

HOUSE BILL NO. 407

INTRODUCED BY A. HERTZ, B. KEENAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SANITATION IN SUBDIVISIONS RULE REQUIREMENTS TO ALLOW FOR A WELL ISOLATION ZONE FOR AN INDIVIDUAL WATER SYSTEM WELL TO EXTEND OUTSIDE OF THE BOUNDARIES OF A SUBDIVISION UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 76-4-102 AND 76-4-104, 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 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.

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

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

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

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

(6) "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.

(7) "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.

~~(7)~~(8) "Mixing zone" has the meaning provided in 75-5-103.

~~(8)~~(9) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

1 ~~(9)~~(10) "Public water supply system" has the meaning provided in 75-6-102.

2 ~~(10)~~(11) "Registered professional engineer" means a person licensed to practice as a professional
3 engineer under Title 37, chapter 67.

4 ~~(11)~~(12) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37,
5 chapter 40.

6 ~~(12)~~(13) "Reviewing authority" means the department or a local department or board of health certified
7 to conduct a review under 76-4-104.

8 ~~(13)~~(14) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building
9 requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water
10 supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

11 ~~(14)~~(15) "Sewer service line" means a sewerline that connects a single building or living unit to a public
12 sewage system or to an extension of a public sewage system.

13 ~~(15)~~(16) "Solid waste" has the meaning provided in 75-10-103.

14 ~~(16)~~(17) "Subdivision" means a division of land or land so divided that creates one or more parcels
15 containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels
16 may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or
17 area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile
18 homes.

19 ~~(17)~~(18) "Water service line" means a waterline that connects a single building or living unit to a public
20 water supply system or to an extension of a public water supply system.

21 ~~(18)~~(19) "Well isolation zone" means the area within a 100-foot radius of a water well."
22

23 **Section 2.** Section 76-4-104, MCA, is amended to read:

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

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

30 (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, industry,
7 recreation, and wildlife.

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

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

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

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

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

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

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

25 (6) The rules must further provide for:

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

28 (i) total development area; and

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

- 1 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability
2 will be available to ensure an adequate supply of water for the type of subdivision proposed;
- 3 (c) evidence concerning the potability of the proposed water supply for the subdivision;
- 4 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;
- 5 (e) standards and technical procedures applicable to storm drainage plans and related designs, in order
6 to ensure proper drainage ways;
- 7 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil
8 testing and site design standards for on-lot sewage disposal systems when applicable;
- 9 (g) standards and technical procedures applicable to water systems;
- 10 (h) standards and technical procedures applicable to solid waste disposal;
- 11 (i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are
12 located wholly within the boundaries of the proposed subdivision where the drainfield or well is located or that
13 an easement or, for public land, other authorization has been obtained from the landowner to place the proposed
14 drainfield mixing zone or well isolation zone outside the boundaries of the proposed subdivision where the
15 drainfield or well is located. A mixing zone or a well isolation zone for an individual water system well that is a
16 minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the proposed
17 subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This
18 subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b).
19 NOTHING IN THIS SECTION IS INTENDED TO PROHIBIT THE EXTENSION, CONSTRUCTION, RECONSTRUCTION, OR OTHER
20 IMPROVEMENTS TO A PUBLIC SEWAGE SYSTEM WITHIN A WELL ISOLATION ZONE THAT EXTENDS ONTO LAND THAT IS
21 DEDICATED FOR USE AS A RIGHT-OF-WAY FOR ROADS, RAILROADS, OR UTILITIES.
- 22 (j) criteria for granting waivers and deviations from the standards and technical procedures adopted
23 under subsections (6)(e) through (6)(i);
- 24 (k) evidence to establish that, if a public water supply system or a public sewage system is proposed,
25 provision has been made for the system and, if other methods of water supply or sewage disposal are proposed,
26 evidence that the systems will comply with state and local laws and regulations that are in effect at the time of
27 submission of the preliminary or final plan or plat. Evidence that the systems will comply with local laws and
28 regulations must be in the form of a certification from the local health department as provided by department rule.
- 29 (l) evidence to demonstrate that appropriate easements, covenants, agreements, and management
30 entities have been established to ensure the protection of human health and state waters and to ensure the

1 long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

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

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

12 (9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part
13 unless it provides a written statement to the applicant detailing the circumstances of the denial or condition
14 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 (10) The department may adopt rules that provide technical details and clarification regarding the water
19 and sanitation information required to be submitted under 76-3-622."

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