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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.

(8) "Facilities" means public or private facilities for the supply of water or disposal of sewage or

1 solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might  
2 be transported or distributed.

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

4 (a) is a licensed engineer or registered sanitarian who specializes in or has at least 5 years of  
5 experience relating to land use issues in the private sector;

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

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

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

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

12 (10)(11) "Mixing zone" has the meaning provided in 75-5-103.

13 (11)(12) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this  
14 chapter after March 30, 2011.

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

17 (12)(13) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under  
18 this chapter after October 1, 2013.

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

21 (13)(14) "Public sewage system" or "public sewage disposal system" means a public sewage system  
22 as defined in 75-6-102.

23 (14)(15) "Public water supply system" has the meaning provided in 75-6-102.

24 (15)(16) "Regional authority" means any regional water authority, regional wastewater authority, or  
25 regional water and wastewater authority organized pursuant to the provisions of Title 75, chapter 6, part 3.

26 (16)(17) "Registered professional engineer" means a person licensed to practice as a professional  
27 engineer under Title 37, chapter 67.

28 (17)(18) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37,

1 chapter 40.

2 ~~(18)~~(19) "Reviewing authority" means the department ~~or~~ a local department, ~~or~~ a local board of health,  
3 or an independent review entity certified to conduct a review under 76-4-104.

4 ~~(19)~~(20) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or  
5 building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction  
6 of water supply or sewage or solid waste disposal, facilities until the department has approved plans for those  
7 facilities.

8 ~~(20)~~(21) "Sewage" has the meaning provided in 75-5-103.

9 ~~(24)~~(22) "Sewer service line" means a sewerline that connects a single building or living unit to a public  
10 sewage system or to an extension of a public sewage system.

11 ~~(22)~~(23) "Solid waste" has the meaning provided in 75-10-103.

12 ~~(23)~~(24) "Subdivision" means a division of land or land so divided that creates one or more parcels  
13 containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the  
14 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium,  
15 townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for  
16 recreational camping vehicles or mobile homes.

17 ~~(24)~~(25) "Water service line" means a waterline that connects a single building or living unit to a public  
18 water supply system or to an extension of a public water supply system.

19 ~~(25)~~(26) "Well isolation zone" means the area within a 100-foot radius of a water well."  
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21 **Section 2.** Section 76-4-104, MCA, is amended to read:

22 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the  
23 provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for  
24 administration and enforcement of this part.

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

28 (a) size of lots;

1 provisions of this part for adoption into the rules pursuant to this section; and

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

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

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

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

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

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

22 **"76-4-105. Subdivision fees -- subdivision program funding.** (1) The department shall adopt rules  
23 setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections  
24 pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a  
25 schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and  
26 subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to  
27 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

28 (a) number of lots in the subdivision;

- 1 (b) the type of water system to serve the development;
- 2 (c) the type of sewage disposal to serve the development; and
- 3 (d) the degree of environmental research necessary to supplement the review procedure.

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

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

11 (4) An independent review entity acting as the reviewing authority may establish a fee, not to  
 12 exceed the fee schedule established by the department, conduct site visits in coordination with the property  
 13 owner, and review applicable exemptions under this chapter. The fee must be paid directly to the independent  
 14 review entity and may not exceed the independent reviewing entity's actual cost."

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

17 **"76-4-106. Cooperation with other governmental agencies.** (1) The reviewing authority may  
 18 require the use of records of all state, county, and municipal agencies and may seek the assistance of those  
 19 agencies.

20 (2) State, county, and municipal officers and employees, including local health officers and  
 21 sanitarians, shall cooperate with the reviewing authority in furthering the purposes of this part so far as is  
 22 practical and consistent with their own duties.

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

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

28 **"76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this