

SENATE BILL NO. 40

INTRODUCED BY E. BUTTREY

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS GOVERNING SUBDIVISION REVIEW; REVISING PROCEDURES FOR THE SUBMISSION OF SUBDIVISION APPLICATIONS; ~~PROVIDING THAT INFORMATION PERTAINING TO MITIGATION BY THE SUBDIVIDER MAY NOT BE CONSIDERED NEW INFORMATION;~~ AMENDING SECTIONS 76-3-504, 76-3-601, AND 76-3-604, ~~AND 76-3-615;~~ MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY 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 76-3-509, 76-3-609, or 76-3-616, 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:

- 1 (i) the design and arrangement of lots, streets, and roads;
- 2 (ii) grading and drainage;
- 3 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
- 4 the:
- 5 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that
- 6 will create one or more parcels containing less than 20 acres; and
- 7 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
- 8 containing 20 acres or more and less than 160 acres; and
- 9 (iv) the location and installation of public utilities;
- 10 (h) provide procedures for the administration of the park and open-space requirements of this chapter;
- 11 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
- 12 local, state, and federal government identified during the preapplication consultation conducted pursuant to
- 13 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review
- 14 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and
- 15 the failure of any agency to complete a review of an application may not be a basis for rejection of the application
- 16 by the governing body.
- 17 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider
- 18 to:
- 19 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
- 20 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
- 21 a legal right to the water and reserve and sever any remaining surface water rights from the land;
- 22 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
- 23 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
- 24 administered through a single entity that specifies administration and the rights and responsibilities of landowners
- 25 within the subdivision who have a legal right and access to the water; or
- 26 (iii) reserve and sever all surface water rights from the land;
- 27 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in
- 28 the subdivision that:
- 29 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical
- 30 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for

1 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an  
2 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision  
3 lots;

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

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

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

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

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

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

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

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

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

1 (p) establish criteria that the governing body or reviewing authority will use to determine whether a  
 2 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade  
 3 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if  
 4 the reviewing authority is not the governing body.

5 (q) establish a preapplication process that:

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

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

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

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

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

21 (r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30  
 22 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.

23 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under  
 24 76-3-509 and this section may include provisions that are consistent with this section that promote cluster  
 25 development.

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

27

28 **SECTION 2. SECTION 76-3-601, MCA, IS AMENDED TO READ:**

29 **"76-3-601. Submission of application and preliminary plat for review -- water and sanitation**  
 30 **information required.** (1) ~~Subject to the submittal deadlines established as provided in 76-3-504(3), the~~ The

1 subdivider shall present to the governing body or to the agent or agency designated by the governing body the  
 2 subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary  
 3 plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be  
 4 accompanied by the preliminary water and sanitation information required under 76-3-622.

5 (2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the  
 6 application and preliminary plat must be submitted to and approved by the city or town governing body.

7 (b) When the proposed subdivision is situated entirely in an unincorporated area, the application and  
 8 preliminary plat must be submitted to and approved by the governing body of the county. However, if the  
 9 proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within  
 10 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city  
 11 or town governing body or its designated agent for review and comment. If the proposed subdivision is situated  
 12 within a rural school district, as described in 20-9-615, the county governing body shall provide a summary of the  
 13 information contained in the application and preliminary plat to school district trustees.

14 (c) If the proposed subdivision lies partly within an incorporated city or town, the application and  
 15 preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

16 (d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body  
 17 of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of  
 18 hearings, reports, and other requirements whenever possible.

19 (3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the  
 20 authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

21

22 **Section 3.** Section 76-3-604, MCA, is amended to read:

23 **"76-3-604. Review of subdivision application -- review for required elements and sufficiency of**  
 24 **information.** (1) (a) ~~Within 5 working days of receipt of a subdivision application submitted~~ The subdivider or the  
 25 subdivider's agent shall contact the reviewing agent or agency in writing to schedule a meeting to submit a  
 26 subdivision application in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the  
 27 review fee submitted as provided in 76-3-602,<sup>2</sup> the The reviewing agent or agency shall schedule and hold the  
 28 meeting within 10 working days of the request A SUBDIVISION APPLICATION IS CONSIDERED TO BE RECEIVED ON THE  
 29 DATE OF DELIVERY TO THE REVIEWING AGENT OR AGENCY AND WHEN ACCOMPANIED BY THE REVIEW FEE SUBMITTED AS  
 30 PROVIDED IN 76-3-602.

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

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

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

12 (2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the  
13 subdivider's agent that the application contains all of the required elements as provided in subsection (1), the  
14 reviewing agent or agency shall determine whether the application and required elements contain detailed,  
15 supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions  
16 of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with  
17 the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

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

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

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

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

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

29 (4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an  
30 application contains sufficient information as provided in subsection (2), the governing body shall approve,

1 conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the  
2 proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms  
3 to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

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

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

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

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

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

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

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

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

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

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

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

1 for each lot.

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

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

8

9 ~~Section 2.~~ Section 76-3-615, MCA, is amended to read:

10 ~~"76-3-615. Subsequent hearings -- consideration of new information -- requirements for~~  
11 ~~regulations. (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this~~  
12 ~~section.~~

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

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

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

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

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

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

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

30 ~~(4)(5) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period~~



1 ~~required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the~~  
2 ~~governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit~~  
3 ~~resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on~~  
4 ~~the subdivision application can be provided. The governing body may not consider any information regarding the~~  
5 ~~subdivision application that is presented after the hearing when making its decision to approve, conditionally~~  
6 ~~approve, or deny the proposed subdivision."~~

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8 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
9 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
10 remains in effect in all valid applications that are severable from the invalid applications.

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12 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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14 **NEW SECTION. Section 6. Applicability.** [This act] applies to subdivision applications submitted on  
15 or after July 1, 2013.

16 - END -