

**Unofficial Draft Copy**

As of: April 16, 2018 (10:36am)

LCSMW1

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

**DRAFT FOR DISCUSSION PURPOSES ONLY**

A Bill for an Act entitled: "An Act exempting small sewer and water utilities from public service commission regulation; requiring private owners of small sewer and water utilities to provide just and reasonable rates, charges, and classifications; requiring notice; allowing a customer to appeal a decision to district court; amending sections 69-3-101 and 76-3-103, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 69-3-101, MCA, is amended to read:

**"69-3-101. Meaning of term "public utility".** (1) The term "public utility", within the meaning of this chapter, includes every corporation, both public and private, company, individual, association of individuals, and their lessees, trustees, or receivers appointed by any court that own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

- (a) heat;
- (b) street-railway service;
- (c) light;

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- (d) power in any form or by any agency;
- (e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities or towns or elsewhere;
- (f) regulated telecommunications service.
- (2) The term does not include:
  - (a) privately owned and operated water, sewer, or water and sewer systems that do not serve the public;
  - (b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23;
  - (c) except as provided in chapter 7, municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44; ~~or~~
    - (d) except as provided in [section 4(4)], a small sewer or water utility as defined in [section 3]; or
    - ~~(d)~~(e) a person exempted from regulation as a public utility as provided in 69-3-111."

{*Internal References to 69-3-101:*

15-72-104x	37-68-102x	69-3-111x	69-3-111x
69-3-113x	69-3-202x	69-3-1203x	69-4-520x
69-4-520x	69-4-520x	76-3-103a	76-3-622x}

**Section 2.** Section 76-3-103, MCA, is amended to read:

**"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

- (1) "Certificate of survey" means a drawing of a field

survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all

elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(10) "Phased development" means a subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for review on a schedule proposed by the subdivider.

(11) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(12) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(13) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(14) "Public utility" has the meaning provided in 69-3-101,

except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44, and small sewer or water utilities as defined in [section 3].

(15) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(16) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

(17) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county

clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (17)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

{ *Internal References to 76-3-103:*

69-5-102x    76-4-127x    76-4-127x    76-6-203x  
76-7-203x    76-8-101x }

NEW SECTION.    **Section 3. Definitions.** As used in [sections 3 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Customer" means any individual or entity supplied with water or sewer service by means of a water or sewer line that connects a single building or living unit to a small sewer or water utility's water or sewer system. For purposes of [sections 3 through 6], each single building or living unit connected to the utility's system is one customer.

(2) "Small sewer or water utility" means a privately owned sewer or water utility that serves the public and has 500 or fewer customers.

NEW SECTION. **Section 4. Small sewer and water utilities -- appropriate regulation.** (1) Except as provided in subsection (4), the private owner of a small sewer or water utility may establish and change, as it considers proper, rates, charges, and classifications imposed for water or sewer service to customers served by the small sewer or water utility. Rates, charges, and classifications must be reasonable and just.

(2) (a) If an owner of a small sewer or water utility establishes or changes rates, charges, or classification on or after July 1, 2019, the owner shall provide notice to its customers.

(b) The notice must:

(i) be mailed at least 30 days prior to establishing or changing rates, charges, or classifications;

(ii) contain an estimate of the amount the customer's average bill will increase or change and the reason for the proposed increase or change;

(iii) include the address and telephone number of a person who may be contacted for further information regarding the notice; and

(iv) be mailed first class, postage prepaid.

(3) The notice required in subsection (2) must be provided to the Montana consumer counsel.

(4) (a) Except as provided in subsection (4) (b), the owner of a small sewer or water utility exempt from regulation in accordance with 69-3-101(2) (d) may file a rate application with the commission, and the commission shall proceed with a rate case in accordance with Title 69, chapter 3, part 3.

(b) A small sewer or water utility that establishes or changes rates, charges, or classifications in accordance with subsections (1) through (3) may not request commission regulation in accordance with subsection (4) (a).

NEW SECTION. **Section 5. Appeals.** A customer of a small sewer or water utility may appeal the decision of a private small water or sewer utility made in accordance with [section 4] to establish or change rates, charges, or classifications to the district court where the small sewer or water utility is located.

NEW SECTION. **Section 6. Grandfather clause -- transition.**  
(1) A small sewer or water utility operating under tariffs approved by the commission on or before July 1, 2019:

(a) may continue to operate under those approved tariffs until their expiration; and

(b) shall notify the commission before the expiration of the approved tariffs if the utility intends to establish or change rates in accordance with [section 4].

(2) Nothing in [sections 3 through 5] prohibits a small sewer or water utility operating under tariffs approved by the commission that expire after July 1, 2019, from applying to the



commission for continued regulation in accordance with [section 4(4)].

NEW SECTION. **Section 7. {standard} Codification instruction.** [Sections 3 through 6] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 3 through 6].

NEW SECTION. **Section 8. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 9. {standard} Effective date.** [This act] is effective July 1, 2019.

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