

HOUSE BILL 81

IN THE HOUSE

January 8, 1979	Introduced and referred to Committee on Local Government.
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 SENATE

February 23, 1979	Introduced and referred to Committee on Local Government.
April 20, 1979	Died in Committee.

1 HOUSE BILL NO. 81  
 2 INTRODUCED BY *Dave Hunsicker*  
 3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN 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 "76-4-102. Definitions. As used in this part, unless  
 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.

1 ~~(4) "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.~~

4 ~~(4)(5)~~ "Public water supply system" or "public sewage  
 5 disposal system" mean, 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 ~~(6)(7)~~ "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 ~~(7)(8)~~ "Subdivision" means a division of land or land  
 21 so divided which creates one or more parcels ~~containing less~~  
 22 ~~than 20 acres, 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

1 size, which provides permanent multiple 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  
12 adoption of sanitary standards, necessary for administration  
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,  
19 groundwater level, distance from lakes, streams, and wells,  
20 type and construction of private water and sewage  
21 facilities, and other factors affecting public health and  
22 the quality of water for uses relating to agriculture,  
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

1 the provisions of 76-4-128:

2 (a) 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)(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 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;

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;

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."

17 Section 4. Section 76-4-105, MCA, is amended to read:

18 "76-4-105. Lot fees. (1) The department shall adopt  
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  
23 review to the department for deposit in the agency fund  
24 provided for in 17-2-102. The fees shall be used for review  
25 of plats and subdivisions based on the complexity of the

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  
12 76-4-124 ~~or under the provisions of 76-4-128~~, the local  
13 governing body shall, within 20 days after receiving an  
14 application under the Montana Subdivision and Platting Act,  
15 distribute the lot fees as determined 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 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 a written complaint~~  
23 ~~alleging 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~~

1 ~~to exist, the department shall issue notice and hold a~~  
 2 ~~hearing pursuant to the Montana Administrative Procedure~~  
 3 ~~Act. 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 shall state the provision alleged to be violated,~~  
 8 ~~the facts alleged to constitute the violation, the~~  
 9 ~~corrective action which the department requires, and the~~  
 10 ~~time within which the action is to be taken. For the purpose~~  
 11 ~~of this part, 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 hearing shall~~  
 15 ~~be held 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 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

1 rule or order issued under this part is subject to a civil  
 2 penalty not to exceed \$1,000. Each day of violation  
 3 constitutes a separate violation.

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  
 8 injunction, the department, if it prevails, is entitled to  
 9 collect a reasonable attorney fee based on the salary of the  
 10 staff attorney representing the department. If the  
 11 department does not prevail, 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 wastes,  
 20 that the subdivision is subject to 76-4-128 and has 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,

1 erect any facility for the supply of water or disposal of  
2 sewage or solid waste, erect any building or shelter in a  
3 subdivision which requires facilities for the supply of  
4 water or disposal of sewage or solid waste, or occupy any  
5 permanent buildings in a subdivision."

6 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 ~~map~~ or plat or subdivision  
10 certificate of survey showing a subdivision unless it  
11 complies with the provisions of this part.

12 (2) A county clerk and recorder ~~may~~ not accept a  
13 subdivision plat or subdivision certificate of survey for  
14 filing until one of the following conditions has been met:

15 (a) the person wishing to file the plat or subdivision  
16 certificate of survey has obtained approval of the local  
17 health officer having jurisdiction and has filed the  
18 approval with the department, and the department has  
19 indicated by stamp or certificate that it has approved the  
20 plat or subdivision certificate of survey and plans and  
21 specifications and that the subdivision is subject to no  
22 sanitary restriction whenever department approval is  
23 necessary; or

24 (b) whenever department approval is not necessary, the  
25 person 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 76-4-128(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  
10 adopted pursuant to chapter 1, 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  
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

1 facilities for the supply of water and disposal of sewage  
2 and solid waste will be provided for the subdivision as  
3 provided in 76-4-127. In this case, department approval is  
4 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 part.~~

9 ~~(2)(3)~~ To the extent that municipal facilities for the  
10 supply of water or disposal of sewage or solid waste are not  
11 to be provided for a subdivision as certified to by the  
12 governing body or the subdivision is not subject to  
13 76-4-128, 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~~  
18 ~~development plans -- land divisions excluded from department~~  
19 ~~review. (1) When a subdivision as defined in this part is~~  
20 ~~excluded from the provisions of 76-3-302 and 76-3-401~~  
21 ~~through 76-3-403, but not 76-3-281, and the subdivision is~~  
22 ~~otherwise subject to the provisions of this part, 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 government where applicable. ~~end--the--department--shall~~

1 ~~indicate by certificate that it has approved the plans and~~  
2 ~~specifications and that the subdivision is not subject to a~~  
3 ~~sanitary restriction. The plan review by the department or~~  
4 the local government under 76-4-128 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 local government, if it exercises the review authority  
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, or the local government where  
14 applicable, must give ~~final~~ action of finally act on 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 (c) The department, or the local government where  
19 applicable, 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  
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

1 according to the provisions of this part, except that the  
2 following divisions, unless used to evade the provisions of  
3 this part, are not subject to review by the department:

4 (a) the exclusions cited in 76-3-201 and 76-3-204, as  
5 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

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 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 and the  
9 number of parcels in the proposed subdivision exceeds nine,  
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 Policy Act, the department shall review and approve or  
16 disapprove the proposed subdivision and the provisions of  
17 subsection (1) do not apply.

18 (2)(3) When a local government has conducted a review  
19 of a subdivision containing five or fewer parcels pursuant  
20 ~~to this section,~~ described in subsection (1) of this  
21 section, it shall advise the department of its  
22 recommendation for approval or disapproval of the  
23 subdivision. ~~The department shall, within 10 days after~~  
24 ~~receiving the recommendation of the local government, make a~~  
25 ~~final decision on the subdivision.~~



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--parcel~~l~~ all of the fees collected pursuant to  
12 76-4-105 to the local government for the review of  
13 subdivisions containing five or fewer parcels described in  
14 subsection (1) of this section.

15 (b) (i) When a local government exercises the  
16 delegated authority to conduct review pursuant to subsection  
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 shall, within 10 days after  
23 receiving the recommendation of the local government, make a  
24 final decision on the subdivision."

-End-

Approved by Comm.  
on Local Government

HOUSE BILL NO. 81

INTRODUCED BY HURWITZ

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR EXPANDED LOCAL GOVERNMENT REVIEW OF SANITARY REQUIREMENTS FOR SUBDIVISIONS; MODIFYING THE DEFINITION OF A SUBDIVISION; PROVIDING NEW ADMINISTRATIVE AND JUDICIAL REMEDIES; AND AMENDING 76-4-102 THROUGH 76-4-105, 76-4-108, 76-4-109, 76-4-121 THROUGH 76-4-125, AND 76-4-128, MCA."

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~~(4) "Person" means the state, a political subdivision of the state, an institution, a firm, a corporation, a partnership, an individual, or other entity.~~

~~(5) "Public water supply system" or "public sewage disposal system" means, 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.~~

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

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~~(8) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than .20 acre, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of~~

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

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 7 thereof shall show all such parcels, whether contiguous or  
 8 not."

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 12 adoption of sanitary standards, necessary for administration  
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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,  
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 20 type and construction of private water and sewage  
 21 facilities, and other factors affecting public health and  
 22 the quality of water for uses relating to agriculture,  
 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

1 the provisions of 76-4-128:

2 (a) 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†(4) The rules shall further provide for:

9 (a) the furnishing to the department of a copy of the  
 10 plat, 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;

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;

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;

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 7 water systems;

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 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  
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 23 review to the department for deposit in the agency fund  
 24 provided for in 17-2-102. The fees shall be used for review  
 25 of plats and subdivisions based on the complexity of the

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  
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 12 ~~76-4-124 or under the provisions of 76-4-128, the local~~  
 13 ~~governing body shall, within 20 days after receiving an~~  
 14 ~~application under the Montana Subdivision and Platting Act,~~  
 15 ~~distribute the lot fees as determined 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 DOMESTIC 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 a written complaint~~  
 23 ~~alleging 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~~

1 to exist; the department shall issue notice and hold a  
 2 hearing pursuant to the Montana Administrative Procedure  
 3 Act. 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 shall state the provision alleged to be violated,  
 8 the facts alleged to constitute the violation, the  
 9 corrective action which the department requires, and the  
 10 time within which the action is to be taken. For the purpose  
 11 of this part, 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 hearing shall  
 15 be held within a reasonable time.

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

1 part or any rule or order issued under this part is subject  
 2 to a civil penalty not to exceed ~~\$1,000~~ \$500. Each day of  
 3 violation constitutes a separate violation.

4 (2)(3) Action Expenses imposed under subsection (1)  
 5 or (2) does 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  
 8 injunction, the department, if it prevails, is entitled to  
 9 collect a reasonable attorney fee based on the salary of the  
 10 staff attorney representing the department. If the  
 11 department does not prevail, 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 ~~Unt~~ 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 waste,  
 20 that the subdivision is subject to 76-4-128 and has 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,

1 erect any facility for the supply of water or disposal of  
 2 sewage or solid waste, erect any building or shelter in a  
 3 subdivision which requires facilities for the supply of  
 4 water or disposal of sewage or solid waste, or occupy any  
 5 permanent buildings in a subdivision."

6 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 ~~map or~~ plat or subdivision  
 10 certificate of survey showing a subdivision unless it  
 11 complies with the provisions of this part.

12 (2) A county clerk and recorder may not accept a  
 13 subdivision plat or subdivision certificate of survey for  
 14 filing until one of the following conditions has been met:

15 (a) the person wishing to file the plat or subdivision  
 16 certificate of survey has obtained approval of the local  
 17 health officer having jurisdiction and has filed the  
 18 approval with the department, and the department has  
 19 indicated by stamp or certificate that it has approved the  
 20 plat or subdivision certificate of survey and plans and  
 21 specifications and that the subdivision is subject to no  
 22 sanitary restriction whenever department approval is  
 23 necessary; or

24 (b) whenever department approval is not necessary, the  
 25 person 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 76-4-128(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  
 10 adopted pursuant to chapter 1, 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  
 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

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

5 ~~(2) The subdivisions described in 76-4-128 are not~~  
6 ~~subject to sanitary restrictions if the local governing body~~  
7 ~~certifies that the subdivisions here meet the requirements of~~  
8 ~~this part.~~

9 (2)(2)(2) 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 76-4-128, 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 ~~at~~ or  
17 ~~some of the provisions of the subdivision and platting act~~  
18 ~~development plans or land divisions excluded from department~~  
19 ~~review. (1) When a subdivision as defined in this part is~~  
20 ~~excluded from the provisions of 76-3-302 and 76-3-401~~  
21 ~~through 76-3-403, but not 76-3-201, and the subdivision is~~  
22 ~~otherwise subject to the provisions of this part, 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 government where applicable, and the department shall

1 ~~indicate by certificate that it has approved the plans and~~  
2 ~~specifications and that the subdivision is not subject to a~~  
3 ~~sanitary restriction. The plan review by the department or~~  
4 ~~the local government under 76-4-128 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 local government, if it exercises the review authority  
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, or the local government where  
14 applicable, must give final action of finally act on 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 (c) The department, or the local government where  
19 applicable, 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  
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

1 according to the provisions of this part, except that the  
 2 following divisions, ~~unless used to evade the provisions of~~  
 3 ~~this part,~~ are not subject to review by the department:

4 (a) the exclusions cited in 76-3-201 and 76-3-204, ~~as~~  
 5 ~~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

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 ~~DETERMINED BY THE~~  
 23 ~~DEPARTMENT TO BE QUALIFIED~~ to adequately review ~~determine~~  
 24 ~~whether~~ the water supply and sewage and solid waste disposal  
 25 facilities proposed for the subdivision ~~meet the standards~~

1 ~~prescribed by the department;~~ or

2 (b) ~~parcels 10 acres or larger in size when each~~  
 3 ~~parcel will contain individual water and sewage facilities~~  
 4 ~~and the local government has qualified personnel to~~  
 5 ~~adequately determine whether water supply and sewage and~~  
 6 ~~solid waste disposal facilities proposed for the subdivision~~  
 7 ~~meet the standards prescribed by the department.~~

8 (2) ~~Whenever the governing body receives an~~  
 9 ~~application under subsection (1)(b) of this section and the~~  
 10 ~~number of parcels in the proposed subdivision exceeds nine,~~  
 11 ~~the governing body shall notify the department of the~~  
 12 ~~proposed subdivision. If the department determines that the~~  
 13 ~~proposed subdivision may require the preparation of a~~  
 14 ~~preliminary environmental review or an environmental impact~~  
 15 ~~statement under the provisions of the Montana Environmental~~  
 16 ~~Policy Act, the department shall review and approve or~~  
 17 ~~disapprove the proposed subdivision and the provisions of~~  
 18 ~~subsection (1) do not apply.~~

19 (2)(3) ~~When a local government has conducted a review~~  
 20 ~~of a subdivision containing five or fewer parcels pursuant~~  
 21 ~~to this section, described in subsection (1) of this~~  
 22 ~~section, it shall advise the department of its~~  
 23 ~~recommendation for approval or disapproval of the~~  
 24 ~~subdivision, AND IT SHALL SEND TO THE DEPARTMENT~~  
 25 ~~DOCUMENTATION USED IN APPROVAL IMMEDIATELY UPON REVIEW. The~~



1 department shall, within 10 days after receiving the  
2 recommendation of the local government, make a final  
3 decision on the subdivision.

4 (4) When a local government exercises the authority  
5 delegated to it by this section, the local government may  
6 choose to make the final decision on the proposed  
7 subdivision and shall accept legal responsibility for that  
8 decision.

9 (3)(2) (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 an agreement with the local government wherein the  
13 department shall agree to transfer not less than 10 of the  
14 fee per parcel 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 parcels described in  
17 subsection (1) of this section.

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 section, the department shall transfer to the local  
23 government not less than 10 of the fee per parcel collected  
24 pursuant to 76-4-105.

25 (ii) The department shall, within 10 days after

1 receiving the recommendation of the local government, make a  
2 final decision on the subdivision."

-End-

*Mail*

HOUSE BILL NO. 81

INTRODUCED BY MURWITZ

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR EXPANDED LOCAL GOVERNMENT REVIEW OF SANITARY REQUIREMENTS FOR SUBDIVISIONS; MODIFYING THE DEFINITION OF A SUBDIVISION; PROVIDING NEW ADMINISTRATIVE AND JUDICIAL REMEDIES; AND AMENDING 76-4-102 THROUGH 76-4-105, 76-4-108, 76-4-109, 76-4-121 THROUGH 76-4-125, AND 76-4-128, MCA."

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

Section 1. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means department of health and environmental sciences.

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

~~(4) "Person" means the state, a political subdivision of the state, an institution, a firm, a corporation, a partnership, an individual, or other entity.~~

~~(5) "Public water supply system" or "public sewage disposal system" means, 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.~~

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

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

~~(8) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than .20 acre, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of~~

1 size, which provides permanent multiple 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  
12 adoption of sanitary standards, necessary for administration  
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,  
19 groundwater level, distance from lakes, streams, and wells,  
20 type and construction of private water and sewage  
21 facilities, and other factors affecting public health and  
22 the quality of water for uses relating to agriculture,  
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

1 the provisions of 76-4-128:

2 (a) minor subdivisions containing five or fewer  
3 parcels of land where 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)~~(4) The rules shall further provide for:

9 (a) the furnishing to the department of a copy of the  
10 plat, 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;

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;

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."

17 Section 4. Section 76-4-105, MCA, is amended to read:

18 "76-4-105. Lot fees. (1) The department shall adopt  
 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  
 23 review to the department for deposit in the agency fund  
 24 provided for in 17-2-102. The fees shall be used for review  
 25 of plats and subdivisions based on the complexity of the

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~~  
 12 ~~76-4-124 or under the provisions of 76-4-128, the local~~  
 13 ~~governing body shall, within 20 days after receiving an~~  
 14 ~~application under the Montana Subdivision and Platting Act,~~  
 15 ~~distribute the lot fees as determined 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 DOMESTIC 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 a written complaint~~  
 23 ~~alleging 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~~

1 ~~to exist; the department shall issue notice and hold a~~  
 2 ~~hearing pursuant to the Montana Administrative Procedure~~  
 3 ~~Act. 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 shall state the provision alleged to be violated,~~  
 8 ~~the facts alleged to constitute the violation, the~~  
 9 ~~corrective action which the department requires, and the~~  
 10 ~~time within which the action is to be taken. For the purpose~~  
 11 ~~of this part, 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 hearing shall~~  
 15 ~~be held 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 ~~WILLFULLY~~ violating  
 21 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 (2) ~~In addition to the penalty specified in subsection~~  
 25 ~~(1), a person who WILLFULLY violates any provision of this~~

1 ~~part or any rule or order issued under this part is subject~~  
 2 ~~to a civil penalty not to exceed ~~\$1,000~~ \$500. Each day of~~  
 3 ~~violation constitutes a separate violation.~~

4 ~~(3)~~ (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  
 8 injunction, the department, if it prevails, is entitled to  
 9 collect a reasonable attorney fee based on the salary of the  
 10 staff attorney representing the department. If the  
 11 department does not prevail, reasonable attorney fees shall  
 12 be awarded to the prevailing party.

13 ~~(4)~~ (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 waste,  
 20 ~~that the subdivision is subject to 76-4-128 and has 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,

1 erect any facility for the supply of water or disposal of  
 2 sewage or solid waste, erect any building or shelter in a  
 3 subdivision which requires facilities for the supply of  
 4 water or disposal of sewage or solid waste, or occupy any  
 5 permanent buildings in a subdivision."

6 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 map--or plat or subdivision  
 10 certificate of survey showing a subdivision unless it  
 11 complies with the provisions of this part.

12 (2) A county clerk and recorder may not accept a  
 13 subdivision plat or subdivision certificate of survey for  
 14 filing until one of the following conditions has been met:

15 (a) the person wishing to file the plat or subdivision  
 16 certificate of survey has obtained approval of the local  
 17 health officer having jurisdiction and has filed the  
 18 approval with the department, and the department has  
 19 indicated by stamp or certificate that it has approved the  
 20 plat or subdivision certificate of survey and plans and  
 21 specifications and that the subdivision is subject to no  
 22 sanitary restriction whenever department approval is  
 23 necessary; or

24 (b) whenever department approval is not necessary, the  
 25 person 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 76-4-128(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  
 10 adopted pursuant to chapter 1, 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  
 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

1 facilities for the supply of water and disposal of sewage  
 2 and solid waste will be provided for the subdivision as  
 3 provided in 76-4-127. In this case, department approval is  
 4 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 part.~~

9 ~~(2)(2)~~ (2) 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 76-4-128, 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~~  
 18 ~~development plans -- land divisions excluded from department~~  
 19 ~~review. (1) When a subdivision as defined in this part is~~  
 20 ~~excluded from the provisions of 76-3-302 and 76-3-401~~  
 21 ~~through 76-3-403, but not 76-3-201, and the subdivision is~~  
 22 ~~otherwise subject to the provisions of this part, 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 government where applicable end--the--department---shall

1 ~~indicate by certificate that it has approved the plans and~~  
 2 ~~specifications and that the subdivision is not subject to a~~  
 3 ~~sanitary restriction. The plan review by the department or~~  
 4 ~~the local government under 76-4-128 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 local government, if it exercises the review authority  
 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, or the local government where  
 14 applicable, must give ~~final~~ action of finally act on 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 (c) The department, or the local government where  
 19 applicable, 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  
 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

1 according to the provisions of this part, except that the  
2 following divisions, unless used to evade the provisions of  
3 this part, are not subject to review by the department:

4 (a) the exclusions cited in 76-3-201 and 76-3-204, as  
5 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

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 DETERMINED BY THE  
23 DEPARTMENT TO BE QUALIFIED to adequately review determine  
24 whether the water supply and sewage and solid waste disposal  
25 facilities proposed for the subdivision meet the standards

1 prescribed by the department; or

2 (b) parcels 10 acres or larger in size when each  
3 parcel will contain individual water and sewage facilities  
4 and the local government has qualified personnel to  
5 adequately determine whether water supply and sewage and  
6 solid waste disposal facilities proposed for the subdivision  
7 meet the standards prescribed by the department;

8 (2) Whenever the governing body receives an  
9 application under subsection (1)(b) of this section and the  
10 number of parcels in the proposed subdivision exceeds nine,  
11 the governing body shall notify the department of the  
12 proposed subdivision. If the department determines that the  
13 proposed subdivision may require the preparation of a  
14 preliminary environmental review or an environmental impact  
15 statement under the provisions of the Montana Environmental  
16 Policy Act, the department shall review and approve or  
17 disapprove the proposed subdivision and the provisions of  
18 subsection (1) do not apply.

19 (2)(3) When a local government has conducted a review  
20 of a subdivision containing five or fewer parcels pursuant  
21 to ~~this section~~ described in subsection (1) of this  
22 section, it shall advise the department of its  
23 recommendation for approval or disapproval of the  
24 subdivision, AND IT SHALL SEND TO THE DEPARTMENT  
25 DOCUMENTATION USED IN APPROVAL IMMEDIATELY UPON REVIEW. The



1 department shall, within 10 days after receiving the  
 2 recommendation of the local government, make a final  
 3 decision on the subdivision.

4 (4) When a local government exercises the authority  
 5 delegated to it by this section, the local government may  
 6 choose to make the final decision on the proposed  
 7 subdivision and shall accept legal 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 an agreement with the local government wherein the  
 13 department shall agree to transfer not less than \$10 of the  
 14 fee-per-parcel 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 parcels described in  
 17 subsection (1) of this section.

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 section, the department shall transfer to the local  
 23 government not less than \$10 of the fee per parcel collected  
 24 pursuant to 76-4-105.

25 (ii) The department shall, within 10 days after

1 receiving the recommendation of the local government, make a  
 2 final decision on the subdivision."

-End-