



AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION SANITATION REVIEW; PROVIDING DEFINITIONS; EXTENDING RULEMAKING AUTHORITY; ALLOWING LOCAL ENTITIES TO ESTABLISH FEES FOR SUBDIVISION AND SUBDIVISION EXEMPTION REVIEW; REVISING SUBDIVISION EXEMPTIONS; REQUIRING NOTIFICATION TO PURCHASERS FOR CERTAIN UNREVIEWED LOTS; AND AMENDING SECTIONS 76-4-102, 76-4-103, 76-4-104, 76-4-105, 76-4-111, 76-4-113, 76-4-125, 76-4-129, 76-4-130, AND 76-4-131, MCA.

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

**Section 1.** Section 76-4-102, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(15)~~(16) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

~~(16)~~(17) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

~~(17)~~(18) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

~~(18)~~(19) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or

building requiring facilities for the supply of water ~~or~~ or the disposition of sewage or solid waste or the construction of water supply ~~or~~ or sewage or solid waste disposal, facilities until the department has approved plans for those facilities.

~~(19)~~(20) "Sewage" has the meaning provided in 75-5-103.

~~(20)~~(21) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

~~(21)~~(22) "Solid waste" has the meaning provided in 75-10-103.

~~(22)~~(23) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any ~~area parcel~~, regardless of size, that provides two or more permanent ~~multiple space spaces~~ for recreational camping vehicles or mobile homes.

~~(23)~~(24) "Water service line" means a waterline that connects a single building or living unit to a public 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."

**Section 2.** Section 76-4-103, MCA, is amended to read:

**"76-4-103. What constitutes subdivision.** ~~A subdivision consists of only those parcels of less than 20 acres that have been created by a division of land, and the~~ The plat for a subdivision must show all of the parcels, whether contiguous or not. A parcel that is 20 acres or more in size, exclusive of public roadways, is not subject to review under this part, unless the parcel provides two or more permanent spaces for recreational camping vehicles or mobile homes. The rental or lease of one or more parts of a single building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part."

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

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

administration and enforcement of this part.

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

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

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

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

(ii) A local department or board of health may be certified by the department to 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) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

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

- (a) a proposed subdivision lies within more than one jurisdictional area and the respective governing

bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

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

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review

under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed ~~dwelli~~g units and structures requiring facilities for water supply ~~or~~ or sewage disposal;

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

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

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

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

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

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

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

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed ~~proposed~~-subdivision where the proposed drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or proposed well isolation zone outside the boundaries of the ~~proposed~~-subdivision where the proposed drainfield or proposed well is located.

(i) A proposed drainfield mixing zone or a proposed well isolation zone for an individual water system

well that is a minimum of 50 feet inside the ~~proposed~~ subdivision boundary may extend outside the boundaries of the ~~proposed~~ subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

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

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

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

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

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

(7) The requirements of subsection (6)(i) regarding proposed drainfield mixing zones and proposed well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after [the effective date of this act], except as provided in subsections (6)(i)(i) and (6)(i)(ii).

~~(7)~~(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water

quality apply.

~~(8)~~(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the appeal process for the denial or condition imposition.

~~(9)~~(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622."

**Section 4.** Section 76-4-105, MCA, is amended to read:

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

- (a) number of lots in the subdivision;
- (b) the type of water system to serve the development;
- (c) the type of sewage disposal to serve the development; and
- (d) the degree of environmental research necessary to supplement the review procedure.

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

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

**Section 5.** Section 76-4-111, MCA, is amended to read:

**"76-4-111. Exemption for certain condominiums, townhomes, and townhouses.** (1)

Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, constructed on land ~~divided~~ subdivided in compliance with parts 5 and 6 of the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units, duplexes, or commercial units, the construction or conversion of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is not subject to the provisions of this part, provided that, if a new extension of a public water supply system or extension of a public sewage system is required to serve the development, the department reviews and approves plans for the extension."

**Section 6.** Section 76-4-113, MCA, is amended to read:

**"76-4-113. Notification to purchasers.** The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the certificate of subdivision approval specifying the approved type and locations of water supply, storm water drainage, and sewage disposal facilities and information regarding connection to municipal, ~~or~~ county water and/or sewer district, or regional authority facilities provided for under 76-4-130. Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. The seller of any lot recorded with the exemption in 76-4-125(1)(c) shall include within the instruments of transfer a reference to that exclusion and a statement that the lot has not been reviewed or approved under this part. A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction."

**Section 7.** Section 76-4-125, MCA, is amended to read:

**"76-4-125. Land divisions excluded from review.** (1) A subdivision excluded from the provisions of



chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

- (a) the exclusion cited in 76-3-201;
  - (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;
  - (c) divisions made for purposes other than the construction of water supply or sewage ~~and or~~ solid waste disposal facilities as the department specifies by rule;
  - (d) as certified pursuant to 76-4-127:
    - (i) new divisions subject to review under the Montana Subdivision and Platting Act;
    - (ii) divisions or previously divided parcels recorded with sanitary restrictions; or
    - (iii) divisions or previously divided parcels of land that are exempt from the Montana Subdivision and Platting Act review under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f);
  - (e) subject to the provisions of subsection (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:
    - (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or
    - (ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter; and
  - (f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).
- (2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.
- (3) A previously divided parcel that meets the eligibility criteria for an existing exemption from this part may use the exemption in lieu of obtaining a certificate of subdivision approval if the appropriate document,

exemption certificate, certificate of survey or subdivision plat filed with the county clerk and recorder cites the applicable exemption in its entirety."

**Section 8.** Section 76-4-129, MCA, is amended to read:

**"76-4-129. Joint application form and concurrent review.** ~~(1) Within 90 days after July 1, 1977, the department shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity.~~

~~(2)~~—The review required by this part and the provisions of chapter 3 ~~shall~~ may occur concurrently subject to the requirements of 76-4-115."

**Section 9.** Section 76-4-130, MCA, is amended to read:

**"76-4-130. Deviation from certificate of subdivision approval.** (1) Except as provided in subsection (2), a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

(2) A person may deviate from the certificate of subdivision approval without approval by the reviewing authority if the deviation consists solely of connecting to municipal, ~~or~~ county water and/or sewer district, or regional authority facilities in place of previously approved facilities. The department may require notification when a person connects to municipal, ~~or~~ county water and/or sewer district, or regional authority facilities."

**Section 10.** Section 76-4-131, MCA, is amended to read:

**"76-4-131. Applicability of public water supply laws.** ~~The An exclusions exclusion~~ provided for in 76-4-121, 76-4-122, 76-4-125, and 76-4-130(2) this part does ~~de~~ not relieve any person of the duty to comply with the requirements of Title 75, chapter 6. An extension of a public water supply system or an extension of a public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75, chapter 6."

- END -

I hereby certify that the within bill,  
SB 44, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

SENATE BILL NO. 44

INTRODUCED BY J. ESP

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION SANITATION REVIEW; PROVIDING DEFINITIONS; EXTENDING RULEMAKING AUTHORITY; ALLOWING LOCAL ENTITIES TO ESTABLISH FEES FOR SUBDIVISION AND SUBDIVISION EXEMPTION REVIEW; REVISING SUBDIVISION EXEMPTIONS; REQUIRING NOTIFICATION TO PURCHASERS FOR CERTAIN UNREVIEWED LOTS; AND AMENDING SECTIONS 76-4-102, 76-4-103, 76-4-104, 76-4-105, 76-4-111, 76-4-113, 76-4-125, 76-4-129, 76-4-130, AND 76-4-131, MCA.