HOUSE BILL 81

IN THE HOUSE

January 8, 1979	Introduced and referred to Committee on Local Govern- ment.
February 20, 1979	Committee recommend bill, as amended.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, do pass.
	Considered correctly engrossed.
February 23, 1979	Third reading, passed.
IN THE SENA	TE
February 23, 1979	Introduced and referred to Committee on Local Govern- ment.
April 20, 1979	Died in Committee.

INTRODUCED BY Dune Herent 1 2 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR EXPANDED 5 LOCAL GOVERNMENT REVIEW OF SANITARY REQUIREMENTS FOR 6 SUBDIVISIONS: MODIFYING THE DEFINITION OF A SUBDIVISION: 7 PROVIDING NEW ADMINISTRATIVE AND JUDICIAL REMEDIES; AND 8 AMENDING 76-4-102 THROUGH 76-4-105, 76-4-108, 76-4-109, 9 76-4-121 THROUGH 76-4-125, AND 76-4-128, MCA.* 10 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 Section 1. Section 76-4-102, MCA, is amended to read: 13 #76-4-102. Definitions. As used in this part, unless 14 the context clearly indicates otherwise, the following words 15 or phrases have the following meanings: 16 board of health and 17 (1) "Board" means the 18 environmental sciences. (2) "Department" means department of health and 19 environmental sciences. 20 (3) "Facilities" means public or private facilities 21 for the supply of water or disposal of sewage or solid waste 22 and any pipes, conduits, or other stationary method by which 23

23 and any pipes, conducts, or other stationary method by which 24 water, sewage, or solid wastes might be transported or 25 distributed.

(4) "Person" means the state, a political subdivision 1 of the state, an institution, a firm, a corporation, a z partnership, an individual, or other entity. З f4f(5) "Public water supply system" or "public sewage . disposal system" mean, respectively, a water supply or 5 sewage disposal system that serves 10 or more families or 25 6 or more persons for at least 60 days out of the calendar 7 year. 8

9 (5)(6) "Sanitary restriction" means a prohibition 10 against the erection of any dwelling, shelter, or building 11 requiring facilities for the supply of water or the 12 disposition of sewage or solid waste or the construction of 13 water supply or sewage or solid waste disposal facilities 14 until the department has approved plans for those 15 facilities.

16 <u>(6)[7]</u> "Solid wastes" means all putrescible and 17 nonputrescible solid wastes (except body wastes), including 18 garbage, rubbish, street cleanings, dead animals, yard 19 clippings, and solid market and solid industrial wastes.

20 (77)(81 "Subdivision" means a division of land or land 21 so divided which creates one or more parcels containing less 22 then-20-acress-exclusive-of-public-roadways, in order that 23 the title to or possession of the parcels may be sold, 24 rented, leased, or otherwise conveyed and includes any 25 resubdivision and any condominium or area, regardless of

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size, which provides permanent multiple space for
 recreational camping vehicles or mobile homes."

3 Section 2. Section 76-4-103, MCA, is amended to read:
4 "76-4-103. What constitutes subdivision. A subdivision
5 shall comprise only those parcels of-less-than-20-acres
6 which have been created by a division of land, and the plat
7 thereof shall show all such parcels, whether contiguous or
8 nots"

9 Section 3. Section 76-4-104, MCA, is amended to read:
10 "76-4-104. Rules for administration and enforcement.
11 (1) The department shall adopt reasonable rules, including
12 adoption of sanitary standards, necessary for administration
13 and enforcement of this part.

(2) The rules and standards shall provide the basis 14 for approving subdivision plats and subdivision certificates 15 of survey for various types of water, sewage facilities, and 16 17 solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, 18 groundwater level, distance from lakes, streams, and wells, 19 type and construction of private water and sewage 20 facilities, and other factors affecting public health and 21 the quality of water for uses relating to agriculture. 22 23 industry, recreation, and wildlife.

24(3) The rules shall provide for the review of the25following subdivisions by the local government according to

1 the provisions of 76-4-1281 (a) minor subdivisions containing five or fever 2 parcels of land whenever each parcel will contain individual 3 water and sewage facilities: 4 5 (b) subdivisions comprised of parcels of 10 acres or larger in size when each parcel will contain individual 6 7 water and sevace facilities. (3)(4) The rules shall further provide for: 8 0 (a) the furnishing to the department of a copy of the 10 plate end subdivision certificate of surveys or other documentation showing the layout or plan of development, 11 including: 12 13 (i) total development area; (ii) total number of proposed dwelling units; 14 (b) adequate evidence that a water supply that is 15 sufficient in terms of quality, quantity, and dependability 16 will be available to ensure an adequate supply of water for 17 the type of subdivision proposed; 18 19 (c) evidence concerning the potability of the proposed 20 water supply for the subdivision; (d) adequate evidence that a sewage disposal facility 21 22 is sufficient in terms of capacity and dependability; (e) standards and technical procedures applicable to 23 storm drainage plans and related designs, in order to insure 24 proper drainage ways; 25

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

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

8 (h) standards and technical procedures applicable to9 solid waste disposal;

10 (i) requiring evidence to establish that, if a public 11 sewage disposal system is proposed, provision has been made 12 for the system and, if other methods of sewage disposal are 13 proposed, evidence that the systems will comply with state 14 and local laws and regulations which are in effect at the 15 time of submission of the preliminary or final plan or 16 plat."

Section 4. Section 76-4-105, MCA, is amended to read: 17 "76-4-105. Lot fees. (1) The department shall adopt 18 19 reasonable rules setting forth fees, not to exceed \$25 per 20 parcel, for services rendered in the review of plats-and 21 subdivisions. The rules shall provide for a schedule of 22 fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund 23 provided for in 17-2-102. The fees shall be used for review 24 of plats and subdivisions based on the complexity of the 25

1 subdivision, including but not limited to:

- 2 (a) number of lots in the subdivision;
- 3 (b) the type of water system to serve the development;
- 4 (c) the type of sewage disposal to serve the

5 development; and

6 {d} the degree of environmental research necessary to
7 supplement the review procedure.

(2) The department shall adopt rules to determine the 8 distribution of lot fees between the local governing body a and the department as provided in 76-4-128. 10 When a 11 subdivision is reviewed under the master plan provisions of 76-4-124 or under the provisions of 76-4-128, the local 12 governing body shall, within 20 days after receiving an 13 14 application under the Montana Subdivision and Platting Act, 15 distribute the lot fees as determined by this subsection. (3) A fee as described in this section is not required 16 17 for the review of subdivisions in which divisions are made 18 for the purpose of relocating common boundary lines unless the division will result in the installation of additional 19

- 20 water supply or sewage disposal facilities.*
- 21 Section 5. Section 76-4-108, HCA, is amended to read:
- 22 "76-4-108. Enforcement. (1) If--a--written-complaint
- 23 siteging-violation-is-made--to--the--department--or--if--the
- 24 department--has-reason-to-believe-that-a-person-has-violated
- 25 chis-part-or-ony-rule-thereunder-and-if-a-violation-is-found

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1	to-existv-the-departmentshallissuenoticeandholda
z	hearing-pursuanttotheMontana-Administrative-Procedure
3	Acte If the department has reason to believe that a
4	violation of this part or a rule made under it has occurred.
5	it may have written notice served personally or by mail to
6	the last-known address of the alleged violator or his agent.
7	The notice_sball_state_the_provision_alleged_to_be_violated.
8	the facts alleged to constitute the violations the
9	corrective_action_which_the_department_requiress_and_the
10	time within which the action is to be taken. For the purpose
11	of this parts service by mail is complete on the date of
12	mailing. The alleged violator may request a hearing before
13	the board no later than 30 days after service of a notice
14	under this section. If a request is filed, a bearing shall
15	<u>be beld within a reasonable time.</u>
16	(2) In addition to or instead of issuing an order, the
17	department may initiate appropriate action for injunction or
18	for recovery of penalty as provided in this part."
19	Section 6. Section 76-4-109. MCA, is amended to read:
ZO	#76-4-109。 Penalties。 (1) A person violating any
21	provision of this part, except 76-4-122(1), or any rule or
22	order issued under this part is guilty of an offense and

23 subject to a fine of not to exceed \$1,000.
24 (2). In addition to the penalty specified in subsection

25 (1)* a person who violates any provision of this part or any

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ı	rule or order issued under this part is subject to _acivil
2	penalty not to exceed \$1,000, Each day of violation
3	<u>constitutes a separate violations</u>
4	(2)(3) Action Penalties imposed under subsection (1)
5	or (2) does do not bar enforcement of this part or rules or
6	orders issued under it by injunction or other appropriate
7	remedy. In any action filed by the department for
-	injunctions the departments if it prevailss is entitled to
8	-
9	<u>collect a reasonable attorney fee based on the salary of the</u>
10	staff attorney representing the department. If the
11	department does not prevails reasonable attorney fees shall
12	be awarded to the prevailing party.
13	(3)(4) The purpose of this section is to provide
14	additional and cumulative remedies."
15	Section 7. Section 76-4-121, MCA, is amended to read:
16	#76-4-121. Restrictions on subdivision activities.
17	Until Unless the local governing body has certified that a
18	subdivision is to be provided with municipal facilities for
19	a supply of water and disposal of sewage and solid waster
20	that the subdivision is subject to 76-4-128 and has met the
21	standards provided in this parts or that the department has
22	indicated that the subdivision is subject to no
23	restrictions, a person may not file a subdivision plat <u>or</u>
24	subdivision certificate of survey with a county clerk and
25	recorder, make disposition of any lot within a subdivision,

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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 buildings in a subdivision."

Section 8. Section 76-4-122, MCA, is amended to read:
7 #76-4-122. Filing or recording of noncomplying map or
8 plat prohibited. (1) The county clerk and recorder shall may
9 not file or record any mep-or plat or subdivision
10 certificate of survey showing a subdivision unless it
11 complies with the provisions of this part.

(2) A county clerk and recorder may not accept a 12 subdivision plat or subdivision certificate of survey for 13 filing until one of the following conditions has been met: 14 (a) the person wishing to file the plat or subdivision 15 certificate of survey has obtained approval of the local 16 health officer having jurisdiction and has filed the 17 approval with the department, and the department has 18 indicated by stamp or certificate that it has approved the 19 plat or subdivision certificate of survey and plans and 20 specifications and that the subdivision is subject to no 21 sanitary restriction whenever department approval is 22 23 necessary; or

(b) whenever department approval is not necessary, theperson wishing to file the plat has obtained a certificate

1 from the governing body that the subdivision is inside a 2 master planning area and will be provided with municipal 3 facilities for the supply of water and disposal of sewage 4 and solid waste or is in the category of subdivisions 5 provided for in 76-5-128(1) and has been approved pursuant 6 to 76-5-128."

7 Section 9. Section 76-4-123, MCA, is amended to read: "76-4-123. Department review and approval required A 9 outside master planning areas. Outside master planning areas 10 adopted pursuant to chapter it unless the subdivision is 11 subject to the provisions of 76-4-128. a person may not file 12 a subdivision plat with a county clerk and recorder, make 13 disposition of a lot within a subdivision, erect any 14 facility for the supply of water or disposal of sewage or 15 solid waste, erect a building or shelter in a subdivision 16 which requires facilities for the supply of water or 17 disposal of sewage or solid waste, or occupy a permanent 18 building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction." 19 20 Section 10. Section 76-4-124. MCA. is amended to read: 21 "76-4-124. Type of review and approval required within 22 master planning areas and for certain other subdivisions. (1) Within master planning areas adopted pursuant to chapter 23 1, a subdivision is not subject to sanitary restrictions 24 when the local governing body certifies that municipal 25

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facilities for the supply of water and disposal of sewage
 and solid waste will be provided for the subdivision as
 provided in 76-4-127. In this case, department approval is
 not necessary.

5 (2) The subdivisions described in 76-4-128(1) are not
6 subject to sanitary restrictions if the local governing body
7 certifies that the subdivisions have met the requirements of
8 this parts

9 (2)(3) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body or the subdivision is not subject to 13 <u>76-6-128</u>, the person wishing to subdivide must obtain 14 department approval as provided in 76-4-122(2)(a)."

15 Section 11. Section 76-4-125, MCA, is amended to read: 16 #76-4-125. Review of subdivisions-excluded-from-all-or 17 some-of-the-provisions-of-the-subdivision-and--platting--act development_plans -- land divisions_excluded from department 18 19 review. (1) When--a-subdivision-as-defined-in-this-part-is 20 exc?uded--from--the--provisions--of--76-3-302--and--76-3-401 21 through--76-3-483y--but-not-76-3-281y-end-the-subdivision-is 22 otherwise-subject-to-the--provisions--of--this--party--plans 23 Plans and specifications of the a subdivision as defined in 24 this part shall be submitted to the department or the local 25 <u>acvernment___where__applicable.</u> ond--the--department--shall LC 0063/01

1	indicate-by-certificate-that-it-has-approved-theplansand
2	specificationsand-th at-the-sub division-is-not-subject-to-a
3	sonitary-restrictions The plan review by the department or
4	the local government under <u>16-4-128</u> shall be as follows:
5	(a) At any time after the developer has submitted an
6	application under the Montana Subdivision and Platting Act,
7	the developer shall present to the department or to the
8	<u>local_governmentsifit_exercises_thereviewauthority</u>
9	granted to it under 76-4-128. a preliminary plan of the
10	proposed development, whatever information the developer
11	feels necessary for its subsequent review, and information
12	required by the department.
13	(b) The department <u>, or the local government where</u>
14	applicables must givefinelection-of <u>finally act on</u> the
15	proposed plan within 60 days unless an environmental impact
16	statement is required, at which time this deadline may be
17	increased to 120 days.
18	<pre>(c)The_departmentsorthelocalgovernmentwhere</pre>
19	applicables_sball_indicate_its_approval_or_disapproval_in
20	writing. If the department approves a subdivision. it shall
21	certify_thatithas_approved_the_plans_and_specifications
22	and that the subdivision is subject to no sanitary
23	restrictions.
24	(2) A subdivision excluded from the provisions of

25 chapter 3 shall be submitted for review by the department

according to the provisions of this part, except that the
 following divisions, unless used to evade the provisions of
 this part, are not subject to review by the department:
 (a) the exclusions cited in 76-3-201 and 76-3-204, as
 amended;

6 (b) divisions made for the purpose of acquiring 7 additional land to become part of an approved parcel. 8 provided that no dwelling or structure requiring water or 9 sewage disposal is to be erected on the additional acquired 10 parcel and that the division does not fall within a 11 previously platted or approved subdivision; and

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

15 Section 12. Section 76-4-128, MCA, is amended to read: 16 *76-4-128. Delegation of department review to local 17 government. (1) The department shall delegate to a local 18 government the authority to review a subdivision under this 19 part when the subdivision involves:

20 (a) five or fewer parcels when each parcel will 21 contain individual water and sawage facilities and the local 22 government has qualified personnel to adequately review 23 determine whether the water supply and sewage and solid 24 waste disposal facilities proposed for the subdivision- meet

25 the standards prescribed by the department: or

1	(b) parcels 10 acres or larger in size when each
2	parcel will contain individual water and sewage facilities
3	and the local government has qualified personnel to
4	adequately determine whether water_supply_and_sewage_and
5	solid waste disposal facilities proposed for the subdivision
6	meet the standards prescribed by the department.
7	(2) Whenever the governing body receives an
8	application_under_subsection_(1)(b)_of_this_section_andthe
9	numberof_parcels_in_the_proposed_subdivision_exceeds_nines
10	the governing body shall notify the department of the
11	proposed subdivision. If the department determines that the
12	proposed subdivision may require the preparation of a
13	preliminary environmental review or an environmental impact
14	statement under the provisions of the Montana Environmental
15	folicy Acts the department shall review and approve or
16	disapprove the proposed subdivision and the provisions of
17	subsection (1) do not apply.
18	<pre>t2)[3] When a local government has conducted a review</pre>
19	of a subdivision containing-five-or-fewer-parcels-pursuant
20	to-this-section, described in subsection (1) of this
21	sections it shall advise the department of its
22	recommendation for approval or disapproval of the
23	subdivision. Thedepartmentshallywithin-10-days-after
24	receiving-the-recommendation-of-the-local-governmenty-make-a

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final-decision-on-the-subdivision.

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1 (4) When a local government exercises the authority 2 delegated to it by this section: the local government may 3 choose to make the final decision on the proposed 4 subdivision and shall accept legal responsibility for that 5 decision 6 (3)(5) (a) In delegating authority pursuant to this 7 section. the department. when the local government makes a 8 final decision pursuant to subsection [4], shall enter into 9 an agreement with the local government wherein the 10 department shall agree to transfer not-less-than-\$10-of--the 11 fee-per-percel all of the fees collected pursuant to 12 76-4-105 to the local government for the review of subdivisions containing-five-or-fewer-porcels described in 13 14 subsection (I) of this section. 15 (b) (i) When a local government exercises the delegated authority to conduct review pursuant to subsection 16 17 (1) of this section but does not choose to make the final 18 decision on proposed subdivisions pursuant to subsection (4) 19 of this section, the department shall transfer to the local 20 government not less than \$10 of the fee per parcel collected 21 pursuant to 76-4-105-22 (iii) The department shalle within 10 days after receiving the recommendation of the local government, make a 23 24 final_decision_on_the_subdivision."

⁻End-

Approved by Comm. on Local Government

1	HOUSE BILL NO. 81
2	INTRODUCED BY HURWITZ
3	BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS
4	
5	A BILL FOR AN ACT ENTITLED: MAN ACT TO PROVIDE FOR EXPANDED
6	LOCAL GOVERNMENT REVIEW OF SANITARY REQUIREMENTS FOR
7	SUBDIVISIONS; MODIFYING THE DEFINITION OF A SUBDIVISION;
8	PROVIDING NEW ADMINISTRATIVE AND JUDICIAL REMEDIES; AND
9	AMENDING 76-4-102 THROUGH 76-4-105+ 76-4-108+ 76-4-109+
10	76-4-121 THROUGH 76-4-125. AND 76-4-128. MCA."
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	Section 1. Section 76-4-102, MCA, is amended to read:
14	<pre>"76-4-102. Definitions. As used in this part. unless</pre>
15	the context clearly indicates otherwise, the following words
16	or phrases have the following meanings:
17	(1) "Board" means the board of health and
18	environmental sciences.
19	(2) "Department" means department of health and
20	environmental sciences.
21	(3) "Facilities" means public or private facilities
22	for the supply of water or disposal of sewage or solid waste
23	and any pipes, conduits, or other stationary method by which
24	water, sewage, or solid wastes might be transported or
25	distributed.

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 141___Person__means_the_state*_a_political__subdivision

 2
 of__the__state*_an__institution*_a__firm*_a_corporation*_a

 3
 partnership*_an_individual*_or_other_entity*

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t+t1(21 "Public water supply system" or "public sewage
disposal system" mean, respectively, a water supply or
sewage disposal system that serves 10 or more families or 25
or more persons for at least 60 days out of the calendar
year.

9 t5t161 "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building 11 requiring facilities for the supply of water or the 12 disposition of sewage or solid waste or the construction of 13 water supply or sewage or solid waste disposal facilities 14 until the department has approved plans for those 15 facilities.

16 <u>t6till</u> "Solid wastes" means all putrescible and 17 nonputrescible solid wastes (except body wastes), including 18 garbage, rubbish, street cleanings, dead animals, yard 19 clippings, and solid market and solid industrial wastes.

20 <u>(77)181</u> "Subdivision" means a division of land or land 21 so divided which creates one or more parcels containing-less 22 than--20--acresy-exclusive-of-public-roadwaysy in order that 23 the title to or possession of the parcels may be sold; 24 rented; leased, or otherwise conveyed and includes any 25 resubdivision and any condominium or area; regardless of

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SECOND READING

size, which provides permanent multiple space for

2 recreational camping vehicles or mobile homes.*

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3 Section 2. Section 76-4-103, MCA, is amended to read: 4 #76-4-103. What constitutes subdivision. A subdivision 5 shall comprise only those parcels of-less-than-20-acres 6 which have been created by a division of land, and the plat 7 thereof shall show all such parcels, whether contiguous or not." 8

9 Section 3. Section 76-4-104, MCA, is amended to read: 10 #76-4-104. Rules for administration and enforcement. (1) The department shall adopt reasonable rules, including 11 12 adoption of sanitary standards, necessary for administration 13 and enforcement of this part.

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

24 (3) The rules shall provide for the review of the 25 following__subdivisions_by_the_local_government_according_to

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1 the provisions of 76-4-128:

2 1al_minor_subdivisions_containing_five__or__fewer 3 parcels_of_land_whenever_each_parcel_will_contain_individual 4 water_and_sewage_facilities: 5 (b) subdivisions comprised of parcels of 10 acres or

6 larger_in_size when_each_parcel_will contain individual 7 water_and_sewage_facilities.

8 +3+141 The rules shall further provide for: 9 (a) the furnishing to the department of a copy of the 10 plate and subdivision certificate of survey. or other 11

documentation showing the layout or plan of development. 12 including:

13 (i) total development area;

14 (ii) total number of proposed dwelling units;

15 (b) adequate evidence that a water supply that is

16 sufficient in terms of quality, quantity, and dependability

17 will be available to ensure an adequate supply of water for

18 the type of subdivision proposed:

19 (c) evidence concerning the potability of the proposed

20 water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility 21

22 is sufficient in terms of capacity and dependability;

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23 (e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure 24 25 proper drainage ways;

1 (f) standards and technical procedures applicable to 2 sanitary sewer plans and designs, including soil percolation 3 testing and required percolation rates and site design 4 standards for on-lot sewage disposal systems when 5 applicable:

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

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

10 (i) requiring evidence to establish that, if a public 11 sewage disposal system is proposed, provision has been made 12 for the system and, if other methods of sewage disposal are 13 proposed, evidence that the systems will comply with state 14 and local laws and regulations which are in effect at the 15 time of submission of the preliminary or final plan or 16 plat."

Section 4. Section 76-4-105. MCA. is amended to read: 17 18 "76-4-105. Lot fees. (1) The department shall adopt reasonable rules setting forth fees, not to exceed \$25 per 19 parcel, for services rendered in the review of plats-and 20 21 subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision 22 23 review to the department for deposit in the agency fund provided for in 17-2-102. The fees shall be used for review 24 of plats and subdivisions based on the complexity of the 25

1 subdivision, including but not limited to:

(a) number of lots in the subdivision;

3 (b) the type of water system to serve the development;
4 (c) the type of sewage disposal to serve the

5 development; and

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6 (d) the degree of environmental research necessary to7 supplement the review procedure.

8 (2) The department shall adopt rules to determine the 9 distribution of lot fees between the local governing body 10 and the department as provided in 76-4-128. When---a subdivision--is-reviewed-under-the-master-plan-provisions-of 11 12 76-4-124 or_undsr_ths_provisions_of__76-4-128v--the--local governing--body--shall--within--28--days-ofter-receiving-on 13 opplication-under-the-Hontona-Subdivision-and-Platting--Acty 14 distribute-the-lot-fees-as-determined-by-this-subsection. 15 (3) A fee as described in this section is not required 16 for the review of subdivisions in which divisions are made 17 18 for the purpose of relocating common boundary lines unless 19 the division will result in the installation of additional 20 DOMESTIC water supply or sewage disposal facilities." Section 5. Section 76-4-108. MCA, is amended to read: 21 22 M76-4-108. Enforcement. (1) If--s--written-complaint 23 afteding-violation-is-made--to--the--department--or--if--the 24 department--has-reason-to-believe-that-a-person-has-violated

25 this-part-or-any-rule-thereunder-and-if-a-violation-is-found

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HB 81

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1	to-existv-the-departmentshallissuenoticeandholda
2	hearingpursuanttotheMontona-Administrative-Procedure
3	Acty If the department bas reason to believe that a
4	violation_of_this_part_or_a_rule_made_usder_it_bas_occurred*
5	<pre>itmayhave_written_notice_served_personally_or_by_mail_to</pre>
6	the_last=known_address_of_the_allegod_violator_or_bis_agents
7	The notice shall state the provision alleged to be violated.
8	thefactsallegedtoconstitutetbeviolation*tbe
9	corrective_action_which_the_department_requires_and_the
10	time_within_which_the_action_is_to_be_takenFor_the_purpose
11	<u>of this parts service by mail is complete on the date of</u>
12	<pre>mailingsIbealleged_violator_may_request_a_bearing_before</pre>
13	the board on later than 30 days after service of a notice
14	under_this_sections_lf_a_reguest_is_fileds_a_bearing_shall
15	be_beld_within_a_reasonable_time*
16	(2) In addition to or instead of issuing an order+ the
17	department may initiate appropriate action for injunction or
18	for recovery of penalty as provided in this part."
19	Section 6. Section 76-4-109. MCA, is amended to read:

20 "76-4-109. Penalties. (1) A person <u>HILLFULLY</u> violating any provision of this part, except 76-4-122(1), or any rule 21 22 or order issued under this part is quilty of an offense and 23 subject to a fine of not to exceed \$1,000.

24 121 In addition to the penalty specified in subsection 25 (1), a person who WILLFULLY violates any provision of this

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part_or_any_rule_or_order_issued_under_this_part_is_subject to a civil penalty not to exceed \$1,000 \$500. Each-day of xigistips:constitutes-a-separate-violationy t2)131 Action Egnalties_imposed under subsection (1) or [2] does do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy. In any action filed by the department for injunction: the department, if it prevails, is entitled to be awarded to the prevailing party. additional and cumulative remedies."

collect_a_reasonable_attorney_fee_based_on_the_salary_of_the staff__attorney__representing__the__department. If the department_does_not_prevail._reasonable_attorney_fees__sball (3)[4] The purpose of this section is to provide Section 7. Section 76-4-121, MCA, is amended to read:

16 "76-4-121. Restrictions on subdivision activities. Until Unless the local governing body has certified that a 17 18 subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waster 19 20 that__the_subdivision_is_subject_to_76-4-128_and_has_met_the 21 standards provided in this parts or that the department has indicated that the subdivision is subject to no 22 23 restrictions, a person may not file a subdivision plat or 24 subdivision certificate of survey with a county clerk and 25 recorder, make disposition of any lot within a subdivision,

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erect any facility for the supply of water or disposal of
 sewage or solid waster erect any building or shelter in a
 subdivision which requires facilities for the supply of
 water or disposal of sewage or solid waster or occupy any
 permanent buildings in a subdivision."

6 Section 8. Section 76-4-122, MCA, is amended to read: 7 m76-4-122. Filing or recording of noncomplying map or 8 plat prohibited. (1) The county clerk and recorder shall may 9 not file or record any mep-or plat <u>or_subdivision</u> 10 <u>certificate_of_survey</u> showing a subdivision unless it 11 complies with the provisions of this part.

12 (2) A county clerk and recorder may not accept a subdivision plat or subdivision certificate of survey for 13 filing until one of the following conditions has been met: 14 (a) the person wishing to file the plat or subdivision 15 certificate_of_survey has obtained approval of the local 16 17 health officer having jurisdiction and has filed the 18 approval with the department, and the department has indicated by stamp or certificate that it has approved the 19 20 plat or subdivision certificate of survey and plans and specifications and that the subdivision is subject to no 21 sanitary restriction whenever department approval is 22 23 necessary; or

(b) whenever department approval is not necessary+ the
 person wishing to file the plat has obtained a certificate

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1 from the governing body that the subdivision is inside a 2 master planning area and will be provided with municipal 3 facilities for the supply of water and disposal of sewage 4 and solid waste <u>or_is_in_the_category_of_subdivisions</u> 5 provided_for_in_76=4=128111_and_bas_been_approved_pursuant 6 to_76=4=128."

7 Section 9. Section 76-4-123. MCA, is amended to read: А #76-4-123. Department review and approval required 0 outside master planning areas. Outside master planning areas 10 adopted pursuant to chapter 1+ unless the subdivision is 11 subject_to_the_provisions_of_76-4-128, a person way not file 12 a subdivision plat with a county clerk and recorder, make 13 disposition of a lot within a subdivision, erect any 14 facility for the supply of water or disposal of sewage or 15 solid waste, erect a building or shelter in a subdivision 16 which requires facilities for the supply of water or 17 disposal of sewage or solid waste, or occupy a permanent 18 building in a subdivision until the department has indicated 19 that the subdivision is subject to no sanitary restriction." 20 Section 10. Section 76-4-124, MCA, is amended to read: 21 "76-4-124. Type of review and approval required within 22 master planning areas and for certain other subdivisions. 23 (1) Within master planning areas adopted pursuant to chapter 24 1. a subdivision is not subject to sanitary restrictions

25 when the local governing body certifies that municipal

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facilities for the supply of water and disposal of sewage
 and solid waste will be provided for the subdivision as
 provided in 76-4-127. In this case, department approval is
 not necessary.

5 i2in=Iberaubdivisionandeasribedrin=76n5:120filtearer:not
 6 aubject=to=sonitary=restrictions=if=tbe=locst=governing=body
 7 certifiea=tbot=tbe=aubdivisiona=bove=met=tbe=requirementa=of
 8 tbia=montx

9 <u>t2t21(2)</u> To the extent that municipal facilities for 10 the supply of water or disposal of sewage or solid waste are 11 not to be provided for a subdivision as certified to by the 12 governing body <u>or_the_subdivision_is_not_subject_to</u> 13 <u>T6=4=128</u>, the person wishing to subdivide must obtain 14 department approval as provided in T6-4-122(2)(a).^m

15 Section 11. Section 76-4-125. MCA. is amended to read: 16 #76-4-125. Review of subdivisions-excluded-from-all-or 17 some--of--the-provisions-of-the-subdivision-and-platting-act 18 development_plans_=_land_divisions_excluded_fcom_department 19 review. (1) When-s-subdivision-as-defined-in--this--part--is 20 excluded--from--the--provisions--of--76-3-302--and--76-3-40t 21 through-76-3-483y-but-not-76-3-281y-and-the--subdivision--is 22 otherwise--subject--to--the--provisions--of-this-party-plans 23 <u>Plans</u> and specifications of the <u>a</u> subdivision as defined in 24 this part shall be submitted to the department or the local 25 <u>government__where__applicables</u> and--the--department---shall

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indicate--by--curtificate-that-it-has-approved-the-plans-and 1 specifications-and-that-the-subdivision-is-not-subject-to--a 2 sanitary--restriction. The plan review by the department or 3 4 the local covernment under 76-4-128 shall be as follows: (a) At any time after the developer has submitted an 5 application under the Montana Subdivision and Platting Act, 6 the developer shall present to the department <u>or_to_the</u> 7 8 local_povernment+__if__it__exercises_the_review_authority Q granted to it under 76-4-128: a preliminary plan of the 10 proposed development, whatever information the developer feels necessary for its subsequent review+ and information 11 12 required by the department. 13 (b) The departments or the local overnment where applicable: must give-final-setion-of finally_act_on the 14 proposed plan within 60 days unless an environmental impact 15 statement is required, at which time this deadline may be 16 17 increased to 120 days. 18 (c) The departments or the local covernment where applicable: shall_indicate_its_approval__or__disapproval__in 19 20 writings, If the department approves a subdivision it shall certify that it has approved the plans and specifications 21 22 and that the subdivision is subject to no sanitary 23 restrictions (2) A subdivision excluded from the provisions of 24 chapter 3 shall be submitted for review by the department 25

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following divisions, unless used to evade the provisions of 2 this parts are not subject to review by the department: 3 (a) the exclusions cited in 76-3-201-and 76-3-2041_as 4 5 amended; (b) divisions made for the purpose of acquiring 6 additional land to become part of an approved parcel. 7 provided that no dwelling or structure requiring water or R sewage disposal is to be erected on the additional acquired 9 10 parcel and that the division does not fall within a

according to the provisions of this part, except that the

11 previously platted or approved subdivision; and

1

12 (c) divisions made for purposes other than the 13 construction of water supply or sewage and solid waste 14 disposal facilities as the department specifies by rule.

Section 12. Section 76-4-128, MCA, is amended to read: M76-4-128. Delegation of department review to local government. (1) The department shall delegate to a local government the authority to review a subdivision under this part when the subdivision involves:

20 <u>Fall five or fewer parcels when_each_parcel_will</u> 21 <u>contain_individual_water_and_sewage_facilities</u> and the local 22 government has qualified personnel <u>DETERMINED__BY___IME</u> 23 <u>DEPARIMENT_TO_BE_QUALIFIED</u> to adequately review <u>determine</u> 24 <u>whether</u> the water supply and sewage and solid waste disposal 25 facilities proposed for the subdivision_meet_the_standards

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1 prescribed_by_tbe_departmenti_or

2	(b)parcels10acresorlargeriosize_when_each
3	parcel_will_contain_individual_water_andsewagefacilities
4	andthelocal_governmentbasqualified_personnelto
5	adequately_determine_wbetber_watersupplyandsewageand
5	splid_waste_disposal_facilities_proposed_for_the_subdivision
7	meet_the_standards_prescribed_by_the_department*
8	121Wbeneverthegoverningbodyreceivesan
9	application_under_subsection_(1)(b)_of_this_section_andthe
10	oumberof_parcels_io_the_proposed_subdivision_exceeds_ninex
11	the governing_body_shall_notify_the_department_of_the
12	proposed_subdivisionsIf_the_department_determines_that_the
13	proposed_subdivision_may_require_tbe_preparation_of_a
14	preliminary_environmental_review_or_an_environmentalimpact
15	<pre>statement_under_the_provisions_of_the_Montana_Environmental</pre>
16	Policy_Acts_thedepartmentsballreviewandapproveor
17	disapprove_the_proposed_subdivision_and_the_provisions_of
18	subsection_[1]_do_not_applys
19	<pre>f2j[3] When a local government has conducted a review</pre>
20	of a subdivision containing-five-or-fewer-parcels-pursuant
21	tothissection, <u>described_in_subsection_111_of_this</u>
22	section: it shall advise the department of its
23	recommendation for approval or disapproval of the
24	subdivisionANDIISHALLSENDIQ_IHEDEPARIMENT
25	DOCUMENIATION_USED_IN_APPROVAL_IMMEDIATELY_UPON_BEVIEW. The

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department--shally--within--10--days--after--receiving---the
 recommendation---of--the--local--governmenty--make--a--final
 decision-on-the-subdivisiony
 (6) When a local government exercises the authority

4 <u>141_When_alocal_government_exercises_the_authority</u> 5 <u>delegated_to_it_by_this_sections_the_local_government_may</u> 6 <u>choose_to_make_the_final_decision__on__the__proposed</u> 7 <u>subdivision_and_shall_accept_legal_responsibility_for_that</u> 8 <u>decisions</u>

t3+151__1a1 In delegating authority pursuant to this 9 10 section, the department, when the local upvernment makes a 11 final_decision_pursuant_to_subsection_f41+ shall enter into an agreement with the local government wherein the 12 13 department shall agree to transfer not-less-then-sig-of--the 14 fee--per--percel all of the fees collected pursuant to 15 76-4-105 to the local government for the review of 16 subdivisions containing-five-or-fewer-parcets described_in 17 subsection_[1]_of_this_section.

18 [b]_fil_When_a__local__government__exercises__the 19 delegated_authority_to_conduct_review_pursuant_to_subsection 20 fil_of_this_section_but_does_not_choose_to_make_the_final 21 decision_on_proposed_subgivisions_pursuant_to_subsection_f41 22 of_this_section.the_department_shall_transfer_to_the_local 23 government_not_less_than_\$10_of_the_fee_per_parcel_collected 24 pursuant_to_7654-1054

25 <u>fiil_The___department___shalls__within__l0__days__after</u>

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- 1 receiving the recommendation of the local government+ make a
- 2 final_decision_on_the_subdivision."

-End-

46th Legislature

HB 0081/02

1	HOUSE BILL NO. 81	1
2	INTRODUCED BY HURWITZ	2
3	BY REQUEST OF THE INTERIM SUBCONMITTEE ON SUBDIVISION LAWS	3
4		4
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR EXPANDED	5
6	LOCAL GOVERNMENT REVIEW OF SANITARY REQUIREMENTS FOR	6
7	SUBDIVISIONS; MODIFYING THE DEFINITION OF A SUBDIVISION;	7
8	PROVIDING NEW ADMINISTRATIVE AND JUDICIAL REMEDIES; AND	8
9	AMENDING 76-4-102 THROUGH 76-4-105, 76-4-108, 76-4-109,	9
10	76-4-121 THRDUGH 76-4-125, AND 76-4-128, MCA."	10
11		11
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12
13	Section 1. Section 76-4-102; MCA; is amended to read:	13
14	#76-4-102. Definitions. As used in this part. unless	14
15	the context clearly indicates otherwise, the following words	15
16	or phrases have the following meanings:	16
17	(1) "Board" means the board of health and	17
18	environmental sciences.	18
19	(2) "Department" means department of health and	19
20	environmental sciences.	20
21	(3) "Facilities" means public or private facilities	21
22	for the supply of water or disposal of sewage or solid waste	22
23	and any pipes, conduits, or other stationary method by which	23
24	water, sewage, or solid wastes might be transported or	24
25	dîstributed.	25

141___Person__means_the_states_a_political__subdivision of__the__states__an__institutions__a__firms_a_corporations_a partnerships_an_individuals_or_other_entitys

4 (41/51 "Public water supply system" or "public sewage
5 disposal system" means respectively: a water supply or
6 sewage disposal system that serves 10 or more families or 25
7 or more persons for at least 60 days out of the calendar
8 year.

9 (5)(6) "Sanitary restriction" means a prohibition 10 against the erection of any dwelling, shelter, or building 11 requiring facilities for the supply of water or the 12 disposition of sewage or solid waste or the construction of 13 water supply or sewage or solid waste disposal facilities 14 until the department has approved plans for those 15 facilities.

16 <u>(6)[7]</u> "Solid wastes" means all putrescible and 17 nonputrescible solid wastes (except body wastes). Including 18 garbage, rubbish, street cleanings, dead animals, yard 19 clippings, and solid market and solid industrial wastes.

20 (77(8) "Subdivision" means a division of land or land 21 so divided which creates one or more parcels containing-less 22 than--20--acresv-exclusive-of-public-roadwaysv in order that 23 the title to or possession of the parcels may be sold 24 rented, leased, or otherwise conveyed and includes any 25 resubdivision and any condominium or area, regardless of

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THIRD READING

space for

2 recreational camping vehicles or mobile homes." 3 Section 2. Section 76-4-103, MCA, is amended to read: 4 *76-4-103. What constitutes subdivision. A subdivision 5 shall comprise only those parcels of-less-than-20-acres 6 which have been created by a division of land, and the plat 7 thereof shall show all such parcels, whether contiguous or 8 not•# 9 Section 3. Section 76-4-104, MCA, is amended to read: 10 "76-4-104. Rules for administration and enforcement. 11 (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration 12 13 and enforcement of this part-14 (2) The rules and standards shall provide the basis 15 for approving subdivision plats and subdivision certificates 16 of survey for various types of water, sewage facilities, and 17 solid waste disposal, both public and private, and shall be 18 related to size of lots, contour of land, porosity of soil, groundwater level, distance from lakes, streams, and wells, 19 and construction of private water and sewage 20 type facilities, and other factors affecting public health and 21 22 the quality of water for uses relating to agriculture. 23 industry, recreation, and wildlife.

size, which provides permanent multiple

1

24 (3) <u>The rules shall provide for the review of the</u>
 25 <u>following subdivisions by the local government according to</u>

1 the provisions of 76-4-128: 2 (a) pinor subdivisions containing five or fewer 3 parcels_of_land_where yer_each_parcel_will_contain_individual 4 water and sewage facilities: 5 (b)__subdivisions__comprised_of_parcels_of_10_acres_or 6 larger_in_size when__each__parcel_will__contain__individual 7 water_and_sewage_facilities. t3)(4) The rules shall further provide for: 9 (a) the furnishing to the department of a copy of the 10 plats and subdivision certificate of surveys or other documentation showing the layout or plan of development, 11 12 including: 13 (i) total development area; 14 (ii) total number of proposed dwelling units; 15 (b) adequate evidence that a water supply that is 16 sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for 17 the type of subdivision proposed; 18 19 (c) evidence concerning the potability of the proposed 20 water supply for the subdivision; 21 (d) adequate evidence that a sewage disposal facility 22 is sufficient in terms of capacity and dependability;

23 (e) standards and technical procedures applicable to
24 storm drainage plans and related designs, in order to insure
25 proper drainage ways;

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1 (f) standards and technical procedures applicable to 2 sanitary sewer plans and designs, including soil percolation 3 testing and required percolation rates and site design 4 standards for on-lot sewage disposal systems when 5 applicable:

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

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

10 (i) requiring evidence to establish that, if a public 11 sewage disposal system is proposed, provision has been made 12 for the system and, if other methods of sewage disposal are 13 proposed, evidence that the systems will comply with state 14 and local laws and regulations which are in effect at the 15 time of submission of the preliminary or final plan or 16 plate^m

Section 4. Section 76-4-105, MCA, is amended to read: 17 "76-4-105. Lot fees. (1) The department shall adopt 18 reasonable rules setting forth fees, not to exceed \$25 per 19 parcel, for services rendered in the review of plats-and 20 subdivisions. The rules shall provide for a schedule of 21 fees to be paid by the applicant for plat or subdivision 22 review to the department for deposit in the agency fund 23 provided for in 17-2-102. The fees shall be used for review 24 25 of plats and subdivisions based on the complexity of the

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1 subdivision. including but not limited to:

2 (a) number of lots in the subdivision:

3 (b) the type of water system to serve the development;

4 (C) the type of sewage disposal to serve the
 5 development; and

6 (d) the degree of environmental research necessary to
7 supplement the review procedure.

8 (2) The department shall adopt rules to determine the 9 distribution of lot fees between the local governing body 10 and the department as provided in 76-4-128. When---a 11 subdivision--is-reviewed-under-the-master-plan-provisions-of 76-4-124 or_under_the--provisions--of--76-4-128+--the--tocot 12 13 governing--body--shaily--within--20--days-after-receiving-an epplication-under-the-Montena-Subdivision-and-Platting--Acty 14 15 distribute-the-int-fees-as-datersined-by-this-subsection.

16 (3) A fee as described in this section is not required
17 for the review of subdivisions in which divisions are made
18 for the purpose of relocating common boundary lines unless
19 the division will result in the installation of additional
20 DDMESTIC water supply or sewage disposal facilities."
21 Section 5. Section 76-4-108. MCA. is amended to read:
22 "76-4-108. Enforcement. (1) if--e--written-complaint

alleging-violation-is-made-to-the-department-or-if-the
department-hos-reason-to-believe-that-a-person-hos-violated
this-part-or-any-rule-thereunder-and-if-a-violation-is-found

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to-existy-the-departmentshallissuenoticeandholda
hearingpursuanttotheMontana-Administrative-Procedure
Acty If the department has reason to believe that a
violation_of_this_part_or_a_rule_made_under_it_bas_occurred*
itmaxhave_written_notice_served_personally_or_by_mail_to
the_last=known_address_of_the_alleged_violator_or_bis_agent.
The notice shall state the provision alleged to be violated.
tbsfactsallegedtoconstitutetbeviolation+tbe
correctiveactionwhichthedepartment_requiress_and_the
time_within_which_the_action_is_to_be_takenEoc_the_purpose
of_this_parts_service_by_sail_is_complete_on_thsdate_of
mailingsIbealleged_violator_may_request_a_bearing_before
the board no later than 30 days after service of a notice
under_this_sections_If_a_request_is_fileds_a_bearing_sball
be beld within a reasonable time.
(2) In addition to or instead of issuing an order, the
department may initiate appropriate action for injunction or
for recovery of penalty as provided in this part."
Section 6. Section 76-4-109, MCA, is amended to read:
"76-4-109. Penalties. (1) A person <u>WILLEULLY</u> violating
any provision of this part, except 76-4-122(1), or any rule

•

22 or order issued under this part is guilty of an offense and
23 subject to a fine of not to exceed \$1,000.
24 <u>[2] In addition to the penalty specified in subsection</u>

25 (1): a person who WILLFULLY violates any provision of this

1	part_or_any_rule_or_order_issued_under_this_part_issubject
Z	to a civil penalty not to exceed #1x000 \$500. Each-day-of
3	xisistion <u>=constitutes- ==separata=visistion</u> x
4	<pre>f2t(3) Action Penalties imposed under subsection (1)</pre>
5	or [2] does do not bar enforcement of this part or rules or
6	orders issued under it by injunction or other appropriate
۲	remedy. In any action filed by the department for
8	injunctions the departments if it prevailss is entitled to
9	collect_a_reasonable_attorney_fee_based_on_the_salary_of_the
10	<pre>staffattorneyrepresentingtbedepartmentIf_tbe</pre>
11	department_does_not_prevail.reasonable_attorney_feessball
12	be_awarded_to_tbe_prevailing_party_
13	<pre>f3f1f1 The purpose of this section is to provide</pre>
14	additional and cumulative remedies."
15	Section 7. Section 76-4-121, MCA, is amended to read:
16	"76-4-121. Restrictions on subdivision activities.
17	Until <u>Unless</u> the local governing body has certified that a
18	subdivision is to be provided with municipal facilities for
19	a supply of water and disposal of sewage and solid waste ${f t}$
20	tbatthe_subdivision_is_subject_to_76-4-128_and_bas_met_the
21	standards_provided_in_this_part: or that the department has
22	indicated that the subdivision is subject to no
23	restrictions, a person may not file a subdivision plat or
24	subdivision certificate of survey with a county clerk and

25 recorder. make disposition of any lot within a subdivision.

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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 buildings in a subdivision.[#]

Section 8. Section 76-4-122, MCA, is amended to read:
"76-4-122. Filing or recording of noncomplying map or
plat prohibited. (1) The county clerk and recorder shall may
not file or record any mep-or plat or subdivision
certificate of survey showing a subdivision unless it
complies with the provisions of this part.

(2) A county clerk and recorder may not accept a 12 subdivision plat or subdivision certificate of survey for 13 filing until one of the following conditions has been met: 14 (a) the person wishing to file the plat or subdivision 15 certificate of survey has obtained approval of the local 16 health officer having jurisdiction and has filed the 17 approval with the department, and the department has 18 indicated by stamp or certificate that it has approved the 19 plat or subdivision certificate of survey and plans and 20 specifications and that the subdivision is subject to no 21 sanitary restriction whenever department approval is 22 23 necessary; or

(b) whenever department approval is not necessary. the
person wishing to file the plat has obtained a certificate

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1 from the governing body that the subdivision is inside a master planning area and will be provided with municipal 3 facilities for the supply of water and disposal of sewage 4 and solid waste or is in the category of subdivisions 5 provided for in 76=4=128(1) and has been approved pursuant 6 to 76=4=128."

7 Section 9. Section 76-4-123, MCA, is amended to read: 8 #76-4-123. Department review and approval required 9 outside master planning areas. Outside master planning areas adopted pursuant to chapter 1, unless the subdivision is 10 11 subject to the provisions of 76-4-128, a person may not file 12 a subdivision plat with a county clerk and recorder, make 13 disposition of a lot within a subdivision, erect any 14 facility for the supply of water or disposal of sewage or 15 solid waste, erect a building or shelter in a subdivision 16 which requires facilities for the supply of water or 17 disposal of sewage or solid waste, or occupy a permanent 18 building in a subdivision until the department has indicated 19 that the subdivision is subject to no sanitary restriction." Section 10. Section 76-4-124. MCA, is amended to read: 20 21 "76-4-124. Type of review and approval required within 22 master planning areas and for certain other subdivisions. 23 (1) Within master planning areas adopted pursuant to chapter 24 1. a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal 25

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facilities for the supply of water and disposal of sewage
 and solid waste will be provided for the subdivision as
 provided in 76-4-127. In this case, department approval is
 not necessary.

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 6
 subject:to::senitery:restrictions:if::the:tocal:governing:body

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 certifies:the:subdivisions:hove:met:the:requirements:of

 8
 this:pertx

9 <u>t2+t2+t21</u> To the extent that municipal facilities for 10 the supply of water or disposal of sewage or solid waste are 11 not to be provided for a subdivision as certified to by the 12 governing body or the subdivision is not subject to 13 <u>T6-5-128</u>, the person wishing to subdivide must obtain 14 department approval as provided in 76-5-122(2)(a)."

Section 11. Section 76-4-125. MCA, is amended to read: 15 #76-4-125. Review of subdivisions-excluded-from-all-or 16 17 some--of--the-provisions-of-the-subdivision-ond-platting-act development_plans -- land divisions_excluded_from_department 18 review. (1) When-a-subdivision-as-defined-in--this--part--is 19 exc}uded--from--the--provisions--of--76-3-302--end--76-3-401 20 through-76-3-483y-but-not-76-3-281y-and-the--subdivision--is 21 22 23 Plans and specifications of the a subdivision as defined in 24 this part shall be submitted to the department or the local 25 government_where_applicable_ end--the--department---shelt

indicate--by--certificate-that-it-has-approved-the-plans-and 1 2 specifications-and-that-the-subdivision-is-not-subject-to--a sanitary--restrictions The plan review by the department or 3 the local covernment under 76-4-128 shall be as follows: (a) At any time after the developer has submitted an 5 6 application under the Montana Subdivision and Platting Act, the developer shall present to the department pr_to_the 7 я local_opvernments_if_it_exercises_the_review_authority granted to it under 76-4-128, a preliminary plan of the Q proposed development, whatever information the developer 10 11 feels necessary for its subsequent review, and information 12 required by the department. 13 (b) The department, or the local government where applicable: must give-final-action-of finally_act_on the 14 proposed plan within 60 days unless an environmental impact 15 statement is required, at which time this deadline may be 16 17 increased to 120 davs. 18 (c) The department, or the local covernment where 19 applicables_shall_indicate_its_approval_or_disapproval_in 20 writing, If the department approves a subdivision, it shall 21 certify that it has approved the plans and specifications and that the subdivision is subject to no sanitary 22 23 restrictions. (2) A subdivision excluded from the provisions of 24 chapter 3 shall be submitted for review by the department 25

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1

1	according to the provisions of this part, except that the
2	following divisions <u>e unless used to avade the provisions of</u>
3	this parts are not subject to review by the department:
4	(a) the exclusions cited in 76-3-201 -and 76-3-204 <u>1_as</u>
5	sacuqeq:
6	(b) divisions made for the purpose of acquiring
7	additional land to become part of an approved parcel,
8	provided that no dwelling or structure requiring water or
9	sewage disposal is to be erected on the additional acquired
10	parcel and that the division does not fall vithin a
11	previously platted or approved subdivision; and
12	(c) divisions made for purposes other than the
13	construction of water supply or sewage and solid waste
14	disposal facilities as the department specifies by rule.
15	Section 12. Section 76-4-128, MCA, is amended to read:
16	#76-4-128. Delegation of department review to local
17	government. (1) The department shall delegate to a local
18	government the authority to review a subdivision under this
19	part when the subdivision involves:
20	(a) five or fewer parcels when each parcel will
21	contain_individual_water_and_sewage_facilities and the local
22	government has qualified personnel <u>DETERMINED_BYIHE</u>
23	<u>DEPARIMENT_ID_BE_QUALIFIED</u> to adequately review <u>determine</u>

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Z	(b)parcels_10acresorlargerinsize_when_each
3	parcel_will_contain_individual_water_andsewagefacilities
4	and the local government has qualified personnel to
5	adequately_determine_whether_watersupplyandsewageand
6	solid_waste_disposal_facilities_proposed_for_the_subdivision
7	meat_tbs_standards_prescribed_by_tbe_department+
8	121_Wheneverthegoverningbodyreceivesao
9	application under subsection (1)(b) of this section and the
10	number_of_parcels_in_the_proposed_subdivision_exceeds_ning:
11	the governing body shall notify the department of the
12	proposed_subdivisionsif_the_department_determines_that_the
13	proposed_subdivision_may_require_the_preparation_of_a
14	preliminary_environmental_review_or_an_environmentalimpact
15	<u>statement_under_the_provisions_of_the_Montana_Environmental</u>
16	Policy Acts the department shall review and approve or
17	disapprove_the_proposed_subdivision_and_the_provisions_of
18	subsection_(1)_do_oot_applys
19	<pre>{2}(3) When a local government has conducted a review</pre>
20	of a subdivision contoining-five-or-fewer-perceis-pursuant
21	tothissection <u>described in subsection []] of this</u>
22	sections it shall advise the department of its
23	recommendation for approval or disapproval of the
24	subdivision <u>+ANDIISHALLSENDIOIHEDEPARIMENI</u>
25	DOCUMENTATION_USED_IN_APPROVAL_IBMEDIATELY_UPON_REVIEN. The

prescribed by the departmenti or

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whether the water supply and sewage and solid waste disposal

facilities proposed for the subdivision. meet the standards

1 department--shally--within--10--days--after--receiving---the
2 recommendation---of--the--local--governmenty--make--a--final
3 decision-on-the-subdivisions

4 (5)__Wben_a_local_government_sxercises_the_authority
5 delegated_to_it_by_this_Sections_the_local_government_may
6 choose_to_make_the_final_decision__on_the__proposed
7 subdivision_and_shall_accept_legat_responsibility_for_that
8 decision_

9 (3)(5) (a) In delegating authority pursuant to this 10 section, the department, when the local government makes a 11 final decision pursuant to subsection (4), shall enter into 12 agreement with the local government wherein the an 13 department shall agree to transfer not-less-than-\$10-of--the fee--per--percel all of the fees collected pursuant to 14 15 76-4-105 to the local government for the review of 16 subdivisions containing-five-or-fewer-percets described in subsection (1) of this section. 17

18 (b)_(i)_When_a__local__government__exercises__the 19 delegated_authority_to_conduct_review_pursuant_to_subsection 20 (1)_of_this_section_but_does_not_choose_to_make_the_final 21 decision_on_proposed_subdivisions_pursuant_to_subsection_(4) 22 of_this_sections_the_department_shall_transfer_to_the_local 23 government_not_less_than_\$10_of_the_fee_per_parcel_collected 24 pursuant_to_16=5=105s

25 <u>(ii) The department shalls within 10 days after</u>

- 1 receiving the recommendation of the local government, make a
- 2 final_decision_on_the_subdivisions"

-End-

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