

SENATE BILL NO. 316

INTRODUCED BY J. FIELDER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SUBDIVISION AND LOCAL BOARD OF HEALTH LAWS
5 RELATED TO ENCROACHMENT ONTO PRIVATE PROPERTY; PROHIBITING LOCAL APPROVAL OF A
6 PROPOSED SUBDIVISION IF A WELL ISOLATION ZONE OR OTHER ~~ELEMENTS~~ FEATURES AND
7 IMPROVEMENTS OF THE SUBDIVISION ENCROACH ONTO PRIVATE PROPERTY; REQUIRING
8 DEPARTMENT OF ENVIRONMENTAL QUALITY SANITATION IN SUBDIVISION RULES TO PROVIDE FOR
9 EVIDENCE THAT WELL ISOLATION ZONES ARE LOCATED WHOLLY WITHIN THE BOUNDARIES OF A
10 PROPOSED SUBDIVISION; REQUIRING LOCAL BOARD OF HEALTH RULES TO ADDRESS WELL
11 ISOLATION ZONES UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 50-2-116, 76-3-608,
12 76-4-102, AND 76-4-104, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 50-2-116, MCA, is amended to read:

17 **"50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of the
18 public health system, in collaboration with federal, state, and local partners, each local board of health shall:

- 19 (a) appoint and fix the salary of a local health officer who is:
20 (i) a physician;
21 (ii) a person with a master's degree in public health; or
22 (iii) a person with equivalent education and experience, as determined by the department;
23 (b) elect a presiding officer and other necessary officers;
24 (c) employ qualified staff;
25 (d) adopt bylaws to govern meetings;
26 (e) hold regular meetings at least quarterly and hold special meetings as necessary;
27 (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
28 (i) epidemiological tracking and investigation;
29 (ii) screening and testing;
30 (iii) isolation and quarantine measures;

- 1 (iv) diagnosis, treatment, and case management;
- 2 (v) abatement of public health nuisances;
- 3 (vi) inspections;
- 4 (vii) collecting and maintaining health information;
- 5 (viii) education and training of health professionals; or
- 6 (ix) other public health measures as allowed by law;
- 7 (g) protect the public from the introduction and spread of communicable disease or other conditions of
- 8 public health importance, including through actions to ensure the removal of filth or other contaminants that might
- 9 cause disease or adversely affect public health;
- 10 (h) supervise or make inspections for conditions of public health importance and issue written orders for
- 11 compliance or for correction, destruction, or removal of the conditions;
- 12 (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of
- 13 public health laws, rules, and local regulations;
- 14 (j) identify to the department an administrative liaison for public health. The liaison must be the local
- 15 health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a
- 16 full-time local health officer, the liaison must be the highest ranking public health professional employed by the
- 17 jurisdiction.
- 18 (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than
- 19 state standards for the control and disposal of sewage from private and public buildings and facilities that are not
- 20 regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting
- 21 variances from the minimum requirements that are identical to standards promulgated by the board of
- 22 environmental review and must provide for appeal of variance decisions to the department as required by
- 23 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the
- 24 drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property
- 25 without the authorization of the private property owner.
- 26 (2) Local boards of health may:
- 27 (a) accept and spend funds received from a federal agency, the state, a school district, or other persons
- 28 or entities;
- 29 (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private
- 30 and public buildings and facilities;

- 1 (c) adopt regulations that do not conflict with rules adopted by the department:
- 2 (i) for the control of communicable diseases;
- 3 (ii) for the removal of filth that might cause disease or adversely affect public health;
- 4 (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that
- 5 affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly
- 6 into state water and that are not required to have an operating permit as required by rules adopted under
- 7 75-5-401;
- 8 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing
- 9 establishments and that are not less stringent than state standards for tattooing and body-piercing
- 10 establishments;
- 11 (v) for the establishment of institutional controls that have been selected or approved by the:
- 12 (A) United States environmental protection agency as part of a remedy for a facility under the federal
- 13 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or
- 14 (B) department of environmental quality as part of a remedy for a facility under the Montana
- 15 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and
- 16 (vi) to implement the public health laws; and
- 17 (d) promote cooperation and formal collaborative agreements between the local board of health and
- 18 tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,
- 19 information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters
- 20 addressed in this title.
- 21 (3) A local board of health may provide, implement, facilitate, or encourage other public health services
- 22 and functions as considered reasonable and necessary."

23

24 **Section 2.** Section 76-3-608, MCA, is amended to read:

25 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to

26 approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary

27 plat, applicable environmental assessment, public hearing, planning board recommendations, or additional

28 information demonstrates that development of the proposed subdivision meets the requirements of this chapter.

29 A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts

30 on educational services or based solely on parcels within the subdivision having been designated as

1 wildland-urban interface parcels under 76-13-145.

2 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as
3 applicable.

4 (3) A subdivision proposal must undergo review for the following primary criteria:

5 (a) except when the governing body has established an exemption pursuant to subsection (6) of this
6 section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural
7 water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;

8 (b) compliance with:

9 (i) the survey requirements provided for in part 4 of this chapter;

10 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

11 (iii) the local subdivision review procedure provided for in this part;

12 (c) the provision of easements within and to the proposed subdivision for the location and installation
13 of any planned utilities; and

14 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the
15 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

16 (4) The governing body may require the subdivider to design the proposed subdivision to reasonably
17 minimize potentially significant adverse impacts identified through the review required under subsection (3). The
18 governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

19 (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under
20 subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is
21 recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and
22 will preclude approval of the subdivision.

23 (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider
24 and shall give due weight and consideration to the expressed preference of the subdivider.

25 (6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water
26 and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on
27 the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing
28 subdivision, zoning, or other regulations that the governing body has the authority to enforce.

29 (7) A governing body may not require as a condition of subdivision approval that a property owner waive
30 a right to protest the creation of a special improvement district or a rural improvement district for capital

1 improvement projects that does not identify the specific capital improvements for which protest is being waived.
2 A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final
3 subdivision plat is filed with the county clerk and recorder.

4 (8) A governing body may not approve a proposed subdivision if any of the ~~elements~~ FEATURES AND
5 IMPROVEMENTS of the subdivision encroach onto adjoining private property in a manner that is not otherwise
6 provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the
7 proposed subdivision encroaches onto adjoining private property unless the owner of the private property
8 authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided
9 in 76-4-102."

10
11 **Section 3.** Section 76-4-102, MCA, is amended to read:

12 **"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following
13 definitions apply:

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

17 (2) "Board" means the board of environmental review.

18 (3) "Department" means the department of environmental quality.

19 (4) "Extension of a public sewage system" means a sewerline that connects two or more sewer service
20 lines to a sewer main.

21 (5) "Extension of a public water supply system" means a waterline that connects two or more water
22 service lines to a water main.

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

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

27 (8) "Public sewage system" or "public sewage disposal system" means a public sewage system as
28 defined in 75-6-102.

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

30 (10) "Registered professional engineer" means a person licensed to practice as a professional engineer

1 under Title 37, chapter 67.

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

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

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

9 (14) "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 (15) "Solid waste" has the meaning provided in 75-10-103.

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

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

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

19

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

21 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the
22 provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for
23 administration and enforcement of this part.

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

27 (a) size of lots;

28 (b) contour of land;

29 (c) porosity of soil;

30 (d) ground water level;

- 1 (e) distance from lakes, streams, and wells;
- 2 (f) type and construction of private water and sewage facilities; and
- 3 (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry,
- 4 recreation, and wildlife.
- 5 (3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by
- 6 a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board
- 7 of health employs a registered sanitarian or a registered professional engineer and if the department certifies
- 8 under subsection (4) that the local department or board is competent to conduct the review.
- 9 (b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or
- 10 board of health may not review public water supply systems, public sewage systems, or extensions of or
- 11 connections to these systems.
- 12 (ii) A local department or board of health may be certified to review subdivisions proposed to connect to
- 13 existing municipal water and wastewater systems previously approved by the department if no extension of the
- 14 systems is required.
- 15 (4) The department shall also adopt standards and procedures for certification and maintaining
- 16 certification to ensure that a local department or board of health is competent to review the subdivisions as
- 17 described in subsection (3).
- 18 (5) The department shall review those subdivisions described in subsection (3) if:
- 19 (a) a proposed subdivision lies within more than one jurisdictional area and the respective governing
- 20 bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or
- 21 (b) the local department or board of health elects not to be certified.
- 22 (6) The rules must further provide for:
- 23 (a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under
- 24 this part and other documentation showing the layout or plan of development, including:
- 25 (i) total development area; and
- 26 (ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage
- 27 disposal;
- 28 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability
- 29 will be available to ensure an adequate supply of water for the type of subdivision proposed;
- 30 (c) evidence concerning the potability of the proposed water supply for the subdivision;

- 1 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;
- 2 (e) standards and technical procedures applicable to storm drainage plans and related designs, in order
- 3 to ensure proper drainage ways;
- 4 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil
- 5 testing and site design standards for on-lot sewage disposal systems when applicable;
- 6 (g) standards and technical procedures applicable to water systems;
- 7 (h) standards and technical procedures applicable to solid waste disposal;
- 8 (i) adequate evidence that a proposed drainfield mixing zone ~~is~~ and a proposed well isolation zone are
- 9 located wholly within the boundaries of the proposed subdivision where the drainfield or well is located or that
- 10 an easement or, for public land, other authorization has been obtained from the landowner to place the proposed
- 11 drainfield mixing zone or well isolation zone outside the boundaries of the proposed subdivision where the
- 12 drainfield or well is located. A mixing zone ~~or well isolation zone~~ may extend outside the boundaries of the
- 13 proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.
- 14 This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b).
- 15 ~~A well isolation zone may extend outside the boundaries of the proposed subdivision onto adjoining private~~
- 16 ~~property if the private property owner has authorized the extension.~~
- 17 (j) criteria for granting waivers and deviations from the standards and technical procedures adopted
- 18 under subsections (6)(e) through (6)(i);
- 19 (k) evidence to establish that, if a public water supply system or a public sewage system is proposed,
- 20 provision has been made for the system and, if other methods of water supply or sewage disposal are proposed,
- 21 evidence that the systems will comply with state and local laws and regulations that are in effect at the time of
- 22 submission of the preliminary or final plan or plat. Evidence that the systems will comply with local laws and
- 23 regulations must be in the form of a certification from the local health department as provided by department rule.
- 24 (l) evidence to demonstrate that appropriate easements, covenants, agreements, and management
- 25 entities have been established to ensure the protection of human health and state waters and to ensure the
- 26 long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.
- 27 (7) If the reviewing authority is a local department or board of health, it shall notify the department of its
- 28 recommendation for approval or disapproval of the subdivision not later than 45 days from its receipt of the
- 29 subdivision application. The department shall make a final decision on the subdivision within 10 days after
- 30 receiving the recommendation of the local reviewing authority, but not later than 55 days after the submission of

1 a complete application, as provided in 76-4-125.

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

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

10 (a) the reason for the denial or condition imposition;

11 (b) the evidence that justifies the denial or condition imposition; and

12 (c) information regarding the appeal process for the denial or condition imposition.

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

15

16 NEW SECTION. SECTION 5. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT
17 MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS
18 ACT].

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- END -