

1 SENATE BILL NO. 165

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5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION
7 SANITATION REVIEW; LIMITING THE REGULATION OF INDIVIDUAL SEWAGE FACILITY IMPACTS TO
8 SURFACE WATER TO A DISTANCE OF 500 FEET OR LESS AWAY FROM STATE SURFACE WATERS;
9 REVISING SUBDIVISION EXEMPTIONS; AND AMENDING SECTIONS 76-3-504, 76-3-622, 76-4-102, 76-4-
10 104, 76-4-108, 76-4-115, AND 76-4-125, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 76-3-504, MCA, is amended to read:

15 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this
16 chapter must, at a minimum:

17 (a) list the materials that must be included in a subdivision application in order for the application to be
18 determined to contain the required elements for the purposes of the review required in 76-3-604(1);

19 (b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the
20 governing body an environmental assessment as prescribed in 76-3-603;

21 (c) establish procedures consistent with this chapter for the submission and review of subdivision
22 applications and amended applications;

23 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

24 (e) provide for the identification of areas that, because of natural or human-caused hazards, are
25 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the
26 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures
27 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not
28 include building regulations as defined in 50-60-101 other than those identified by the department of labor and

1 industry as provided in 50-60-901.

2 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-
3 year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

4 (g) prescribe standards for:

5 (i) the design and arrangement of lots, streets, and roads;

6 (ii) grading and drainage;

7 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
8 the:

9 (A) regulations adopted by the ~~department of environmental quality~~ board of environmental review
10 under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

11 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
12 containing 20 acres or more and less than 160 acres; and

13 (iv) the location and installation of public utilities;

14 (h) provide procedures for the administration of the park and open-space requirements of this
15 chapter;

16 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
17 local, state, and federal government identified during the preapplication consultation conducted pursuant to
18 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency
19 review may not delay the governing body's action on the application beyond the time limits specified in this
20 chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of
21 the application by the governing body.

22 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the
23 subdivider to:

24 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
25 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
26 a legal right to the water and reserve and sever any remaining surface water rights from the land;

27 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
28 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement

1 administered through a single entity that specifies administration and the rights and responsibilities of
2 landowners within the subdivision who have a legal right and access to the water; or

3 (iii) reserve and sever all surface water rights from the land;

4 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements
5 in the subdivision that:

6 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical
7 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for
8 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
9 irrigation district or other private or public entity formed to provide for the use of the water right on the
10 subdivision lots;

11 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair,
12 maintenance, and inspection of the ditch; and

13 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch
14 easement without the written permission of the ditch owner.

15 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

16 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
17 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
18 land and may continue to be assessed for irrigation water delivery even though the water may not be
19 deliverable; or

20 (B) the water rights are removed or the process has been initiated to remove the water rights from the
21 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
22 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
23 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and
24 shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

25 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
26 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
27 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
28 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with

1 historic and legal rights;

2 (m) require the subdivider to describe, dimension, and show public utility easements in the
3 subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient
4 width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of
5 public utility services within the subdivision.

6 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
7 hearings;

8 (o) establish procedures describing how the governing body or its agent or agency will address
9 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

10 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
11 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade
12 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
13 the reviewing authority is not the governing body.

14 (q) establish a preapplication process that:

15 (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body,
16 that is designated by the governing body to review subdivision applications prior to the subdivider submitting
17 the application;

18 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and
19 growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

20 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
21 state, and federal government, and any other entities that may be contacted for comment on the subdivision
22 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If,
23 during the review of the application, the agent or agency designated by the governing body contacts a public
24 utility, agency, or other entity that was not included on the list originally made available to the subdivider, the
25 agent or agency shall notify the subdivider of the contact and the timeframe for response.

26 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the
27 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

28 (v) establishes a time limit after a preapplication meeting by which an application must be submitted;

1 (r) require that the written decision required by 76-3-620 must be provided to the applicant within 30
2 working days following a decision by the governing body to approve, conditionally approve, or deny a
3 subdivision;

4 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple
5 spaces for recreational camping vehicles or mobile homes.

6 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted
7 under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
8 development."

9

10 **Section 2.** Section 76-3-622, MCA, is amended to read:

11 **"76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as
12 provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency
13 designated by the governing body the information listed in this section for proposed subdivisions that will
14 include new water supply or wastewater facilities. The information must include:

15 (a) a vicinity map or plan that shows:

16 (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the
17 proposed lots, of:

18 (A) flood plains;

19 (B) surface water features;

20 (C) springs;

21 (D) irrigation ditches;

22 (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and
23 wastewater treatment systems;

24 (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

25 (G) the representative drainfield site used for the soil profile description as required under subsection
26 (1)(d); and

27 (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water
28 and sewer facilities;

1 (b) a description of the proposed subdivision's water supply systems, storm water systems, solid
2 waste disposal systems, and wastewater treatment systems, including:

3 (i) whether the water supply and wastewater treatment systems are individual, shared, multiple user,
4 or public as those systems are defined in rules published by the department of environmental quality; and

5 (ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a
6 statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of
7 the public service commission or exempt from public service commission jurisdiction and, if exempt, an
8 explanation for the exemption;

9 (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that
10 shows all information required for a lot layout document in rules adopted by the ~~department of environmental~~
11 quality board of environmental review pursuant to 76-4-104;

12 (d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

13 (i) a soil profile description from a representative drainfield site identified on the vicinity map, as
14 provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental
15 quality;

16 (ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance
17 between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting
18 layer; and

19 (iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of
20 the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation
21 distance provided in subsection (1)(d)(ii);

22 (e) for new water supply systems, unless cisterns are proposed, evidence of adequate water
23 availability:

24 (i) obtained from well logs or testing of onsite or nearby wells;

25 (ii) obtained from information contained in published hydrogeological reports; or

26 (iii) as otherwise specified by rules adopted by the ~~department of environmental quality~~ board of
27 environmental review pursuant to 76-4-104;

28 (f) evidence of sufficient water quality in accordance with rules adopted by the ~~department of~~

1 ~~environmental quality~~ board of environmental review pursuant to 76-4-104;

2 (g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment
3 systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-
4 5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant
5 changes in water quality. The preliminary analysis may be based on currently available information and must
6 consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems
7 within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this
8 subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is
9 required for an application that is reviewed under Title 76, chapter 4.

10 (2) A subdivider whose land division is excluded from review under 76-4-125(1) or whose facilities are
11 excluded from review under 76-4-125(3) is not required to submit the information required in this section.

12 (3) A governing body may not, through adoption of regulations, require water and sanitation
13 information in addition to the information required under this section unless the governing body complies with
14 the procedures provided in 76-3-511."
15

16 **Section 3.** Section 76-4-102, MCA, is amended to read:

17 **"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
18 following definitions apply:

19 (1) "Adequate county water and/or sewer district facilities" means facilities provided by a county water
20 and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5
21 and 6.

22 (2) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply
23 water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality
24 and that are operating in compliance with Title 75, chapters 5 and 6.

25 (3) "Board" means the board of environmental review.

26 (4) "Certifying authority" means a municipality or a county water and/or sewer district that meets the
27 eligibility requirements established by the department under ~~76-4-104(6)~~, 76-4-104(8).

28 (5) "Department" means the department of environmental quality.

1 (6) "Extension of a public sewage system" means a sewerline that connects two or more sewer
2 service lines to a sewer main.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (18) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building

1 requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water
 2 supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

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

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

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

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

12 (23) "Water service line" means a waterline that connects a single building or living unit to a public
 13 water supply system or to an extension of a public water supply system.

14 (24) "Well isolation zone" means the area within a 100-foot radius of a water well."
 15

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

17 **"76-4-104. Rules for administration and enforcement.** (1) The ~~department~~ board shall, subject to
 18 the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for
 19 administration and enforcement of this part.

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

23 (a) size of lots;

24 (b) contour of land;

25 (c) porosity of soil;

26 (d) ground water level;

27 (e) distance from lakes, streams, and wells;

28 (f) type and construction, SIZE, AND LOCATION of private water and sewage facilities BASED ON SITE

1 ~~CHARACTERISTICS for areas where a local board of health has not adopted provisions for the regulation of water~~
 2 ~~wells or for the control and disposal of sewage from private and public buildings and facilities as described in~~
 3 ~~Title 50; for areas where the local board of health has adopted provisions for regulation of water wells or for the~~
 4 ~~control and disposal of sewage, the local board of health shall regulate the rules, standards and approval of the~~
 5 ~~design and construction of those facilities; and~~

6 (g) other factors affecting public health and the quality of water for uses relating to agriculture,
 7 industry, recreation, and wildlife.

8 (3) Rules regulating impacts to surface water apply only to individual, shared, and multi-user sewage
 9 facilities located 500 feet or closer and higher in elevation in relationship to state surface waters.

10 ~~(4) The following divisions of land are exempt from storm drainage review requirements of this~~
 11 ~~chapter:~~

12 ~~(a) minor subdivisions for residential use as defined in 76-3-103;~~

13 ~~(b) divisions of land exempt from subdivision review for residential use as defined in 76-3-201, 76-3-~~
 14 ~~203, 76-3-205, 76-3-206, and 76-3-207~~

15 ~~(4) THE STORM DRAINAGE REVIEW REQUIREMENTS OF THIS CHAPTER DO NOT APPLY TO DIVISIONS OR~~
 16 ~~PARCELS OF LAND THAT ARE EXEMPT FROM REVIEW UNDER 76-3-207(1)(A), (1)(B), (1)(D), (1)(E), OR (1)(F) THAT:~~

17 ~~(A) ARE USED FOR A SINGLE-FAMILY RESIDENTIAL PURPOSE; OR~~

18 ~~(B) INCLUDE NO MORE THAN 25% THAT IS IMPERVIOUS.~~

19 ~~(3)~~ (5) (a) Except as provided in subsection ~~(3)(b)~~ (5)(b), the rules must provide for the review of
 20 subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter
 21 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional
 22 engineer and if the department certifies under subsection ~~(4)-(6)~~ that the local department or board is
 23 competent to conduct the review.

24 (b) (i) Except as provided in 75-6-121 and subsection ~~(3)(b)(ii)-(5)(b)(ii)~~ of this section, a local
 25 department or board of health may not review public water supply systems, public sewage systems, or
 26 extensions of or connections to these systems.

27 (ii) A local department or board of health may be certified by the department to review subdivisions
 28 proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems

1 previously approved by the department if no extension of the systems is required.

2 ~~(4)~~ (6) The department shall ~~also~~ adopt standards and procedures for certification and maintaining
3 certification to ensure that a local department or board of health is competent to review the subdivisions as
4 described in subsection ~~(3)~~ (5).

5 ~~(5)~~ (7) The department shall review those subdivisions described in subsection ~~(3)~~ (5) if:

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

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

9 ~~(6)~~ (8) The rules must further provide for:

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

12 (i) total development area; and

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

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

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

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

20 (e) standards and technical procedures applicable to storm drainage plans and related designs, in
21 order to ensure proper drainage ways;

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

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

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

26 (i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are
27 located wholly within the boundaries of the proposed subdivision as defined by 76-3-103 where the proposed
28 drainfield or well is located or that an easement or, for public land, other authorization has been obtained from

1 the landowner to place the proposed drainfield mixing zone or proposed well isolation zone outside the
 2 boundaries of the proposed subdivision where the proposed drainfield or proposed well is located. A proposed
 3 mixing zone or a proposed well isolation zone for an individual water system well that is a minimum of 50 feet
 4 inside the proposed subdivision boundary may extend outside the boundaries of the proposed subdivision onto
 5 adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i)
 6 does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this
 7 section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public
 8 sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for
 9 roads, railroads, or utilities.

10 (j) criteria for granting waivers and deviations from the standards and technical procedures adopted
 11 under subsections ~~(6)(e) through (6)(i)~~ (8)(e) through (8)(i);

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

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

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

23 ~~(7)~~ (9) Review and certification or denial of certification that a division of land is not subject to sanitary
 24 restrictions under this part may occur only under those rules in effect when a complete application is submitted
 25 to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot
 26 was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied.
 27 In the absence of specific requirements, minimum standards necessary to protect public health and water
 28 quality apply.

1 ~~(8)~~ (10) The reviewing authority may not deny or condition a certificate of subdivision approval under
2 this part unless it provides a written statement to the applicant detailing the circumstances of the denial or
3 condition imposition. The statement must include:

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

7 ~~(9)~~ (11) The department may adopt rules that provide technical details and clarification regarding the
8 water and sanitation information required to be submitted under 76-3-622."

9

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

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

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

24 (3) The provisions of this part may be enforced by a reviewing authority other than the department or
25 board only for those divisions described in ~~76-4-104(3)~~, 76-4-104(5). If a local reviewing authority fails to
26 adequately enforce the provisions of this part, the department or the board may compel compliance with this
27 part under the provisions of this section.

28 (4) When a local reviewing authority exercises the authority delegated to it by this section, the local

1 reviewing authority is legally responsible for its actions under this part.

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

9 (6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
 10 part 6, apply to a hearing held under this section."
 11

12 **Section 6.** Section 76-4-115, MCA, is amended to read:

13 **"76-4-115. Contents of application -- supplemental information.** (1) The application submitted
 14 under 76-4-114 must include preliminary plans and specifications for the proposed development, information
 15 required under rules adopted pursuant to this chapter, and any additional information the applicant feels
 16 necessary.

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

19 (a) a copy of the certification from the local health department required by ~~76-4-104(6)(k)~~ 76-4-
 20 104(8)(k);

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

23 (c) any public comments or summaries of public comments collected as provided in 76-3-604(7)."
 24

25 **Section 7.** Section 76-4-125, MCA, is amended to read:

26 **"76-4-125. Land divisions excluded from review.** (1) A subdivision excluded from the provisions of
 27 chapter 3 must be submitted for review according to the provisions of this part, except that the following
 28 divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to

1 review:

2 (a) the ~~exclusion~~ exclusions cited in 76-3-201 and 76-3-207(1)(f);

3 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,
4 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and
5 that the division does not fall within a previously platted or approved subdivision;

6 (c) divisions made for purposes other than the construction of water supply or sewage and solid
7 waste disposal facilities as the department specifies by rule;

8 (d) as certified pursuant to 76-4-127:

9 (i) new divisions subject to review under the Montana Subdivision and Platting Act;

10 (ii) divisions or previously divided parcels recorded with sanitary restrictions; or

11 (iii) divisions or parcels of land that are exempt from the Montana Subdivision and Platting Act review
12 under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f);

13 (e) subject to the provisions of subsection (2), a remainder of an original tract created by segregating
14 a parcel from the tract for purposes of transfer if:

15 (i) the remainder is served by a public or multiple-user sewage system approved before January 1,
16 1997, pursuant to local regulations or this chapter; or

17 (ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source
18 that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant
19 to local regulations or this chapter; and

20 (f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).

21 (2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior
22 to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated
23 from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to
24 accommodate a replacement drainfield.

25 (3) Facilities exempt from the review required by this part include facilities for water supply,
26 wastewater disposal, storm water, or solid waste disposal that do not violate the conditions of a previous
27 approval:

28 (a) as part of a subdivision pursuant to this part; or

1 (b) by a local reviewing authority."

2

3 COORDINATION SECTION. SECTION 8. COORDINATION INSTRUCTION. IF BOTH SENATE BILL NO. 233

4 AND [THIS ACT] ARE PASSED AND APPROVED, THEN THE CHANGE IN THIS ACT IN 76-3-504(1)(G)(III)(A) REGARDING

5 REGULATIONS ADOPTED BY THE BOARD OF ENVIRONMENTAL REVIEW MUST BE DELETED."

6

- END -