

HOUSE BILL NO. 556

INTRODUCED BY J. KRAUTTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE INSTALLATION AND USE OF NEW AND INNOVATIVE SEWAGE DISPOSAL TECHNOLOGIES AND EQUIPMENT; REVISING DEPARTMENT RULEMAKING AUTHORITY FOR SANITATION IN SUBDIVISIONS; AND AMENDING SECTIONS 76-4-104 AND 76-4-105, MCA."

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

NEW SECTION. Section 1. New and innovative technology and equipment -- rulemaking. (1) The department shall adopt reasonable rules for the installation of new and innovative wastewater treatment technologies and equipment for residential wastewater treatment facilities.

- (2) The rules must provide that the technology and equipment to be installed:
 - (a) satisfies rules implemented pursuant to 76-4-104(6)(d), (6)(f), and (6)(i);
 - (b) has been approved for use in other states or had been previously approved for use in the state of Montana;
 - (c) meets NSF/ANSI 40 standard testing threshold for residential wastewater treatment systems; and
 - (d) meets department rules for loading rate and setback criteria.

(3) A registered professional engineer shall approve a design and installation manual containing detailed construction and design guidance for a residential wastewater treatment facility that satisfies the rules provided for in this section. The department may neither amend nor add requirements to the manual.

(4) An application for a residential wastewater treatment facility with a design and installation manual authorized by this section does not require the signature and approval seal from a registered professional engineer.

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

"76-4-104. (Temporary) Rules for administration and enforcement. (1) The department shall, except as provided in [section 1] and subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.



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

- 4 (a) size of lots;
5 (b) contour of land;
6 (c) porosity of soil;
7 (d) ground water level;
8 (e) distance from lakes, streams, and wells;
9 (f) type and construction of private water and sewage facilities; and
10 (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry,
11 recreation, and wildlife.

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

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

20 (ii) A local department or board of health may be certified to review subdivisions proposed to connect to
21 existing municipal water and wastewater systems previously approved by the department if no extension of the
22 systems is required.

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

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

- 27 (a) a proposed subdivision lies within more than one jurisdictional area and the respective governing
28 bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or
29 (b) the local department or board of health elects not to be certified.

30 (6) The rules must further provide for:

- 1 (a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under
2 this part and other documentation showing the layout or plan of development, including:
- 3 (i) total development area; and
4 (ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage
5 disposal;
- 6 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability
7 will be available to ensure an adequate supply of water for the type of subdivision proposed;
- 8 (c) evidence concerning the potability of the proposed water supply for the subdivision;
- 9 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;
- 10 (e) standards and technical procedures applicable to storm drainage plans and related designs, in order
11 to ensure proper drainage ways;
- 12 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil
13 testing and site design standards for on-lot sewage disposal systems when applicable;
- 14 (g) standards and technical procedures applicable to water systems;
- 15 (h) standards and technical procedures applicable to solid waste disposal;
- 16 (i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are
17 located wholly within the boundaries of the proposed subdivision where the drainfield or well is located or that
18 an easement or, for public land, other authorization has been obtained from the landowner to place the proposed
19 drainfield mixing zone or well isolation zone outside the boundaries of the proposed subdivision where the
20 drainfield or well is located. A mixing zone or a well isolation zone for an individual water system well that is a
21 minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the proposed
22 subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This
23 subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b).
24 Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other
25 improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for
26 use as a right-of-way for roads, railroads, or utilities.
- 27 (j) criteria for granting waivers and deviations from the standards and technical procedures adopted
28 under subsections (6)(e) through (6)(i);
- 29 (k) evidence to establish that, if a public water supply system or a public sewage system is proposed,
30 provision has been made for the system and, if other methods of water supply or sewage disposal are proposed,

1 evidence that the systems will comply with state and local laws and regulations that are in effect at the time of
2 submission of the preliminary or final plan or plat. Evidence that the systems will comply with local laws and
3 regulations must be in the form of a certification from the local health department as provided by department rule.

4 (I) evidence to demonstrate that appropriate easements, covenants, agreements, and management
5 entities have been established to ensure the protection of human health and state waters and to ensure the
6 long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

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

12 (8) The reviewing authority may not deny or condition a certificate of subdivision approval under this part
13 unless it provides a written statement to the applicant detailing the circumstances of the denial or condition
14 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 (9) The department may adopt rules that provide technical details and clarification regarding the water
19 and sanitation information required to be submitted under 76-3-622. (Terminates September 30, 2019--sec. 13,
20 Ch. 344, L. 2017.)

21 **76-4-104. (Effective October 1, 2019) Rules for administration and enforcement.** (1) The department
22 shall, except as provided in [section 1] and subject to the provisions of 76-4-135, adopt reasonable rules,
23 including adoption of sanitary standards, necessary for 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 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 a well isolation zone for an individual water system well that is a
13 minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the proposed
14 subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This
15 subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b).
16 Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other
17 improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for
18 use as a right-of-way for roads, railroads, or utilities.
- 19 (j) criteria for granting waivers and deviations from the standards and technical procedures adopted
20 under subsections (6)(e) through (6)(i);
- 21 (k) evidence to establish that, if a public water supply system or a public sewage system is proposed,
22 provision has been made for the system and, if other methods of water supply or sewage disposal are proposed,
23 evidence that the systems will comply with state and local laws and regulations that are in effect at the time of
24 submission of the preliminary or final plan or plat. Evidence that the systems will comply with local laws and
25 regulations must be in the form of a certification from the local health department as provided by department rule.
- 26 (l) evidence to demonstrate that appropriate easements, covenants, agreements, and management
27 entities have been established to ensure the protection of human health and state waters and to ensure the
28 long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.
- 29 (7) If the reviewing authority is a local department or board of health, it shall notify the department of its
30 recommendation for approval or disapproval of the subdivision not later than 45 days from its receipt of the

1 subdivision application. The department shall make a final decision on the subdivision within 10 days after
2 receiving the recommendation of the local reviewing authority, but not later than 55 days after the submission of
3 a complete application, as provided in 76-4-125.

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

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

- 12 (a) the reason for the denial or condition imposition;
13 (b) the evidence that justifies the denial or condition imposition; and
14 (c) information regarding the appeal process for the denial or condition imposition.

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

17

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

19 **"76-4-105. Subdivision fees -- subdivision program funding.** (1) The department shall adopt rules
20 setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections
21 pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for
22 a schedule of fees to be paid by the applicant to the department or, if applicable, to another reviewing authority
23 for deposit in the general fund of the reviewing authority's jurisdiction. The fees must be used for review of plats
24 and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant
25 to 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

- 26 (a) number of lots in the subdivision;
27 (b) the type of water system to serve the development;
28 (c) the type of sewage disposal to serve the development; and
29 (d) the degree of environmental research necessary to supplement the review procedure.

30 (2) The department shall adopt rules to determine the distribution of fees to the local reviewing authority

1 for reviews conducted pursuant to 76-4-104 or [section 1], inspections conducted pursuant to 76-4-107, and
2 enforcement activities conducted pursuant to 76-4-108."

3
4 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
5 integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to [section 1].

6 - END -