

SENATE BILL NO. 40

INTRODUCED BY E. BUTTREY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS GOVERNING SUBDIVISION
5 REVIEW; REVISING PROCEDURES FOR THE SUBMISSION OF SUBDIVISION APPLICATIONS; PROVIDING
6 THAT INFORMATION PERTAINING TO MITIGATION BY THE SUBDIVIDER MAY NOT BE CONSIDERED NEW
7 INFORMATION; AMENDING SECTIONS 76-3-604 AND 76-3-615, MCA; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

11
12 **Section 1.** Section 76-3-604, MCA, is amended to read:

13 **"76-3-604. Review of subdivision application -- review for required elements and sufficiency of**
14 **information.** (1) (a) ~~Within 5 working days of receipt of a subdivision application submitted~~ The subdivider or the
15 subdivider's agent shall contact the reviewing agent or agency in writing to schedule a meeting to submit a
16 subdivision application in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the
17 review fee submitted as provided in 76-3-602; ~~the~~ The reviewing agent or agency shall schedule and hold the
18 meeting within 10 working days of the request.

19 (b) Within 5 working days from the date of the meeting to submit the application, the reviewing agent or
20 agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a)
21 and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing
22 agent's or agency's determination.

23 ~~(b)~~ If the reviewing agent or agency determines that elements are missing from the application, the
24 reviewing agent or agency shall identify those elements in the notification.

25 (c) If the reviewing agent or agency fails to schedule and hold the meeting to submit the application
26 pursuant to this subsection (1), the application is considered to be received on the date of delivery to the
27 reviewing agent or agency. The date of delivery means the date the application is hand-delivered by the
28 subdivider or the subdivider's agent to the reviewing agent or agency or the date of the return receipt if the
29 application is delivered by certified mail, return receipt requested.

30 (2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the

1 subdivider's agent that the application contains all of the required elements as provided in subsection (1), the
2 reviewing agent or agency shall determine whether the application and required elements contain detailed,
3 supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions
4 of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with
5 the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

6 (b) If the reviewing agent or agency determines that information in the application is not sufficient to allow
7 for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information
8 in its notification.

9 (c) A determination that an application contains sufficient information for review as provided in this
10 subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the
11 governing body and does not limit the ability of the reviewing agent or agency or the governing body to request
12 additional information during the review process.

13 (3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

14 (a) a determination is made that the application contains the required elements and sufficient information;
15 and

16 (b) the subdivider or the subdivider's agent is notified.

17 (4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an
18 application contains sufficient information as provided in subsection (2), the governing body shall approve,
19 conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the
20 proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms
21 to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

22 (a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review
23 period, not to exceed 1 year; or

24 (b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

25 (5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body
26 shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to
27 exceed the total amount of the subdivision review fee collected by the governing body for the subdivision
28 application, until the governing body denies, approves, or conditionally approves the subdivision.

29 (b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended
30 pursuant to subsection (4).

1 (6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the
2 subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

3 (7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding
4 the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the
5 comments submitted available to the subdivider within 30 days after conditional approval or approval of the
6 subdivision application and preliminary plat.

7 (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the
8 comments or the summary provided by the governing body to the:

9 (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more
10 parcels containing less than 20 acres; and

11 (ii) local health department or board of health for proposed subdivisions that will create one or more
12 parcels containing 20 acres or more and less than 160 acres.

13 (8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres,
14 the governing body may require approval by the department of environmental quality as a condition of approval
15 of the final plat.

16 (b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the
17 governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622,
18 that there is an adequate water source and at least one area for a septic system and a replacement drainfield
19 for each lot.

20 (9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter
21 may occur only under those regulations in effect at the time a subdivision application is determined to contain
22 sufficient information for review as provided in subsection (2).

23 (b) If regulations change during the review periods provided in subsections (1) and (2), the determination
24 of whether the application contains the required elements and sufficient information must be based on the new
25 regulations."

26

27 **Section 2.** Section 76-3-615, MCA, is amended to read:

28 **"76-3-615. Subsequent hearings -- consideration of new information -- requirements for**
29 **regulations.** (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this
30 section.

1 (2) The governing body shall determine whether public comments or documents presented to the
2 governing body at a hearing held pursuant to 76-3-605 constitute:

3 (a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that
4 the public has had a reasonable opportunity to examine and on which the public has had a reasonable
5 opportunity to comment; or

6 (b) new information regarding a subdivision application that has never been submitted as evidence or
7 considered by either the governing body or its agent or agency at a hearing during which the subdivision
8 application was considered.

9 (3) If the governing body determines that the public comments or documents constitute the information
10 described in subsection (2)(b), the governing body may:

11 (a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the
12 new information if the governing body determines that the new information is either irrelevant or not credible; or

13 (b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of
14 only the new information that may have an impact on the findings and conclusions that the governing body will
15 rely upon in making its decision on the proposed subdivision.

16 (4) Information pertaining to mitigation of potentially significant adverse impacts by the subdivider
17 pursuant to 76-3-608(4) may not be considered new information under subsection (2)(b) of this section.

18 ~~(4)~~(5) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period
19 required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the
20 governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit
21 resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on
22 the subdivision application can be provided. The governing body may not consider any information regarding the
23 subdivision application that is presented after the hearing when making its decision to approve, conditionally
24 approve, or deny the proposed subdivision."
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26 **NEW SECTION. Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable
27 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
28 remains in effect in all valid applications that are severable from the invalid applications.
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30 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

