

1 HOUSE BILL NO. 123

2 INTRODUCED BY D. BEDEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO LOCAL BOARDS OF HEALTH;
5 CLARIFYING THE REQUIREMENTS OF A WRITTEN FINDING FOR A RULE THAT IS MORE STRINGENT
6 THAN STATE STANDARDS; AND AMENDING SECTION 50-2-130, MCA."

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

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10 **Section 1.** Section 50-2-130, MCA, is amended to read:

11 **"50-2-130. Local regulations no more stringent than state regulations or guidelines.** (1) After
12 April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board
13 may not adopt a rule under 50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv) that is more stringent than the comparable
14 state regulations or guidelines that address the same circumstances. The local board may incorporate by
15 reference comparable state regulations or guidelines.

16 (2) The local board may adopt a rule to implement 50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv) that is more
17 stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a
18 public hearing and public comment and based on evidence in the record, that:

19 (a) the proposed local standard or requirement protects public health or the environment; and

20 (b) the local board standard or requirement to be imposed can mitigate harm to the public health or
21 environment and is achievable under current technology.

22 (3) The written finding must:

23 (a) reference information and peer-reviewed scientific studies contained in the record that forms the
24 basis for the local board's conclusion if the proposed rule includes a technical or engineering standard that is
25 more stringent than the technical or engineering standards found in rule promulgated by the department of
26 environmental quality as allowed in 76-4-104 and by the board of environmental review as allowed in 75-5-305-
27 ; and

28 (b) The written finding must also include information from the hearing record regarding the costs to

1 the regulated community that are directly attributable to the proposed local standard or requirement.

2 (4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April
3 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may
4 petition the local board to review the rule. If the local board determines that the rule is more stringent than
5 comparable state regulations or guidelines, the local board shall comply with this section by either revising the
6 rule to conform to the state regulations or guidelines or making the written finding, as provided under
7 subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A
8 petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The
9 local board may charge a petition filing fee in an amount not to exceed \$250.

10 (b) A person may also petition the local board for a rule review under subsection (4)(a) if the local
11 board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the
12 state government subsequently establishes comparable regulations or guidelines that are less stringent than
13 the previously adopted local board rule."

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