

HOUSE BILL NO. 585
INTRODUCED BY D. FUCHS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE SANITATION IN SUBDIVISIONS LAWS; CONFORMING DEFINITIONS TO THOSE IN OTHER ACTS; AUTHORIZING REVIEW OF MAJOR AND MINOR SUBDIVISIONS BY A CERTIFIED LOCAL DEPARTMENT OR BOARD OF HEALTH; ELIMINATING THE MANDATORY SOIL PERCOLATION TESTING REQUIREMENT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES REGARDING CRITERIA FOR GRANTING WAIVERS AND DEVIATIONS; REQUIRING THE APPLICANT TO SUBMIT EVIDENCE THAT WATER SUPPLY SYSTEMS ARE IN COMPLIANCE WITH STATE AND LOCAL LAWS AND REGULATIONS; AUTHORIZING THE LOCAL REVIEWING AUTHORITY TO ADOPT FEES; AUTHORIZING THE USE OF FEES COLLECTED BY THE REVIEWING AUTHORITY FOR INSPECTION AND ENFORCEMENT ACTIVITIES; PROVIDING THAT THE REVIEWING AUTHORITY MAY ENFORCE THE SANITATION IN SUBDIVISIONS LAWS; REPEALING CERTAIN PROVISIONS RELATED TO DELEGATION OF REVIEW TO LOCAL GOVERNMENTS; REPEALING REDUNDANT PROVISIONS; AMENDING SECTIONS 50-2-116, 76-4-102, 76-4-104, 76-4-105, 76-4-108, 76-4-111, 76-4-125, 76-4-129, AND 76-4-131, MCA; REPEALING SECTIONS 76-4-128 AND 76-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards. (1) Local boards shall:

- (a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;
- (b) elect a presiding officer and other necessary officers;
- (c) employ necessary qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings quarterly and hold special meetings as necessary;
- (f) supervise destruction and removal of all sources of filth that cause disease;
- (g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings; ~~The fees must be deposited with the county treasurer.~~

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives;

(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; and

(vi) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection,

"tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors.

(l) adopt regulations for the establishment of institutional controls that have been selected or approved by the:

(i) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(ii) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(m) adopt fees as provided in 76-4-105.

(3) Fees adopted pursuant to this section must be deposited with the county treasurer."

Section 2. 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 words or phrases have the following meanings definitions apply:

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

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

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

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

(5) "Facilities" means public or private facilities for the supply of water 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.

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

~~(6)(7) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year~~ has the meaning provided in 75-6-102.

~~(7)(8) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.~~

~~(8)(9) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.~~

~~(9)~~(10) "Reviewing authority" means the department under the conditions described in 76-3-104(5)(c) or a local department or board of health certified to conduct a review under 76-4-104.

~~(10)~~(11) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the ~~department~~ reviewing authority has approved plans for those facilities.

~~(11)~~(12) "Sewer service line" means a sewerline that connects a single building or living unit to a public ~~sewer~~ sewage system or to an extension of a public sewage system.

~~(12)~~(13) "~~Solid wastes~~" means ~~all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes~~ "Solid waste" has the meaning provided in 75-10-103.

~~(13)~~(14) "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 and any condominium or area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

~~(14)~~(15) "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."

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

"76-4-104. ~~Rules for administration~~ Administration and enforcement -- rules -- review of subdivisions. (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 ~~subdivision plats~~ subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal, ~~both public and private, and~~. 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) The rules must provide for the review of the following divisions of land 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 review these divisions of land:~~

~~———(a) divisions of land containing five or fewer parcels, whenever each parcel will contain individual onsite water and sewage disposal facilities; and~~

~~———(b) divisions of land proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.~~

~~———(4)(3) 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 divisions of land subdivisions described in subsection ~~(3)~~ (5).~~

~~(5) The department shall review those divisions of land described in subsection (3) if:~~

~~———(a) a proposed division of land 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)(4) The rules must further provide for:~~

(a) providing the reviewing authority with a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units;

(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;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil ~~percolation~~ testing and ~~required percolation rates~~ 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) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (4)(e) through (4)(h); and

~~(j)~~ (i) evidence to establish that, if a public water supply system or a public sewage disposal 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 preliminary or final plan or plat.

~~(7) If the reviewing authority is a local department or board of health, it shall, upon approval of a division of land under this part, notify the department of the approval and submit to the department a copy of the approval statement.~~

(5) (a) Subject to subsection (5)(b), a local department or board of health may review subdivisions if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies, as provided in subsection (3), that the local department or board is competent to conduct the review.

(b) Except as provided in 75-6-121, a local department or board of health may not conduct the review required under Title 75, chapter 6, for a public water supply system, extension of a public water supply system, public sewage system, or extension of a public sewage system. The local department or board of health may review the proposed subdivision for compliance with applicable local regulations or rules adopted pursuant to this part that do not implement the requirements of Title 75, chapter 6.

(c) The department shall review subdivisions if:

(i) requested by a local reviewing authority;

(ii) a proposed subdivision lies within more than one jurisdictional area and the respective local reviewing authorities are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision;
or

(iii) the local department or board of health has not been certified to conduct a review.

~~(6)~~ (6) 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 ~~at the time plans and specifications are~~ when a complete application is submitted to the ~~department~~ 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.

~~(9)~~(7) The reviewing authority may not deny or condition a certification that a division of land is not subject to sanitary restrictions under this part unless it provides a written statement to the applicant detailing the circumstances of the certification 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."

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

"76-4-105. Lot Subdivision fees -- subdivision program funding use of fees. (1) The reviewing authority may charge fees that do not exceed actual costs for reviewing subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108.

~~(2)~~ The department shall adopt rules setting forth fees ~~that do not exceed actual costs to the department in reviewing plats and subdivisions. The rules must provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the state special revenue fund or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction.~~ that do not exceed actual costs for reviewing subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108.

~~(3)~~ The All fees collected pursuant to this section 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) the 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 governing body, as provided in 76-4-128.

~~(3)~~(4) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

~~(4)~~(5) Fees collected by the department under this section must be deposited in ~~the~~ an account in the state special revenue fund ~~provided for in 76-4-132~~ to be used as provided in this section."

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

"76-4-108. Enforcement. (1) If the reviewing authority has reason to believe that a violation of this part or a rule made under ~~§~~ this part has occurred, it may have written notice served personally or by mail to the last-known address of the alleged violator or ~~his~~ the alleged violator's agent. The notice ~~shall~~ must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. For the purpose of this part, service by mail is complete on the date of mailing. The alleged violator may, no later than 30 days after service of a notice under this section, request a hearing before the reviewing authority or, if the reviewing authority is the department, before the board. If a request is filed, a hearing ~~shall~~ must be held within a reasonable time.

(2) In addition to or instead of issuing ~~an order~~ a notice, the reviewing authority may initiate appropriate action to compel compliance with this part.

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

~~(4)~~(3) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority shall accept legal responsibility for its actions under this part.

~~(5)~~(4) If a violation of this part is found to exist, a reviewing authority may revoke a certificate of approval and reimpose sanitary restrictions on a subdivision, following a hearing ~~before the reviewing authority under this section~~ as provided in subsection (1)."

Section 6. Section 76-4-111, MCA, is amended to read:

"76-4-111. Exemption for certain condominiums and subdivisions. (1) Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local board of health requirements and has received approval for a given number of living units for rental or lease, the construction of the same or a fewer number of condominium units on that parcel is not subject to the

provisions of this part, provided that no new extension of a public water supply system or extension of a public sewage disposal system is required ~~as defined in this part~~.

(3) Subdivisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 and first- or second-class municipalities that will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste are not subject to the provisions of this part; except that, if the municipal facilities for water supply or sewage disposal to serve the subdivision constitute either an extension of a public water supply system or extension of a public sewage disposal system, the subdivision must be reviewed in accordance with the provisions of ~~76-4-105~~, 76-4-124; and 76-4-127."

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

"76-4-125. Review of development plans subdivision application -- land divisions excluded from review. (1) ~~Plans and specifications of~~ Except as provided in subsection (2), a subdivision, ~~as defined in this part,~~ must be submitted to the reviewing authority, and the reviewing authority shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. ~~The plan~~ review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include a preliminary plan of plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application.

(b) The reviewing authority shall determine whether or not an application is complete within 30 working days of submission of the application.

~~(b)(c)~~ (c) The reviewing authority shall ~~give final action of the~~ make a final decision on the proposed ~~plan~~ subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) 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 exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,

provided that a dwelling or structure requiring water or sewage disposal may not be erected 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 solid waste disposal facilities as the department specifies by rule; and

(d) subject to the provisions of subsection (3), 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 ~~multifamily~~ multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this ~~chapter part~~;

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this ~~chapter part~~.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the transfer of the parcel to be segregated from the remainder referenced in subsection (2)(d)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

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~~ 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 chapter 3~~ and the provisions of ~~chapter 3 this part~~. When an application is received by either the ~~department reviewing authority~~ or ~~a local government the local governing body pursuant to chapter 3, the department reviewing authority or local government governing body~~ 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~~ must occur concurrently."

Section 9. Section 76-4-131, MCA, is amended to read:

"76-4-131. Applicability of public water supply laws. The exclusions provided for in ~~76-4-121 through 76-4-130~~ shall this part do not relieve any person of the duty to comply with the requirements of Title 75, chapter 6."

NEW SECTION. **Section 10. Repealer.** Sections 76-4-128 and 76-4-132, MCA, are repealed.

NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

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