

1 Senate BILL NO. 310
2 INTRODUCED BY Rehults

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
5 TITLE 69, CHAPTER 50, AND TO GIVE THE DEPARTMENT OF HEALTH
6 AND ENVIRONMENTAL SCIENCES THE POWER TO INSPECT AND MONITOR
7 WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS; TO ADD A
8 DEFINITION OF PLAT, CERTIFICATE OF SURVEY, AND PUBLIC WATER
9 SUPPLY OR PUBLIC SEWAGE DISPOSAL SYSTEM; TO CLARIFY THE
10 TYPES OF FACILITIES COVERED BY TITLE 69, CHAPTER 50, AND THE
11 EXEMPTIONS IN THE ACT; TO GRANT THE RIGHT TO APPEAL A
12 DECISION TO APPROVE A SUBDIVISION; AND TO REVISE PENALTIES
13 FOR VIOLATIONS OF TITLE 69, CHAPTER 50; TO PROVIDE FOR LOCAL
14 GOVERNMENT REVIEW IN CERTAIN CASES; AUTHORIZE THE DEPARTMENT
15 TO BRING AN ACTION FOR THE COLLECTION OF CIVIL PENALTIES;
16 AMENDING SECTIONS 69-5002, 69-5003, 69-5005, 69-5006, AND
17 69-5008, R.C.M. 1947; AND REPEALING SECTION 69-5007, R.C.M.
18 1947."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Authority to inspect and monitor. In order
22 to carry out the objectives of Title 69, chapter 50, to
23 monitor the installation of sewage disposal and water supply
24 systems and to prevent the occurrence of water pollution
25 problems associated with subdivision development, the

1 department or the board may:
2 (1) whenever a public water supply or sewage disposal
3 system is proposed or has been constructed, at reasonable
4 times, after presentation of appropriate credentials by an
5 authorized representative of the department, enter upon any
6 public or private property to inspect such systems in order
7 to assure that the plans and specifications approved for the
8 system have been adhered to and that the provisions of Title
9 69, chapter 50, rules, or orders are being satisfied;

10 (2) whenever a public water supply or sewage disposal
11 system is proposed or has been constructed, require as a
12 condition of approval that records concerning the operation
13 of a public sewage disposal or public water supply system be
14 maintained or that monitoring equipment or wells be
15 installed, used, and maintained for the collection of
16 water-quality-related data.

17 Section 2. Section 69-5002, R.C.M. 1947, is amended to
18 read as follows:

19 "69-5002. Definitions. As used in this chapter, unless
20 the context clearly indicates otherwise, the following words
21 or phrases shall have the following meanings:

22 (1) "Subdivision" means a division of land, or land so
23 divided, which creates one (1) or more parcels containing
24 less than ~~twenty~~(20) acres, exclusive of public roadways,
25 in order that the title to or possession of the parcels may

1 be sold, rented, leased, or otherwise conveyed, and includes
 2 any resubdivision; and any condominium or area, regardless
 3 of size, which provides permanent multiple space for
 4 recreational camping vehicles or mobile homes. A
 5 subdivision shall comprise only those parcels of less than
 6 ~~twenty-{20}~~ acres which have been segregated--from--the
 7 ~~original--tract~~ created by a division of land, and the plat
 8 thereof shall show all such parcels, whether contiguous or
 9 not; provided, however, condominiums constructed on land
 10 divided in compliance with the Montana Subdivision and
 11 Platting Act and this chapter are exempt from provisions of
 12 this chapter.

13 (2) "Board" means the board of health and
 14 environmental sciences.

15 (3) "Department" means department of health and
 16 environmental sciences.

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

23 (5) "Facilities" means public or private facilities
 24 for the supply of water or disposal of sewage or solid waste
 25 and any pipes, conduits, or other stationary method by which

1 water, sewage, or solid wastes might be transported or
 2 distributed.

3 (6) "Solid wastes" means all putrescible and
 4 nonputrescible solid wastes (except body wastes), including
 5 garbage, rubbish, street cleanings, dead animals, yard
 6 clippings, and solid market and solid industrial wastes.

7 (7) "Plat" means a geographical representation showing
 8 the division of lots, parcels, blocks, streets, alleys, or
 9 other divisions and dedications and any other document which
 10 geographically describes a division of land, including a
 11 certificate of survey.

12 (8) "Certificate of survey" means a drawing of a field
 13 survey prepared by a registered surveyor for the purpose of
 14 disclosing facts pertaining to boundary locations.

15 (9) "Public water supply system" or "public sewage
 16 disposal system" means respectively, a water supply or
 17 sewage disposal system that serves 10 or more families or 25
 18 or more persons for at least 60 days out of the calendar
 19 year."

20 Section 3. Section 69-5003, R.C.M. 1947, is amended to
 21 read as follows:

22 "69-5003. Approval of plans for facilities in
 23 subdivisions. (1) A person may not file a subdivision plat
 24 or certificate of survey with a county clerk and recorder,
 25 make disposition of any lot within a subdivision, erect any

1 facility for the supply of water or disposal of sewage or
 2 solid waste, erect any building or shelter in a subdivision
 3 which requires facilities for the supply of water or
 4 disposal of sewage or solid waste, or occupy any permanent
 5 building in a subdivision until the department has indicated
 6 that the subdivision is subject to no sanitary restriction.

7 (2) A county clerk and recorder may not accept a
 8 subdivision plat or certificate of survey for filing until:

9 (a) the person wishing to file the plat or certificate
 10 of survey has obtained approval of the local health officer
 11 having jurisdiction and has filed the approval with the
 12 department; and

13 (b) the department has indicated by stamp or
 14 certificate that it has approved the plat or certificate of
 15 survey and plans and specifications and that the subdivision
 16 is subject to no sanitary restriction.

17 ~~(3) When a subdivision as defined in this chapter is~~
 18 ~~excluded from the provisions of title 11, chapter 38,~~
 19 ~~section 11-3862, R.S.M., 1947, except section 11-3862-(8),~~
 20 ~~R.S.M., 1947, and the subdivision is otherwise subject to the~~
 21 ~~provisions of this chapter, plans~~ Plans and specifications
 22 of the for subdivisions as defined in this chapter shall be
 23 submitted to the department and the department shall
 24 indicate by certificate that it has approved the plans and
 25 specifications and that the subdivision is not subject to a

1 sanitary restriction. The plan review by the department
 2 shall be as follows:

3 (a) The developer shall present to the department a
 4 preliminary plan of the proposed development and whatever
 5 information the developer feels necessary for its subsequent
 6 review. Within ~~sixty~~ {60} days of this submission, based
 7 upon its receipt by the department, the department shall
 8 notify the developer if the material submitted is
 9 satisfactory to determine if sanitary restrictions are
 10 necessary and if not what additional information is required
 11 for subsequent action by the department.

12 (b) If additional information is necessary to
 13 determine if sanitary restrictions are necessary no further
 14 processing will be made on the request until the ~~mission~~
 15 ~~missing~~ information is made available to the department by
 16 the developer.

17 (c) The department must notify the developer within
 18 ~~thirty~~ {30} days if his submission of additional requested
 19 material is satisfactory. If the material is not
 20 satisfactory, the provision of subsection (b) shall apply.

21 (d) After the department has notified the developer
 22 that they have all the necessary information required for
 23 review, the department must give final action of the
 24 proposed plan within ~~sixty~~ {60} days, unless an
 25 environmental impact statement is required, at which time

1 this deadline may be increased to one-hundred-twenty-~~(120)~~
2 days.

3 (4) A person may not construct or use any facilities
4 which deviate from the plans and specifications filed with
5 the department until the department has approved the
6 deviation.

7 (5) A subdivision excluded from the provisions of
8 Title 11, chapter 38, shall be submitted for review by the
9 department according to the provisions of this chapter,
10 except that the following divisions are not subject to
11 review by the department:

12 (a) the exclusions cited in 11-3862(8) and 11-3862(9);
13 (b) divisions made for the purpose of acquiring
14 additional land to become part of an approved parcel,
15 provided that no dwelling or structure requiring water or
16 sewage disposal is to be erected on the additional acquired
17 parcel; and

18 (c) divisions made for purposes other than the
19 construction of water supply or sewage and solid waste
20 disposal facilities as the department specifies by rule.

21 (6) When a subdivision involves the resubdivision of a
22 lot which will be connected to existing municipal water
23 supply and municipal sewage and solid waste disposal
24 systems, the department shall, within 20 days of the
25 submission of a plat and satisfactory supplemental

1 information, make a final decision on the proposed
2 subdivision.

3 (7) Within 90 days after [the effective date of this
4 act], the department and the department of community affairs
5 shall prepare and distribute a joint application form that
6 can be used by an applicant to apply for approval of a
7 subdivision under the provisions of this act and the
8 provisions of Title 11, chapter 38. When an application is
9 received by either the department or a local government, the
10 department or local government is responsible for forwarding
11 the appropriate parts of the application to the other
12 entity. The review required by Title 69, chapter 50, and
13 the provisions of Title 11, chapter 38, shall occur
14 concurrently or in any order that the applicant may request.

15 (8) When the department conducts its review of a
16 subdivision before a local government has given final
17 approval under the provisions of Title 11, chapter 38, any
18 change in the boundaries of a subdivision made by the local
19 government which deviate from the boundaries approved by the
20 department under this act must be resubmitted to the
21 department for approval. The department shall complete its
22 review of the change in boundary lines within 20 days after
23 submission of the changes by the local government to the
24 department unless the change in boundaries will result in an
25 increased number of divisions of land, in which case the

1 department has 40 days to conduct its review."

2 Section 4. Section 69-5005, R.C.M. 1947, is amended to
3 read as follows:

4 "69-5005. Rules for administration and enforcement of
5 chapter. (1) The department shall adopt reasonable rules,
6 including adoption of sanitary standards, and setting forth
7 fees, not to exceed ~~fifteen dollars (\$15)~~ \$25 per parcel for
8 services rendered in the review of plats and subdivisions
9 necessary for administration and enforcement of this
10 chapter.

11 (2) The rules and standards shall provide the basis
12 for approving subdivision plats for various types of water,
13 sewage facilities, and solid waste disposal, both public and
14 private, and shall be related to size of lots, contour of
15 land, porosity of soil, ground water level, distance from
16 lakes, streams, and wells, type and construction of private
17 water and sewage facilities, and other factors affecting
18 public health and the quality of water for uses relating to
19 agriculture, industry, recreation, and wildlife.

20 (3) The rules shall further provide for:

21 (a) the furnishing to the department of a copy of the
22 plat and other documentation showing the layout or plan of
23 development, including:

- 24 (i) total development area,
25 (ii) total number of proposed dwelling units;

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

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

7 (d) adequate evidence that a sewage disposal system is
8 sufficient in terms of capacity and dependability;

9 ~~(f)(e)~~ standards and technical procedures applicable
10 to storm drainage plans and related designs, in order to
11 insure proper drainage ways;

12 ~~(f)(f)~~ standards and technical procedures applicable
13 to sanitary sewer plans and designs, including soil
14 percolation testing and required percolation rates and site
15 design standards for on-lot sewage disposal systems when
16 applicable;

17 ~~(f)(g)~~ standards and technical procedures applicable
18 to water systems;

19 ~~(g)(h)~~ standards and technical procedures applicable
20 to solid waste disposal;

21 ~~(h)(i)~~ requiring evidence to establish that, if a
22 public sewage disposal system is proposed, provision has
23 been made for the system and, if other methods of sewage
24 disposal are proposed, evidence that the systems will comply
25 with state and local laws and regulations which are in

1 effect at the time of submission of the preliminary or final
2 plan or plat;

3 ~~++(j)~~ a schedule of fees to be paid by the applicant
4 for plat or subdivision review to the department for deposit
5 in the agency fund provided for in section 79-410. The fees
6 shall be used for review of plats and subdivisions based on
7 the complexity of the subdivision, including but not limited
8 to:

- 9 (i) number of lots in the subdivision;
10 (ii) the type of water system to serve the development;
11 (iii) the type of sewage disposal to serve the
12 development; and
13 (iv) the degree of environmental research necessary to
14 supplement the review procedure.

15 (4) A fee as described in this section is not required
16 for the review of subdivisions in which divisions are made
17 for the purpose of relocating common boundary lines unless
18 the division will result in the installation of additional
19 water supply or sewage disposal facilities.

20 (5) The department may delegate to a local government
21 the authority to review a subdivision under Title 69,
22 chapter 50, when the subdivision involves five or fewer
23 parcels and the department is satisfied that the local
24 government can adequately review the water supply and sewage
25 and solid waste disposal facilities proposed for the

1 subdivision. In delegating authority pursuant to this
2 subsection, the department shall enter into an agreement
3 with the local government wherein the department shall agree
4 to transfer not less than \$10 of the fee collected pursuant
5 to this section to the local government for the review of
6 subdivisions containing five or fewer parcels. When a local
7 government has conducted a review of a subdivision
8 containing five or fewer parcels pursuant to this section,
9 it shall advise the department of its recommendation for
10 approval or disapproval and the department shall, within 10
11 days after receiving the recommendation of the local
12 government, make a final decision on the subdivision."

13 Section 5. Section 69-5006, R.C.M. 1947, is amended to
14 read as follows:

15 "69-5006. Request for hearing. Upon denial ~~of~~ or
16 approval of subdivision plans and specifications relating to
17 environmental health facilities ~~the~~ a person who is
18 aggrieved by such denial or approval may request a hearing
19 before the board. Such hearings will be held pursuant to the
20 Montana Administrative Procedure Act [82-4201 to 82-4225]."

21 Section 6. Section 69-5008, R.C.M. 1947, is amended to
22 read as follows:

23 "69-5008. Penalties. (1) A person ~~violating who~~
24 purposely violates any provision of ~~the act~~ Title 69,
25 chapter 50, or any rule, ~~or~~ order, or condition of approval

1 chapter 50, or any rule, or order, or condition of approval
 2 issued under--this--act thereunder, is guilty of an offense
 3 and subject to a fine of not to exceed one-thousand--dollars
 4 ~~(\$1,000)~~ \$1,000. Each day upon which a violation occurs
 5 constitutes a separate offense.

6 (2) A person who violates any provision of Title 69,
 7 chapter 50, or a rule, order, or condition of approval
 8 issued thereunder is subject to a civil penalty not to
 9 exceed \$1,000. Each day upon which a violation occurs
 10 constitutes a separate violation.

11 ~~(2)(3)~~ Action under subsection (1) or (2) of this
 12 section does not bar enforcement of this act or rules or
 13 orders issued under it by injunction or other appropriate
 14 remedy.

15 ~~(3)(4)~~ The purpose of this section is to provide
 16 additional and cumulative remedies. This--act--does the
 17 provisions of Title 69, chapter 50, do not abridge or alter
 18 rights of action or remedies in equity or under the common
 19 law or statutory law, criminal or civil, nor does any
 20 provision of this chapter or any act done by virtue of it
 21 estop the state, any municipality or other subdivision of
 22 the state, or any person in the exercise of his rights in
 23 equity or under the common law or statutory law.

24 (5) The department may, through the attorney general
 25 or appropriate county attorney, initiate an action for

1 collection of a civil penalty or injunctive relief as
 2 specified in this section."

3 Section 7. Repealer. Section 69-5007, R.C.M. 1947, is
 4 repealed.

-End-

STATE OF MONTANA

REQUEST NO. 284-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 28, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 310 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise Title 69, Chapter 50, and to give the Department of Health and Environmental Sciences the power to inspect and monitor water supply and sewage disposal systems; to add a definition of plan, certificate of survey, and public water supply or public sewage disposal system; to clarify the types of facilities covered by Title 69, Chapter 50, and the exemptions in the act; to grant the right to appeal a decision to approve a subdivision; and to revise penalties for violations of Title 69, Chapter 50; to provide for local government review in certain cases; authorize the Department to bring an action for the collection of civil penalties.

ASSUMPTIONS:

1. Approximately 6,700 subdivision units will be included in the 2,000 applications received from developers each year.
2. The increased workload will require an Engineer II and a Lawyer II. The lawyer position will be required to handle the actions for collection of civil penalties or injunctive relief. The engineer position will handle the on-site reviews, monitoring scheme and record review, and review of applications prior to government review.
3. Fines and civil penalties resulting from legal action will aggregate \$10,000 per year.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>	<u>TOTAL</u>
Additional revenue due to the proposed law	<u>\$37,000</u>	<u>\$37,500</u>	<u>\$74,500</u>
Less: Additional expenditures due to the proposed law			
Personal services	34,810	37,270	72,080
Operating expenses	4,010	4,700	8,710
Equipment	750	500	1,250
Local assistance*	<u>31,500</u>	<u>31,500</u>	<u>63,000</u>
Total additional cost of proposed legislation	<u>71,070</u>	<u>73,970</u>	<u>145,040</u>
Net additional cost of proposed legislation	<u>\$34,070</u>	<u>\$36,470</u>	<u>\$70,540</u>

*The proposed legislation should result in approximately \$31,500 per year paid to the counties to assist in the review of subdivisions. The receipts will probably cover one-half to two-thirds of the cost of the review process.

Richard L. Drury for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-3-77

Approved by Comm.
on Local Government

1 SENATE BILL NO. 310
 2 INTRODUCED BY ROBERTS
 3 BY REQUEST OF THE
 4 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCE
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 7 TITLE 69, CHAPTER 50, AND TO GIVE THE DEPARTMENT OF HEALTH
 8 AND ENVIRONMENTAL SCIENCES THE POWER TO INSPECT AND MONITOR
 9 WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS; TO ADD A
 10 DEFINITION OF PLAT, CERTIFICATE OF SURVEY, AND PUBLIC WATER
 11 SUPPLY OR PUBLIC SEWAGE DISPOSAL SYSTEM; TO CLARIFY THE
 12 TYPES OF FACILITIES COVERED BY TITLE 69, CHAPTER 50, AND THE
 13 EXEMPTIONS IN THE ACT; TO GRANT THE RIGHT TO APPEAL A
 14 DECISION TO APPROVE A SUBDIVISION; AND TO REVISE PENALTIES
 15 FOR VIOLATIONS OF TITLE 69, CHAPTER 50; TO PROVIDE FOR LOCAL
 16 GOVERNMENT REVIEW IN CERTAIN CASES; AUTHORIZE THE DEPARTMENT
 17 TO BRING AN ACTION FOR THE COLLECTION OF CIVIL PENALTIES;
 18 AMENDING SECTIONS 69-5002, 69-5003, 69-5005, 69-5006, AND
 19 69-5008, R.C.M. 1947; AND REPEALING SECTION 69-5007, R.C.M.
 20 1947."
 21
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 23 Section 1. Authority to inspect and monitor. In order
 24 to carry out the objectives of Title 69, chapter 50, to
 25 monitor the installation of sewage disposal and water supply

1 systems and to prevent the occurrence of water pollution
 2 problems associated with subdivision development, the
 3 department or the board may:
 4 (1) whenever a public water supply or PUBLIC sewage
 5 disposal system is proposed or has been constructed, at
 6 reasonable times, after presentation of appropriate
 7 credentials by an authorized representative of the
 8 department, enter upon any public or private property to
 9 inspect such systems in order to assure that the plans and
 10 specifications approved for the system have been adhered to
 11 and that the provisions of Title 69, chapter 50, rules, or
 12 orders are being satisfied;
 13 (2) whenever a public water supply or PUBLIC sewage
 14 disposal system is proposed or has been constructed, require
 15 as a condition of approval that records concerning the
 16 operation of a public sewage disposal or public water supply
 17 system be maintained or that monitoring equipment or wells
 18 be installed, used, and maintained for the collection of
 19 water-quality-related data.
 20 Section 2. Section 69-5002, R.C.M. 1947, is amended to
 21 read as follows:
 22 "69-5002. Definitions. As used in this chapter, unless
 23 the context clearly indicates otherwise, the following words
 24 or phrases shall have the following meanings:
 25 (1) "Subdivision" means a division of land, or land so

1 divided, which creates one ~~ft~~ or more parcels containing
 2 less than ~~twenty-(20)~~ acres, exclusive of public roadways,
 3 in order that the title to or possession of the parcels may
 4 be sold, rented, leased, or otherwise conveyed, and includes
 5 any resubdivision; and any condominium or area, regardless
 6 of size, which provides permanent multiple space for
 7 recreational camping vehicles or mobile homes. A
 8 subdivision shall comprise only those parcels of less than
 9 ~~twenty-(20)~~ acres which have been ~~segregated--from--the~~
 10 ~~original--tract~~ created by a division of land, and the plat
 11 thereof shall show all such parcels, whether contiguous or
 12 not; provided, however, condominiums constructed on land
 13 divided in compliance with the Montana Subdivision and
 14 Platting Act and this chapter are exempt from provisions of
 15 this chapter.

16 (2) "Board" means the board of health and
 17 environmental sciences.

18 (3) "Department" means department of health and
 19 environmental sciences.

20 (4) "Sanitary restriction" means a prohibition against
 21 the erection of any dwelling, shelter or building requiring
 22 facilities for the supply of water or the disposition of
 23 sewage or solid waste or the construction of water supply or
 24 sewage or solid waste disposal facilities until the
 25 department has approved plans for those facilities.

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

6 (6) "Solid wastes" means all putrescible and
 7 nonputrescible solid wastes (except body wastes), including
 8 garbage, rubbish, street cleanings, dead animals, yard
 9 clippings, and solid market and solid industrial wastes.

10 (7) "Plat" means a geographical representation OF A
 11 SUBDIVISION showing the division of LAND INTO lots, parcels,
 12 blocks, streets, AND alleys--or AND other divisions and
 13 dedications and--any--other--document--which--geographically
 14 describes--a--division--of--land--including--a--certificate--of
 15 survey.

16 (8) "Certificate of survey" means a drawing of a field
 17 survey prepared by a registered surveyor for the purpose of
 18 disclosing facts pertaining to boundary locations.

19 (9) "Public water supply system" or "public sewage
 20 disposal system" means respectively, a water supply or
 21 sewage disposal system that serves 10 or more families or 25
 22 or more persons for at least 60 days out of the calendar
 23 year."

24 Section-3--Section-59-5803v-R#6#M#-1947r-is-amended-to
 25 read-as-follows+

1 ~~69-5803~~ Approval of plans for facilities in
2 subdivisions: (1) A person may not file a subdivision plat
3 ~~or certificate of survey~~ with a county clerk and recorder
4 make disposition of any lot within a subdivision ~~erect any~~
5 ~~facility for the supply of water or disposal of sewage or~~
6 ~~solid waste~~ erect any building or shelter in a subdivision
7 which requires facilities for the supply of water or
8 disposal of sewage or solid waste or occupy any permanent
9 building in a subdivision until the department has indicated
10 that the subdivision is subject to no sanitary restrictions
11 (2) A county clerk and recorder may not accept a
12 subdivision plat ~~or certificate of survey~~ for filing until
13 (a) the person wishing to file the plat ~~or certificate~~
14 ~~of survey~~ has obtained approval of the local health officer
15 having jurisdiction and has filed the approval with the
16 department; and
17 (b) the department has indicated by stamp or
18 certificate that it has approved the plat ~~or certificate of~~
19 ~~survey~~ and plans and specifications and that the subdivision
20 is subject to no sanitary restrictions
21 (3) When a subdivision as defined in this chapter is
22 excluded from the provisions of title 11, chapter 38,
23 section 11-3862, R.S.M. 1947, except section 11-3862 (8),
24 R.S.M. 1947, and the subdivision is otherwise subject to the
25 provisions of this chapter, plans Plans and specifications

1 of the for subdivisions ~~as defined in this chapter~~ shall be
2 submitted to the department and the department shall
3 indicate by certificate that it has approved the plans and
4 specifications and that the subdivision is not subject to a
5 sanitary restriction. The plan review by the department
6 shall be as follows:
7 (a) The developer shall present to the department a
8 preliminary plan of the proposed development and whatever
9 information the developer feels necessary for its subsequent
10 review. Within sixty (60) days of this submission based
11 upon its receipt by the department, the department shall
12 notify the developer if the material submitted is
13 satisfactory to determine if sanitary restrictions are
14 necessary and if not what additional information is required
15 for subsequent action by the department.
16 (b) If additional information is necessary to
17 determine if sanitary restrictions are necessary, no further
18 processing will be made on the request until the missing
19 information is made available to the department by
20 the developer.
21 (c) The department must notify the developer within
22 thirty (30) days of his submission of additional requested
23 material is satisfactory. If the material is not
24 satisfactory, the provision of subsection (b) shall apply.
25 (d) After the department has notified the developer

1 that they have all the necessary information required for
 2 review, the department must give final action of the
 3 proposed plan within sixty (60) days unless an
 4 environmental impact statement is required, at which time
 5 this deadline may be increased to one hundred twenty (120)
 6 days.

7 (4) A person may not construct or use any facilities
 8 which deviate from the plans and specifications filed with
 9 the department until the department has approved the
 10 deviations.

11 (5) A subdivision excluded from the provisions of
 12 Title IX Chapter 38x shall be submitted for review by the
 13 department according to the provisions of this chapter,
 14 except that the following divisions are not subject to
 15 review by the departments:

16 (a) the exclusions cited in §§ 3862(f) and 3862(f)(1);
 17 (b) divisions made for the purpose of acquiring
 18 additional land to become part of an approved parcel,
 19 provided that no dwelling or structure requiring water or
 20 sewage disposal is to be erected on the additional acquired
 21 parcels; and

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

25 (d) when a subdivision involves the redivision of a

1 lot which will be connected to existing municipal water
 2 supply and municipal sewage and solid waste disposal
 3 systems; the department shall within 20 days of the
 4 submission of a plat and satisfactory supplemental
 5 information, make a final decision on the proposed
 6 subdivision.

7 (7) Within 90 days after the effective date of this
 8 act, the department and the department of community affairs
 9 shall prepare and distribute a joint application form that
 10 can be used by an applicant to apply for approval of a
 11 subdivision under the provisions of this act and the
 12 provisions of Title IX Chapter 38x. When an application is
 13 received by either the department or a local government, the
 14 department or local government is responsible for forwarding
 15 the appropriate parts of the application to the other
 16 entity. The review required by Title IX Chapter 38x and
 17 the provisions of Title IX Chapter 38x shall occur
 18 concurrently or in any order that the applicant may request.

19 (8) When the department conducts its review of a
 20 subdivision before a local government has given final
 21 approval under the provisions of Title IX Chapter 38x, any
 22 changes in the boundaries of a subdivision made by the local
 23 government which deviate from the boundaries approved by the
 24 department under this act must be resubmitted to the
 25 department for approval. The department shall complete its

1 ~~review of the change in boundary lines within 20 days after~~
 2 ~~submission of the changes by the local government to the~~
 3 ~~department unless the change in boundaries will result in an~~
 4 ~~increased number of divisions of land in which case the~~
 5 ~~department has 40 days to conduct its review."~~

6 Section 3. Section 69-5005, R.C.M. 1947, is amended to
 7 read as follows:

8 "69-5005. Rules for administration and enforcement of
 9 chapter. (1) The department shall adopt reasonable rules,
 10 including adoption of sanitary standards, and setting forth
 11 fees, not to exceed ~~fifteen dollars (\$15)~~ \$25 per parcel for
 12 services rendered in the review of plats and subdivisions
 13 necessary for administration and enforcement of this
 14 chapter.

15 (2) The rules and standards shall provide the basis
 16 for approving subdivision plats for various types of water,
 17 sewage facilities, and solid waste disposal, both public and
 18 private, and shall be related to size of lots, contour of
 19 land, porosity of soil, ground water level, distance from
 20 lakes, streams, and wells, type and construction of private
 21 water and sewage facilities, and other factors affecting
 22 public health and the quality of water for uses relating to
 23 agriculture, industry, recreation, and wildlife.

24 (3) The rules shall further provide for:

25 (a) the furnishing to the department of a copy of the

1 plat and other documentation showing the layout or plan of
 2 development, including:

3 (i) total development area;

4 (ii) total number of proposed dwelling units;

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

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

11 ~~(d) adequate evidence that a sewage disposal system~~
 12 ~~FACILITY is sufficient in terms of capacity and~~
 13 ~~dependability;~~

14 ~~(e)~~ standards and technical procedures applicable
 15 to storm drainage plans and related designs, in order to
 16 insure proper drainage ways;

17 ~~(f)(1)~~ standards and technical procedures applicable
 18 to sanitary sewer plans and designs, including soil
 19 percolation testing and required percolation rates and site
 20 design standards for on-lot sewage disposal systems when
 21 applicable;

22 ~~(f)(2)~~ standards and technical procedures applicable
 23 to water systems;

24 ~~(f)(3)~~ standards and technical procedures applicable
 25 to solid waste disposal;

1 ~~(h)(1)~~ requiring evidence to establish that, if a
 2 public sewage disposal system is proposed, provision has
 3 been made for the system and, if other methods of sewage
 4 disposal are proposed, evidence that the systems will comply
 5 with state and local laws and regulations which are in
 6 effect at the time of submission of the preliminary or final
 7 plan or plat;

8 ~~(i)(1)~~ a schedule of fees to be paid by the applicant
 9 for plat or subdivision review to the department for deposit
 10 in the agency fund provided for in section 79-410. The fees
 11 shall be used for review of plats and subdivisions based on
 12 the complexity of the subdivision, including but not limited
 13 to:

- 14 (i) number of lots in the subdivision;
- 15 (ii) the type of water system to serve the development;
- 16 (iii) the type of sewage disposal to serve the
 17 development; and
- 18 (iv) the degree of environmental research necessary to
 19 supplement the review procedure.

20 ~~(4) A fee as described in this section is not required~~
 21 ~~for the review of subdivisions in which divisions are made~~
 22 ~~for the purpose of relocating common boundary lines unless~~
 23 ~~the division will result in the installation of additional~~
 24 ~~water supply or sewage disposal facilities.~~

25 ~~(5) The department may delegate to a local government~~

1 ~~the authority to review a subdivision under Title 69,~~
 2 ~~chapter 50, when the subdivision involves five or fewer~~
 3 ~~parcels and the department is satisfied that the local~~
 4 ~~government can adequately review the water supply and sewage~~
 5 ~~and solid waste disposal facilities proposed for the~~
 6 ~~subdivision. In delegating authority pursuant to this~~
 7 ~~subsection, the department shall enter into an agreement~~
 8 ~~with the local government wherein the department shall agree~~
 9 ~~to transfer not less than \$10 of the fee PER PARCEL~~
 10 ~~collected pursuant to this section to the local government~~
 11 ~~for the review of subdivisions containing five or fewer~~
 12 ~~parcels. When a local government has conducted a review of a~~
 13 ~~subdivision containing five or fewer parcels pursuant to~~
 14 ~~this section, it shall advise the department of its~~
 15 ~~recommendation for approval or disapproval and--the DEPARTMENT~~
 16 ~~SUBDIVISION. THE department shall, within 10 days after~~
 17 ~~receiving the recommendation of the local government, make a~~
 18 ~~final decision on the subdivision."~~

19 ~~Section 5--Section 69-5006--Revised--1947--is amended to~~
 20 ~~read as follows:~~

21 ~~"69-5006--Request for--hearings--Upon--denial--of or~~
 22 ~~approval of subdivision plans and specifications relating to~~
 23 ~~environmental--health--facilities--the a person--who--is~~
 24 ~~aggrieved by such denial or approval may request--a--hearing~~
 25 ~~before the board. Such hearings will be held pursuant to the~~

1 Montana--Administrative-Procedure-Act-[82-4201-to-82-4225]v"

2 Section-6w--Section-69-5008v-R6EvMv-1947v-is-amended-to
3 read-as-follows:

4 *69-5008v--Penaltiesv--(1)--A--person--violating who
5 purposely--violates any--provision--of--the--act ~~title-69v~~
6 ~~chapter-59v~~ or-any-rulev or-orderv ~~or-condition-of-approval~~
7 ~~issued-under--this--act thereunderv~~ is-guilty-of-an-offense
8 and-subject-to-a-fine-of-not-to-exceed-one-thousand--dollars
9 ~~(\$1v000) \$2v000v Each--day--upon--which-a-violation-occurs~~
10 ~~constitutes-a-separate-offensev~~

11 ~~(2)--A--person--who--violates--any--provision--of--title--69v--~~
12 ~~chapter--59v--or--a--rulev--orderv--or--condition--of--approval~~
13 ~~issued--thereunder--is--subject--to--a--civil--penalty--not--to~~
14 ~~exceed--\$1v000v--Each--day--upon--which--a--violation--occurs~~
15 ~~constitutes--a--separate--violationv~~

16 (2)(3) Action-under-subsection--(1) or--(2) of--this
17 section--does--not--bar--enforcement-of-this-act-or-rules-or
18 orders-issued-under-it-by-injunction-or-other--appropriate
19 remedyv

20 (3)(4) The-purpose-of--this--section--is--to-provide
21 additional--and--cumulative--remediesv--This--act--does ~~the~~
22 ~~provisions--of--title-69v--chapter-59v--do~~ not-bridge-or-ster
23 rights-of-action-or-remedies-in-equity-or-under--the--common
24 ~~law--or--statutory--lawv--criminal--or--civilv--nor--does--any~~
25 ~~provision-of-this-chapter-or-any-act--done-by--virtue--of--it~~

1 estop--the--statev--any-municipality-or-other-subdivision-of
2 the-statev-or-any-person-in-the-exercise-of--his--rights--in
3 equity-or-under-the-common-law-or-statutory--lawv

4 ~~(5)--The--department--mayv--through--the--attorney--general~~
5 ~~or--appropriate--county--attorneyv--initiate--an--action--for~~
6 ~~collection--of--a--civil--penalty--or--injunctive--relief--as~~
7 ~~specified--in--this--sectionv"~~

8 Section-7v--Repealv--Section-69-5007v-R6EvMv-1947v-is
9 repeatedv

-End-

1 SENATE BILL NO. 310

2 INTRODUCED BY ROBERTS

3 BY REQUEST OF THE

4 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
7 TITLE 69, CHAPTER 50, AND TO GIVE THE DEPARTMENT OF HEALTH
8 AND ENVIRONMENTAL SCIENCES THE POWER TO INSPECT AND MONITOR
9 WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS; TO ADD A
10 DEFINITION OF PLAT, CERTIFICATE OF SURVEY, AND PUBLIC WATER
11 SUPPLY OR PUBLIC SEWAGE DISPOSAL SYSTEM; ~~TO CLARIFY THE~~
12 ~~TYPES OF FACILITIES COVERED BY TITLE 69, CHAPTER 50, AND THE~~
13 ~~EXEMPTIONS IN THE ACT; TO GRANT THE RIGHT TO APPEAL A~~
14 ~~DECISION TO APPROVE A SUBDIVISION; AND TO REVISE PENALTIES~~
15 ~~FOR VIOLATIONS OF TITLE 69, CHAPTER 50; TO PROVIDE FOR LOCAL~~
16 ~~GOVERNMENT REVIEW IN CERTAIN CASES; AUTHORIZE THE DEPARTMENT~~
17 ~~TO BRING AN ACTION FOR THE COLLECTION OF CIVIL PENALTIES;~~
18 AMENDING SECTIONS 69-5002, ~~69-5003, AND 69-5005, 69-5006,~~
19 ~~AND 69-5008, R.C.M. 1987; AND REPEALING SECTION 69-5007,~~
20 ~~R.C.M. 1947."~~

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Authority to inspect and monitor. In order
24 to carry out the objectives of Title 69, chapter 50, to
25 monitor the installation of sewage disposal and water supply

1 systems and to prevent the occurrence of water pollution
2 problems associated with subdivision development, the
3 department or the board may:

4 (1) whenever a public water supply or PUBLIC sewage
5 disposal system is proposed or has been constructed, at
6 reasonable times, after presentation of appropriate
7 credentials by an authorized representative of the
8 department, enter upon any public or private property to
9 inspect such systems in order to assure that the plans and
10 specifications approved for the system have been adhered to
11 and that the provisions of Title 69, chapter 50, rules, or
12 orders are being satisfied;

13 (2) whenever a public water supply or PUBLIC sewage
14 disposal system is proposed or has been constructed, require
15 as a condition of approval that records concerning the
16 operation of a public sewage disposal or public water supply
17 system be maintained or that monitoring equipment or wells
18 be installed, used, and maintained for the collection of
19 water-quality-related data.

20 Section 2. Section 69-5002, R.C.M. 1987, is amended to
21 read as follows:

22 "69-5002. Definitions. As used in this chapter, unless
23 the context clearly indicates otherwise, the following words
24 or phrases shall have the following meanings:

25 (1) "Subdivision" means a division of land, or land so

1 divided, which creates one ~~(4)~~ or more parcels containing
 2 less than ~~twenty~~ (20) acres, exclusive of public roadways,
 3 in order that the title to or possession of the parcels may
 4 be sold, rented, leased, or otherwise conveyed, and includes
 5 any resubdivision; and any condominium or area, regardless
 6 of size, which provides permanent multiple space for
 7 recreational camping vehicles or mobile homes. A
 8 subdivision shall comprise only those parcels of less than
 9 ~~twenty~~ (20) acres which have been ~~segregated from the~~
 10 ~~original tract~~ created by a division of land, and the plat
 11 thereof shall show all such parcels, whether contiguous or
 12 not; provided, however, condominiums constructed on land
 13 divided in compliance with the Montana Subdivision and
 14 Platting Act and this chapter are exempt from provisions of
 15 this chapter.

16 (2) "Board" means the board of health and
 17 environmental sciences.

18 (3) "Department" means department of health and
 19 environmental sciences.

20 (4) "Sanitary restriction" means a prohibition against
 21 the erection of any dwelling, shelter or building requiring
 22 facilities for the supply of water or the disposition of
 23 sewage or solid waste or the construction of water supply or
 24 sewage or solid waste disposal facilities until the
 25 department has approved plans for those facilities.

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

6 (6) "Solid wastes" means all putrescible and
 7 nonputrescible solid wastes (except body wastes), including
 8 garbage, rubbish, street cleanings, dead animals, yard
 9 clippings, and solid market and solid industrial wastes.

10 (7) "Plat" means a geographical representation OF A
 11 SUBDIVISION showing the division of LAND INTO lots, parcels,
 12 blocks, streets, AND alleys, or AND other divisions and
 13 dedications and any other document which geographically
 14 describes a division of land, including a certificate of
 15 survey.

16 (8) "Certificate of survey" means a drawing of a field
 17 survey prepared by a registered surveyor for the purpose of
 18 disclosing facts pertaining to boundary locations.

19 (9) "Public water supply system" or "public sewage
 20 disposal system" means respectively, a water supply or
 21 sewage disposal system that serves 10 or more families or 25
 22 or more persons for at least 60 days out of the calendar
 23 year."

24 Section 2, Section 69-5003, R.C.M., 1947, is amended to
 25 read as follows:

~~469-5003. Approval of plans for facilities in subdivisions. (1) A person may not file a subdivision plat or certificate of survey with a county clerk and recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction.~~

~~(2) A county clerk and recorder may not accept a subdivision plat or certificate of survey for filing until:~~

~~(a) the person wishing to file the plat or certificate of survey has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and~~

~~(b) the department has indicated by stamp or certificate, that it has approved the plat or certificate of survey and plans and specifications and that the subdivision is subject to no sanitary restriction.~~

~~(3) When a subdivision as defined in this chapter is excluded from the provisions of Title 11, chapter 39, section 11-3862, R.C.M. 1947, except section 11-3862 (8), R.C.M. 1947, and the subdivision is otherwise subject to the provisions of this chapter, plans Plans and specifications~~

~~of the for subdivisions as defined in this chapter shall be submitted to the department and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:~~

~~(a) The developer shall present to the department a preliminary plan of the proposed development and whatever information the developer feels necessary for its subsequent review. Within sixty (60) days of this submission, based upon its receipt by the department, the department shall notify the developer if the material submitted is satisfactory to determine if sanitary restrictions are necessary and if not what additional information is required for subsequent action by the department.~~

~~(b) If additional information is necessary to determine if sanitary restrictions are necessary no further processing will be made on the request until the missing information is made available to the department by the developer.~~

~~(c) The department must notify the developer within thirty (30) days if his submission of additional requested material is satisfactory. If the material is not satisfactory, the provision of subsection (b) shall apply.~~

~~(d) After the department has notified the developer~~

1 ~~that they have all the necessary information required for~~
2 ~~review, the department must give final action of the~~
3 ~~proposed plan within sixty (60) days, unless an~~
4 ~~environmental impact statement is required, at which time~~
5 ~~this deadline may be increased to one hundred twenty (120)~~
6 ~~days.~~

7 ~~(4) A person may not construct or use any facilities~~
8 ~~which deviate from the plans and specifications filed with~~
9 ~~the department until the department has approved the~~
10 ~~deviation.~~

11 ~~(5) A subdivision excluded from the provisions of~~
12 ~~Title 11, chapter 38, shall be submitted for review by the~~
13 ~~department according to the provisions of this chapter,~~
14 ~~except that the following divisions are not subject to~~
15 ~~review by the department:~~

16 ~~(a) the exclusions cited in 11.3862(8) and 11.3862(9);~~

17 ~~(b) divisions made for the purpose of acquiring~~
18 ~~additional land to become part of an approved parcel,~~
19 ~~provided that no dwelling or structure requiring water or~~
20 ~~sewage disposal is to be erected on the additional acquired~~
21 ~~parcel; and~~

22 ~~(c) divisions made for purposes other than the~~
23 ~~construction of water supply or sewage and solid waste~~
24 ~~disposal facilities as the department specifies by rule.~~

25 ~~(6) When a subdivision involves the resubdivision of a~~

1 ~~lot which will be connected to existing municipal water~~
2 ~~supply and municipal sewage and solid waste disposal~~
3 ~~systems, the department shall, within 20 days of the~~
4 ~~submission of a plat and satisfactory supplemental~~
5 ~~information, make a final decision on the proposed~~
6 ~~subdivision.~~

7 ~~(7) Within 90 days after [the effective date of this~~
8 ~~act], the department and the department of community affairs~~
9 ~~shall prepare and distribute a joint application form that~~
10 ~~can be used by an applicant to apply for approval of a~~
11 ~~subdivision under the provisions of this act and the~~
12 ~~provisions of Title 11, chapter 38. When an application is~~
13 ~~received by either the department or a local government, the~~
14 ~~department or local government is responsible for forwarding~~
15 ~~the appropriate parts of the application to the other~~
16 ~~entity. The review required by Title 69, chapter 50, and~~
17 ~~the provisions of Title 11, chapter 38, shall occur~~
18 ~~concurrently or in any order that the applicant may request.~~

19 ~~(8) When the department conducts its review of a~~
20 ~~subdivision before a local government has given final~~
21 ~~approval under the provisions of Title 11, chapter 38, any~~
22 ~~change in the boundaries of a subdivision made by the local~~
23 ~~government which deviate from the boundaries approved by the~~
24 ~~department under this act must be resubmitted to the~~
25 ~~department for approval. The department shall complete its~~

1 ~~review of the change in boundary lines within 20 days after~~
 2 ~~submission of the changes by the local government to the~~
 3 ~~department unless the change in boundaries will result in an~~
 4 ~~increased number of divisions of land, in which case the~~
 5 ~~department has 40 days to conduct its review."~~

6 Section 3. Section 69-5005, R.C.M. 1947, is amended to
 7 read as follows:

8 "69-5005. Rules for administration and enforcement of
 9 chapter. (1) The department shall adopt reasonable rules,
 10 including adoption of sanitary standards, and setting forth
 11 fees, not to exceed ~~fifteen dollars (\$15)~~ \$25 per parcel for
 12 services rendered in the review of plats and subdivisions
 13 necessary for administration and enforcement of this
 14 chapter.

15 (2) The rules and standards shall provide the basis
 16 for approving subdivision plats for various types of water,
 17 sewage facilities, and solid waste disposal, both public and
 18 private, and shall be related to size of lots, contour of
 19 land, porosity of soil, ground water level, distance from
 20 lakes, streams, and wells, type and construction of private
 21 water and sewage facilities, and other factors affecting
 22 public health and the quality of water for uses relating to
 23 agriculture, industry, recreation, and wildlife.

24 (3) The rules shall further provide for:

25 (a) the furnishing to the department of a copy of the

1 plat and other documentation showing the layout or plan of
 2 development, including:

- 3 (i) total development area,
- 4 (ii) total number of proposed dwelling units;
- 5 (b) adequate evidence that a water supply that is
 6 sufficient in terms of quality, quantity and dependability
 7 will be available to ensure an adequate supply of water for
 8 the type of subdivision proposed;

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

11 ~~(d) adequate evidence that a sewage disposal system~~
 12 FACILITY is sufficient in terms of capacity and
 13 dependability;

14 ~~(e)~~ (e) standards and technical procedures applicable
 15 to storm drainage plans and related designs, in order to
 16 insure proper drainage ways;

17 ~~(f)~~ (f) standards and technical procedures applicable
 18 to sanitary sewer plans and designs, including soil
 19 percolation testing and required percolation rates and site
 20 design standards for on-lot sewage disposal systems when
 21 applicable;

22 ~~(g)~~ (g) standards and technical procedures applicable
 23 to water systems;

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

1 ~~(i)~~ requiring evidence to establish that, if a
 2 public sewage disposal system is proposed, provision has
 3 been made for the system and, if other methods of sewage
 4 disposal are proposed, evidence that the systems will comply
 5 with state and local laws and regulations which are in
 6 effect at the time of submission of the preliminary or final
 7 plan or plat;

8 ~~(j)~~ a schedule of fees to be paid by the applicant
 9 for plat or subdivision review to the department for deposit
 10 in the agency fund provided for in section 79-410. The fees
 11 shall be used for review of plats and subdivisions based on
 12 the complexity of the subdivision, including but not limited
 13 to:

14 (i) number of lots in the subdivision;

15 (ii) the type of water system to serve the development;

16 (iii) the type of sewage disposal to serve the
 17 development; and

18 (iv) the degree of environmental research necessary to
 19 supplement the review procedure.

20 (4) A fee as described in this section is not required
 21 for the review of subdivisions in which divisions are made
 22 for the purpose of relocating common boundary lines unless
 23 the division will result in the installation of additional
 24 water supply or sewage disposal facilities.

25 (5) The department may delegate to a local government

1 the authority to review a subdivision under Title 69,
 2 chapter 50, when the subdivision involves five or fewer
 3 parcels and the department is satisfied that the local
 4 government can adequately review the water supply and sewage
 5 and solid waste disposal facilities proposed for the
 6 subdivision. In delegating authority pursuant to this
 7 subsection, the department shall enter into an agreement
 8 with the local government wherein the department shall agree
 9 to transfer not less than \$10 of the fee PER PARCEL
 10 collected pursuant to this section to the local government
 11 for the review of subdivisions containing five or fewer
 12 parcels. When a local government has conducted a review of a
 13 subdivision containing five or fewer parcels pursuant to
 14 this section, it shall advise the department of its
 15 recommendation for approval or disapproval and the OF THE
 16 SUBDIVISION. THE department shall, within 10 days after
 17 receiving the recommendation of the local government, make a
 18 final decision on the subdivision."

19 ~~Section 5. Section 69-5006, R.C.M. 1947, is amended to~~
 20 ~~read as follows:~~

21 ~~"69-5006. Request for hearing. Upon denial of or~~
 22 ~~approval of subdivision plans and specifications relating to~~
 23 ~~environmental health facilities the a person who is~~
 24 ~~aggrieved by such denial or approval may request a hearing~~
 25 ~~before the board. Such hearings will be held pursuant to the~~

1 ~~Montana Administrative Procedure Act [82-4201 to 82-4225].~~

2 Section 6. Section 69-5008, R.C.M. 1947, is amended to
3 read as follows:

4 ~~69-5008. Penalties. (1) A person violating who~~
5 ~~purposefully violates any provision of the act Title 69,~~
6 ~~chapter 50, or any rule, or order, or condition of approval~~
7 ~~issued under this act thereunder, is guilty of an offense~~
8 ~~and subject to a fine of not to exceed one thousand dollars~~
9 ~~(\$1,000) \$3,000. Each day upon which a violation occurs~~
10 ~~constitutes a separate offense.~~

11 ~~(2) A person who violates any provision of Title 69,~~
12 ~~chapter 50, or a rule, order, or condition of approval~~
13 ~~issued thereunder is subject to a civil penalty not to~~
14 ~~exceed \$1,000. Each day upon which a violation occurs~~
15 ~~constitutes a separate violation.~~

16 ~~(2)(3) Action under subsection (1) or (2) of this~~
17 ~~section does not bar enforcement of this act or rules or~~
18 ~~orders issued under it by injunction or other appropriate~~
19 ~~remedy.~~

20 ~~(3)(4) The purpose of this section is to provide~~
21 ~~additional and cumulative remedies. This act does The~~
22 ~~provisions of Title 69, chapter 50, do not abridge or alter~~
23 ~~rights of action or remedies in equity or under the common~~
24 ~~law or statutory law, criminal or civil, nor does any~~
25 ~~provision of this chapter or any act done by virtue of it~~

1 ~~ostep the state, any municipality or other subdivision of~~
2 ~~the state, or any person in the exercise of his rights in~~
3 ~~equity or under the common law or statutory law.~~

4 ~~(5) The department may, through the attorney general~~
5 ~~or appropriate county attorney, initiate an action for~~
6 ~~collection of a civil penalty or injunctive relief as~~
7 ~~specified in this section."~~

8 Section 7. Repealer. Section 69-5007, R.C.M. 1947, is
9 repealed.

-End-

HOUSE OF REPRESENTATIVES

April 6, 1977

HOUSE COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL 310

1. Amend page 9, section 3, line 11.

Following: "~~15~~"

Strike: "\$25"

Insert: "\$40"

2. Amend page 12, section 3, line 9.

Following: "than"

Strike: "\$10"

Insert: "\$20"

AS AMENDED

BE CONCURRED IN

April 7, 1977

Committee of the Whole Amendment to Senate Bill 310, reading as follows:

1. Amend page 11, section 3, line 25.

Following: "department"

Strike: "may"

Insert: "shall"

2. Amend page 12, section 3, line 3.

Following: "and"

Strike: "the department is satisfied that"

3. Amend page 12, section 3, line 4.

Following: "government"

Strike: "can"

Insert: "has qualified personnel to"

1 SENATE BILL NO. 310
 2 INTRODUCED BY ROBERTS
 3 BY REQUEST OF THE
 4 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCE
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 7 TITLE 69, CHAPTER 50, AND TO GIVE THE DEPARTMENT OF HEALTH
 8 AND ENVIRONMENTAL SCIENCES THE POWER TO INSPECT AND MONITOR
 9 WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS; TO ADD A
 10 DEFINITION OF PLAT, CERTIFICATE OF SURVEY, AND PUBLIC WATER
 11 SUPPLY OR PUBLIC SEWAGE DISPOSAL SYSTEM; ~~TO CLARIFY THE~~
 12 ~~TYPES OF FACILITIES COVERED BY TITLE 69, CHAPTER 50, AND THE~~
 13 ~~EXEMPTIONS IN THE ACT; TO GRANT THE RIGHT TO APPEAL A~~
 14 ~~DECISION TO APPROVE A SUBDIVISION; AND TO REVISE PENALTIES~~
 15 ~~FOR VIOLATIONS OF TITLE 69, CHAPTER 50; TO PROVIDE FOR LOCAL~~
 16 ~~GOVERNMENT REVIEW IN CERTAIN CASES; AUTHORIZE THE DEPARTMENT~~
 17 ~~TO BRING AN ACTION FOR THE COLLECTION OF CIVIL PENALTIES;~~
 18 AMENDING SECTIONS 69-5002, 69-5003, AND 69-5005, 69-5006
 19 AND 69-5008, R.C.M. 1947, AND REPEALING SECTION 69-5007,
 20 R.E.M. 1947."
 21
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 23 Section 1. Authority to inspect and monitor. In order
 24 to carry out the objectives of Title 69, chapter 50, to
 25 monitor the installation of sewage disposal and water supply

REFERENCE BILL

1 systems and to prevent the occurrence of water pollution
 2 problems associated with subdivision development, the
 3 department or the board may:

4 (1) whenever a public water supply or PUBLIC sewage
 5 disposal system is proposed or has been constructed, at
 6 reasonable times, after presentation of appropriate
 7 credentials by an authorized representative of the
 8 department, enter upon any public or private property to
 9 inspect such systems in order to assure that the plans and
 10 specifications approved for the system have been adhered to
 11 and that the provisions of Title 69, chapter 50, rules, or
 12 orders are being satisfied;

13 (2) whenever a public water supply or PUBLIC sewage
 14 disposal system is proposed or has been constructed, require
 15 as a condition of approval that records concerning the
 16 operation of a public sewage disposal or public water supply
 17 system be maintained or that monitoring equipment or wells
 18 be installed, used, and maintained for the collection of
 19 water-quality-related data.

20 Section 2. Section 69-5002, R.C.M. 1947, is amended to
 21 read as follows:

22 "69-5002. Definitions. As used in this chapter, unless
 23 the context clearly indicates otherwise, the following words
 24 or phrases shall have the following meanings:

25 (1) "Subdivision" means a division of land, or land so

1 divided, which creates one ~~(1)~~ or more parcels containing
 2 less than ~~twenty~~(20) acres, exclusive of public roadways,
 3 in order that the title to or possession of the parcels may
 4 be sold, rented, leased, or otherwise conveyed, and includes
 5 any resubdivision; and any condominium or area, regardless
 6 of size, which provides permanent multiple space for
 7 recreational camping vehicles or mobile homes. A
 8 subdivision shall comprise only those parcels of less than
 9 ~~twenty~~(20) acres which have been ~~segregated from the~~
 10 ~~original tract created by a division of land~~, and the plat
 11 thereof shall show all such parcels, whether contiguous or
 12 not; provided, however, condominiums constructed on land
 13 divided in compliance with the Montana Subdivision and
 14 Platting Act and this chapter are exempt from provisions of
 15 this chapter.

16 (2) "Board" means the board of health and
 17 environmental sciences.

18 (3) "Department" means department of health and
 19 environmental sciences.

20 (4) "Sanitary restriction" means a prohibition against
 21 the erection of any dwelling, shelter or building requiring
 22 facilities for the supply of water or the disposition of
 23 sewage or solid waste or the construction of water supply or
 24 sewage or solid waste disposal facilities until the
 25 department has approved plans for those facilities.

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

6 (6) "Solid wastes" means all putrescible and
 7 nonputrescible solid wastes (except body wastes), including
 8 garbage, rubbish, street cleanings, dead animals, yard
 9 clippings, and solid market and solid industrial wastes.

10 ~~(7) "Plat" means a geographical representation of a~~
 11 ~~SUBDIVISION showing the division of LAND INTO lots parcels~~
 12 ~~blocks, streets AND alleys, or AND other divisions and~~
 13 ~~dedications and any other document which geographically~~
 14 ~~describes a division of land, including a certificate of~~
 15 ~~survey.~~

16 ~~(8) "Certificate of survey" means a drawing of a field~~
 17 ~~survey prepared by a registered surveyor for the purpose of~~
 18 ~~disclosing facts pertaining to boundary locations.~~

19 ~~(9)(1) "Public water supply system" or "public sewage~~
 20 ~~disposal system" means respectively, a water supply or~~
 21 ~~sewage disposal system that serves 10 or more families or 25~~
 22 ~~or more persons for at least 60 days out of the calendar~~
 23 ~~year."~~

24 Section 3- Section 69-5003, R.E.M. 1947, is amended to
 25 read as follows:

1 ~~"69-5803. Approval of plans for facilities in~~
2 ~~subdivisions. (1) A person may not file a subdivision plat~~
3 ~~or certificate of survey with a county clerk and recorder,~~
4 ~~make disposition of any lot within a subdivision, erect any~~
5 ~~facility for the supply of water or disposal of sewage or~~
6 ~~solid waste, erect any building or shelter in a subdivision~~
7 ~~which requires facilities for the supply of water or~~
8 ~~disposal of sewage or solid waste, or occupy any permanent~~
9 ~~building in a subdivision until the department has indicated~~
10 ~~that the subdivision is subject to no sanitary restrictions.~~
11 ~~(2) A county clerk and recorder may not accept a~~
12 ~~subdivision plat or certificate of survey for filing until:~~
13 ~~(a) the person wishing to file the plat or certificate~~
14 ~~of survey has obtained approval of the local health officer~~
15 ~~having jurisdiction and has filed the approval with the~~
16 ~~department; and~~
17 ~~(b) the department has indicated by stamp or~~
18 ~~certificate that it has approved the plat or certificate of~~
19 ~~survey and plans and specifications and that the subdivision~~
20 ~~is subject to no sanitary restrictions.~~
21 ~~(3) When a subdivision as defined in this chapter is~~
22 ~~excluded from the provisions of Title 11, chapter 38,~~
23 ~~section 11-3862, R.E.M. 1947, except section 11-3862 (4),~~
24 ~~R.E.M. 1947, and the subdivision is otherwise subject to the~~
25 ~~provisions of this chapter, plans Plans and specifications~~

1 ~~of the for subdivisions as defined in this chapter shall be~~
2 ~~submitted to the department and the department shall~~
3 ~~indicate by certificate that it has approved the plans and~~
4 ~~specifications and that the subdivision is not subject to a~~
5 ~~sanitary restriction. The plan review by the department~~
6 ~~shall be as follows:~~
7 ~~(a) The developer shall present to the department a~~
8 ~~preliminary plan of the proposed development and whatever~~
9 ~~information the developer feels necessary for its subsequent~~
10 ~~review. Within sixty (60) days of this submission, based~~
11 ~~upon its receipt by the department, the department shall~~
12 ~~notify the developer if the material submitted is~~
13 ~~satisfactory to determine if sanitary restrictions are~~
14 ~~necessary and if not what additional information is required~~
15 ~~for subsequent action by the department.~~
16 ~~(b) If additional information is necessary to~~
17 ~~determine if sanitary restrictions are necessary, no further~~
18 ~~processing will be made on the request until the missing~~
19 ~~information is made available to the department by~~
20 ~~the developer.~~
21 ~~(c) The department must notify the developer within~~
22 ~~thirty (30) days if his submission of additional requested~~
23 ~~material is satisfactory. If the material is not~~
24 ~~satisfactory, the provision of subsection (b) shall apply.~~
25 ~~(d) After the department has notified the developer~~

1 that they have all the necessary information required for
 2 review the department must give final action of the
 3 proposed plan within sixty (60) days unless on
 4 environmental impact statement is required at which time
 5 this deadline may be increased to one hundred twenty (120)
 6 days.

7 (4) A person may not construct or use any facilities
 8 which deviate from the plans and specifications filed with
 9 the department until the department has approved the
 10 deviations.

11 (5) A subdivision excluded from the provisions of
 12 Title 11v chapter 38v shall be submitted for review by the
 13 department according to the provisions of this chapter
 14 except that the following divisions are not subject to
 15 review by the department:

16 (a) the exclusions cited in 11-3862(f) and 11-3862(g);

17 (b) divisions made for the purpose of acquiring
 18 additional land to become part of an approved parcel
 19 provided that no dwelling or structure requiring water or
 20 sewage disposal is to be erected on the additional acquired
 21 parcel; and

22 (c) divisions made for purposes other than the
 23 construction of water supply or sewage and solid waste
 24 disposal facilities as the department specifies by rule.

25 (6) When a subdivision involves the resubdivision of a

1 lot which will be connected to existing municipal water
 2 supply and municipal sewage and solid waste disposal
 3 systems the department shall within 20 days of the
 4 submission of a plot and satisfactory supplemental
 5 information make a final decision on the proposed
 6 subdivision.

7 (7) Within 90 days after the effective date of this
 8 act the department and the department of community affairs
 9 shall prepare and distribute a joint application form that
 10 can be used by an applicant to apply for approval of a
 11 subdivision under the provisions of this act and the
 12 provisions of Title 11v chapter 38v. When an application is
 13 received by either the department or a local government the
 14 department or local government is responsible for forwarding
 15 the appropriate parts of the application to the other
 16 entity. The review required by Title 62v chapter 50v and
 17 the provisions of Title 11v chapter 38v shall occur
 18 concurrently or in any order that the applicant may request.

19 (8) When the department conducts its review of a
 20 subdivision before a local government has given final
 21 approval under the provisions of Title 11v chapter 38v any
 22 change in the boundaries of a subdivision made by the local
 23 government which deviate from the boundaries approved by the
 24 department under this act must be resubmitted to the
 25 department for approval. The department shall complete its

1 ~~review of the change in boundary lines within 20 days after~~
 2 ~~submission of the changes by the local government to the~~
 3 ~~department unless the change in boundaries will result in an~~
 4 ~~increased number of divisions of land in which case the~~
 5 ~~department has 40 days to conduct its review"~~

6 Section 3. Section 69-5005, R.C.M. 1947, is amended to
 7 read as follows:

8 "69-5005. Rules for administration and enforcement of
 9 chapter. (1) The department shall adopt reasonable rules,
 10 including adoption of sanitary standards, and setting forth
 11 fees, not to exceed fifteen dollars ~~(+\$15)~~ ~~\$25~~ ~~\$40~~ ~~\$25~~ per
 12 parcel for services rendered in the review of plats and
 13 subdivisions necessary for administration and enforcement of
 14 this chapter.

15 (2) The rules and standards shall provide the basis
 16 for approving subdivision plats for various types of water,
 17 sewage facilities, and solid waste disposal, both public and
 18 private, and shall be related to size of lots, contour of
 19 land, porosity of soil, ground water level, distance from
 20 lakes, streams, and wells, type and construction of private
 21 water and sewage facilities, and other factors affecting
 22 public health and the quality of water for uses relating to
 23 agriculture, industry, recreation, and wildlife.

24 (3) The rules shall further provide for:

25 (a) the furnishing to the department of a copy of the

1 plat and other documentation showing the layout or plan of
 2 development, including:

3 (i) total development area;

4 (ii) total number of proposed dwelling units;

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

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

11 ~~(d) adequate evidence that a sewage disposal system~~
 12 ~~FACILITY is sufficient in terms of capacity and~~
 13 ~~dependability;~~

14 ~~(e)~~(e) standards and technical procedures applicable
 15 to storm drainage plans and related designs, in order to
 16 insure proper drainage ways;

17 ~~(f)~~(f) standards and technical procedures applicable
 18 to sanitary sewer plans and designs, including soil
 19 percolation testing and required percolation rates and site
 20 design standards for on-lot sewage disposal systems when
 21 applicable;

22 ~~(g)~~(g) standards and technical procedures applicable
 23 to water systems;

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

1 ~~(h)(1)~~ requiring evidence to establish that, if a
2 public sewage disposal system is proposed, provision has
3 been made for the system and, if other methods of sewage
4 disposal are proposed, evidence that the systems will comply
5 with state and local laws and regulations which are in
6 effect at the time of submission of the preliminary or final
7 plan or plat;

8 ~~(i)(1)~~ a schedule of fees to be paid by the applicant
9 for plat or subdivision review to the department for deposit
10 in the agency fund provided for in section 79-410. The fees
11 shall be used for review of plats and subdivisions based on
12 the complexity of the subdivision, including but not limited
13 to:

- 14 (i) number of lots in the subdivision;
- 15 (ii) the type of water system to serve the development;
- 16 (iii) the type of sewage disposal to serve the
17 development; and
- 18 (iv) the degree of environmental research necessary to
19 supplement the review procedure.

20 ~~(4) A fee as described in this section is not required~~
21 ~~for the review of subdivisions in which divisions are made~~
22 ~~for the purpose of relocating common boundary lines unless~~
23 ~~the division will result in the installation of additional~~
24 ~~water supply or sewage disposal facilities.~~

25 ~~(5) The department may SHALL delegate to a local~~

1 ~~government the authority to review a subdivision under Title~~
2 ~~69, chapter 50, when the subdivision involves five or fewer~~
3 ~~parcels and the department is satisfied that the local~~
4 ~~government can HAS QUALIFIED PERSONNEL TO adequately review~~
5 ~~the water supply and sewage and solid waste disposal~~
6 ~~facilities proposed for the subdivision. In delegating~~
7 ~~authority pursuant to this subsection, the department shall~~
8 ~~enter into an agreement with the local government wherein~~
9 ~~the department shall agree to transfer not less than 210 220~~
10 ~~\$10 of the fee PER PARCEL collected pursuant to this section~~
11 ~~to the local government for the review of subdivisions~~
12 ~~containing five or fewer parcels. When a local government~~
13 ~~has conducted a review of a subdivision containing five or~~
14 ~~fewer parcels pursuant to this section, it shall advise the~~
15 ~~department of its recommendation for approval or disapproval~~
16 ~~and the OF THE SUBDIVISION. THE department shall, within 10~~
17 ~~days after receiving the recommendation of the local~~
18 ~~government, make a final decision on the subdivision."~~

19 ~~Section 5--Section 69-5006, RUCM-1947, is amended to~~
20 ~~read as follows:~~

21 ~~"69-5006--Request for hearings--Upon denial of or~~
22 ~~approval of subdivision plans and specifications relating to~~
23 ~~environmental health facilities the a person who is~~
24 ~~aggrieved by such denial or approval may request a hearing~~
25 ~~before the board. Such hearings will be held pursuant to the~~

1 Montana Administrative Procedure Act [82-4201 to 82-4225]."

2 Section 69-5008, R.C.M. 1947, is amended to
3 read as follows:

4 "69-5008. Penalties. (1) A person violating who
5 purposely violates any provision of the act Title 69
6 chapter 50 or any rule or order or condition of approval
7 issued under this act thereunder is guilty of an offense
8 and subject to a fine of not to exceed one thousand dollars
9 (\$1,000) ~~\$3,000~~. Each day upon which a violation occurs
10 constitutes a separate offense.

11 (2) A person who violates any provision of Title 69
12 chapter 50 or a rule, order, or condition of approval
13 issued thereunder is subject to a civil penalty not to
14 exceed \$1,000. Each day upon which a violation occurs
15 constitutes a separate violation.

16 (2)(3) Action under subsection (1) or (2) of this
17 section does not bar enforcement of this act or rules or
18 orders issued under it by injunction or other appropriate
19 remedy.

20 (3)(4) The purpose of this section is to provide
21 additional and cumulative remedies. This act does ~~the~~
22 provisions of Title 69 chapter 50 do not abridge or alter
23 rights of action or remedies in equity or under the common
24 law or statutory law, criminal or civil, nor does any
25 provision of this chapter or any act done by virtue of it

1 estop the state, any municipality or other subdivision of
2 the state, or any person in the exercise of his rights in
3 equity or under the common law or statutory law
4 (5) ~~The department may, through the attorney general~~
5 ~~or appropriate county attorney, initiate an action for~~
6 ~~collection of a civil penalty or injunctive relief as~~
7 ~~specified in this section."~~

8 Section 7. Repealer. Section 69-5007, R.C.M. 1947, is
9 repealed.

-End-