

1 HOUSE BILL NO. 364
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6
 7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SANITATION IN SUBDIVISIONS ACT
 8 APPLICATION REVIEW PROCESS; ALLOWING AN INDEPENDENT REVIEWER TO CONDUCT
 9 SUBDIVISION REVIEWS UNDER CERTAIN CIRCUMSTANCES; DETERMINING TRIGGERS FOR
 10 INDEPENDENT REVIEWS; REQUIRING REPORTING TO THE ENVIRONMENTAL QUALITY COUNCIL;
 11 REVISING REPORTING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING
 12 DEFINITIONS; AMENDING SECTIONS 76-4-102, 76-4-104, 76-4-114, 76-4-115, AND 76-4-116, MCA; AND
 13 PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
 17 **Section 1.** Section 76-4-102, MCA, is amended to read:

18 **"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
 19 following definitions apply:

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

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

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

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

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

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

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

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

9 (9) "Independent reviewer" means a registered sanitarian or registered professional engineer that
10 the department has certified to conduct a review under 76-4-104.

11 ~~(9)~~(10) "Individual water system" means any water system that serves one living unit or commercial
12 unit and that is not a public water supply system as defined in 75-6-102.

13 ~~(10)~~(11) "Mixing zone" has the meaning provided in 75-5-103.

14 ~~(11)~~(12) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this
15 chapter after March 30, 2011.

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

18 ~~(12)~~(13) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under
19 this chapter after October 1, 2013.

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

22 ~~(13)~~(14) "Public sewage system" or "public sewage disposal system" means a public sewage system
23 as defined in 75-6-102.

24 ~~(14)~~(15) "Public water supply system" has the meaning provided in 75-6-102.

25 ~~(15)~~(16) "Regional authority" means any regional water authority, regional wastewater authority, or
26 regional water and wastewater authority organized pursuant to the provisions of Title 75, chapter 6, part 3.

27 ~~(16)~~(17) "Registered professional engineer" means a person licensed to practice as a professional
28 engineer under Title 37, chapter 67.

1 ~~(17)~~(18) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37,
2 chapter 40.

3 ~~(18)~~(19) "Reviewing authority" means the department or a local department or board of health certified
4 to conduct a review under 76-4-104.

5 ~~(19)~~(20) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or
6 building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction
7 of water supply or sewage or solid waste disposal, facilities until the department has approved plans for those
8 facilities.

9 ~~(20)~~(21) "Sewage" has the meaning provided in 75-5-103.

10 ~~(24)~~(22) "Sewer service line" means a sewerline that connects a single building or living unit to a public
11 sewage system or to an extension of a public sewage system.

12 ~~(22)~~(23) "Solid waste" has the meaning provided in 75-10-103.

13 ~~(23)~~(24) "Subdivision" means a division of land or land so divided that creates one or more parcels
14 containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the
15 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium,
16 townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for
17 recreational camping vehicles or mobile homes.

18 ~~(24)~~(25) "Water service line" means a waterline that connects a single building or living unit to a public
19 water supply system or to an extension of a public water supply system.

20 ~~(25)~~(26) "Well isolation zone" means the area within a 100-foot radius of a water well."
21

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

23 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the
24 provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for
25 administration and enforcement of this part.

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

- 1 (a) size of lots;
- 2 (b) contour of land;
- 3 (c) porosity of soil;
- 4 (d) ground water level;
- 5 (e) distance from lakes, streams, and wells;
- 6 (f) type and construction of private water and sewage facilities; and
- 7 (g) other factors affecting public health and the quality of water for uses relating to agriculture,
- 8 industry, recreation, and wildlife.

9 (3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of
 10 subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter
 11 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional
 12 engineer and if the department certifies under subsection (4) that the local department or board is competent to
 13 conduct the review.

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

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

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

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

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

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

28 (6) The rules must further provide for:

- 1 (a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review
2 under this part and other documentation showing the layout or plan of development, including:
- 3 (i) total development area; and
4 (ii) total number of proposed units and structures requiring facilities for water supply or sewage
5 disposal;
- 6 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and
7 dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;
- 8 (c) evidence concerning the potability of the proposed water supply for the subdivision;
9 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and
10 dependability;
- 11 (e) standards and technical procedures applicable to storm drainage plans and related designs, in
12 order to ensure proper drainage ways, except that the rules must provide a basis for not requiring storm water
13 review under this part for parcels 5 acres and larger on which the total impervious area does not and will not
14 exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75,
15 chapter 5, or rules adopted pursuant to Title 75, chapter 5.
- 16 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including
17 soil 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
21 are 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 drainfield mixing zone or a proposed well isolation zone for an individual water
26 system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of
27 the subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.
- 28 (ii) This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those

1 under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or
2 reconstruction of or other improvements to a public sewage system within a well isolation zone that extends
3 onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

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

6 (k) evidence to establish that, if a public water supply system or a public sewage system is
7 proposed, provision has been made for the system and, if other methods of water supply or sewage disposal
8 are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect
9 at the time of submission of the subdivision application under this chapter. Evidence that the systems will
10 comply with local laws and regulations must be in the form of a certification from the local health department as
11 provided by department rule.

12 (l) evidence to demonstrate that appropriate easements, covenants, agreements, and
13 management entities have been established to ensure the protection of human health and state waters and to
14 ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal
15 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 and proposed
19 well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after
20 October 1, 2021, except as provided in subsections (6)(i)(i) and (6)(i)(ii).

21 (8) The department shall:

22 (a) conduct a biennial review of experimental wastewater system components that have been
23 granted a waiver or deviation as provided in subsection (6)(j);

24 (b) utilize relevant analysis of wastewater system components approved in other states and data
25 from peer-reviewed third-party studies to conduct the review provided in subsection (8)(a);

26 (c) propose those experimental wastewater system components that meet the purposes and
27 provisions of this part for adoption into the rules pursuant to this section; and

28 (d) report to the local government interim committee biennially, in accordance with 5-11-210, the

1 number and type of experimental wastewater system components reviewed and the number and type of system
2 components approved and provide written findings to explain why a system component was reviewed but not
3 approved.

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

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

- 13 (a) the reason for the denial or condition imposition;
14 (b) the evidence that justifies the denial or condition imposition; and
15 (c) information regarding the appeal process for the denial or condition imposition.

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

18 (12) (a) Except as provided in subsection (12)(b) and pursuant to subsection (12)(c), the rules must
19 provide for the review of subdivisions consistent with 76-4-114 by an independent reviewer if the department
20 certifies under subsection (4) of this section that the independent reviewer is competent to conduct the review.

21 (b) (i) Except as provided in subsection (12)(b)(ii), an independent reviewer may not review public
22 water supply systems, public sewage systems, or extensions of or connections to these systems.

23 (ii) An independent reviewer may be certified by the department to review subdivisions proposed
24 to connect to existing municipal or county water and/or sewer district water and wastewater systems previously
25 approved by the department if no extension of the system is required.

26 (c) (i) If 10% or more of the applications received during a calendar quarter remain overdue
27 applications at the end of the quarter, the department shall assign applications to independent reviewers in a
28 number not to exceed the number of overdue applications, unless an independent reviewer is not available.

1 (ii) The department may assign applications to independent reviewers if fewer than 10% of the
2 applications received by the department in a calendar quarter are overdue at the end of that quarter.

3 (d) The department shall reimburse independent reviewers at the same rate the department
4 reimburses local departments or local boards of health certified under subsection (3).

5 (13) (a) As used in this section, "overdue application" means an application for which the
6 department has not provided a response within 40 days under 76-4-114(3)(c)(i)(A) and that remains
7 outstanding at the end of a quarter.

8 (b) The term does not include applications for which:

9 (i) no more than one extension has been granted to the department under 76-4-114(4); or

10 (ii) any number of extensions under 76-4-114(5) have been granted."

11

12 **Section 3.** Section 76-4-114, MCA, is amended to read:

13 **"76-4-114. Review of application.** Except as provided in 76-4-125, the applicant shall submit an
14 application for review of a subdivision pursuant to the following procedure:

15 (1) An applicant may request a preapplication meeting with the reviewing authority prior to
16 submitting an application. The reviewing authority shall schedule the requested meeting between the applicant
17 and the reviewing authority within 30 days of receiving the request from the applicant. The meeting may be
18 conducted in person, via telephone, or via teleconference. For informational purposes only, the reviewing agent
19 shall identify the state laws and rules that may apply to the subdivision review process.

20 (2) If the proposed development includes onsite sewage disposal facilities, the applicant shall
21 notify the designated agent of the local board of health prior to presenting the subdivision application to the
22 reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets
23 applicable state and local requirements.

24 (3) (a) After submitting an application if required under the Montana Subdivision and Platting Act,
25 the applicant shall submit an application to the reviewing authority. A subdivision application is considered to be
26 received on the date of delivery to the reviewing authority when accompanied by the review fee established
27 pursuant to 76-4-105.

28 (b) Within 15 days of the receipt of an application, the reviewing authority or independent reviewer

1 shall determine whether the application contains the elements required by 76-4-115(1) to allow for review and
2 shall notify the applicant of the ~~reviewing authority's~~ determination. If the reviewing authority or independent
3 reviewer determines that elements are missing from the application, the reviewing agent or agency shall identify
4 those elements in the notification. The applicant shall address the missing elements identified by the reviewing
5 authority or independent reviewer. A determination that an application contains the required elements for review
6 as provided in this subsection (3)(b) does not ensure that the proposed subdivision will be approved and does
7 not limit the ability of the reviewing authority or independent reviewer to request additional information during
8 the review process.

9 (c) (i) After the reviewing authority or independent reviewer notifies the applicant that the
10 application contains all of the required elements as provided by subsection (3)(b), the reviewing authority or
11 independent reviewer shall make a final decision or a recommendation on the application. Except as provided
12 by subsection (4), the reviewing authority or independent reviewer shall:

13 (A) make a final decision within 40 days of finding that the application contains all of the required
14 elements if the reviewing authority is the department; or

15 (B) make a recommendation for approval to the department or deny the application within 30 days
16 of finding that the application contains all of the required elements if the reviewing authority is a local
17 department, ~~or local~~ board of health, or independent reviewer. If the department receives a recommendation for
18 approval of the subdivision from a local department, ~~or local~~ board of health, or independent reviewer, the
19 department shall make a final decision on the application within 10 days of receiving the recommendation ~~of the~~
20 ~~reviewing authority~~.

21 (ii) If the department approves the application, the department shall issue a certificate of
22 subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not
23 subject to a sanitary restriction.

24 (iii) If the reviewing authority or independent reviewer denies the application, the reviewing
25 authority or independent reviewer shall identify the deficiencies that result in the denial in a notification to the
26 applicant.

27 (d) (i) If the reviewing authority or independent reviewer denies an application and the applicant
28 resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority or

1 independent reviewer shall complete review of the resubmitted application within 30 days after receipt of the
2 resubmitted application.

3 (ii) If the reviewing authority or independent reviewer denies an application and the applicant
4 resubmits a corrected application after 30 days after the date of the denial letter, the reviewing authority or
5 independent reviewer shall complete review of the resubmitted application within:

6 (A) 55 days after receipt of the resubmitted application if the reviewing authority is the department;
7 or

8 (B) 45 days after receipt of the resubmitted application if the reviewing authority is a local
9 department, ~~or local board of health,~~ or independent reviewer.

10 (iii) If the review of the resubmitted application is conducted by a local department, ~~or local board~~
11 ~~of health,~~ or independent reviewer and the reviewing authority or independent reviewer makes a
12 recommendation to the department for approval of the application, the department shall make a final decision
13 on the application within 10 days after the local reviewing authority or independent reviewer completes its
14 review under subsection (3)(d)(i) or (3)(d)(ii).

15 (4) Except as provided in subsections (6) and (7), if the reviewing authority or independent
16 reviewer needs an extension of a deadline in this section to complete its review or if an applicant requests an
17 extension of a deadline, then the reviewing authority or independent reviewer shall notify the applicant of the
18 extension prior to the end of the review deadline. An extension under this subsection may not exceed 30 days;
19 ~~however, the reviewing authority may issue more than one extension.~~

20 (5) The reviewing authority or independent reviewer may extend a deadline in this section until the
21 items required in 76-4-115(2) are submitted. The reviewing authority or independent reviewer shall notify the
22 applicant of the extension before the end of the review deadline. The reviewing authority or independent
23 reviewer shall make a final decision within 30 days of receipt of the items required in 76-4-115(2).

24 (6) The department may extend a deadline under subsections (3)(c) and (3)(d) by 90 days if an
25 environmental assessment is required.

26 (7) The department may extend a deadline under subsections (3)(c) and (3)(d) by 120 days if an
27 environmental impact statement is required."
28

1 **Section 4.** Section 76-4-115, MCA, is amended to read:

2 **"76-4-115. Contents of application -- supplemental information.** (1) The application submitted
3 under 76-4-114 must include preliminary plans and specifications for the proposed development, information
4 required under rules adopted pursuant to this chapter, and any additional information the applicant feels
5 necessary.

6 (2) In addition to the information required for the submission of the application under subsection
7 (1), before the reviewing authority or independent reviewer makes a final decision on the application, the
8 applicant shall provide:

9 (a) a copy of the certification from the local health department required by 76-4-104(6)(k);

10 (b) if required under Title 76, chapter 3, an approval from the local governing body under Title 76,
11 chapter 3; and

12 (c) any public comments or summaries of public comments collected as provided in 76-3-604(7)."
13

14 **Section 5.** Section 76-4-116, MCA, is amended to read:

15 **"76-4-116. Annual report.** The department shall report annually to the environmental quality council
16 in accordance with 5-11-210;

17 (1) summarizing the review procedures adopted under Title 76, chapter 4, and recommending
18 recommendations as to whether statutory changes should be made to the process; and

19 (2) noting the percentage and number of overdue applications for each calendar quarter and if
20 independent reviewers were necessary under 76-4-104(12)(c)(i)."
21

22 NEW SECTION. Section 6. Saving clause. [This act] does not affect rights and duties that matured,
23 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
24

25 NEW SECTION. Section 7. Nonseverability. It is the intent of the legislature that each part of [this
26 act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other
27 parts are invalid.
28

