

SB0191 Senate Local Govt. Comm.
Exhibit No. 4
Date 2-7-2011
Bill No. SB 191

SENATE BILL NO. 191

INTRODUCED BY R. ERICKSON

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SEPTIC SYSTEM DISCLOSURE STATEMENT ON REAL ESTATE DOCUMENTS; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, a properly designed, constructed, and maintained septic system can provide long-term, effective treatment of household wastewater and is key to the property value of a home or business; and

WHEREAS, a poorly maintained septic system may malfunction, damaging property and costing thousands of dollars to repair or replace;

WHEREAS, a poorly maintained septic system degrades water quality in ground water, streams, and rivers and can contaminate drinking water, especially if located near wells;

WHEREAS, a prospective property buyer needs to know if a property is served by a septic system, whether a septic system has been permitted by the county, and if a septic system has been maintained, repaired, or replaced; and

WHEREAS, a seller should not be liable for future failures or maintenance of a septic system unless the seller fails to disclose the required information to the buyer or does not agree to a requested inspection.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Montana Septic System Disclosure Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Inhabitable real property" means any real property that includes a building affixed to land. The building must be designed to be primarily occupied by humans, either as a dwelling or as a place of business.

(2) "Septic system" means any system where sewage, including wastewater, is collected in a tank or disposed of within the boundaries of the inhabitable real property being offered for sale.

1 NEW SECTION. Section 3. Septic system disclosure statement on real estate documents --
 2 disclosure of permit -- immunity from liability. (1) A septic system disclosure statement must be provided
 3 on at least one document, form, or application executed prior to or contemporaneously with an offer for the
 4 purchase and sale of inhabitable real property served by a septic system. The seller shall provide the
 5 following disclosure statement to the buyer, and the buyer shall acknowledge receipt of this disclosure
 6 statement by signing a copy of the disclosure statement:

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7 "THIS PROPERTY INCLUDES A SEPTIC SYSTEM THAT COLLECTS, TREATS, AND DISPOSES
 8 OF SEWAGE. A POORLY MAINTAINED SEPTIC SYSTEM MAY MALFUNCTION, DAMAGING PROPERTY
 9 AND DEGRADING WATER QUALITY. THE BUYER UNDERSTANDS THAT SEPTIC SYSTEMS REQUIRE
 10 REGULAR MAINTENANCE, REPAIR, AND POTENTIAL REPLACEMENT TO PROTECT PUBLIC HEALTH,
 11 WATER QUALITY, AND PRIVATE PROPERTY. IT IS THE BUYER'S OBLIGATION TO DETERMINE THE
 12 CONDITION OF THE SEPTIC SYSTEM. THE BUYER MAY HIRE A QUALIFIED INSPECTOR TO INSPECT
 13 THE SEPTIC SYSTEM AND ASSOCIATED INFRASTRUCTURE AND MAKE ANY CONTRACT
 14 CONTINGENT UPON THE RESULTS OF THAT INSPECTION. A SELLER WHO PROVIDES THIS SEPTIC
 15 SYSTEM DISCLOSURE STATEMENT, PROVIDES FOR THE DISCLOSURE OF A COPY OF THE COUNTY
 16 PERMIT FOR THE SEPTIC SYSTEM, AND PROVIDES OTHER AVAILABLE RECORDS AND
 17 KNOWLEDGE OF THE SEPTIC SYSTEM AND DRAINFIELD MAINTENANCE, REPAIR, AND LOCATION IS
 18 NOT LIABLE IN ANY ACTION RELATED TO THE FAILURE OF THE SEPTIC SYSTEM SERVING A
 19 PROPERTY THAT IS SUBJECT TO ANY CONTRACT TO PURCHASE."

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 Deleted: WHERE SEWAGE IS COLLECTED OR DISPOSED OF WITHIN THE BOUNDARIES OF THE PROPERTY. THE BUYER UNDERSTANDS THAT SEPTIC SYSTEMS REQUIRE REGULAR MAINTENANCE, REPAIR, AND REPLACEMENT TO PROTECT PUBLIC HEALTH, WATER QUALITY, AND PRIVATE PROPERTY. THE BUYER MAY REQUEST AN INSPECTION OF THE SEPTIC SYSTEM AND ANY ASSOCIATED DRAINFIELD OR INFRASTRUCTURE

20 (2) If the information is available, the seller shall provide for the disclosure to the buyer prior to or
 21 upon entry into a contract for the purchase of the inhabitable real property:

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- 22 (a) the county permit for the septic system; and
- 23 (b) any other records and knowledge of septic system and drainfield maintenance, repair, and
- 24 location.

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25 (3) The furnishing of information pursuant to subsection (2) is not to be construed as a promise,
 26 warranty, or representation of any sort by the seller as to the condition of the septic system. This section does
 27 not create a contingency on the purchase of the property or any right to rescind a contract for purchase
 28 unless the contingency or right to rescind is an express term of the applicable contract.

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 Deleted: b) pumping records or other records of septic system maintenance;

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 Deleted: (4) A seller or seller's agent who complies with subsections (1) and (2) is not liable in any action related to the septic system.

