the subdivider provide a
17 copy of a permit obtained from the state engineer, issued
18 pursuant to Section 72-5-1, 72-5-23 or 72-5-24 NMSA 1978, or if
19 the subdivision is located within a declared underground water
20 basin, provide a copy of a permit obtained from the state
21 engineer issued pursuant to those sections or to Section 72-12-3
22 or 72-12-7 NMSA 1978 for the subdivision water use. In acting
23 on the permit application, the state engineer shall determine
24 whether the amount of water permitted is sufficient [~~in~~
25 ~~quantity]~~ to fulfill the [~~maximum annual-~~] county's water

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1 requirements ~~[of the subdivision, including water for indoor and~~
2 ~~outdoor domestic uses. The board of county commissioners may~~
3 ~~elect not to approve the final plat if the state engineer has~~
4 ~~not issued a permit for the subdivision water use]. The state~~
5 engineer shall have one hundred twenty days to act upon the
6 water permit. If after one hundred twenty days the state
7 engineer has not acted upon the water permit, the board of
8 county commissioners may approve the final plat."

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 5, 1997

Mr. Speaker:

Your ENERGY AND NATURAL RESOURCES COMMITTEE, to whom has been referred

HOUSE BILL 1083

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 7, lines 24 and 25, restore "in quantity".
2. On page 7, line 25, restore "maximum annual" and strike "county' s".,

and thence referred to the AGRICULTURE AND WATER RESOURCES COMMITTEE.

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Respectfully submitted,

James Roger Madalena, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 1 Against

Yes: 7

No: Stewart

Excused: Chavez, Garcia, M. P., Getty, Knowles

Absent: None

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 8, 1997

Mr. Speaker:

**Your AGRICULTURE AND WATER RESOURCES COMMITTEE,
to whom has been referred**

HOUSE BILL 1083, as amended

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.**

Respectfully submitted,

G. X. McSherry, Chairman

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FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 1 Against

Yes: 5

No: Porter

Excused: Abeyta, Garnenez, Stell

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 21, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 1083, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 8, lines 1 through 4, strike the brackets and
line-through on those lines.

2. On page 8, lines 4 through 8, strike the underscored
language and insert in lieu thereof "Once an application for a
water permit has been deemed complete by the state engineer, the
state engineer shall have one hundred twenty days to act upon an
unprotested water permit.".,

and thence referred to the APPROPRIATIONS AND FINANCE
COMMITTEE.

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

HJC/HB 1083

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Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 4 For 3 Against

Yes: 4

No: Foy, Pederson, Stewart

Excused: Alwin, King, Luna, Rios, Sanchez, Vaughn

Absent: None

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