

SENATE BILL NO. 269

INTRODUCED BY M. CAFERRO

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A SUBDIVISION APPLICATION BE CONSIDERED TO CONTAIN SUFFICIENT INFORMATION FOR STATE AGENCY REVIEW BEFORE A LOCAL GOVERNING BODY MAY BEGIN ITS REVIEW; REQUIRING AGENCIES TO NOTIFY A LOCAL GOVERNING BODY AND A SUBDIVIDER WHEN A SUFFICIENCY DETERMINATION IS MADE; AND AMENDING SECTIONS 76-3-504, 76-3-604, 76-3-615, AND 76-4-125, MCA."

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 the subdivider to be notified of the agencies that must have determined that an application
 18 contains sufficient information for review before the governing body will begin its process to review a subdivision
 19 application under 76-3-604(5);

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

22 ~~(v)~~(vi) establishes a time limit after a preapplication meeting by which an application must be submitted;

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

25 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple
 26 spaces for recreational camping vehicles or mobile homes.

27 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under
 28 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
 29 development."
 30

1 **Section 2.** Section 76-3-604, MCA, is amended to read:

2 **"76-3-604. Review of subdivision application -- review for required elements and sufficiency of**
3 **information.** (1) (a) A subdivision application is considered to be received on the date of delivery to the reviewing
4 agent or agency and when accompanied by the review fee submitted as provided in 76-3-602.

5 (b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall
6 determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify
7 the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or
8 agency's determination. If the reviewing agent or agency determines that elements are missing from the
9 application, the reviewing agent or agency shall identify those elements in the notification.

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

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

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

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

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

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

27 (4) Review of a subdivision application may not begin under subsection (5) until the state agencies
28 identified under 76-3-504(1)(q) have determined that information in the application is sufficient to allow for the
29 agencies' review of the application and have submitted their determination to the local governing body and the
30 subdivider.

1 ~~(4)~~(5) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an
2 application contains sufficient information as provided in subsection (2) and sufficiency determinations have been
3 submitted as provided in subsection (4), the governing body shall approve, conditionally approve, or deny the
4 proposed subdivision within 60 working days or 80 working days if the proposed subdivision contains 50 or more
5 lots, based on its determination of whether the application conforms to the provisions of this chapter and to the
6 local regulations adopted pursuant to this chapter, unless:

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

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

10 ~~(5)~~(6) (a) If the governing body fails to comply with the time limits under subsection ~~(4)~~ (5), the governing
11 body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not
12 to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision
13 application, until the governing body denies, approves, or conditionally approves the subdivision.

14 (b) The provisions of subsection ~~(5)~~(6) ~~(a)~~ (a) do not apply if the review period is extended or suspended
15 pursuant to subsection ~~(4)~~ (5).

16 ~~(6)~~(7) If the governing body denies or conditionally approves the proposed subdivision, it shall send the
17 subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

18 ~~(7)~~(8) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding
19 the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the
20 comments submitted available to the subdivider within 30 days after conditional approval or approval of the
21 subdivision application and preliminary plat.

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

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

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

28 ~~(8)~~(9) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres,
29 the governing body may require approval by the department of environmental quality as a condition of approval
30 of the final plat.

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

5 ~~(9)~~(10) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this
6 chapter may occur only under those regulations in effect at the time a subdivision application is determined to
7 contain sufficient information for review as provided in subsection (2).

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

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

13 **"76-3-615. Subsequent hearings -- consideration of new information -- requirements for**
14 **regulations.** (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this
15 section.

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

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

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

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

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

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

1 (4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required
2 in 76-3-604~~(4)~~(5) is suspended and the new hearing must be noticed and held within 45 days of the governing
3 body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes
4 at the governing body's next scheduled public meeting for which proper notice for the public hearing on the
5 subdivision application can be provided. The governing body may not consider any information regarding the
6 subdivision application that is presented after the hearing when making its decision to approve, conditionally
7 approve, or deny the proposed subdivision."
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9 **Section 4.** Section 76-4-125, MCA, is amended to read:
10 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except
11 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing
12 authority. The review by the reviewing authority must be as follows:

13 (a) At any time after the developer has submitted an application under the Montana Subdivision and
14 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must
15 include preliminary plans and specifications for the proposed development, whatever information the developer
16 feels necessary for its subsequent review, any public comments or summaries of public comments collected as
17 provided in 76-3-604~~(7)~~(8), and information required by the reviewing authority. Subdivision fees assessed by
18 the reviewing authority must accompany the application. If the proposed development includes onsite sewage
19 disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting
20 the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to
21 determine whether the site meets applicable state and local requirements. Upon receipt of an application, the
22 reviewing authority shall determine if the application contains sufficient information for review and shall submit
23 its determination to the local governing body and to the developer as provided in 76-3-604(4).

24 (b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing
25 authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant
26 if the application does not include a copy of the certification from the local health department required by
27 76-4-104(6)(k) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3,
28 together with any public comments or summaries of public comments collected as provided in 76-3-604~~(7)~~(a)
29 (8)(a).

30 (c) If the reviewing authority denies an application and the applicant resubmits a corrected application

1 within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted
2 application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application
3 is conducted by a local department or board of health that is certified under 76-4-104, the department shall make
4 a final decision on the application within 10 days after the local reviewing authority completes its review.

5 (d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision
6 on the proposed subdivision within 55 days after the submission of a complete application and payment of fees
7 to the reviewing authority unless an environmental impact statement is required, at which time this deadline may
8 be increased to 120 days. The reviewing authority may not request additional information for the purpose of
9 extending the time allowed for a review and final decision on the proposed subdivision. If the department
10 approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has
11 approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

12 (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to
13 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade
14 the provisions of this part, are not subject to review:

15 (a) the exclusion cited in 76-3-201;

16 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,
17 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and
18 that the division does not fall within a previously platted or approved subdivision;

19 (c) divisions made for purposes other than the construction of water supply or sewage and solid waste
20 disposal facilities as the department specifies by rule;

21 (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1
22 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127,
23 that adequate storm water drainage and adequate municipal facilities will be provided; and

24 (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating
25 a parcel from the tract for purposes of transfer if:

26 (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997,
27 pursuant to local regulations or this chapter; or

28 (ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source
29 that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant
30 to local regulations or this chapter.

