

HOUSE BILL NO. 321

INTRODUCED BY J. COHENOUR

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF LOCAL GOVERNMENTS TO REQUIRE PUBLIC WATER SUPPLY SYSTEMS AND PUBLIC WASTEWATER SYSTEMS FOR SUBDIVISIONS; AMENDING SECTIONS 76-3-504 AND 76-3-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;



1 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
2 the:

3 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that
4 will create one or more parcels containing less than 20 acres; and

5 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
6 containing 20 acres or more and less than 160 acres; and

7 (iv) the location and installation of public utilities;

8 (h) provide procedures for the administration of the park and open-space requirements of this chapter;

9 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
10 local, state, and federal government identified during the preapplication consultation conducted pursuant to
11 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review
12 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and
13 the failure of any agency to complete a review of an application may not be a basis for rejection of the application
14 by the governing body.

15 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider
16 to:

17 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
18 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
19 a legal right to the water and reserve and sever any remaining surface water rights from the land;

20 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
21 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
22 administered through a single entity that specifies administration and the rights and responsibilities of landowners
23 within the subdivision who have a legal right and access to the water; or

24 (iii) reserve and sever all surface water rights from the land;

25 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in
26 the subdivision that:

27 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical
28 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for
29 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
30 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision

1 lots;

2 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance,
3 and inspection of the ditch; and

4 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch
5 easement without the written permission of the ditch owner.

6 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

7 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
8 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
9 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;
10 or

11 (B) the water rights are removed or the process has been initiated to remove the water rights from the
12 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
13 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
14 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall
15 document that intent, when applicable, in agreements and legal documents for related sales transactions.

16 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
17 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
18 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
19 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
20 historic and legal rights;

21 (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision
22 on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow
23 the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility
24 services within the subdivision.

25 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
26 hearings;

27 (o) establish procedures describing how the governing body or its agent or agency will address
28 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

29 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
30 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade

1 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
 2 the reviewing authority is not the governing body.

3 (q) establish a preapplication process that:

4 (i) requires a subdivider to meet with the agent or agency, other than the governing body, that is
 5 designated by the governing body to review subdivision applications prior to the subdivider submitting the
 6 application;

7 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth
 8 policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

9 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
 10 state, and federal government, and any other entities that may be contacted for comment on the subdivision
 11 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during
 12 the review of the application, the agent or agency designated by the governing body contacts a public utility,
 13 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or
 14 agency shall notify the subdivider of the contact and the timeframe for response.

15 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent
 16 or agency receives a written request for a preapplication meeting from the subdivider; and

17 (v) establishes a time limit after a preapplication meeting by which an application must be submitted as
 18 provided in 76-3-604.

19 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under
 20 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
 21 development.

22 (3) A governing body implementing the provisions of subsection (1)(g)(iii) may, subject to the
 23 requirements of 76-3-511, require public water systems, public sewer systems, or both.

24 ~~(3)~~(4) The governing body may establish deadlines for submittal of subdivision applications."
 25

26 **Section 2.** Section 76-3-511, MCA, is amended to read:

27 **"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except as
 28 provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a
 29 regulation under 76-3-501 or ~~76-3-504(1)(f)(iii)~~ 76-3-504(1)(g)(iii) that is more stringent than the comparable state
 30 regulations or guidelines that address the same circumstances. The governing body may incorporate by reference

1 comparable state regulations or guidelines.

2 (2) The governing body may adopt a regulation to implement 76-3-501 or ~~76-3-504(1)(f)(iii)~~
3 76-3-504(1)(g)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body
4 makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

5 (a) the proposed local standard or requirement protects public health or the environment; and

6 (b) the local standard or requirement to be imposed can mitigate harm to the public health or
7 environment and is achievable under current technology.

8 (3) The written finding must reference information and peer-reviewed scientific studies contained in the
9 record that forms the basis for the governing body's conclusion. The written finding must also include information
10 from the hearing record regarding the costs to the regulated community that are directly attributable to the
11 proposed local standard or requirement.

12 (4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before
13 April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may
14 petition the governing body to review the regulation. If the governing body determines that the regulation is more
15 stringent than comparable state regulations or guidelines, the governing body shall comply with this section by
16 either revising the regulation to conform to the state regulations or guidelines or by making the written finding,
17 as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the
18 petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged
19 regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

20 (b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the
21 governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines
22 existed and the state government subsequently establishes comparable regulations or guidelines that are less
23 stringent than the previously adopted governing body regulation."
24

25 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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