

SENATE BILL NO. 262

INTRODUCED BY F. MANDEVILLE

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING THE REVIEW OF CERTAIN SUBDIVISION APPLICATIONS AND WATER OR SEWER PLANS FROM ENVIRONMENTAL REVIEW; PROVIDING AN EXEMPTION TO LOCAL GOVERNMENTS AND INDEPENDENT REVIEWERS; REVISING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 75-6-121, 76-4-104, AND 76-4-136, MCA."

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

NEW SECTION. Section 1. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2 when reviewing water or sewer system plans or specifications under this part.

Section 2. Section 75-6-121, MCA, is amended to read:

"75-6-121. Delegation of review of small public water and sewer construction. (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department shall delegate to the division of local government the review of:

(a) small public water and sewer systems; and

(b) extensions or alterations of existing public water and sewer systems.

(2) The department shall adopt rules regarding the delegation of review authority to divisions of local government.

(3) A division of local government conducting a review under this section:

(a) must receive 90% of the review fee, and the department must receive the remaining 10% of the review fee; and

(b) shall complete documents necessary to complete the review and to comply with:

(i) ~~the Montana Environmental Policy Act provided for in Title 75, chapter 1, parts 1 through 3;~~

(ii) ~~real property takings requirements in accordance with Title 70; and~~

1 ~~(iii)~~(ii) determinations of nondegradation and nonsignificance as required in Title 75, chapter 5."

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

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

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

- 10 (a) size of lots;
11 (b) contour of land;
12 (c) porosity of soil;
13 (d) ground water level;
14 (e) distance from lakes, streams, and wells;
15 (f) type and construction of private water and sewage facilities; and
16 (g) other factors affecting public health and the quality of water for uses relating to agriculture,
17 industry, recreation, and wildlife.

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

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

22 (4) (a) Except as provided in subsection (4)(b), the rules must provide for the review of
23 subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter
24 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional
25 engineer and if the department certifies under subsection (5) that the local department or board is competent to
26 conduct the review.

27 (b) (i) Except as provided in 75-6-121 and subsection (4)(b)(ii) of this section, a local department or
28 board of health may not review public water supply systems, public sewage systems, or extensions of or

1 connections to these systems.

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

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

8 (b) On or before December 31, 2023, the department shall develop procedures for certification of
9 prequalified independent reviewers and develop a training curriculum to ensure compliance with this part.

10 (6) The department shall review those subdivisions described in subsection (4) if:

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

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

15 (7) The rules must further provide for:

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

18 (i) total development area; and

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

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

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

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

26 (e) standards and technical procedures applicable to storm drainage plans and related designs, in
27 order to ensure proper drainage ways, except that the rules must provide a basis for not requiring storm water
28 review under this part for parcels 5 acres and larger on which the total impervious area does not and will not

1 exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75,
2 chapter 5, or rules adopted pursuant to Title 75, chapter 5.

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

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

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

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

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

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

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

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

27 (l) evidence to demonstrate that appropriate easements, covenants, agreements, and
28 management entities have been established to ensure the protection of human health and state waters and to

1 ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal
2 facilities;

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

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

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

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

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

19 (9) The department shall:

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

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

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

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

1 approved.

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

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

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

14 (12) (a) Subject to subsection (12)(b), the department may adopt rules that provide technical details
15 and clarification regarding the water and sanitation information required to be submitted under 76-3-622.

16 (b) A subdivider may locate a water well anywhere on a lot, parcel, or tract of record if the
17 subdivider maintains the minimum setback distances adopted in rule. The reviewing authority may not limit a
18 subdivider to a single proposed well location.

19 (13) (a) The rules must provide for the review of subdivisions consistent with 76-4-114 by an
20 independent reviewer if the department certifies under subsection (5) of this section that the independent
21 reviewer is competent to conduct the review.

22 (b) (i) Except as provided in subsection (13)(b)(ii), an independent reviewer may not review public
23 water supply systems, public sewage systems, or extensions of or connections to these systems.

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

27 (c) If 110 or more new files are submitted to the department for review in any 1 month, the
28 department shall assign applications received in that month to independent reviewers unless an independent

1 reviewer is not available.

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

4 (14) Prior to being assigned an application for review, an independent reviewer shall identify any
5 conflict of interest related to the project under potential review. If the independent reviewer identifies a conflict
6 of interest, the application for review must be assigned to a different independent reviewer.

7 (15) An independent reviewer acting under the requirements of this chapter shall comply with the
8 provisions of Title 2, chapter 6, for public information requests.

9 (16) An independent reviewer conducting reviews under this section shall complete documents
10 necessary to complete the review and to comply with:

11 (a) ~~the Montana Environmental Policy Act provided for in Title 75, chapter 1, parts 1 through 3; and~~

12 (b) ~~real property takings requirements in accordance with Title 70."~~

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14 **Section 4.** Section 76-4-136, MCA, is amended to read:

15 **"76-4-136. Exemption from environmental review --rulemaking.** ~~(1) Except as provided in~~
16 ~~subsection (2), the~~ The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when
17 reviewing applications under this part for subdivisions that:

18 (a) ~~are located 2 or more miles from high-quality waters, as defined in 75-5-103;~~

19 (b) ~~include 14 or fewer single-family residential subdivision lots;~~

20 (c) ~~include wastewater systems that meet nonsignificance criteria established in rule; and~~

21 (d) ~~demonstrate full compliance with the acquisition of necessary water rights and water~~
22 ~~availability.~~

23 (2) ~~The exemption provided for in subsection (1) does not apply to subdivision applications that~~
24 ~~expand or are adjacent to projects exempted from the provisions of Title 75, chapter 1, parts 1 and 2, after May~~
25 ~~2, 2023.~~

26 (3) ~~The department shall adopt rules to implement this section."~~

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28 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 75, chapter 6, and the provisions of Title 75, chapter 6, apply to [section 1].

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