

Amendment - 1st Reading/2nd House-blue - Requested by: Carl Glimm - (H) Local Government

- 2023
68th Legislature 2023

Drafter: Jason Mohr, 406-444-1640

SB0327.001.001

1 SENATE BILL NO. 327

2 INTRODUCED BY C. GLIMM

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT SUBDIVISION APPLICANTS MAY IDENTIFY
5 WATER WELL LOCATIONS; REVISING A DEFINITION; AND AMENDING SECTIONS 76-3-622, 76-4-102,
6 AND 76-4-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 76-3-622, MCA, is amended to read:

11 **"76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as
12 provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency
13 designated by the governing body the information listed in this section for proposed subdivisions that will
14 include new water supply or wastewater facilities. The information must include:

15 (a) a vicinity map or plan that shows:

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

18 (A) flood plains;

19 (B) surface water features;

20 (C) springs;

21 (D) irrigation ditches;

22 (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and
23 wastewater treatment systems, except that the subdivider may locate a water well anywhere on a lot, parcel, or
24 tract of record if the subdivider maintains the minimum setback distances adopted in rule by the department of
25 environmental quality;

26 (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

27 (G) the representative drainfield site used for the soil profile description as required under

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- 1 subsection (1)(d); and
- 2 (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public
- 3 water and sewer facilities;
- 4 (b) a description of the proposed subdivision's water supply systems, storm water systems, solid
- 5 waste disposal systems, and wastewater treatment systems, including:
- 6 (i) whether the water supply and wastewater treatment systems are individual, shared, multiple
- 7 user, or public as those systems are defined in rules published by the department of environmental quality; and
- 8 (ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a
- 9 statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of
- 10 the public service commission or exempt from public service commission jurisdiction and, if exempt, an
- 11 explanation for the exemption;
- 12 (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that
- 13 shows all information required for a lot layout document in rules adopted by the department of environmental
- 14 quality pursuant to 76-4-104;
- 15 (d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum,
- 16 includes:
- 17 (i) a soil profile description from a representative drainfield site identified on the vicinity map, as
- 18 provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental
- 19 quality;
- 20 (ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance
- 21 between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting
- 22 layer; and
- 23 (iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet
- 24 of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation
- 25 distance provided in subsection (1)(d)(ii);
- 26 (e) for new water supply systems, unless cisterns are proposed, evidence of adequate water
- 27 availability;

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1 (i) obtained from well logs or testing of onsite or nearby wells;
2 (ii) obtained from information contained in published hydrogeological reports; or
3 (iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to
4 76-4-104;

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

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

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

17 (3) A governing body may not, through adoption of regulations, require water and sanitation
18 information in addition to the information required under this section unless the governing body complies with
19 the procedures provided in 76-3-511."

20

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

22 **"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
23 following definitions apply:

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

27 (2) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that

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1 supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a
2 municipality and that are operating in compliance with Title 75, chapters 5 and 6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 (15) "Regional authority" means any regional water authority, regional wastewater authority, or
2 regional water and wastewater authority organized pursuant to the provisions of Title 75, chapter 6, part 3.

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

5 (17) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37,
6 chapter 40.

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

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

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

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

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

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

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

24 (25) "Well isolation zone" means the area within a 100-foot radius of a water well or a smaller, site-
25 specific radius as approved by the department."

26

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

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

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

7 (a) size of lots;

8 (b) contour of land;

9 (c) porosity of soil;

10 (d) ground water level;

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

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

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

15 (3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of
16 subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter
17 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional
18 engineer and if the department certifies under subsection (4) that the local department or board is competent to
19 conduct the review.

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

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

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

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1 described in subsection (3).

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

3 (a) a proposed subdivision lies within more than one jurisdictional area and the respective
4 governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed
5 subdivision; or

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

7 (6) The rules must further provide for:

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

10 (i) total development area; and

11 (ii) total number of proposed units and structures requiring facilities for water supply or sewage
12 disposal;

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

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

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

18 (e) standards and technical procedures applicable to storm drainage plans and related designs, in
19 order to ensure proper drainage ways, except that the rules must provide a basis for not requiring storm water
20 review under this part for parcels 5 acres and larger on which the total impervious area does not and will not
21 exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75,
22 chapter 5, or rules adopted pursuant to Title 75, chapter 5.

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

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

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

27 (i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone

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

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

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

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

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

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

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

26 (7) The requirements of subsection (6)(i) regarding proposed drainfield mixing zones and proposed
27 well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after

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1 October 1, 2021, except as provided in subsections (6)(i)(i) and (6)(i)(ii).

2 (8) The department shall:

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

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

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

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

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

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

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

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

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

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

27 (b) A subdivider may locate a water well anywhere on a lot, parcel, or tract of record if the

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1 subdivider maintains the minimum setback distances adopted in rule. The reviewing authority may not limit a
2 subdivider to a single proposed well location."

3

4 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

5

- END -

AMENDED