

## 1 SENATE BILL NO. 89

2 INTRODUCED BY A. WITTICH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REDUCING THE TIME FOR REVIEW OF SUBDIVISION  
5 APPLICATIONS FOR PUBLIC AND PRIVATE WATER SUPPLIES, SEWAGE DISPOSAL FACILITIES, STORM  
6 WATER DRAINAGE WAYS, AND SOLID WASTE DISPOSAL BY THE DEPARTMENT OF ENVIRONMENTAL  
7 QUALITY AND LOCAL DEPARTMENTS OR BOARDS OF HEALTH; CLARIFYING PROCEDURES FOR  
8 PROVIDING EVIDENCE OF SYSTEMS COMPLIANCE; REQUIRING THE DEPARTMENT TO NOTIFY  
9 APPLICANTS UNDER CERTAIN CIRCUMSTANCES IF AN APPLICATION DOES NOT INCLUDE EVIDENCE  
10 OF CERTIFICATION FROM THE LOCAL HEALTH DEPARTMENT OR APPROVAL FROM THE LOCAL  
11 GOVERNING BODY; REVISING PROCEDURES FOR DEPARTMENT REVIEW OF SUBDIVISION  
12 APPLICATIONS; AMENDING SECTIONS 76-4-104 AND 76-4-125, MCA; AND PROVIDING AN IMMEDIATE  
13 EFFECTIVE DATE."

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

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17 **Section 1.** Section 76-4-104, MCA, is amended to read:

18 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the  
19 provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for  
20 administration and enforcement of this part.

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

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

1 recreation, and wildlife.

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

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

9 (ii) A local department or board of health may be certified to review subdivisions proposed to connect to  
10 existing municipal water and wastewater systems previously approved by the department if no extension of the  
11 systems is required.

12 (4) The department shall also adopt standards and procedures for certification and maintaining  
13 certification to ensure that a local department or board of health is competent to review the subdivisions as  
14 described in subsection (3).

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

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

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

19 (6) The rules must further provide for:

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

22 (i) total development area; and

23 (ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage  
24 disposal;

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

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

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

29 (e) standards and technical procedures applicable to storm drainage plans and related designs, in order  
30 to ensure proper drainage ways;

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

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

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

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

7 (j) evidence to establish that, if a public water supply system or a public sewage system is proposed,  
8 provision has been made for the system and, if other methods of water supply or sewage disposal are proposed,  
9 evidence that the systems will comply with state and local laws and regulations that are in effect at the time of  
10 submission of the preliminary or final plan or plat; ~~and~~ EVIDENCE THAT THE SYSTEMS WILL COMPLY WITH LOCAL LAWS  
11 AND REGULATIONS MUST BE IN THE FORM OF A CERTIFICATION FROM THE LOCAL HEALTH DEPARTMENT AS PROVIDED BY  
12 DEPARTMENT RULE.

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

16 (7) If the reviewing authority is a local department or board of health, it shall notify the department of its  
17 recommendation for approval or disapproval of the subdivision not later than ~~50~~ 20 ~~45~~ days from its receipt of the  
18 subdivision application. The department shall make a final decision on the subdivision within 10 days after  
19 receiving the recommendation of the local reviewing authority, but not later than ~~60~~ 30 ~~55~~ days after the  
20 submission of a complete application, as provided in 76-4-125.

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

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

29 (a) the reason for the denial or condition imposition;

30 (b) the evidence that justifies the denial or condition imposition; and

1 (c) information regarding the appeal process for the denial or condition imposition.

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

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5 **Section 2.** Section 76-4-125, MCA, is amended to read:

6 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except  
7 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing  
8 authority. The review by the reviewing authority must be as follows:

9 (a) At any time after the developer has submitted an application under the Montana Subdivision and  
10 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must  
11 include preliminary plans and specifications for the proposed development, whatever information the developer  
12 feels necessary for its subsequent review, any public comments or summaries of public comments collected as  
13 provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the  
14 reviewing authority must accompany the application. If the proposed development includes onsite sewage  
15 disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting  
16 the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to  
17 determine whether the site meets applicable state and local requirements.

18 (B) WITHIN 5 WORKING DAYS AFTER RECEIPT OF AN APPLICATION THAT IS NOT SUBJECT TO REVIEW BY A LOCAL  
19 REVIEWING AUTHORITY UNDER 76-4-104, THE DEPARTMENT SHALL PROVIDE A WRITTEN NOTICE FOR INFORMATIONAL  
20 PURPOSES TO THE APPLICANT IF THE APPLICATION DOES NOT INCLUDE A COPY OF THE CERTIFICATION FROM THE LOCAL  
21 HEALTH DEPARTMENT REQUIRED BY 76-4-104(6)(J) OR, IF APPLICABLE, CONTAIN AN APPROVAL FROM THE LOCAL  
22 GOVERNING BODY UNDER TITLE 76, CHAPTER 3, TOGETHER WITH ANY PUBLIC COMMENTS OR SUMMARIES OF PUBLIC  
23 COMMENTS COLLECTED AS PROVIDED IN 76-3-604(7)(A).

24 (C) IF THE REVIEWING AUTHORITY DENIES AN APPLICATION AND THE APPLICANT RESUBMITS A CORRECTED  
25 APPLICATION WITHIN 30 DAYS AFTER THE DATE OF THE DENIAL LETTER, THE REVIEWING AUTHORITY SHALL COMPLETE  
26 REVIEW OF THE RESUBMITTED APPLICATION WITHIN 30 DAYS AFTER RECEIPT OF THE RESUBMITTED APPLICATION. IF THE  
27 REVIEW OF THE RESUBMITTED APPLICATION IS CONDUCTED BY A LOCAL DEPARTMENT OR BOARD OF HEALTH THAT IS  
28 CERTIFIED UNDER 76-4-104, THE DEPARTMENT SHALL MAKE A FINAL DECISION ON THE APPLICATION WITHIN 10 DAYS  
29 AFTER THE LOCAL REVIEWING AUTHORITY COMPLETES ITS REVIEW.

30 ~~(b)~~(D) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision

1 on the proposed subdivision within ~~60~~ 30 55 days after the submission of a complete application and payment  
2 of fees to the reviewing authority unless an environmental impact statement is required, at which time this  
3 deadline may be increased to 120 days. The reviewing authority may not request additional information for the  
4 purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the  
5 department approves the subdivision, the department shall issue a certificate of subdivision approval indicating  
6 that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

7 (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to  
8 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade  
9 the provisions of this part, are not subject to review:

10 (a) the exclusions cited in 76-3-201 and 76-3-204;

11 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,  
12 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and  
13 that the division does not fall within a previously platted or approved subdivision;

14 (c) divisions made for purposes other than the construction of water supply or sewage and solid waste  
15 disposal facilities as the department specifies by rule;

16 (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1  
17 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127,  
18 that adequate storm water drainage and adequate municipal facilities will be provided; and

19 (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating  
20 a parcel from the tract for purposes of transfer if:

21 (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997,  
22 pursuant to local regulations or this chapter; or

23 (ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source  
24 that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant  
25 to local regulations or this chapter.

26 (3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior  
27 to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from  
28 the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to  
29 accommodate a replacement drainfield."  
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