

SENATE BILL NO. 237

INTRODUCED BY S. VANCE, S. GUNDERSON, J. WELBORN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WATER QUALITY; REQUIRING THAT DEVELOPMENT PLANS BE APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY BEFORE ADDITIONAL CONNECTIONS TO PUBLIC WATER AND WASTEWATER SYSTEMS MAY BE AUTHORIZED; REQUIRING THE APPROVAL OF A DEVELOPMENT PLAN BEFORE THE APPROVAL OF CERTAIN SUBDIVISIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS AND REVISING A DEFINITION; AMENDING SECTIONS 75-6-104, 75-6-108, 76-3-507, AND 76-4-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Development plans -- department requirements -- rulemaking. (1)**

Unless authorized by a development plan approved by the department of environmental quality under this section, a public water or wastewater supply system may not certify or authorize additional connections to its water or wastewater system that would exceed its approved rated capacity.

(2) The department ~~may~~shall approve a municipal development plan to allow additional connections to a public water or wastewater supply system if the municipality demonstrates that:

- (a) the additional connections will not exceed the approved rated capacity of the system;
- (b) the additional connections will not create a risk to public health or the environment; and
- (c) the plan will not cause a violation of any provision of or rule adopted under this part or Title 75, chapter 5 or 6, or any condition or requirement of an approval or order issued pursuant to this part or Title 75, chapter 5 or 6.

(3) A municipality with a development plan approved under this section shall submit an annual report detailing its compliance with the approved plan to the department.

(4) A development plan approved under this section may be used by the department to approve connections that would exceed the system's approved rated capacity only if the connection would serve a

subdivision subject to review under Title 76, chapter 3, and the governing body has required department certification before final plat approval in accordance with 76-3-507(5).

(5) The department may revoke or require modification of an approved development plan if:

(a) the conditions of development have fundamentally changed;

(b) the municipality has violated the requirements of this section or a condition of an approved development plan; or

(c) the department otherwise determines that the conditions of subsection (2) have not been or will not be satisfied.

(6) A municipality that violates this section or a condition of an approved development plan is subject to penalties under 75-6-114.

(7) The department may adopt rules to implement this section.

(8) Nothing in this section requires a municipality to submit a development plan for review unless the municipality intends to approve connections beyond the municipal system's rated capacity.

(9) As used in this section, the following definitions apply:

(a) "Development plan" means a planning document that outlines the current rated capacity of a water or wastewater system and the system's proposed capacity after upgrades, marked by milestones of construction activity as a percentage of existing capacity, are made to the system and includes a timeline for when the design, bidding, and construction of upgrades to an existing system will be completed.

(b) "Rated capacity" means the gross capacity of a water or wastewater system as required by the design standards provided for in Title 75, chapter 6, wastewater discharge permit limits set in Title 75, chapter 5, and water right limits required in Title 85.

**NEW SECTION. Section 2. Development plans -- exceptions.** (1) A reviewing authority may not approve a subdivision under this chapter that is subject to a development plan approved under [section 1] unless the subdivision is subject to the provisions of Title 76, chapter 3, and the governing body has required department certification before final plat approval pursuant to 76-3-507(5).

(2) A certifying authority may not certify that a division under 76-4-125(1)(d) will be served by adequate municipal facilities pursuant to a development plan approved under [section 1] unless the division is

subject to the provisions of Title 76, chapter 3, and the governing body has required department certification before final plat approval pursuant to 76-3-507(5).

**Section 3.** Section 75-6-104, MCA, is amended to read:

**"75-6-104. Duties of department.** (1) The department has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or as a source of ice.

(2) The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system, including requirements to remedy:

(i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(ii) fecal contamination in water used by a public water supply system; or

(iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

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- 1 (g) the collection and analysis of samples of water used for drinking or domestic purposes;
- 2 (h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act
- 3 and this part;
- 4 (i) administrative enforcement procedures and administrative penalties authorized under this part;
- 5 (j) standards and requirements for the review and approval of programs that may be voluntarily
- 6 submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-
- 7 connection, including provisions to exempt cross-connections from the standards and requirements if all
- 8 connected systems are department-approved public water supply systems;
- 9 (k) (i) allowable uses of reclaimed wastewater and classification of those uses;
- 10 (ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to
- 11 each classification that must be met by the public sewage system to protect the uses of the reclaimed
- 12 wastewater and any receiving water;
- 13 (iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for
- 14 which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection
- 15 (2)(k)(ii); and
- 16 (iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this
- 17 subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of
- 18 natural resources and conservation; and
- 19 (l) any other requirement necessary for the protection of public health as described in this part.
- 20 (3) Department rules must provide for the following:
- 21 (a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and
- 22 approved by the department is not subject to changes in department design and construction criteria for a
- 23 period of 36 months after written approval of the facility is issued by the department;
- 24 (b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except
- 25 as provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or
- 26 sewage reviewed and approved under this section is not subject to changes in department design or
- 27 construction criteria for a period of 36 months after written approval is issued by the department;
- 28 (c) plans and specifications for a portion of a facility or system subject to a 36-month limit on

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criteria changes pursuant to subsections (3)(a) and (3)(b) but not constructed within the 36-month timeframe must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria; and

(e) department approval of development plans for a municipal system that allows additional connections above the approved rated capacity of a water or wastewater system pursuant to [section 1].

(4) The department or the board may issue orders necessary to fully implement the provisions of this part.

(5) The department shall:

(a) ~~upon~~ on its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(b) have waters examined to determine their quality and the possibility that they may endanger public health;

(c) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ensuring its quality;

(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(e) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(f) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(g) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states;

(h) enter on premises at reasonable times to determine sources of pollution or danger to water

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- 1 supply systems and whether rules and standards of the department are being obeyed;
- 2 (i) enforce and administer the provisions of this part;
- 3 (j) establish a plan for the provision of safe drinking water under emergency circumstances;
- 4 (k) maintain an inventory of public water supply systems and establish a program for conducting
- 5 sanitary surveys;
- 6 (l) enter into agreements with local boards of health whenever appropriate for the performance of
- 7 surveys and inspections under the provisions of this part; and
- 8 (m) review in the form of a written response within 60 days to an applicant seeking approval for use
- 9 of reclaimed wastewater for snowmaking subject to subsection (2)(k) that:
- 10 (i) approves, approves with conditions, or denies the application pursuant to the provisions of this
- 11 part; and
- 12 (ii) (A) describes additional information that must be submitted prior to department approval under
- 13 subsection (5)(m)(i); or
- 14 (B) describes any additional requirements that the applicant must satisfy prior to department
- 15 approval under subsection (5)(m)(i), such as a permit to discharge under Title 75, chapter 5, part 4, or an
- 16 authorization under Title 85 from the department of natural resources and conservation."

17  
18 **Section 4.** Section 75-6-108, MCA, is amended to read:

19 **"75-6-108. Department to prescribe fees -- opportunity for appeal.** (1) The department shall by  
20 rule prescribe fees to be assessed annually on owners of public water supply systems to recover department  
21 costs in providing services under this part. The annual fee for a public water supply system is no more than  
22 \$2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991,  
23 and ending June 30, 1993, and thereafter is no more than \$2 for each service connection to the public water  
24 supply system, although the minimum fee for any system is \$100, except that the fee for a transient  
25 noncommunity water system is \$50.

26 (2) Public water supply systems in a municipality may raise the rates to recover costs associated  
27 with the fees prescribed in this section without the public hearing required in 69-7-111.

28 (3) The department shall by rule prescribe fees assessed on persons who submit plans and

1 specifications or development plans for construction, alteration, or extension of a public water supply system or  
2 public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans  
3 and specifications.

4 (4) Fees collected pursuant to this section must be deposited in the public drinking water special  
5 revenue fund established in 75-6-115.

6 (5) (a) The department shall notify the owner of a public water supply system in writing of the  
7 amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee  
8 assessment in writing to the board within 20 days after receipt of the written notice.

9 (b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal  
10 may not be based only on the fee schedule adopted by the department.

11 (c) If any part of the fee assessment is not appealed, it must be paid to the department ~~upon on~~  
12 receipt of the notice provided for in subsection (5)(a)."

13  
14 **Section 5.** Section 76-3-507, MCA, is amended to read:

15 **"76-3-507. Provision for security requirements to ensure construction of public improvements.**

16 (1) Except as provided in subsections (2) and (4), the governing body shall require the subdivider to complete  
17 required improvements within the proposed subdivision prior to the approval of the final plat.

18 (2) (a) In lieu of the completion of the construction of any public improvements prior to the approval  
19 of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be  
20 provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the  
21 governing body, providing for and securing the construction and installation of the improvements within a period  
22 specified by the governing body and expressed in the bonds or other security. The governing body shall reduce  
23 bond or security requirements commensurate with the completion of improvements.

24 (b) In lieu of requiring a bond or other means of security for the construction or installation of all the  
25 required public improvements under subsection (2)(a), the governing body may approve an incremental  
26 payment or guarantee plan. The improvements in a prior increment must be completed or the payment or  
27 guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before  
28 development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.

(5) If capacity for the subdivision was approved under a development plan as provided for in [section 1], the governing body shall require the subdivider to complete the water and sewer improvements within and to the proposed subdivision prior to the approval of the final plat. The subdivider shall provide a letter from the department that states that certification and as-builts for the subdivision have been received and that the municipality is in compliance with the applicable development plan."

**Section 6.** 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, including development plans approved by the department pursuant to [section 1].

(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



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1 service lines to a sewer main.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(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."

**NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 6, and the provisions of Title 75, chapter 6, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 76, chapter 4, and the provisions of Title 76, chapter 4, apply to [section 2].

**NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

- END -