



AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION SANITATION REVIEW; LIMITING THE REGULATION OF INDIVIDUAL SEWAGE FACILITIES TO THOSE THAT ARE HIGHER IN ELEVATION OR LESS THAN 500 FEET AWAY FROM STATE SURFACE WATERS; REVISING SUBDIVISION EXEMPTIONS; AMENDING SECTIONS 75-5-301, 76-4-102, 76-4-104, 76-4-108, 76-4-115, AND 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 75-5-301, MCA, is amended to read:

**"75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-201 and this chapter, the department shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water quality, considering the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312. Standards must meet the following requirements:

(a) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed  $1 \times 10^{-3}$  in the case of arsenic and  $1 \times 10^{-5}$  for other carcinogens. However, if a standard established at a risk level of  $1 \times 10^{-3}$  for arsenic or  $1 \times 10^{-5}$  for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(b) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by

this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

- (a) the smallest practicable size;
- (b) a minimum practicable effect on water uses; and
- (c) definable boundaries;
- (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not

limited to rules that:

- (a) provide a procedure for department review and authorization of degradation;
- (b) establish criteria for the following:
  - (i) determining important economic or social development; and
  - (ii) weighing the social and economic importance to the public of allowing the proposed project

against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

- (i) equates significance with the potential for harm to human health, a beneficial use, or the environment;
- (ii) considers both the quantity and the strength of the pollutant;
- (iii) considers the length of time the degradation will occur;
- (iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

- (i) 7.5 milligrams per liter from sources other than sewage;

- (ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;
  - (iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or
  - (iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste; and
  - (e) for septic system discharges that are not subject to ground water permitting requirements under 75-5-401, establish criteria to determine when the discharges result in nonsignificant changes in surface water quality in order that those discharges are not required to undergo review under 75-5-303(3) and no further analysis under law or rule is required. The criteria must:
    - (i) be adopted by rule before July 1, 2024; and
    - (ii) be developed in a manner that generally considers soil type, mixing zone dilution and nitrogen credits, horizontal distance between the discharge and the surface water in the direction of ground water flow, and elevation, including:
      - (A) adopt surface water impacts for low flow conditions based on mixing zone dilution concentrations and other credits for nitrogen;
      - (B) credit nitrogen degradation at the drainfield and riparian zone attenuation based on soil type;
      - (C) exempt surface water body impacts when drainfield is lower in elevation than the waterbody;
      - (D) limit the adjacent to surface water trigger analysis to a maximum of 1/4 or 1/2 mile from the drainfield to a surface water, depending on soil type; and
      - (E) create nonsignificant surface water impact categories of 500 or more feet from the surface water that consider soil texture, ground water depths and other pertinent information.
- (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).
- (7) adopt rules to implement this section."

**Section 2.** 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 county water and/or sewer district facilities" means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5 and 6.
- (2) "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.
- (3) "Board" means the board of environmental review.
- (4) "Certifying authority" means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under ~~76-4-104(6)~~. 76-4-104(7).
- (5) "Department" means the department of environmental quality.
- (6) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.
- (7) "Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.
- (8) "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.
- (9) "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.
- (10) "Mixing zone" has the meaning provided in 75-5-103.
- (11) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this chapter after March 30, 2011.  
(b) The term does not include drainfield mixing zones that existed or were approved under this chapter prior to March 30, 2011.
- (12) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under

this chapter after October 1, 2013.

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

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

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

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

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

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

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

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

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

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

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

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

(24) "Water service line" means a waterline that connects a single building or living unit to a public

water supply system or to an extension of a public water supply system.

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

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

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

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

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

industry, recreation, and wildlife.

(3) The storm drainage review requirements of this chapter do not apply to divisions or parcels of land that are exempt from review under 76-3-207(1)(a), (1)(d), (1)(e), or (1)(f) that:

- (a) are used for a single-family residential purpose; and
- (b) include no more than 25% that is impervious.

~~(3)(4)~~ (a) Except as provided in subsection ~~(3)(b)~~ (4)(b), the rules must provide for the review of subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection ~~(4)-(5)~~ that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection ~~(3)(4)(b)(ii)~~ of this section, a local

department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

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

~~(4)~~(5) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection ~~(3)~~ (4).

~~(5)~~(6) The department shall review those subdivisions described in subsection ~~(3)~~ (4) if:

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

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

~~(6)~~(7) The rules must further provide for:

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

(i) total development area; and

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

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

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

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

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways, except that the rules must provide a basis for not requiring storm water review under this part for parcels 5 acres and larger on which the total impervious area does not and will not exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75,

chapter 5, or rules adopted pursuant to Title 75, chapter 5.

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

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

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

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

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

(ii) This subsection ~~(6)(7)~~(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections ~~(6)(7)~~(e) through ~~(6)(7)~~(i);

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

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



facilities;

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

(n) construction details for individual and shared onsite wastewater systems to be reviewed by the local board of health at the time of septic permitting, except that the reviewing authority may require additional construction detail if the wastewater is not residential strength;

(o) simplified methods for storm water reviews, including acceptable minimum storm water volumes based solely on impervious area for proposed lots with one or two single-family residences; and

(p) a basis for exempting from review facilities previously approved under this chapter or by a local reviewing authority of the facility is not proposed to be changed, is not affected by a proposed change to another facility, and meets the design conditions of its existing approval under this chapter or by the local authority and is operating properly. Existing systems must meet the current setbacks established in rule and subsection (7)(i), unless the lot was created before the relevant effective dates for mixing zones and isolation zones.

~~(7)(8)~~ The requirements of subsection ~~(6)(7)(i)~~ regarding proposed drainfield mixing zones and proposed well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after October 1, 2021, except as provided in subsections ~~(6)(7)(i)(i)~~ and ~~(6)(7)(i)(ii)~~.

~~(8)(9)~~ The department shall:

(a) conduct a biennial review of experimental wastewater system components that have been granted a waiver or deviation as provided in subsection ~~(6)(7)(j)~~;

(b) utilize relevant analysis of wastewater system components approved in other states and data from peer-reviewed third-party studies to conduct the review provided in subsection ~~(8)(9)(a)~~;

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

(d) report to the local government interim committee biennially, in accordance with 5-11-210, the number and type of experimental wastewater system components reviewed and the number and type of system components approved and provide written findings to explain why a system component was reviewed but not approved.

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

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

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

~~(11)~~(12) The department may adopt rules that ~~(11)~~(12) provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622."

**Section 4.** Section 76-4-108, MCA, is amended to read:

**"76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. A notice and order issued by the department under this section may also assess an administrative penalty as provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held within a reasonable time.

- (2) In addition to or instead of issuing an order, the reviewing authority may initiate any other

appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in ~~76-4-104(3)~~, 76-4-104(4). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority is legally responsible for its actions under this part.

(5) If the department or a local reviewing authority determines that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, the department or the local reviewing authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must state the reason for the request. The hearing is before the board if the department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked the certificate.

(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section."

**Section 5.** Section 76-4-115, MCA, is amended to read:

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

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

(a) a copy of the certification from the local health department required by ~~76-4-104(6)(k)~~ 76-4-104(7)(k);

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

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

**Section 6.** Section 76-4-125, MCA, is amended to read:

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

- (a) the ~~exclusion~~ exclusions cited in 76-3-201 and 76-3-207(1)(f);
  - (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;
  - (c) divisions made for purposes other than the construction of water supply or sewage or solid waste disposal facilities as the department specifies by rule;
  - (d) as certified pursuant to 76-4-127:
    - (i) new divisions subject to review under the Montana Subdivision and Platting Act;
    - (ii) divisions or previously divided parcels recorded with sanitary restrictions; or
    - (iii) divisions or previously divided parcels of land that are exempt from the Montana Subdivision and Platting Act review under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f);  - (e) subject to the provisions of subsection (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:
    - (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or
    - (ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter; and
  - (f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).
- (2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be

segregated from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.

(3) A previously divided parcel that meets the eligibility criteria for an existing exemption from this part may use the exemption in lieu of obtaining a certificate of subdivision approval if the appropriate document, exemption certificate, certificate of survey, or subdivision plat filed with the county clerk and recorder cites the applicable exemption in its entirety.

(4) At the request of the owner, the original certificate of subdivision approval shall be reissued for a parcel previously approved under this part if:

- (a) the parcel was subsequently divided without review and approval under this part; and
- (b) the unapproved parcels are aggregated to return to the original divided parcel as originally approved."

**Section 7. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
SB 285, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

SENATE BILL NO. 285

INTRODUCED BY C. GLIMM

AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION SANITATION REVIEW; LIMITING THE REGULATION OF INDIVIDUAL SEWAGE FACILITIES TO THOSE THAT ARE HIGHER IN ELEVATION OR LESS THAN 500 FEET AWAY FROM STATE SURFACE WATERS; REVISING SUBDIVISION EXEMPTIONS; AMENDING SECTIONS 75-5-301, 76-4-102, 76-4-104, 76-4-108, 76-4-115, AND 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.