

Amendment - 2nd Reading-yellow - Requested by: Forrest Mandeville - (S) Committee of Whole

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0227.002.001

SENATE BILL NO. 227

INTRODUCED BY F. MANDEVILLE, C. FRIEDEL, C. GLIMM, J. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ENVIRONMENTAL PROTECTION AND SUBDIVISION REVIEW LAWS; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO DEVELOP A CURRICULUM AND EXAMINATION TO CERTIFY APPLICANTS; ALLOWING A CERTIFIED APPLICANT TO REVIEW SUBDIVISION APPLICATIONS AND ASSUME LEGAL RESPONSIBILITY FOR THE REVIEW; REQUIRING THE DEPARTMENT TO REVIEW APPLICATIONS SUBMITTED BY CERTIFIED APPLICANTS; REMOVING LIMITS ON EXTENSIONS OR ALTERATIONS OF EXISTING PUBLIC WATER AND SEWER SYSTEMS FOR LOCAL GOVERNMENT REVIEW; REMOVING THE REQUIREMENT FOR LOCAL REVIEW AGENTS TO REVIEW FOR ADEQUATE STORMWATER DRAINAGE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-6-121, 76-4-121, AND 76-4-127, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Certification of applicants to prequalify for review. (1) The

department shall promulgate rules to allow for the certification of applicants, including the development of an educational curriculum and examination to enable an applicant to act as a certified reviewing agent pursuant to 76-4-104(4), and shall conduct reviews of subdivision applications submitted by certified applicants under 76-4-114.

(2) To become certified, an applicant:

(a) must be a registered sanitarian or licensed professional engineer with at least 5 years of professional experience;

(b) must have submitted at least one application that was approved by the department prior to applying for certification; and

(c) shall participate in all portions of the required curriculum and must successfully pass the

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examination developed by the department as provided in subsection (1).

(3) (a) Except as allowed in subsection (3)(b), a certified applicant may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(b) A certified applicant may 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) A certified applicant:

(a) shall meet all review timelines required for application review under 76-4-114;

(b) shall certify that the contents of an application, including any supplemental information as required in 76-4-115, are complete;

(c) shall submit completed applications to the department;

(d) is not entitled to subdivision fees under 76-4-105; and

(e) shall assume all legal responsibility for the certified applicant's actions related to applications reviewed and completed by the certified applicant.

(5) Completed applications received by the department from a certified applicant must be considered approved by the reviewing agent and may be filed by the county clerk and recorder as allowed in ~~76-4-112~~ 76-4-122 if the application meets all other conditions of ~~76-4-112~~ 76-4-122.

(6) (a) The department shall review at least 10% of all applications submitted by certified applicants in a calendar year using the standard review process allowed in this part.

(b) If the department reviews an application submitted by a certified applicant pursuant to subsection (6)(a) and finds that the certified applicant has violated a requirement of this part or a rule adopted or an order issued under this part, the department shall revoke the certified status of the applicant. An applicant whose certified status has been revoked as provided in this subsection (6)(b) may not apply for certification under this section and may be liable for penalties allowed in 76-4-109. The department or any other aggrieved person may seek additional remedies allowed in 76-4-110 or seek other redress under any available law.

(7) A certified applicant is required to renew the applicant's certification at least once every 2 years.

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(8) Nothing in this section restricts or denies the ability of the department to enforce the provisions of this chapter, including but not limited to the enforcement provisions provided in 76-4-108, 74-6-1001, and 76-4-1002.

Section 2. Section 75-6-121, MCA, is amended to read:

"75-6-121. Delegation of review of small public water and sewer construction. (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department ~~may~~ shall delegate to the division of local government the review of:

- (a) small public water and sewer systems; and
- (b) extensions or alterations of existing public water and sewer systems ~~that involve 50 or fewer connections.~~

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

Section 3. 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 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;
- (2) the certifying authority has provided certification pursuant to 76-4-127 that the subdivision will be provided with adequate municipal or county water and/or sewer district facilities ~~and or~~ adequate storm water drainage; or
- (3) the subdivision is otherwise exempt from review under 76-4-125."

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

3 **"76-4-127. Notice of certification that adequate storm water drainage and or adequate**
4 **municipal facilities will be provided.** (1) To qualify for the exemption from review set out in 76-4-125(1)(d),
5 the certifying authority shall send notice of certification to the reviewing authority that ~~adequate storm water~~
6 ~~drainage and adequate municipal~~ identifies the facilities that will be provided for the subdivision. For a
7 subdivision subject to Title 76, chapter 3, the certifying authority shall send notice of certification to the
8 reviewing authority prior to final plat approval.

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

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

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

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

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

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

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

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

23 (A) the supply of water;

24 (B) disposal of sewage; or

25 (C) storm water drainage.

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

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

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

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

(3) If a certifying authority is unable to certify adequacy of one or more systems for the subdivision, the reviewing authority shall review the subdivision for adequacy and approval of the remaining services."

NEW SECTION. Section 5. Implementation. The department of environmental quality shall implement the requirements of [section 1] within existing resources.

NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to [section 1].

NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 8. Applicability. [Sections 2 through 4] apply to reviews of applications submitted and systems reviewed on or after [the effective date of this act].

- END -