

1 SENATE BILL NO. 226

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

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR INDEPENDENT REVIEWING ENTITIES
5 CERTIFIED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO CONDUCT SUBDIVISION
6 REVIEWS; PROVIDING A DEFINITION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING
7 SECTIONS 76-4-102, 76-4-104, 76-4-105, 76-4-106, 76-4-108, AND 76-4-114, MCA."

8

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

10

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

12 **"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
13 following definitions apply:

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

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

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

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

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

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

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

28 (8) "Facilities" means public or private facilities for the supply of water or disposal of sewage or

1 solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might
2 be transported or distributed.

3 (9) "Independent review entity" means a person, as defined in 76-1-103, that:

4 (a) IS A LICENSED ENGINEER OR REGISTERED SANITARIAN WHO specializes in or has at least 5 years of
5 experience relating to land-use issues in the private sector;

6 (b) does not have a monetary, ownership, or direct familial relationship to the subject of the review;

7 (c) submits quality control audits to the department on request for subdivision reviews completed
8 by the independent review entity; and

9 (d) is certified by the department to conduct reviews under 76-4-104.

10 ~~(9)~~(10) "Individual water system" means any water system that serves one living unit or commercial
11 unit and that is not a public water supply system as defined in 75-6-102.

12 ~~(10)~~(11) "Mixing zone" has the meaning provided in 75-5-103.

13 ~~(11)~~(12) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this
14 chapter after March 30, 2011.

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

17 ~~(12)~~(13) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under
18 this chapter after October 1, 2013.

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

21 ~~(13)~~(14) "Public sewage system" or "public sewage disposal system" means a public sewage system
22 as defined in 75-6-102.

23 ~~(14)~~(15) "Public water supply system" has the meaning provided in 75-6-102.

24 ~~(15)~~(16) "Regional authority" means any regional water authority, regional wastewater authority, or
25 regional water and wastewater authority organized pursuant to the provisions of Title 75, chapter 6, part 3.

26 ~~(16)~~(17) "Registered professional engineer" means a person licensed to practice as a professional
27 engineer under Title 37, chapter 67.

28 ~~(17)~~(18) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37,

1 chapter 40.

2 ~~(18)~~(19) "Reviewing authority" means the department ~~or~~ a local department ~~or~~ a local board of health,
3 or an independent review entity certified to conduct a review under 76-4-104.

4 ~~(19)~~(20) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or
5 building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction
6 of water supply or sewage or solid waste disposal, facilities until the department has approved plans for those
7 facilities.

8 ~~(20)~~(21) "Sewage" has the meaning provided in 75-5-103.

9 ~~(24)~~(22) "Sewer service line" means a sewerline that connects a single building or living unit to a public
10 sewage system or to an extension of a public sewage system.

11 ~~(22)~~(23) "Solid waste" has the meaning provided in 75-10-103.

12 ~~(23)~~(24) "Subdivision" means a division of land or land so divided that creates one or more parcels
13 containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the
14 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium,
15 townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for
16 recreational camping vehicles or mobile homes.

17 ~~(24)~~(25) "Water service line" means a waterline that connects a single building or living unit to a public
18 water supply system or to an extension of a public water supply system.

19 ~~(25)~~(26) "Well isolation zone" means the area within a 100-foot radius of a water well."
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21 **Section 2.** Section 76-4-104, MCA, is amended to read:

22 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the
23 provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for
24 administration and enforcement of this part.

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

28 (a) size of lots;

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

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

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

17 (ii) A local department ~~or, a local~~ board of health, or an independent review entity may be certified
18 by the department to review subdivisions proposed to connect to existing municipal or county water and/or
19 sewer district water and wastewater systems previously approved by the department if no extension of the
20 systems is required.

21 (4) The department shall also adopt standards and procedures for certification and maintaining
22 certification to ensure that a local department ~~or, a local~~ board of health, or an independent review entity is
23 competent to review the subdivisions as described in subsection (3).

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

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

28 (b) the local department or a local board of health elects not to be certified; or

1 (c) an independent review entity certified by the department is not available to conduct the review.

2 (6) The rules must further provide for:

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

5 (i) total development area; and

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

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

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

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

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

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

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

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

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

27 (i) A proposed drainfield mixing zone or a proposed well isolation zone for an individual water
28 system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of

1 the subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

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

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

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

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

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

20 (7) The requirements of subsection (6)(i) regarding proposed drainfield mixing zones and proposed
21 well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after
22 October 1, 2021, except as provided in subsections (6)(i)(i) and (6)(i)(ii).

23 (8) The department shall:

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

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

28 (c) propose those experimental wastewater system components that meet the purposes and

1 provisions of this part for adoption into the rules pursuant to this section; and

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

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

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

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

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

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21 **Section 3.** Section 76-4-105, MCA, is amended to read:

22 **"76-4-105. Subdivision fees -- subdivision program funding.** (1) The department shall adopt rules
23 setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections
24 pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a
25 schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and
26 subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to
27 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

28 (a) number of lots in the subdivision;

- 1 (b) the type of water system to serve the development;
- 2 (c) the type of sewage disposal to serve the development; and
- 3 (d) the degree of environmental research necessary to supplement the review procedure.

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

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

11 (4) AN INDEPENDENT REVIEW ENTITY ACTING AS THE REVIEWING AUTHORITY MAY ESTABLISH A FEE, NOT
12 TO EXCEED THE FEE SCHEDULE ESTABLISHED BY THE DEPARTMENT, CONDUCT SITE VISITS IN COORDINATION WITH THE
13 PROPERTY OWNER, AND REVIEW APPLICABLE EXEMPTIONS UNDER THIS CHAPTER. THE FEE MUST BE PAID DIRECTLY TO
14 THE INDEPENDENT REVIEW ENTITY AND MAY NOT EXCEED THE INDEPENDENT REVIEWING ENTITY'S ACTUAL COST."

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16 **Section 4.** Section 76-4-106, MCA, is amended to read:

17 **"76-4-106. Cooperation with other governmental agencies.** (1) The reviewing authority may
18 require the use of records of all state, county, and municipal agencies and may seek the assistance of those
19 agencies.

20 (2) State, county, and municipal officers and employees, including local health officers and
21 sanitarians, shall cooperate with the reviewing authority in furthering the purposes of this part so far as is
22 practical and consistent with their own duties.

23 (3) A ~~local~~-reviewing authority without a registered sanitarian or a registered professional engineer
24 to conduct a review under this part may contract with another ~~local~~-reviewing authority for the services of its
25 registered sanitarian or registered professional engineer to conduct the review."

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27 **Section 5.** Section 76-4-108, MCA, is amended to read:

28 **"76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this

1 part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written
2 notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent.
3 The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the
4 corrective action required by the reviewing authority, and the time within which the action is to be taken. A
5 notice and order issued by the department under this section may also assess an administrative penalty as
6 provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under
7 this section, request a hearing before the ~~local~~-reviewing authority other than the department if it issued the
8 notice of violation or the board if the department issued the notice of violation. A request for a hearing must be
9 filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a
10 hearing must be held within a reasonable time.

11 (2) In addition to or instead of issuing an order, the reviewing authority may initiate any other
12 appropriate action to compel compliance with this part.

13 (3) The provisions of this part may be enforced by a reviewing authority other than the department
14 or board only for those divisions described in 76-4-104(3). If a ~~local~~-reviewing authority other than the
15 department fails to adequately enforce the provisions of this part, the department or the board may compel
16 compliance with this part under the provisions of this section.

17 (4) When a ~~local~~-reviewing authority other than the department exercises the authority delegated
18 to it by this section, the ~~local~~-reviewing authority is legally responsible for its actions under this part.

19 (5) If the department or a ~~local~~-reviewing authority other than the department determines that a
20 violation of this part, a rule adopted under this part, or an order issued under this part has occurred, the
21 department or the ~~local~~-reviewing authority may revoke its certificate of approval for the subdivision and
22 reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate,
23 the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30
24 days after receipt of the notice of revocation and must state the reason for the request. The hearing is before
25 the board if the department revoked the certificate or before the ~~local~~-reviewing authority other than the
26 department if the ~~local~~-reviewing authority revoked the certificate.

27 (6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
28 part 6, apply to a hearing held under this section."

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Section 6. Section 76-4-114, MCA, is amended to read:

"76-4-114. Review of application. Except as provided in 76-4-125, the applicant shall submit an application for review of a subdivision pursuant to the following procedure:

(1) An applicant may request a preapplication meeting with the reviewing authority prior to submitting an application. The reviewing authority shall schedule the requested meeting between the applicant and the reviewing authority within 30 days of receiving the request from the applicant. The meeting may be conducted in person, via telephone, or via teleconference. For informational purposes only, the reviewing agent shall identify the state laws and rules that may apply to the subdivision review process.

(2) If the proposed development includes onsite sewage disposal facilities, the applicant shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(3) (a) After submitting an application if required under the Montana Subdivision and Platting Act, the applicant shall submit an application to the reviewing authority. A subdivision application is considered to be received on the date of delivery to the reviewing authority when accompanied by the review fee established pursuant to 76-4-105.

(b) Within 15 days of the receipt of an application, the reviewing authority shall determine whether the application contains the elements required by 76-4-115(1) to allow for review and shall notify the applicant of the reviewing authority's determination. If the reviewing authority determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification. The applicant shall address the missing elements identified by the reviewing authority. A determination that an application contains the required elements for review as provided in this subsection (3)(b) does not ensure that the proposed subdivision will be approved and does not limit the ability of the reviewing authority to request additional information during the review process.

(c) (i) After the reviewing authority notifies the applicant that the application contains all of the required elements as provided by subsection (3)(b), the reviewing authority shall make a final decision or a recommendation on the application. Except as provided by subsection (4), the reviewing authority shall:

1 (A) make a final decision within 40 days of finding that the application contains all of the required
2 elements if the reviewing authority is the department; or

3 (B) make a recommendation for approval to the department or deny the application within 30 days
4 of finding that the application contains all of the required elements if the reviewing authority is a local
5 department ~~or, a local~~ board of health, or an independent reviewing entity. If the department receives a
6 recommendation for approval of the subdivision from a local department ~~or, a local~~ board of health, or an
7 independent reviewing entity, the department shall make a final decision on the application within 10 days of
8 receiving the recommendation of the reviewing authority.

9 (ii) If the department approves the application, the department shall issue a certificate of
10 subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not
11 subject to a sanitary restriction.

12 (iii) If the reviewing authority denies the application, the reviewing authority shall identify the
13 deficiencies that result in the denial in a notification to the applicant.

14 (d) (i) If the reviewing authority denies an application and the applicant resubmits a corrected
15 application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the
16 resubmitted application within 30 days after receipt of the resubmitted application.

17 (ii) If the reviewing authority denies an application and the applicant resubmits a corrected
18 application after 30 days after the date of the denial letter, the reviewing authority shall complete review of the
19 resubmitted application within:

20 (A) 55 days after receipt of the resubmitted application if the reviewing authority is the department;

21 or

22 (B) 45 days after receipt of the resubmitted application if the reviewing authority is a local
23 department or a local board of health.

24 (iii) If the review of the resubmitted application is conducted by a local department, ~~or a local~~ board
25 of health, or an independent reviewing entity and the reviewing authority makes a recommendation to the
26 department for approval of the application, the department shall make a final decision on the application within
27 10 days after the ~~local~~-reviewing authority completes its review under subsection (3)(d)(i) or (3)(d)(ii).

28 (4) Except as provided in subsections (6) and (7), if the reviewing authority needs an extension of

1 a deadline in this section to complete its review or if an applicant requests an extension of a deadline, then the
2 reviewing authority shall notify the applicant of the extension prior to the end of the review deadline. An
3 extension under this subsection may not exceed 30 days; however, the reviewing authority may issue more
4 than one extension.

5 (5) The reviewing authority may extend a deadline in this section until the items required in 76-4-
6 115(2) are submitted. The reviewing authority shall notify the applicant of the extension before the end of the
7 review deadline. The reviewing authority shall make a final decision within 30 days of receipt of the items
8 required in 76-4-115(2).

9 (6) The department may extend a deadline under subsections (3)(c) and (3)(d) by 90 days if an
10 environmental assessment is required.

11 (7) The department may extend a deadline under subsections (3)(c) and (3)(d) by 120 days if an
12 environmental impact statement is required."

13

14 NEW SECTION. SECTION 7. IMPLEMENTATION. THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL
15 IMPLEMENT THE REQUIREMENTS OF [THIS ACT] WITHIN EXISTING RESOURCES.

16

- END -