

1 SENATE BILL NO. 44

2 INTRODUCED BY J. ESP

3 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION
6 SANITATION REVIEW; PROVIDING DEFINITIONS; EXTENDING RULEMAKING AUTHORITY; ALLOWING
7 LOCAL ENTITIES TO ESTABLISH FEES FOR SUBDIVISION AND SUBDIVISION EXEMPTION REVIEW;
8 REVISING SUBDIVISION EXEMPTIONS; REQUIRING NOTIFICATION TO PURCHASERS FOR CERTAIN
9 UNREVIEWED LOTS; AND AMENDING SECTIONS 76-4-102, 76-4-103, 76-4-104, 76-4-105, 76-4-111, 76-4-
10 113, 76-4-121, 76-4-122, 76-4-125, 76-4-127, 76-4-129, 76-4-130, AND 76-4-131, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 76-4-102, MCA, is amended to read:

15 **"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
16 following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~(15)(16)~~ "Registered professional engineer" means a person licensed to practice as a professional
23 engineer under Title 37, chapter 67.

24 ~~(16)(17)~~ "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37,
25 chapter 40.

26 ~~(17)(18)~~ "Reviewing authority" means the department or a local department or board of health certified
27 to conduct a review under 76-4-104.

28 ~~(18)(19)~~ "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or

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

4 ~~(19)(20)~~ "Sewage" has the meaning provided in 75-5-103.

5 ~~(20)(21)~~ "Sewer service line" means a sewerline that connects a single building or living unit to a public
 6 sewage system or to an extension of a public sewage system.

7 ~~(21)(22)~~ "Solid waste" has the meaning provided in 75-10-103.

8 ~~(22)(23)~~ "Subdivision" means a division of land or land so divided that creates one or more parcels
 9 containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the
 10 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium,
 11 townhome, or townhouse, or any area parcel, regardless of size, that provides two or more permanent multiple
 12 space spaces for recreational camping vehicles or mobile homes.

13 ~~(23)(24)~~ "Water service line" means a waterline that connects a single building or living unit to a public
 14 water supply system or to an extension of a public water supply system.

15 ~~(24)(25)~~ "Well isolation zone" means the area within a 100-foot radius of a water well."
 16

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

18 **"76-4-103. What constitutes subdivision.** ~~A subdivision consists of only those parcels of less than~~
 19 ~~20 acres that have been created by a division of land, and the~~ The plat for a subdivision must show all of the
 20 parcels, whether contiguous or not. A parcel that is more than 20 acres in size, exclusive of public roadways, is
 21 not subject to review under this part, unless the parcel provides two or more permanent spaces for recreational
 22 camping vehicles or mobile homes. The rental or lease of one or more parts of a single building, structure, or
 23 other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is
 24 not subject to the requirements of this part."
 25

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

27 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the
 28 provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for

1 administration and enforcement of this part.

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

5 (a) size of lots;

6 (b) contour of land;

7 (c) porosity of soil;

8 (d) ground water level;

9 (e) distance from lakes, streams, and wells;

10 (f) type and construction of private water and sewage facilities; and

11 (g) other factors affecting public health and the quality of water for uses relating to agriculture,
12 industry, recreation, and wildlife.

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

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

21 (ii) A local department or board of health may be certified by the department to review subdivisions
22 proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems
23 previously approved by the department if no extension of the systems is required.

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

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

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

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

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

3 (6) The rules must further provide for:

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

6 (i) total development area; and

7 (ii) total number of proposed ~~dwelling~~ living and commercial units and structures requiring facilities for
8 water supply, ~~or sewage disposal, or storm water drainage~~;

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

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

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

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

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

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

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

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

25 (i) A proposed mixing zone or a proposed well isolation zone for an individual water system well that
26 is a minimum of 50 feet inside the ~~proposed~~-subdivision boundary may extend outside the boundaries of the
27 ~~proposed~~-subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or
28 utilities.

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

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

7 (k) 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
9 proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at
10 the time of submission of the subdivision application under this chapter. Evidence that the systems will comply
11 with local laws and regulations must be in the form of a certification from the local health department as
12 provided by department rule.

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

18 (7) The requirements of subsection (6)(i) regarding proposed drainfield mixing zones apply to all
19 subdivisions and divisions created after March 30, 2011, except as provided in subsections (6)(i)(i) and (6)(i)(ii).
20 The requirements of subsection (6)(i) regarding proposed well isolation zones apply to all subdivisions and
21 divisions created after October 1, 2013, except as provided in subsections (6)(i)(i) and (6)(i)(ii). The
22 requirements of subsection (6)(i) regarding proposed drainfield mixing zones and proposed well isolation zones
23 apply to all subdivisions or divisions excluded from review under 76-4-125 created after [the effective date of
24 this act], except as provided in subsections (6)(i)(i) and (6)(i)(ii).

25 ~~(7)~~(8) Review and certification or denial of certification that a division of land is not subject to sanitary
26 restrictions under this part may occur only under those rules in effect when a complete application is submitted
27 to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot
28 was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied.

1 In the absence of specific requirements, minimum standards necessary to protect public health and water
2 quality apply.

3 ~~(8)~~(9) The reviewing authority may not deny or condition a certificate of subdivision approval under
4 this part unless it provides a written statement to the applicant detailing the circumstances of the denial or
5 condition imposition. The statement must include:

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

9 ~~(9)~~(10) The department may adopt rules that provide technical details and clarification regarding the
10 water and sanitation information required to be submitted under 76-3-622."
11

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

13 **"76-4-105. Subdivision fees -- subdivision program funding.** (1) The department shall adopt rules
14 setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections
15 pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a
16 schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and
17 subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to
18 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

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

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

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

1 department from fees adopted pursuant to this section."

2

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

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

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

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

14

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

16 **"76-4-113. Notification to purchasers.** The developer or owner of an approved subdivision shall
17 provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the
18 certificate of subdivision approval specifying the approved type and locations of water supply, storm water
19 drainage, and sewage disposal facilities and information regarding connection to municipal, ~~or~~ county water
20 and/or sewer district, or regional authority facilities provided for under 76-4-130. Each subsequent seller of
21 property within the subdivision shall include within the instruments of transfer a reference to the conditions of
22 the certificate of subdivision approval. The seller of any lot recorded with the exemption in 76-4-125(1)(c) shall
23 include within the instruments of transfer a reference to that exclusion and a statement that the lot has not been
24 reviewed or approved under this part. A written verification of notice that is signed by both the seller and the
25 purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance
26 with this section for that transaction."

27

28 **Section 7.** Section 76-4-121, MCA, is amended to read:

1 **"76-4-121. Restrictions on subdivision activities.** A person may not dispose of any lot within a
2 subdivision, erect any facility for the supply of water or disposal of sewage, storm water, or solid waste, erect
3 any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage,
4 storm water, or solid waste, or occupy any permanent buildings in a subdivision until:

5 (1) a certificate of subdivision approval has been issued pursuant to 76-4-114 indicating that the
6 reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary
7 restriction;

8 (2) the certifying authority has provided certification pursuant to 76-4-127 that the subdivision will be
9 provided with adequate municipal or county water and/or sewer district facilities and adequate storm water
10 drainage; or

11 (3) the subdivision is otherwise exempt from review under 76-4-125."
12

13 **Section 8.** Section 76-4-122, MCA, is amended to read:

14 **"76-4-122. Certain filings prohibited.** (1) The county clerk and recorder may not file or record any
15 plat, certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this
16 part showing a subdivision unless it complies with the provisions of this part.

17 (2) A county clerk and recorder may not accept a subdivision plat, certificate of survey, or townhome,
18 townhouse, or condominium declaration subject to review under this part for filing until one of the following
19 conditions has been met:

20 (a) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium
21 declaration has obtained approval of the local health officer having jurisdiction and has filed the approval with
22 the reviewing authority and a certificate of subdivision approval has been issued pursuant to 76-4-114
23 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not
24 subject to a sanitary restriction;

25 (b) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium
26 declaration has obtained a certificate from the certifying authority pursuant to 76-4-127 that the subdivision will
27 be provided with adequate municipal or county water and/or sewer district facilities and adequate storm water
28 drainage; or

1 (c) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium
 2 declaration has placed on the plat, certificate of survey, or townhome, townhouse, or condominium declaration
 3 an acknowledged certification that the subdivision is exempt from review under this part. The certification must
 4 quote in its entirety the wording of the applicable exemption.

5 (3) For a lot filed with an exemption provided for in 76-4-125(1)(c), a conspicuous statement must be
 6 placed on the plat or certificate of survey to notify a purchaser that the property has not been reviewed or
 7 approved under this part before the plat or certificate of survey can be filed with the county clerk and recorder."
 8

9 **Section 9.** Section 76-4-125, MCA, is amended to read:

10 **"76-4-125. Land divisions excluded from review.** (1) A subdivision excluded from the provisions of
 11 chapter 3 must be submitted for review according to the provisions of this part, except that the following
 12 divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to
 13 review:

14 (a) the exclusion cited in 76-3-201;

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

18 (c) divisions made for purposes other than the construction of water supply, storm water drainage, or
 19 sewage ~~and or~~ solid waste disposal facilities as the department specifies by rule;

20 (d) as certified pursuant to 76-4-127:

21 (i) new divisions subject to review under the Montana Subdivision and Platting Act;

22 (ii) divisions or previously divided parcels recorded with sanitary restrictions; or

23 (iii) divisions or previously divided parcels of land that are exempt from the Montana Subdivision and
 24 Platting Act review under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f);

25 (e) subject to the provisions of subsection (2), a remainder of an original tract created by segregating
 26 a parcel from the tract for purposes of transfer if:

27 (i) the remainder is served by a public or multiple-user sewage system approved before January 1,
 28 1997, pursuant to local regulations or this chapter; or

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

4 (f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).

5 (2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior
 6 to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated
 7 from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to
 8 accommodate a replacement drainfield.

9 (3) A previously divided lot that meets the eligibility criteria for an existing exemption from this part
 10 may use the exemption in lieu of obtaining a certificate of subdivision approval if an exemption notice is filed
 11 with the county clerk and recorder."

12
 13 **Section 10.** Section 76-4-127, MCA, is amended to read:

14 **"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal**
 15 **facilities will be provided.** (1) To qualify for the exemption from review set out in 76-4-125(1)(d), the certifying
 16 authority shall send notice of certification to the reviewing authority that adequate storm water drainage and
 17 adequate municipal facilities will be provided for the subdivision. For a subdivision subject to Title 76, chapter 3,
 18 the certifying authority shall send notice of certification to the reviewing authority prior to final plat approval.

19 (2) The notice of certification must include the following:

20 (a) the name and address of the applicant;

21 (b) a copy of the preliminary plat included with the application for the proposed subdivision or a final
 22 plat when a preliminary plat is not necessary or, for a subdivision not subject to Title 76, chapter 3, a copy of
 23 the certificate of survey map or amended plat map or a declaration and floor plan, including the layout of each
 24 unit proposed to be recorded, under Title 70, chapter 23, part 3;

25 (c) the number of parcels and living and commercial units in the subdivision;

26 ~~(d) a copy of any applicable zoning ordinances in effect;~~

27 ~~(e) how construction of the sewage disposal and water supply systems or extensions will be financed;~~

28 ~~(f)~~(d) the relative location of the subdivision to the city or the county water and/or sewer district;

1 ~~(g)~~(e) certification that adequate municipal or county water and/or sewer district facilities for the
 2 supply of water and disposal of sewage and solid waste will be provided. Facilities for subdivisions subject to
 3 76-3-507 must be provided within the time that section provides.

4 ~~(h)~~(f) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification
 5 from the facility owners that adequate facilities will be available; and

6 ~~(i)~~(g) certification that the certifying authority has or will review and approve plans to ensure adequate
 7 storm water drainage."

8

9 **Section 11.** Section 76-4-129, MCA, is amended to read:

10 **"76-4-129. Joint application form and concurrent review.** ~~(1) Within 90 days after July 1, 1977, the~~
 11 ~~department shall prepare and distribute a joint application form that can be used by an applicant to apply for~~
 12 ~~approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application~~
 13 ~~is received by either the department or a local government, the department or local government is responsible~~
 14 ~~for forwarding the appropriate parts of the application to the other entity.~~

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

17

18 **Section 12.** Section 76-4-130, MCA, is amended to read:

19 **"76-4-130. Deviation from certificate of subdivision approval.** (1) Except as provided in
 20 subsection (2), a person may not construct or use a facility that deviates from the certificate of subdivision
 21 approval until the reviewing authority has approved the deviation.

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

27

28 **Section 13.** Section 76-4-131, MCA, is amended to read:

1 **"76-4-131. Applicability of public water supply laws.** ~~The An exclusions exclusion~~ provided for in
2 ~~76-4-121, 76-4-122, 76-4-125, and 76-4-130(2)~~ this part does not relieve any person of the duty to comply
3 with the requirements of Title 75, chapter 6. An extension of a public water supply system or an extension of a
4 public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75,
5 chapter 6."

6 - END -