



AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION SANITATION REVIEW; DEFINING TERMS; EXTENDING RULEMAKING AUTHORITY; ALLOWING LOCAL ENTITIES TO REVIEW SUBDIVISION CONNECTIONS TO WATER AND SEWER; REVISING TIMELINES FOR SUBDIVISION REVIEW; REVISING SUBDIVISION EXEMPTIONS; REVISING FILING REQUIREMENTS; AMENDING SECTIONS 75-1-208, 76-3-622, 76-4-102, 76-4-103, 76-4-104, 76-4-105, 76-4-107, 76-4-111, 76-4-113, 76-4-114, 76-4-115, 76-4-116, 76-4-121, 76-4-122, 76-4-125, 76-4-127, 76-4-130, 76-4-131, AND 76-4-133, MCA; REPEALING SECTION 13, CHAPTER 344, LAWS OF 2017; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 75-1-208, MCA, is amended to read:

"75-1-208. Environmental review procedure. (1)(a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) (a) Except as provided in subsection (2)(b), a project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(b) If the primary concern of the agency's environmental review of a project is the quality or quantity of water, a project sponsor may, after providing a 30-day notice, appear before the water policy committee established in 5-5-231 at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The water policy committee shall ensure that the appropriate agency

personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

- (i) 60 days to complete a public scoping process, if any;
- (ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and
- (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 75-1-201(9) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216, 75-20-231, ~~[76-4-114.]~~ 76-4-114, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, evaluate the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures. ~~(Bracketed reference to 76-4-114 in subsection (4)(b) terminates September 30, 2019, and reverts to 76-4-125 effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)~~"

Section 2. Section 76-3-622, MCA, is amended to read:

"76-3-622. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed

lots, of:

- (A) flood plains;
- (B) surface water features;
- (C) springs;
- (D) irrigation ditches;
- (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
- (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
- (G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and
 - (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;
- (b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:
 - (i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and
 - (ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;
- (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;
- (d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:
 - (i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;
 - (ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
 - (iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the

natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under ~~[76-4-125(1)]~~ 76-4-125(1) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511. ~~(Bracketed reference to 76-4-125(1) in subsection (2) terminates September 30, 2019, and reverts to 76-4-125(2) effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)~~"

Section 3. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adequate county water and/or sewer district facilities" means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5

and 6.

~~(1)~~(2) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.

~~(2)~~(3) "Board" means the board of environmental review.

~~(4)~~ "Certifying authority" means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under 76-4-104~~(6)~~.

~~(3)~~(5) "Department" means the department of environmental quality.

~~(4)~~(6) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.

~~(5)~~(7) "Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.

~~(6)~~(8) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

~~(7)~~(9) "Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102.

~~(8)~~(10) "Mixing zone" has the meaning provided in 75-5-103.

~~(11)~~(a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this chapter after March 30, 2011.

~~(b)~~ The term does not include drainfield mixing zones that existed or were approved under this chapter prior to March 30, 2011.

~~(12)~~ (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under this chapter after October 1, 2013.

~~(b)~~ The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.

~~(9)~~(13) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

~~(10)~~(14) "Public water supply system" has the meaning provided in 75-6-102.

(14)(15) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(12)(16) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(13)(17) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

(14)(18) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(19) "Sewage" has the meaning provided in 75-5-103.

(15)(20) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

(16)(21) "Solid waste" has the meaning provided in 75-10-103.

(17)(22) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, ~~and any condominium, townhome or townhouse,~~ or any area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

(18)(23) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

(19)(24) "Well isolation zone" means the area within a 100-foot radius of a water well."

Section 4. Section 76-4-103, MCA, is amended to read:

"76-4-103. What constitutes subdivision. A subdivision ~~shall comprise~~ consists of only those parcels of less than 20 acres ~~which that~~ have been created by a division of land, and the plat ~~thereof shall~~ must show all ~~such of the~~ of the parcels, whether contiguous or not. The rental or lease of one or more parts of a single building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part."

Section 5. Section 76-4-104, MCA, is amended to read:

"76-4-104. (Temporary) Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified by the department to review subdivisions proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

- (a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or
- (b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

- (i) total development area; and
- (ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the proposed drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or proposed well isolation zone outside the boundaries of the proposed subdivision where the proposed drainfield or proposed well is located. A proposed mixing zone or a proposed well isolation zone for an individual water system well that is a minimum of 50 feet inside the proposed subdivision boundary may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the

extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the ~~preliminary or final plan or plat~~ subdivision application under this chapter. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(m) eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under the provisions of 76-4-127.

(7) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(8) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the appeal process for the denial or condition imposition.

(9) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622. (~~Terminates September 30, 2019--sec. 13, Ch. 344, L. 2017.~~)

~~76-4-104. (Effective October 1, 2019) Rules for administration and enforcement.~~ (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

~~(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:~~

- ~~(a) size of lots;~~
- ~~(b) contour of land;~~
- ~~(c) porosity of soil;~~
- ~~(d) ground water level;~~
- ~~(e) distance from lakes, streams, and wells;~~
- ~~(f) type and construction of private water and sewage facilities; and~~
- ~~(g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.~~

~~(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.~~

~~(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.~~

~~(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.~~

~~(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).~~

~~(5) The department shall review those subdivisions described in subsection (3) if:~~

- ~~(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing~~

~~bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or~~

~~_____ (b) the local department or board of health elects not to be certified.~~

~~_____ (6) The rules must further provide for:~~

~~_____ (a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:~~

~~_____ (i) total development area; and~~

~~_____ (ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;~~

~~_____ (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;~~

~~_____ (c) evidence concerning the potability of the proposed water supply for the subdivision;~~

~~_____ (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;~~

~~_____ (e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;~~

~~_____ (f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;~~

~~_____ (g) standards and technical procedures applicable to water systems;~~

~~_____ (h) standards and technical procedures applicable to solid waste disposal;~~

~~_____ (i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or well isolation zone outside the boundaries of the proposed subdivision where the drainfield or well is located. A mixing zone or a well isolation zone for an individual water system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.~~

~~———(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);~~

~~———(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.~~

~~———(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.~~

~~———(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than 45 days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than 55 days after the submission of a complete application, as provided in 76-4-125.~~

~~———(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.~~

~~———(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:~~

~~———(a) the reason for the denial or condition imposition;~~

~~———(b) the evidence that justifies the denial or condition imposition; and~~

~~———(c) information regarding the appeal process for the denial or condition imposition.~~

~~———(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622."~~

Section 6. Section 76-4-105, MCA, is amended to read:

"76-4-105. Subdivision fees -- subdivision program funding. (1) The department shall adopt rules setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a schedule of fees to be paid by the applicant to the department ~~or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction.~~ The fees must be used for review of plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

- (a) number of lots in the subdivision;
- (b) the type of water system to serve the development;
- (c) the type of sewage disposal to serve the development; and
- (d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees to the local reviewing authority for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and enforcement activities conducted pursuant to 76-4-108."

Section 7. Section 76-4-107, MCA, is amended to read:

"76-4-107. Authority to inspect and monitor -- certification. (1) In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the reviewing authority, whenever any water supply or sewage disposal system is proposed or has been constructed, may:

- (a) enter ~~upon~~ any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the reviewing authority, to inspect ~~such systems~~ the system in order to ~~assure~~ ensure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;
- (b) require as a condition of approval that records concerning the operation of a sewage disposal or water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

(2) The reviewing authority ~~shall~~ shall require certification from a registered professional engineer that

a public water supply system or a public sewage disposal system required by rule to be designed by a registered professional engineer has been constructed according to approved plans and specifications."

Section 8. Section 76-4-111, MCA, is amended to read:

"76-4-111. Exemption for certain condominiums, townhomes, and townhouses. (1) Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units, the construction of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is not subject to the provisions of this part, provided that ~~no~~, if a new extension of a public water supply system or extension of a public sewage system is required to serve the development, the department reviews and approves plans for the extension."

Section 9. Section 76-4-113, MCA, is amended to read:

"76-4-113. Notification to purchasers. The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the certificate of subdivision approval specifying the approved type and locations of water supply, storm water drainage, and sewage disposal facilities and information regarding connection to municipal or county water and/or sewer district facilities provided for under 76-4-130. Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction."

Section 10. Section 76-4-114, MCA, is amended to read:

"76-4-114. (Temporary) Review of application. Except as provided in 76-4-125, the applicant shall submit an application for review of a subdivision pursuant to the following procedure:

(1) An applicant may request a preapplication meeting with the reviewing authority prior to submitting an application. The reviewing authority shall schedule the requested meeting between the applicant and the

reviewing authority within 30 days of receiving the request from the applicant. The meeting may be conducted in person, via telephone, or via teleconference. For informational purposes only, the reviewing agent shall identify the state laws and rules that may apply to the subdivision review process.

(2) If the proposed development includes onsite sewage disposal facilities, the applicant shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(3) (a) After submitting an application if required under the Montana Subdivision and Platting Act, the applicant shall submit an application to the reviewing authority. A subdivision application is considered to be received on the date of delivery to the reviewing authority when accompanied by the review fee established pursuant to 76-4-105.

(b) Within 15 days of the receipt of an application, the reviewing authority shall determine whether the application contains the elements required by 76-4-115(1) to allow for review and shall notify the applicant of the reviewing authority's determination. If the reviewing authority determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification. The applicant shall address the missing elements identified by the reviewing authority. A determination that an application contains the required elements for review as provided in this subsection (3)(b) does not ensure that the proposed subdivision will be approved and does not limit the ability of the reviewing authority to request additional information during the review process.

(c) (i) After the reviewing authority notifies the applicant that the application contains all of the required elements as provided by subsection (3)(b), the reviewing authority shall make a final decision or a recommendation on the application. Except as provided by subsection (4), the reviewing authority shall:

(A) make a final decision within 40 days of finding that the application contains all of the required elements if the reviewing authority is the department; or

(B) make a recommendation for approval to the department or deny the application within 30 days of finding that the application contains all of the required elements if the reviewing authority is a local department or board of health. If the department receives a recommendation for approval of the subdivision from a local department or board of health, the department shall make a final decision on the application within 10 days of receiving the recommendation of the reviewing authority.

(ii) If the department approves the application, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(iii) If the reviewing authority denies the application, the reviewing authority shall identify the deficiencies that result in the denial in a notification to the applicant.

(d) (i) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application.

(ii) If the reviewing authority denies an application and the applicant resubmits a corrected application after 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within:

(A) 55 days after receipt of the resubmitted application if the reviewing authority is the department; or

(B) 45 days after receipt of the resubmitted application if the reviewing authority is a local department or board of health.

(iii) If the review of the resubmitted application is conducted by a local department or board of health and the reviewing authority makes a recommendation to the department for approval of the application, the department shall make a final decision on the application within 10 days after the local reviewing authority completes its review under subsection (3)(d)(i) or (3)(d)(ii).

~~(4) If an environmental impact statement is required, the deadline to issue a final decision in (3)(c)(i) may be increased to 120 days.~~

~~(5)(4) If Except as provided in subsections (6) and (7), if the reviewing authority needs an extension of a deadline in this section to complete its review or if an applicant requests an extension of a deadline, then if the reviewing authority shall notify the applicant of the extension prior to the end of the review deadline. An extension under this subsection may not exceed 30 days; however, the reviewing authority may issue more than one extension.~~

(5) The reviewing authority may extend a deadline in this section until the items required in 76-4-115(2) are submitted. The reviewing authority shall notify the applicant of the extension before the end of the review deadline. The reviewing authority shall make a final decision within 30 days of receipt of the items required in 76-4-115(2).

(6) The department may extend a deadline under subsections (3)(c) and (3)(d) by 90 days if an environmental assessment is required.

(7) The department may extend a deadline under subsections (3)(c) and (3)(d) by 120 days if an environmental impact statement is required. (Terminates September 30, 2019--sec. 13, Ch. 344, L. 2017.)"

Section 11. Section 76-4-121, MCA, is amended to read:

"76-4-121. Restrictions on subdivision activities. A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until:

(1) a certificate of subdivision approval has been issued pursuant to ~~[76-4-114]~~ 76-4-114 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(2) the ~~governing body~~ certifying authority has provided certification pursuant to 76-4-127 that the subdivision ~~is within a jurisdictional area that has adopted a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal or county water and/or sewer district facilities and adequate storm water drainage; or~~

(3) the subdivision is otherwise exempt from review under 76-4-125. ~~(Bracketed reference to 76-4-114 in subsection (1) terminates September 30, 2019, and reverts to 76-4-125 effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)"~~

Section 12. Section 76-4-122, MCA, is amended to read:

~~"76-4-122. Filing or recording of noncomplying plat or certificate of survey~~ Certain filings prohibited. (1) The county clerk and recorder may not file or record any plat, ~~or~~ certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat, ~~or~~ certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part for filing until one of the following conditions has been met:

(a) the person wishing to file the plat, ~~or~~ certificate of survey, or townhome, townhouse, or condominium declaration has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority and a certificate of subdivision approval has been issued pursuant to ~~[76-4-114]~~ 76-4-114 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(b) the person wishing to file the plat, ~~or~~ certificate of survey, or townhome, townhouse, or condominium declaration has obtained a certificate from the ~~governing body~~ certifying authority pursuant to 76-4-127 that the subdivision ~~is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal~~ or county water and/or sewer district facilities and adequate storm water drainage; or

(c) the person wishing to file the plat, ~~or~~ certificate of survey, or townhome, townhouse, or condominium declaration has placed on the plat, ~~or~~ certificate of survey, or townhome, townhouse, or condominium declaration an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption. ~~(Bracketed reference to 76-4-114 in subsection (2)(a) terminates September 30, 2019, and reverts to 76-4-125 effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)"~~

Section 13. Section 76-4-125, MCA, is amended to read:

"76-4-125. (Temporary) Land divisions excluded from review. (1) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

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

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

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

~~(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1~~

~~or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and as certified pursuant to 76-4-127:~~

~~(i) new divisions subject to review under the Montana Subdivision and Platting Act;~~

~~(ii) divisions or previously divided parcels recorded with sanitary restrictions; or~~

~~(iii) divisions or parcels of land that are exempt from the Montana Subdivision and Platting Act review under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f);~~

~~(e) subject to the provisions of subsection (3) (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:~~

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

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

~~(f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).~~

~~(2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield. (Terminates September 30, 2019--sec. 13, Ch. 344, L. 2017.)~~

~~**76-4-125. (Effective October 1, 2019) Review of subdivision application--land divisions excluded from review.** (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:~~

~~(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting~~

~~the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements:~~

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

~~———— (c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 calendar days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 calendar days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a final decision on the application within 10 calendar days after the local reviewing authority completes its review:~~

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

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

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

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

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

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

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

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

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

~~— (3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."~~

Section 14. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) ~~Except as provided in subsection (3), to~~ To qualify for the exemption from review set out in ~~[76-4-125(1)(d)]~~ 76-4-125(1)(d), the governing body, as defined in 76-3-103, shall, prior to final plat approval under the Montana Subdivision and Platting Act, certifying authority shall send notice of certification to the reviewing authority that ~~a subdivision has been submitted for approval and that~~ adequate storm water drainage and adequate municipal facilities will be provided for the subdivision. For a subdivision subject to Title 76, chapter 3, the certifying authority shall send notice of certification to the reviewing authority prior to final plat approval.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat included with the application for the proposed subdivision or a final plat when a preliminary plat is not necessary or, ~~if subsection (3) applies for a subdivision not subject to Title 76, chapter 3,~~ a copy of the certificate of survey map or amended plat map or a declaration and floor plan, including

the layout of each unit proposed to be recorded, under Title 70, chapter 23, part 3;

(c) the number of ~~proposed~~ parcels in the subdivision ~~or division under subsection (3)~~;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

~~— (f) certification that the subdivision or division under subsection (3) is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;~~

~~— (g)(f) the relative location of the subdivision or division under subsection (3) to the city or town the county water and/or sewer district;~~

~~(h)(g) certification that adequate municipal or county water and/or sewer district facilities for the supply of water and disposal of sewage and solid waste ~~are available or, unless subsection (3) applies,~~ will be provided ~~within the time provided in 76-3-507. If subsection (3) applies, the requirements of 76-3-507 do not apply.~~ Facilities for subdivisions subject to 76-3-507 must be provided within the time that section provides.~~

~~(i)(h) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities ~~are~~ will be available; and~~

~~(j)(i) certification that the governing body certifying authority has ~~reviewed or will review~~ and ~~approved~~ approve plans to ensure adequate storm water drainage.~~

~~(3) A division of land that is exempt from the Montana Subdivision and Platting Act review under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f) qualifies for an exemption under [76-4-125(1)(d)] if the governing body, as defined in 76-3-103, sends a notice of certification under subsection (2) to the reviewing authority stating that adequate storm water drainage and adequate municipal facilities will be provided for the division. (Bracketed references to 76-4-125(1)(d) in subsections (1) and (3) terminate September 30, 2019, and revert to 76-4-125(2)(d) effective October 1, 2019--sec. 13, Ch. 344, L. 2017.)"~~

Section 15. Section 76-4-130, MCA, is amended to read:

"76-4-130. Deviation from certificate of subdivision approval. A (1) Except as provided in subsection (2), a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

(2) A person may deviate from the certificate of subdivision approval without approval by the reviewing authority if the deviation consists solely of connecting to municipal or county water and/or sewer district facilities in place of previously approved facilities. The department may require notification when a person connects to municipal or county water and/or sewer district facilities."

Section 16. Section 76-4-131, MCA, is amended to read:

"76-4-131. Applicability of public water supply laws. The exclusions provided for in 76-4-121, 76-4-122, ~~and 76-4-125,~~ and 76-4-130(2) do not relieve any person of the duty to comply with the requirements of Title 75, chapter 6. An extension of a public water supply system or an extension of a public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75, chapter 6."

Section 17. Section 76-4-133, MCA, is amended to read:

"76-4-133. Installation inspection. A person who owns or controls a parcel of land that has been approved under this chapter for the installation of an individual, shared, or multiple-user sewage system shall:

(1) have the system inspected during installation by the local health officer, as defined in 50-1-101, or by the installer or other person designated by the local health officer; and

(2) file with the local board of health a certification by the inspector that the system has been installed in compliance with the certificate of subdivision approval and any conditions of approval."

Section 18. Repealer. Section 13, Chapter 344, Laws of 2017, is repealed.

Section 19. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2019.

(2) [Section 5(6)(m) and section 7] are effective January 1, 2020.

- END -

I hereby certify that the within bill,
HB 0055, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 55
INTRODUCED BY F. MANDEVILLE
BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION SANITATION REVIEW; DEFINING TERMS; EXTENDING RULEMAKING AUTHORITY; ALLOWING LOCAL ENTITIES TO REVIEW SUBDIVISION CONNECTIONS TO WATER AND SEWER; REVISING TIMELINES FOR SUBDIVISION REVIEW; REVISING SUBDIVISION EXEMPTIONS; REVISING FILING REQUIREMENTS; AMENDING SECTIONS 75-1-208, 76-3-622, 76-4-102, 76-4-103, 76-4-104, 76-4-105, 76-4-107, 76-4-111, 76-4-113, 76-4-114, 76-4-115, 76-4-116, 76-4-121, 76-4-122, 76-4-125, 76-4-127, 76-4-130, 76-4-131, AND 76-4-133, MCA; REPEALING SECTION 13, CHAPTER 344, LAWS OF 2017; AND PROVIDING EFFECTIVE DATES.