

**Amendment - 2nd Reading-yellow - Requested by: Forrest Mandeville - (S) Committee of Whole**

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0226.002.001

SENATE BILL NO. 226

INTRODUCED BY F. MANDEVILLE, C. FRIEDEL, C. GLIMM, J. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR INDEPENDENT REVIEWING ENTITIES CERTIFIED BY THE DEPARTMENT TO CONDUCT SUBDIVISION REVIEWS; PROVIDING A DEFINITION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 76-4-102, 76-4-104, 76-4-105, 76-4-106, 76-4-108, AND 76-4-114, MCA."

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

**Section 1.** 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).

(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.

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(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) "Independent review entity" means a person, as defined in 76-1-103, that:

(a) IS A LICENSED ENGINEER OR REGISTERED SANITARIAN WHO ~~specializes in~~ or has at least 5 years of experience relating to land-use issues in the private sector;

(b) does not have a monetary, ownership, or direct familial relationship to the subject of the review;

(c) submits quality control audits to the department on request for subdivision reviews completed by the independent review entity; and

(d) is certified by the department to conduct reviews under 76-4-104.

~~(9)(10)~~ "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)(11)~~ "Mixing zone" has the meaning provided in 75-5-103.

~~(11)(12)~~ (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)(13)~~ (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)(14)~~ "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

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

~~(15)(16)~~ "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)(17)~~ "Registered professional engineer" means a person licensed to practice as a professional

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1 engineer under Title 37, chapter 67.

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

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

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

10 ~~(20)~~(21) "Sewage" has the meaning provided in 75-5-103.

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

13 ~~(22)~~(23) "Solid waste" has the meaning provided in 75-10-103.

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

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

21 ~~(25)~~(26) "Well isolation zone" means the area within a 100-foot radius of a water well."  
22

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

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

27 (2) The rules and standards must provide the basis for approving subdivisions for various types of

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

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

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

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

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- (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 a local board of health elects not to be certified; or
- (c) an independent review entity certified by the department is not available to conduct the review.
- (6) 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

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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)(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)(e) through (6)(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.

(7) The requirements of subsection (6)(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)(i)(i) and (6)(i)(ii).

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- 1           (8)     The department shall:
- 2           (a)     conduct a biennial review of experimental wastewater system components that have been
- 3 granted a waiver or deviation as provided in subsection (6)(j);
- 4           (b)     utilize relevant analysis of wastewater system components approved in other states and data
- 5 from peer-reviewed third-party studies to conduct the review provided in subsection (8)(a);
- 6           (c)     propose those experimental wastewater system components that meet the purposes and
- 7 provisions of this part for adoption into the rules pursuant to this section; and
- 8           (d)     report to the local government interim committee biennially, in accordance with 5-11-210, the
- 9 number and type of experimental wastewater system components reviewed and the number and type of system
- 10 components approved and provide written findings to explain why a system component was reviewed but not
- 11 approved.
- 12          (9)     Review and certification or denial of certification that a division of land is not subject to sanitary
- 13 restrictions under this part may occur only under those rules in effect when a complete application is submitted
- 14 to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot
- 15 was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied.
- 16 In the absence of specific requirements, minimum standards necessary to protect public health and water
- 17 quality apply.
- 18          (10)    The reviewing authority may not deny or condition a certificate of subdivision approval under
- 19 this part unless it provides a written statement to the applicant detailing the circumstances of the denial or
- 20 condition imposition. The statement must include:
- 21           (a)     the reason for the denial or condition imposition;
- 22           (b)     the evidence that justifies the denial or condition imposition; and
- 23           (c)     information regarding the appeal process for the denial or condition imposition.
- 24          (11)    The department may adopt rules that provide technical details and clarification regarding the
- 25 water and sanitation information required to be submitted under 76-3-622."
- 26
- 27

**Section 3.** Section 76-4-105, MCA, is amended to read:

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1           **"76-4-105. Subdivision fees -- subdivision program funding.** (1) The department shall adopt rules  
2     setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections  
3     pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a  
4     schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and  
5     subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to  
6     76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

- 7           (a)     number of lots in the subdivision;  
8           (b)     the type of water system to serve the development;  
9           (c)     the type of sewage disposal to serve the development; and  
10          (d)     the degree of environmental research necessary to supplement the review procedure.

11          (2)     The department shall adopt rules to determine the distribution of fees to the ~~local~~ LOCAL  
12     reviewing authority ~~other than the department~~ for reviews conducted pursuant to 76-4-104, inspections  
13     conducted pursuant to 76-4-107, and enforcement activities conducted pursuant to 76-4-108.

14          (3)     ~~The local~~ A THE LOCAL reviewing authority ~~other than the department~~ may establish a fee to  
15     review applications, conduct site visits, and review applicable exemptions under this chapter. The fee must be  
16     paid directly to the ~~local~~ LOCAL reviewing authority and may not exceed the ~~local~~ LOCAL reviewing authority's  
17     actual cost that is not otherwise reimbursed by the department from fees adopted pursuant to this section.

18          (4)     AN INDEPENDENT REVIEW ENTITY ACTING AS THE REVIEWING AUTHORITY MAY ESTABLISH A FEE, NOT  
19     TO EXCEED THE FEE SCHEDULE ESTABLISHED BY THE DEPARTMENT, CONDUCT SITE VISITS IN COORDINATION WITH THE  
20     PROPERTY OWNER, AND REVIEW APPLICABLE EXEMPTIONS UNDER THIS CHAPTER. THE FEE MUST BE PAID DIRECTLY TO  
21     THE INDEPENDENT REVIEW ENTITY AND MAY NOT EXCEED THE INDEPENDENT REVIEWING ENTITY'S ACTUAL COST."

22  
23           **Section 4.** Section 76-4-106, MCA, is amended to read:

24           **"76-4-106. Cooperation with other governmental agencies.** (1) The reviewing authority may  
25     require the use of records of all state, county, and municipal agencies and may seek the assistance of those  
26     agencies.

27          (2)     State, county, and municipal officers and employees, including local health officers and



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1 sanitarians, shall cooperate with the reviewing authority in furthering the purposes of this part so far as is  
2 practical and consistent with their own duties.

3 (3) A ~~local~~-reviewing authority without a registered sanitarian or a registered professional engineer  
4 to conduct a review under this part may contract with another ~~local~~-reviewing authority for the services of its  
5 registered sanitarian or registered professional engineer to conduct the review."  
6

7 **Section 5.** Section 76-4-108, MCA, is amended to read:

8 **"76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this  
9 part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written  
10 notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent.  
11 The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the  
12 corrective action required by the reviewing authority, and the time within which the action is to be taken. A  
13 notice and order issued by the department under this section may also assess an administrative penalty as  
14 provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under  
15 this section, request a hearing before the ~~local~~-reviewing authority other than the department if it issued the  
16 notice of violation or the board if the department issued the notice of violation. A request for a hearing must be  
17 filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a  
18 hearing must be held within a reasonable time.

19 (2) In addition to or instead of issuing an order, the reviewing authority may initiate any other  
20 appropriate action to compel compliance with this part.

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

25 (4) When a ~~local~~-reviewing authority other than the department exercises the authority delegated  
26 to it by this section, the ~~local~~-reviewing authority is legally responsible for its actions under this part.

27 (5) If the department or a ~~local~~-reviewing authority other than the department determines that a

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

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

10  
11 **Section 6.** Section 76-4-114, MCA, is amended to read:

12 **"76-4-114. Review of application.** Except as provided in 76-4-125, the applicant shall submit an  
13 application for review of a subdivision pursuant to the following procedure:

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

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

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

27 (b) Within 15 days of the receipt of an application, the reviewing authority shall determine whether

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

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

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

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

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

22 (iii) If the reviewing authority denies the application, the reviewing authority shall identify the  
23 deficiencies that result in the denial in a notification to the applicant.

24 (d) (i) If the reviewing authority denies an application and the applicant resubmits a corrected  
25 application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the  
26 resubmitted application within 30 days after receipt of the resubmitted application.

27 (ii) If the reviewing authority denies an application and the applicant resubmits a corrected

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1 application after 30 days after the date of the denial letter, the reviewing authority shall complete review of the  
2 resubmitted application within:

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

5 (B) 45 days after receipt of the resubmitted application if the reviewing authority is a local  
6 department or a local board of health.

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

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

16 (5) The reviewing authority may extend a deadline in this section until the items required in 76-4-  
17 115(2) are submitted. The reviewing authority shall notify the applicant of the extension before the end of the  
18 review deadline. The reviewing authority shall make a final decision within 30 days of receipt of the items  
19 required in 76-4-115(2).

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

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

24 - END -