

Amendment - 1st Reading/2nd House-blue - Requested by: Daniel Zolnikov - (S) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

HB0364.002.002

1 HOUSE BILL NO. 364
2 INTRODUCED BY C. KNUDSEN, D. BEDEY, K. ZOLNIKOV, S. ESSMANN, B. MITCHELL, S. VINTON, M.
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5 MINER, T. SMITH, R. KNUDSEN

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SANITATION IN SUBDIVISIONS ACT
8 APPLICATION REVIEW PROCESS; ALLOWING AN INDEPENDENT REVIEWER TO CONDUCT
9 SUBDIVISION REVIEWS UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING TRIGGERS FOR
10 INDEPENDENT REVIEWS; ~~DETERMINING TRIGGERS FOR INDEPENDENT REVIEWS~~; REQUIRING
11 REPORTING TO THE ENVIRONMENTAL QUALITY COUNCIL; REQUIRING THE DEPARTMENT OF
12 ENVIRONMENTAL QUALITY TO DEVELOP A CURRICULUM AND EXAMINATION TO CERTIFY
13 APPLICANTS INDEPENDENT REVIEWERS; ALLOWING A CERTIFIED APPLICANT TO REVIEW
14 SUBDIVISION APPLICATIONS AND ASSUME LEGAL RESPONSIBILITY FOR THE REVIEW; REMOVING
15 LIMITS ON EXTENSIONS OR ALTERATIONS OF EXISTING PUBLIC WATER AND SEWER SYSTEMS FOR
16 LOCAL GOVERNMENT REVIEW; REMOVING THE REQUIREMENT FOR LOCAL REVIEW AGENTS TO
17 REVIEW FOR ADEQUATE STORMWATER DRAINAGE; REQUIRING REFUNDS OF SUBDIVISION FEES
18 FOR DEADLINE EXTENSIONS REQUESTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY;
19 REVISING-ESTABLISHING REPORTING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY;
20 PROVIDING DEFINITIONS; AMENDING SECTIONS 75-6-121, 76-4-102, 76-4-104, 76-4-105, 76-4-114, 76-4-
21 115, AND 76-4-116, 76-1-121, AND 76-4-127 MCA; AND PROVIDING AN APPLICABILITY DATE AND A
22 TERMINATION DATE."
23

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

25
26 **SECTION 1. SECTION 75-6-121, MCA, IS AMENDED TO READ:**

27 **"75-6-121. Delegation of review of small public water and sewer construction. (1) If a local**

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1 government requests a delegation and the appropriate division of the local government has established
2 satisfactory review programs, the department ~~may~~shall delegate to the division of local government the review
3 of:

4 (a) small public water and sewer systems; and

5 (b) extensions or alterations of existing public water and sewer systems ~~that involve 50 or fewer~~
6 ~~connections.~~

7 (2) The department ~~may~~shall adopt rules regarding the delegation of review authority to divisions
8 of local government.

9 (3) A division of local government conducting a review under this section:

10 (a) must receive 90% of the review fee, and the department must receive the remaining 10% of
11 the review fee; and

12 (b) shall complete documents necessary to complete the review and to comply with:

13 (i) the Montana Environmental Policy Act provided for in Title 75, chapter 1, parts 1 through 3;

14 (ii) real property takings requirements in accordance with Title 70; and

15 (iii) determinations of nondegradation and nonsignificance as required in Title 75, chapter 5."

16
17 **Section 2.** Section 76-4-102, MCA, is amended to read:

18 **"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
19 following definitions apply:

20 (1) "Adequate county water and/or sewer district facilities" means facilities provided by a county
21 water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75,
22 chapters 5 and 6.

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

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

27 (4) "Certifying authority" means a municipality or a county water and/or sewer district that meets

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1 ~~(16)~~(17) "Registered professional engineer" means a person licensed to practice as a professional
2 engineer under Title 37, chapter 67.

3 ~~(17)~~(18) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37,
4 chapter 40.

5 ~~(18)~~(19) "Reviewing authority" means the department or a local department or board of health certified
6 to conduct a review under 76-4-104.

7 ~~(19)~~(20) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or
8 building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction
9 of water supply or sewage or solid waste disposal, facilities until the department has approved plans for those
10 facilities.

11 ~~(20)~~(21) "Sewage" has the meaning provided in 75-5-103.

12 ~~(21)~~(22) "Sewer service line" means a sewerline that connects a single building or living unit to a public
13 sewage system or to an extension of a public sewage system.

14 ~~(22)~~(23) "Solid waste" has the meaning provided in 75-10-103.

15 ~~(23)~~(24) "Subdivision" means a division of land or land so divided that creates one or more parcels
16 containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the
17 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium,
18 townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for
19 recreational camping vehicles or mobile homes.

20 ~~(24)~~(25) "Water service line" means a waterline that connects a single building or living unit to a public
21 water supply system or to an extension of a public water supply system.

22 ~~(25)~~(26) "Well isolation zone" means the area within a 100-foot radius of a water well."
23

24 **Section 3.** Section 76-4-104, MCA, is amended to read:

25 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the
26 provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for
27 administration and enforcement of this part.

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

4 (a) size of lots;

5 (b) contour of land;

6 (c) porosity of soil;

7 (d) ground water level;

8 (e) distance from lakes, streams, and wells;

9 (f) type and construction of private water and sewage facilities; and

10 (g) other factors affecting public health and the quality of water for uses relating to agriculture,
11 industry, recreation, and wildlife.

12 (3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of
13 subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter
14 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional
15 engineer and if the department certifies under subsection (4) that the local department or board is competent to
16 conduct the review.

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

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

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

26 **(b) On or before December 31, 2023, the department shall develop procedures for certification of**
27 **prequalified independent reviewers and develop a training curriculum to ensure compliance with this part.**

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- 1 (5) The department shall review those subdivisions described in subsection (3) if:
- 2 (a) a proposed subdivision lies within more than one jurisdictional area and the respective
- 3 governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed
- 4 subdivision; or
- 5 (b) the local department or board of health elects not to be certified.
- 6 (6) The rules must further provide for:
- 7 (a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review
- 8 under this part and other documentation showing the layout or plan of development, including:
- 9 (i) total development area; and
- 10 (ii) total number of proposed units and structures requiring facilities for water supply or sewage
- 11 disposal;
- 12 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and
- 13 dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;
- 14 (c) evidence concerning the potability of the proposed water supply for the subdivision;
- 15 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and
- 16 dependability;
- 17 (e) standards and technical procedures applicable to storm drainage plans and related designs, in
- 18 order to ensure proper drainage ways, except that the rules must provide a basis for not requiring storm water
- 19 review under this part for parcels 5 acres and larger on which the total impervious area does not and will not
- 20 exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75,
- 21 chapter 5, or rules adopted pursuant to Title 75, chapter 5.
- 22 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including
- 23 soil testing and site design standards for on-lot sewage disposal systems when applicable;
- 24 (g) standards and technical procedures applicable to water systems;
- 25 (h) standards and technical procedures applicable to solid waste disposal;
- 26 (i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone
- 27 are located wholly within the boundaries of the proposed subdivision where the proposed drainfield or well is

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1 located or that an easement or, for public land, other authorization has been obtained from the landowner to
2 place the proposed drainfield mixing zone or proposed well isolation zone outside the boundaries of the
3 proposed subdivision where the proposed drainfield or proposed well is located.

4 (i) A proposed drainfield mixing zone or a proposed well isolation zone for an individual water
5 system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of
6 the subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

7 (ii) This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those
8 under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or
9 reconstruction of or other improvements to a public sewage system within a well isolation zone that extends
10 onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

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

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

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

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

25 (7) The requirements of subsection (6)(i) regarding proposed drainfield mixing zones and proposed
26 well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after
27 October 1, 2021, except as provided in subsections (6)(i)(i) and (6)(i)(ii).

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1 (8) The department shall:

2 (a) conduct a biennial review of experimental wastewater system components that have been
3 granted a waiver or deviation as provided in subsection (6)(j);

4 (b) utilize relevant analysis of wastewater system components approved in other states and data
5 from peer-reviewed third-party studies to conduct the review provided in subsection (8)(a);

6 (c) propose those experimental wastewater system components that meet the purposes and
7 provisions of this part for adoption into the rules pursuant to this section; and

8 (d) report to the local government interim committee biennially, in accordance with 5-11-210, the
9 number and type of experimental wastewater system components reviewed and the number and type of system
10 components approved and provide written findings to explain why a system component was reviewed but not
11 approved.

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

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

21 (a) the reason for the denial or condition imposition;

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

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

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

26 (12) (a) Except as provided in subsection (12)(b) and pursuant to subsection (12)(c), the THE rules
27 must provide for the review of subdivisions consistent with 76-4-114 by an independent reviewer if the

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1 department certifies under subsection (4) of this section that the independent reviewer is competent to conduct
2 the review.

3 (b) (i) Except as provided in subsection (12)(b)(ii), an independent reviewer may not review public
4 water supply systems, public sewage systems, or extensions of or connections to these systems.

5 (ii) An independent reviewer may be certified by the department to review subdivisions proposed
6 to connect to existing municipal or county water and/or sewer district water and wastewater systems previously
7 approved by the department if no extension of the system is required.

8 (c) (i) If 10% or more of the applications received during a calendar quarter remain overdue
9 applications at the end of the quarter, the department shall assign applications to independent reviewers in a
10 number not to exceed the number of overdue applications, unless an independent reviewer is not available.

11 (ii) The department may assign applications to independent reviewers if fewer than 10% of the
12 applications received by the department in a calendar quarter are overdue at the end of that quarter.

13 (d)(c) If 110 or more new files are submitted to the department for review in any one month, the
14 department shall assign applications received in that month to independent reviewers unless an independent
15 reviewer is not available.

16 (d) The department shall reimburse independent reviewers at the same rate the department
17 reimburses local departments or local boards of health certified under subsection (3).

18 (13) (a) As used in this section, "overdue application" means an application for which the
19 department has not provided a response within 40 days under 76-4-114(3)(c)(i)(A) and that remains
20 outstanding at the end of a quarter.

21 (b) The term does not include applications for which:

22 (i) no more than one extension has been granted to the department under 76-4-114(4) ; or

23 (ii) any number of extensions under 76-4-114(5) have been granted.

24 (13) PRIOR TO BEING ASSIGNED AN APPLICATION FOR REVIEW, AN INDEPENDENT REVIEWER SHALL IDENTIFY
25 ANY CONFLICT OF INTEREST RELATED TO THE PROJECT UNDER POTENTIAL REVIEW. IF THE INDEPENDENT REVIEWER
26 IDENTIFIES A CONFLICT OF INTEREST, THE APPLICATION FOR REVIEW MUST BE ASSIGNED TO A DIFFERENT INDEPENDENT
27 REVIEWER.

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1 (14) AN INDEPENDENT REVIEWER ACTING UNDER THE REQUIREMENTS OF THIS CHAPTER SHALL COMPLY
2 WITH THE PROVISIONS OF TITLE 2, CHAPTER 6, FOR PUBLIC INFORMATION REQUESTS.

3 (15) An independent reviewer conducting reviews under this section shall complete documents
4 necessary to complete the review and to comply with:

5 (a) the Montana Environmental Policy Act provided for in Title 75, chapter 1, parts 1 through 3; and

6 (b) real property takings requirements in accordance with Title 70."

7

8 **SECTION 4. SECTION 76-4-105, MCA, IS AMENDED TO READ:**

9 **"76-4-105. Subdivision fees -- subdivision program funding.** (1) The department shall adopt rules
10 setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections
11 pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a
12 schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and
13 subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to
14 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

15 (a) the number of lots in the subdivision;

16 (b) the type of water system to serve the development;

17 (c) the type of sewage disposal to serve the development; and

18 (d) the degree of environmental research necessary to supplement the review procedure.

19 (2) ~~(a) For-Except as provided for in subsection (2)(b), for~~ extensions requested by the department
20 of the deadlines in 76-4-114, the department shall refund the applicant:

21 (a)(i) for the first extension, ~~40%-25%~~ of the fees;

22 (b)(ii) for the second extension, ~~30%-50%~~of the fees; and

23 ~~(e)(iii)~~ for the third extension, the remaining fees paid.

24 (b) Reimbursement is not required for extensions:

25 (i) requested by the applicant under 76-4-114(4); or

26 (ii) necessary under 76-4-114(5) to obtain the required information in 76-4-115(2).

27 (c) A reimbursement provided for in this subsection (2) applies only to the portions of the

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1 application review being completed by the department.

2 ~~(2)~~(3) The department shall adopt rules to determine the distribution of fees to the local reviewing
3 authority for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and
4 enforcement activities conducted pursuant to 76-4-108.

5 ~~(3)~~(4) The local reviewing authority may establish a fee to review applications, conduct site visits, and
6 review applicable exemptions under this chapter. The fee must be paid directly to the local reviewing authority
7 and may not exceed the local reviewing authority's actual cost that is not otherwise reimbursed by the
8 department from fees adopted pursuant to this section."

9

10 **Section 5.** Section 76-4-114, MCA, is amended to read:

11 **"76-4-114. Review of application.** Except as provided in 76-4-125, the applicant shall submit an
12 application for review of a subdivision pursuant to the following procedure:

13 (1) An applicant may request a preapplication meeting with the reviewing authority prior to
14 submitting an application. The reviewing authority shall schedule the requested meeting between the applicant
15 and the reviewing authority within 30 days of receiving the request from the applicant. The meeting may be
16 conducted in person, via telephone, or via teleconference. For informational purposes only, the reviewing agent
17 shall identify the state laws and rules that may apply to the subdivision review process.

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

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

26 (b) Within 15 days of the receipt of an application, the reviewing authority or independent reviewer
27 shall determine whether the application contains the elements required by 76-4-115(1) to allow for review and

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1 shall notify the applicant of the ~~reviewing authority's~~ determination. If the reviewing authority or independent
2 reviewer determines that elements are missing from the application, the reviewing agent or agency shall identify
3 those elements in the notification. The applicant shall address the missing elements identified by the reviewing
4 authority or independent reviewer. A determination that an application contains the required elements for review
5 as provided in this subsection (3)(b) does not ensure that the proposed subdivision will be approved and does
6 not limit the ability of the reviewing authority or independent reviewer to request additional information during
7 the review process.

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

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

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

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

23 (iii) If the reviewing authority or independent reviewer denies the application, the reviewing
24 authority or independent reviewer shall identify the deficiencies that result in the denial in a notification to the
25 applicant. The reviewing authority may identify other apparent deficiencies in additional information submitted
26 after the initial application.

27 (d) (i) If the reviewing authority or independent reviewer denies an application and the applicant

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1 resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority or
2 independent reviewer shall complete review of the resubmitted application within 30 days after receipt of the
3 resubmitted application.

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

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

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

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

16 (4) Except as provided in subsections (6) and (7), if the reviewing authority or independent
17 reviewer needs an extension of a deadline in this section to complete its review or if an applicant requests an
18 extension of a deadline, then the reviewing authority or independent reviewer shall notify the applicant of the
19 extension prior to the end of the review deadline. An extension under this subsection may not exceed 30 days;
20 however, the reviewing authority may issue more than one extension. ~~THE REVIEWING AUTHORITY MAY NOT ISSUE~~

21 ~~MORE THAN ONE EXTENSION.~~

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

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

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1 (7) The department may extend a deadline under subsections (3)(c) and (3)(d) by 120 days if an
2 environmental impact statement is required.

3 (8) AN APPLICATION IS CONSIDERED AN OVERDUE APPLICATION IF THE DEPARTMENT HAS NOT PROVIDED A
4 RESPONSE OR MET THE STATUTORY TIMELINES PROVIDED IN THIS SECTION.

5 (9) If a municipal system has been delegated review authority under 75-6-112, the department is
6 not required to review water or sewer facilities that have already been approved by the municipality."

7

8 **Section 6.** Section 76-4-115, MCA, is amended to read:

9 **"76-4-115. Contents of application -- supplemental information.** (1) The application submitted
10 under 76-4-114 must include preliminary plans and specifications for the proposed development, information
11 required under rules adopted pursuant to this chapter, and any additional information the applicant feels
12 necessary.

13 (2) In addition to the information required for the submission of the application under subsection
14 (1), before the reviewing authority or independent reviewer makes a final decision on the application, the
15 applicant shall provide:

16 (a) a copy of the certification from the local health department required by 76-4-104(6)(k);

17 (b) if required under Title 76, chapter 3, an approval from the local governing body under Title 76,
18 chapter 3; and

19 (c) any public comments or summaries of public comments collected as provided in 76-3-604(7)."

20

21 **Section 7.** Section 76-4-116, MCA, is amended to read:

22 **"76-4-116. Annual report AND QUARTERLY REPORTS.** (1) The department shall report annually to the
23 environmental quality council in accordance with 5-11-210:

24 (1) summarizing the review procedures adopted under Title 76, chapter 4, and recommending
25 recommendations as to whether statutory changes should be made to the process; and

26 (2) noting the percentage and number of overdue applications for each calendar quarter and if
27 independent reviewers were necessary under 76-4-104(12)(c)(i).

1 (2) THE DEPARTMENT SHALL REPORT QUARTERLY TO THE ENVIRONMENTAL QUALITY COUNCIL IN
2 ACCORDANCE WITH 5-11-210 THE NUMBER AND PERCENTAGE OF OVERDUE FILES AS PROVIDED IN 76-4-114(8).

3 (3) (a) Before July 1, 2028, the department shall provide a comprehensive review of subdivision
4 review procedures, including an analysis of the role of independent reviewers, delays in permit issuance, and
5 permit outcomes. The department shall consider and collect input from stakeholders in preparing the
6 comprehensive review.

7 (b) The department shall report to the environmental quality council the information provided in the
8 comprehensive review required in subsection (3)(a). The environmental quality council may provide
9 recommendations to the department."

10
11 SECTION 8. SECTION 76-4-121, MCA, IS AMENDED TO READ:

12 ~~"76-4-121. Restrictions on subdivision activities. A person may not dispose of any lot within a~~
13 ~~subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or~~
14 ~~shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or~~
15 ~~occupy any permanent buildings in a subdivision until:~~

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

19 (2) ~~the certifying authority has provided certification pursuant to 76-4-127 that the subdivision will~~
20 ~~be provided with adequate municipal or county water and/or sewer district facilities and or adequate storm~~
21 ~~water drainage; or~~

22 (3) ~~the subdivision is otherwise exempt from review under 76-4-125."~~

23
24 Section 8. SECTION 76-4-127, MCA, IS AMENDED TO READ:

25 "76-4-127. Notice of certification that adequate storm water drainage and ~~or and~~ adequate
26 municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(1)(d),
27 the certifying authority shall send notice of certification to the reviewing authority that ~~adequate storm water~~

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1 ~~drainage and adequate municipal~~ identifies the adequate storm water drainage and adequate municipal
2 facilities ~~that~~ will be provided for the subdivision. For a subdivision subject to Title 76, chapter 3, the certifying
3 authority shall send notice of certification to the reviewing authority prior to final plat approval.

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

5 (a) the name and address of the applicant;

6 (b) a copy of the preliminary plat included with the application for the proposed subdivision or a
7 final plat when a preliminary plat is not necessary or, for a subdivision not subject to Title 76, chapter 3, a copy
8 of the certificate of survey map or amended plat map or a declaration ~~and floor plan, including the layout of~~
9 ~~each unit proposed to be recorded,~~ and floor plan, including the layout of each unit proposed to be recorded
10 under Title 70, chapter 23, part 3;

11 (c) the number of parcels in the subdivision;

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

13 (e) how construction of ~~the the~~ sewage disposal, ~~and~~ water supply, ~~solid waste, or storm water~~
14 ~~drainage~~ systems or extensions to those systems will be financed;

15 (f) the relative location of the subdivision to the city or the county water and/or sewer district city or
16 the county water and/or sewer district boundaries of the certifying authority;

17 (g) ~~(i)~~ certification that adequate municipal or county water and/or sewer district ~~adequate~~
18 ~~municipal or county water and/or sewer district facilities~~ for the supply of water and disposal of sewage and
19 solid waste ~~for the supply of water and disposal of sewage and solid waste~~ will be provided, including:

20 (A) the supply of water;

21 (B) the disposal of sewage; or

22 (C) storm water drainage.

23 ~~(ii) The notice must identify which facilities, if any, cannot be certified by the certifying authority.~~

24 Facilities for subdivisions subject to 76-3-507 must be provided within the time that section provides.

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

27 ~~(i) certification that the certifying authority has or will review and approve plans to ensure adequate~~

1 storm water drainage

2 (i) certification that the certifying authority has or will review and approve plans to ensure
3 adequate storm water drainage.

4 (3) A municipality may be authorized to act as a reviewing authority under this section and may
5 self-approve the municipality's own exemption. ~~If a certifying authority is unable to certify adequacy of one or~~
6 ~~more systems for the subdivision, the reviewing authority shall review the subdivision for adequacy and~~
7 ~~approval of the remaining services."~~

8
9 NEW SECTION. SECTION 10. CERTIFICATION OF APPLICANTS TO PREQUALIFY FOR REVIEW. (1) THE
10 DEPARTMENT SHALL PROMULGATE RULES TO ALLOW FOR THE CERTIFICATION OF APPLICANTS, INCLUDING THE
11 DEVELOPMENT OF AN EDUCATIONAL CURRICULUM AND EXAMINATION TO ENABLE AN APPLICANT TO ACT AS A CERTIFIED
12 REVIEWING AGENT PURSUANT TO 76-4-104(4), AND SHALL CONDUCT REVIEWS OF SUBDIVISION APPLICATIONS
13 SUBMITTED BY CERTIFIED APPLICANTS UNDER 76-4-114.

14 (2) TO BECOME CERTIFIED, AN APPLICANT:

15 (A) MUST BE A REGISTERED SANITARIAN OR LICENSED PROFESSIONAL ENGINEER WITH AT LEAST 5 YEARS
16 OF PROFESSIONAL EXPERIENCE;

17 (B) MUST HAVE SUBMITTED AT LEAST ONE APPLICATION THAT WAS APPROVED BY THE DEPARTMENT PRIOR
18 TO APPLYING FOR CERTIFICATION; AND

19 (C) SHALL PARTICIPATE IN ALL PORTIONS OF THE REQUIRED CURRICULUM AND MUST SUCCESSFULLY PASS
20 THE EXAMINATION DEVELOPED BY THE DEPARTMENT AS PROVIDED IN SUBSECTION (1).

21 (3) A CERTIFIED APPLICANT MAY ONLY REVIEW SUBDIVISIONS IN WHICH EACH PROPOSED LOT IS TO BE
22 SERVICED BY AN INDIVIDUAL WATER WELL AND AN INDIVIDUAL ONSITE WASTEWATER TREATMENT SYSTEM.

23 (4) A CERTIFIED APPLICANT:

24 (A) SHALL MEET ALL REVIEW TIMELINES REQUIRED FOR APPLICATION REVIEW UNDER 76-4-114;

25 (B) SHALL CERTIFY THAT THE CONTENTS OF AN APPLICATION, INCLUDING ANY SUPPLEMENTAL
26 INFORMATION AS REQUIRED IN 76-4-115, ARE COMPLETE;

27 (C) SHALL SUBMIT COMPLETED APPLICATIONS TO THE DEPARTMENT;

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1 (D) IS NOT ENTITLED TO SUBDIVISION FEES UNDER 76-4-105; AND

2 (E) SHALL ASSUME ALL LEGAL RESPONSIBILITY FOR THE CERTIFIED APPLICANT'S ACTIONS RELATED TO
3 APPLICATIONS REVIEWED AND COMPLETED BY THE CERTIFIED APPLICANT;

4 (5) COMPLETED APPLICATIONS RECEIVED BY THE DEPARTMENT FROM A CERTIFIED APPLICANT MUST BE
5 CONSIDERED APPROVED BY THE REVIEWING AGENT AND MAY BE FILED BY THE COUNTY CLERK AND RECORDER AS
6 ALLOWED IN 76-4-122 IF THE APPLICATION MEETS ALL OTHER CONDITIONS OF 76-4-122;

7 (6) (A) THE DEPARTMENT SHALL REVIEW AT LEAST 10% OF ALL APPLICATIONS SUBMITTED BY CERTIFIED
8 APPLICANTS IN A CALENDAR YEAR USING THE STANDARD REVIEW PROCESS ALLOWED IN THIS PART;

9 (B) IF THE DEPARTMENT REVIEWS AN APPLICATION SUBMITTED BY A CERTIFIED APPLICANT PURSUANT TO
10 SUBSECTION (6)(A) AND FINDS THAT THE CERTIFIED APPLICANT HAS VIOLATED A REQUIREMENT OF THIS PART OR A RULE
11 ADOPTED OR AN ORDER ISSUED UNDER THIS PART, THE DEPARTMENT SHALL REVOKE THE CERTIFIED STATUS OF THE
12 APPLICANT. AN APPLICANT WHOSE CERTIFIED STATUS HAS BEEN REVOKED AS PROVIDED IN THIS SUBSECTION (6)(B) MAY
13 NOT APPLY FOR CERTIFICATION UNDER THIS SECTION AND MAY BE LIABLE FOR PENALTIES ALLOWED IN 76-4-109. THE
14 DEPARTMENT OR ANY OTHER AGGRIEVED PERSON MAY SEEK ADDITIONAL REMEDIES ALLOWED IN 76-4-110 OR SEEK
15 OTHER REDRESS UNDER ANY AVAILABLE LAW;

16 (7) A CERTIFIED APPLICANT IS REQUIRED TO RENEW THE APPLICANT'S CERTIFICATION AT LEAST ONCE
17 EVERY 2 YEARS;

18 (8) NOTHING IN THIS SECTION RESTRICTS OR DENIES THE ABILITY OF THE DEPARTMENT TO ENFORCE THE
19 PROVISIONS OF THIS CHAPTER, INCLUDING BUT NOT LIMITED TO THE ENFORCEMENT PROVISIONS PROVIDED IN 76-4-108,
20 76-4-1001, AND 76-4-1002;

21 (9) A CERTIFIED APPLICANT ACTING UNDER THE REQUIREMENTS OF THIS SECTION SHALL COMPLY WITH THE
22 PROVISIONS OF TITLE 2, CHAPTER 6, FOR PUBLIC INFORMATION REQUESTS;

23
24 NEW SECTION. Section 11. IMPLEMENTATION. THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL
25 IMPLEMENT THE REQUIREMENTS OF [THIS ACT] WITHIN EXISTING RESOURCES;

26
27 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that matured,

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1 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

2

3 NEW SECTION. Section 10. Nonseverability. It is the intent of the legislature that each part of [this
4 act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other
5 parts are invalid.

6

7 ~~NEW SECTION. Section 14. CODIFICATION INSTRUCTION. [SECTION 10] IS INTENDED TO BE CODIFIED AS~~
8 ~~AN INTEGRAL PART OF TITLE 76, CHAPTER 4, PART 1, AND THE PROVISIONS OF TITLE 76, CHAPTER 4, PART 1, APPLY TO~~
9 ~~[SECTION 10].~~

10

11 NEW SECTION. Section 11. Applicability. [This act] applies to applications received on or after
12 ~~October 1, 2023~~ January 1, 2024.

13

14 NEW SECTION. Section 9. Termination. [This act] terminates December 31, 2027.

15

- END -