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HOUSE BILL 77

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

James G. Taylor

AN ACT

**RELATING TO PROPERTY LAW; REVISING A COUNTY'S AUTHORITY TO
REGULATE SUBDIVISIONS; AMENDING AND ENACTING 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;**

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

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

5 D. "person" means [~~any~~] an individual, estate,
6 trust, receiver, cooperative association, club, corporation,
7 company, firm, partnership, joint venture, syndicate or other
8 entity;

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

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

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

20 H. "subdivide" means to divide a surface area of
21 land into a subdivision;

22 I. "subdivider" means [~~any~~] a person who creates
23 or who has created a subdivision individually or as part of a
24 common promotional plan or [~~any~~] a person engaged in the sale,
25 lease or other conveyance of subdivided land; however,

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1 "subdivider" does not include ~~[any]~~ a duly licensed real
2 estate broker or salesperson acting on another's account;

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

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

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

16 (3) the division of land within the
17 boundaries of a municipality;

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

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

24 (6) the division of land for grazing or
25 farming activities; provided the land continues to be used for

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1 grazing or farming activities;

2 (7) the division of land resulting only in
3 the alteration of parcel boundaries where parcels are altered
4 for the purpose of increasing or reducing the size of
5 contiguous parcels and where the number of parcels is not
6 increased;

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

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

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

18 (11) the sale, lease or other conveyance of
19 land that creates no parcel smaller than one hundred forty
20 acres;

21 (12) the division of land to create a parcel
22 that is donated to any trust or nonprofit corporation granted
23 an exemption from federal income tax, as described in Section
24 501 (c) (3) of the [United States] Internal Revenue Code of
25 1986, as amended; school, college or other institution with a

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1 defined curriculum and a student body and faculty that
2 conducts classes on a regular basis; or [~~to any~~] church or
3 group organized for the purpose of divine worship, religious
4 teaching or other specifically religious activity; [~~or~~]

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

16 (14) the division of land to create a parcel
17 that is used for facilities that:

18 (a) gather, process or transport gas,
19 oil or byproducts of gas or oil; or

20 (b) dispose of wastewater created
21 during the production or refining of gas, oil or other
22 hydrocarbons;

23 K. "terrain management" means the control of
24 floods, drainage and erosion and measures required for
25 adapting proposed development to existing soil characteristics

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1 and topography;

2 L. "time of purchase, lease or other conveyance"
3 means the time of signing any document obligating the person
4 signing the document to purchase, lease or otherwise acquire a
5 legal interest in land;

6 M. "common promotional plan" means [~~any~~] a plan or
7 scheme of operation, undertaken by a single subdivider or a
8 group of subdividers acting in concert, to offer for sale or
9 lease parcels of land where such land is either contiguous or
10 part of the same area of land or is known, designated or
11 advertised as a common unit or by a common name;

12 N. "type-one subdivision" means [~~any~~] a
13 subdivision containing five hundred or more parcels, any one
14 of which is less than ten acres in size;

15 O. "type-two subdivision" means [~~any~~] a
16 subdivision containing not fewer than twenty-five but not more
17 than four hundred ninety-nine parcels, any one of which is
18 less than ten acres in size;

19 P. "type-three subdivision" means [~~any~~] a
20 subdivision containing not more than twenty-four parcels, any
21 one of which is less than ten acres in size;

22 Q. "type-four subdivision" means [~~any~~] a
23 subdivision containing twenty-five or more parcels, each of
24 which is ten acres or more in size; and

25 R. "type-five subdivision" means [~~any~~] a

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1 subdivision containing not more than twenty-four parcels, each
2 of which is ten acres or more in size."

3 Section 2. Section 47-6-9 NMSA 1978 (being Laws 1973,
4 Chapter 348, Section 9, as amended) is amended to read:

5 "47-6-9. SUBDIVISION REGULATION-- COUNTY AUTHORITY. --

6 A. The board of county commissioners of each
7 county shall regulate subdivisions within the county's
8 boundaries. In regulating subdivisions, the board of county
9 commissioners of each county shall adopt regulations setting
10 forth the county's requirements for:

11 (1) preliminary and final subdivision plats,
12 including their content and format;

13 (2) quantifying the maximum annual water
14 requirements of subdivisions, including water for indoor and
15 outdoor domestic uses;

16 (3) assessing water availability to meet the
17 maximum annual water requirements of subdivisions;

18 (4) water conservation measures;

19 (5) water of an acceptable quality for human
20 consumption and for protecting the water supply from
21 contamination;

22 (6) liquid waste disposal;

23 (7) solid waste disposal;

24 (8) legal access to each parcel;

25 (9) sufficient and adequate roads to each

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1 parcel, including ingress and egress for emergency vehicles;

2 (10) utility easements to each parcel;

3 (11) terrain management;

4 (12) phased development;

5 (13) protecting cultural properties,
6 archaeological sites and unmarked burials, as required by the
7 Cultural Properties Act;

8 (14) specific information to be contained in
9 a subdivider's disclosure statement in addition to that
10 required in Section 47-6-17 NMSA 1978;

11 (15) reasonable fees approximating the cost
12 to the county of determining compliance with the New Mexico
13 Subdivision Act and county subdivision regulations while
14 passing upon subdivision plats;

15 (16) a summary procedure for reviewing
16 certain type-three and all type-five subdivisions as provided
17 in Section 47-6-11 NMSA 1978;

18 (17) recording all conveyances of parcels
19 with the county clerk;

20 (18) financial security to assure the
21 completion of all improvements that the subdivider proposes to
22 build or to maintain;

23 (19) fencing subdivided land, where
24 appropriate, in conformity with Section 77-16-1 NMSA 1978,
25 which places the duty on the purchaser, lessee or other person

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1 acquiring an interest in the subdivided land to fence out
2 livestock; and

3 (20) any other matter relating to
4 subdivisions that the board of county commissioners feels is
5 necessary to promote health, safety or the general welfare.

6 B. Subsection A of this section does not preempt
7 the authority of any state agency to regulate or perform any
8 activity that it is required or authorized by law to perform.

9 C. The following counties shall adopt regulations
10 pursuant to this section on or before July 1, 1996:
11 Bernalillo, Dona Ana and Santa Fe.

12 D. All remaining counties shall adopt regulations
13 pursuant to this section on or before July 1, 1997.

14 E. ~~[Nothing in]~~ The New Mexico Subdivision Act
15 shall not be construed to limit the authority of ~~[counties]~~ a
16 county to adopt subdivision regulations with requirements that
17 are more stringent than the requirements set forth in the New
18 Mexico Subdivision Act, ~~[provided]~~ if the county has adopted a
19 comprehensive plan in accordance with Section 3-21-5 NMSA 1978
20 and ~~[those]~~ the county's regulations are consistent with
21 ~~[such]~~ the comprehensive plan. A county shall adopt
22 regulations that comply with the exemptions to the definition
23 of "subdivision" set forth in Paragraphs (1) through (14) of
24 Subsection J of Section 47-6-2 NMSA 1978. "

25 Section 3. A new section of the New Mexico Subdivision

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Act is enacted to read:

"[NEW MATERIAL] NO CONSOLIDATION OF CONTIGUOUS PARCELS WITHOUT EXPRESS CONSENT AND SPECIFIC ACTION BY OWNER. -- Unless an owner of parcels expressly consents and takes specific action to consolidate contiguous parcels owned by him, no county subdivision regulation enacted pursuant to the provisions of the New Mexico Subdivision Act and no action by a board of county commissioners shall require one parcel to be consolidated with one or more contiguous parcels for the purpose of considering the consolidated parcels as a single tract based upon common ownership of the parcels, if the chain of title to the separate parcels clearly demonstrates the parcels to have been considered separate prior to transfer into common ownership. The provisions of this section shall not be interpreted to limit a county board of commissioners from requiring the merger of contiguous parcels into common ownership for the purpose of enforcing minimum zoning standards on the parcels in preparation for development of the parcels. "