

SENATE BILL NO. 140

Introduced: 01/13/83

Referred to Committee on Local Government: 01/13/83

Hearing: 1/25/83

Report: 02/11/83, Do Pass, As Amended.

2nd Reading: 02/14/83

3rd Reading: 2/16/83

Transmitted to House: 2/16/83

Referred to Committee on Natural Resources: 2/16/83

Hearing: 3/14/83

Report: 03/15/83, Be Not Concurred In

Bill Killed: 03/17/83

1 *Senate* BILL NO. 140
2 INTRODUCED BY Stacy Nye McBride Conover
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE REVIEW AND
5 APPROVAL AUTHORITY TO LOCAL GOVERNING BODIES FOR SANITATION
6 REQUIREMENTS IN SUBDIVISIONS PROPOSED IN THEIR
7 JURISDICTIONAL AREAS; AMENDING SECTIONS 76-3-504, 76-4-102,
8 76-4-104 THROUGH 76-4-108, 76-4-121 THROUGH 76-4-125,
9 76-4-127, 76-4-129, AND 76-4-130, MCA; REPEALING SECTION
10 76-4-128, MCA; AND PROVIDING AN EFFECTIVE DATE."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 76-3-504, MCA, is amended to read:
14 "76-3-504. Minimum requirements for subdivision
15 regulations. The subdivision regulations adopted under this
16 chapter shall, at a minimum:
17 (1) require the subdivider to submit to the governing
18 body an environmental assessment as prescribed in 76-3-603;
19 (2) establish procedures consistent with this chapter
20 for the submission and review of subdivision plats;
21 (3) prescribe the form and contents of preliminary
22 plats and the documents to accompany final plats;
23 (4) provide for the identification of areas which,
24 because of natural or man-caused hazards, are unsuitable for
25 subdivision development and prohibit subdivisions in these

1 areas unless the hazards can be eliminated or overcome by
2 approved construction techniques;
3 (5) prohibit subdivisions for building purposes in
4 areas located within the floodway of a flood of 100-year
5 frequency as defined by Title 76, chapter 5, or determined
6 to be subject to flooding by the governing body;
7 (6) prescribe standards for:
8 (a) the design and arrangement of lots, streets, and
9 roads;
10 (b) grading and drainage;
11 (c) water supply and sewage and solid waste disposal
12 which, at a minimum, meet the regulations or standards
13 adopted by the department of health and environmental
14 sciences or the appropriate reviewing authority under
15 76-4-104;
16 (d) the location and installation of utilities;
17 (7) provide procedures for the administration of the
18 park and open-space requirements of this chapter; and
19 (8) provide for the review of preliminary plats by
20 affected public utilities and those agencies of local,
21 state, and federal government having a substantial interest
22 in a proposed subdivision; such utility or agency review may
23 not delay the governing body's action on the plat beyond the
24 time limits specified in this chapter, and the failure of
25 any agency to complete a review of a plat may not be a basis

for rejection of the plat by the governing body."

Section 2. 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) "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.

~~(5) "Reviewing authority" means the governmental unit responsible under 76-4-104 for reviewing and approving a proposed subdivision under this part.~~

~~(5)(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.

~~(6)(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.

~~(7)(8)~~ "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, 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 size, which provides permanent multiple space for recreational camping vehicles or mobile homes."

Section 3. Section 76-4-104, MCA, is amended to read:

~~"76-4-104. Rules-for-administration Administration and enforcement -- rules and standards. (1) The following governmental units shall review and approve or disapprove all subdivision proposals to insure compliance with this part:~~

~~(a) the city or town governing body when the proposed subdivision lies entirely within the boundaries of an incorporated city or town;~~

~~(b) the county governing body when the proposed subdivision lies entirely in an unincorporated area;~~

~~(c) the city or town and the county governing bodies jointly when the proposed subdivision lies partly within an incorporated city or town;~~

~~(d) the department when:~~

~~(i) the local governing body does not have a registered sanitarian on staff or on contract to perform the necessary review under this part;~~

~~(ii) a proposed subdivision will impact more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or~~

~~(iii) the local governing body elects not to perform the review required under this part.~~

~~††(2) The department reviewing authority shall adopt reasonable rules and standards, including adoption of sanitary standards, necessary for administration and enforcement of this part.~~

~~††(3) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, groundwater level, distance from lakes, streams, and wells, type and construction of private~~

water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

~~††(4)~~ The rules and standards shall further provide for:

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

(i) total development area;

(ii) total number of proposed dwelling units;

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

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

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

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

(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

1 applicable;

2 (g) standards and technical procedures applicable to

3 water systems;

4 (h) standards and technical procedures applicable to

5 solid waste disposal;

6 (i) requiring evidence to establish that, if a public

7 sewage disposal system is proposed, provision has been made

8 for the system and, if other methods of sewage disposal are

9 proposed, evidence that the systems will comply with state

10 and local laws and regulations which are in effect at the

11 time of submission of the preliminary or final plan or plat.

12 (5) If the reviewing authority is a local governing

13 body, it shall, upon approval of a subdivision under this

14 part, notify the department of such action and shall submit

15 to the department a copy of the information provided for

16 under subsection (4)a."

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

18 "76-4-105. Lot fees. (1) The department reviewing

19 authority shall adopt reasonable rules setting forth fees,

20 not to exceed \$30 per parcel, for services rendered in the

21 review of plats and subdivisions. The department shall adopt

22 rules shall provide providing for a schedule of fees to be

23 paid by the applicant for plat or subdivision review to the

24 department for deposit in the agency fund provided for in

25 17-2-102. The All fees shall be used for review of plats and

1 subdivisions based on the complexity of the subdivision,

2 including but not limited to:

3 (a) number of lots in the subdivision;

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

5 (c) the type of sewage disposal to serve the

6 development; and

7 (d) the degree of environmental research necessary to

8 supplement the review procedure.

9 ~~(2) The department shall adopt rules to determine the~~

10 ~~distribution of lot fees between the local governing body~~

11 ~~and the department as provided in 76-4-128. When a~~

12 ~~subdivision is reviewed under the master plan provisions of~~

13 ~~76-4-124, the local governing body shall, within 20 days~~

14 ~~after receiving an application under the Montana Subdivision~~

15 ~~and Platting Act, distribute the lot fees as determined by~~

16 ~~this subsection.~~

17 (3) A fee as described in this section is not required

18 for the review of subdivisions in which divisions are made

19 for the purpose of relocating common boundary lines unless

20 the division will result in the installation of additional

21 water supply or sewage disposal facilities."

22 Section 5. Section 76-4-106, MCA, is amended to read:

23 "76-4-106. Cooperation with other governmental

24 agencies. (1) The department reviewing authority may require

25 the use of records of all state, county, and municipal

1 agencies and may seek the assistance of those agencies.

2 (2) State, county, and ~~city~~ municipal officers and
3 employees, including local health officers and sanitarians,
4 shall cooperate with the ~~board and the department~~ reviewing
5 authority in furthering the purposes of this part so far as
6 is practical and consistent with their own duties.

7 ~~(3) Local government units without a registered~~
8 ~~sanitarian to conduct a review under this part may contract~~
9 ~~with another local government unit for the services of its~~
10 ~~registered sanitarian to perform such review."~~

11 Section 6. Section 76-4-107, MCA, is amended to read:

12 "76-4-107. Authority to inspect and monitor. In order
13 to carry out the objectives of this part, to monitor the
14 installation of sewage disposal and water supply systems,
15 and to prevent the occurrence of water pollution problems
16 associated with subdivision development, the ~~department or~~
17 ~~the board~~ reviewing authority, whenever a public water
18 supply or public sewage disposal system is proposed or has
19 been constructed, may:

20 (1) enter upon any public or private property, at
21 reasonable times and after presentation of appropriate
22 credentials by an authorized representative of the
23 department reviewing authority, to inspect such systems in
24 order to assure that the plans and specifications approved
25 for the system have been adhered to and that the provisions

1 of this part, rules, standards, or orders are being
2 satisfied;

3 (2) require as a condition of approval that records
4 concerning the operation of a public sewage disposal or
5 public water supply system be maintained or that monitoring
6 equipment or wells be installed, used, and maintained for
7 the collection of data related to water quality."

8 Section 7. Section 76-4-108, MCA, is amended to read:

9 "76-4-108. Enforcement. (1) If a written complaint
10 alleging violation is made to the department reviewing
11 authority or if the department reviewing authority has
12 reason to believe that a person has violated this part or
13 any rule or standard thereunder and if a violation is found
14 to exist, the department reviewing authority shall issue
15 notice and hold a hearing. If the reviewing authority is the
16 department, the hearing shall be held pursuant to the
17 Montana Administrative Procedure Act.

18 (2) In addition to or instead of issuing an order, the
19 department reviewing authority may initiate appropriate
20 action for injunction or for recovery of penalty as provided
21 in this part."

22 Section 8. Section 76-4-121, MCA, is amended to read:

23 "76-4-121. Restrictions on subdivision activities.
24 Until the local governing body has certified that a
25 subdivision is to be provided with municipal facilities for

1 a supply of water and disposal of sewage and solid waste or
 2 that the ~~department reviewing authority~~ has indicated that
 3 the subdivision is subject to no restrictions, a person may
 4 not file a subdivision plat with a county clerk and
 5 recorder, make disposition of any lot within a subdivision,
 6 erect any facility for the supply of water or disposal of
 7 sewage or solid waste, erect any building or shelter in a
 8 subdivision which requires facilities for the supply of
 9 water or disposal of sewage or solid waste, or occupy any
 10 permanent buildings in a subdivision."

11 Section 9. Section 76-4-122, MCA, is amended to read:

12 "76-4-122. Filing or recording of noncomplying map or
 13 plat prohibited. (1) The county clerk and recorder shall not
 14 file or record any map or plat showing a subdivision unless
 15 it complies with the provisions of this part.

16 (2) A county clerk and recorder may not accept a
 17 subdivision plat for filing until one of the following
 18 conditions has been met:

19 (a) the person wishing to file the plat has obtained
 20 approval of the local health officer having jurisdiction and
 21 has filed the approval with the ~~department reviewing~~
 22 ~~authority~~, and the ~~department reviewing authority~~ has
 23 indicated by stamp or certificate that it has approved the
 24 plat and plans and specifications and that the subdivision
 25 is subject to no sanitary restriction whenever ~~department~~

1 ~~reviewing authority~~ approval is necessary; or

2 (b) whenever ~~department reviewing authority~~ approval
 3 is not necessary, the person wishing to file the plat has
 4 obtained a certificate from the governing body that the
 5 subdivision is inside a master planning area and will be
 6 provided with municipal facilities for the supply of water
 7 and disposal of sewage and solid waste."

8 Section 10. Section 76-4-123, MCA, is amended to read:

9 "76-4-123. ~~Department--review Review~~ and approval
 10 required outside master planning areas. Outside master
 11 planning areas adopted pursuant to chapter 1, a person may
 12 not file a subdivision plat with a county clerk and
 13 recorder, make disposition of a lot within a subdivision,
 14 erect any facility for the supply of water or disposal of
 15 sewage or solid waste, erect a building or shelter in a
 16 subdivision which requires facilities for the supply of
 17 water or disposal of sewage or solid waste, or occupy a
 18 permanent building in a subdivision until the ~~department~~
 19 ~~reviewing authority~~ has indicated that the subdivision is
 20 subject to no sanitary restriction."

21 Section 11. Section 76-4-124, MCA, is amended to read:

22 "76-4-124. Type of review and approval required within
 23 master planning areas. (1) Within master planning areas
 24 adopted pursuant to chapter 1, a subdivision is not subject
 25 to sanitary restrictions when the local governing body

certifies that municipal 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 reviewing authority approval is not necessary.

(2) 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, the person wishing to subdivide must obtain department reviewing authority approval as provided in 76-4-122(2)(a)."

Section 12. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivisions excluded from all or some of the provisions of the subdivision and platting act.

(1) When a subdivision as defined in this part is excluded from the provisions of 76-3-302 and 76-3-401 through 76-3-403, but not 76-3-201, and the subdivision is otherwise subject to the provisions of this part, plans and specifications of the subdivision as defined in this part shall be submitted to the department reviewing authority and the department reviewing authority shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department reviewing authority shall be as follows:

(a) At any time after the developer has submitted an

application under the Montana Subdivision and Platting Act, the developer shall present to the department reviewing authority a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the department reviewing authority.

(b) The department reviewing authority must give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review by the department reviewing authority according to the provisions of this part, except that the following divisions are not subject to review by the department reviewing authority:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel; 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 reviewing authority may specify."

Section 13. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification to department ~~reviewing authority~~ that water and waste services will be provided by local government. (1) When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, send notice of certification to the department ~~reviewing authority~~ that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision.

(2) The notice of certification shall include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat where a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) a copy of the master plan if one has not yet been submitted to the department ~~reviewing authority~~;

(g) the relative location of the subdivision to the

city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued."

Section 14. Section 76-4-129, MCA, is amended to read:

"76-4-129. Joint application form and concurrent review. (1) Within 90 days after ~~July 1, 1977~~ ~~[the effective date of this act]~~, the department ~~each reviewing authority~~ shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity.

(2) The review required by this part and the provisions of chapter 3 shall occur concurrently."

Section 15. Section 76-4-130, MCA, is amended to read:

"76-4-130. Deviation from plans or specifications. A person may not construct or use a facility which deviates from the plans and specifications filed with the department ~~reviewing authority~~ until the department ~~reviewing authority~~ has approved the deviation."

~~NEW SECTION.~~ Section 16. Repealer. Section 76-4-128,

LC 0560/01

- 1 MCA, is repealed.
- 2 ~~NEW SECTION.~~ Section 17. Effective date. This act is
- 3 effective July 1, 1983.

-End-

STATE OF MONTANA

REQUEST NO. 107-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 15, 1983, there is hereby submitted a Fiscal Note for Senate Bill 140 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 140 provides for review and approval authority to local governing bodies for sanitation requirements in proposed subdivisions in their jurisdictional areas and provides for an effective date.

COMMENTS:

Due to the nature of the proposed legislation, it is impossible to accurately predict its fiscal impact. The proposed legislation would allow local jurisdictional units to assume the subdivision review functions of the sanitation in subdivision act if they so desire. At this time DHES has no method of predicting the number of local jurisdictional units that may elect to accept that responsibility. Likewise DHES has no way of predicting the number that will not accept such responsibility, thus leaving that burden with the Department of Health and Environmental Sciences and creating an unknown impact.

LOCAL IMPACT:

For those local governments accepting the responsibility of subdivision review, there will be a significant impact in both revenue and expenditures. However, an accurate estimate of the impact is not possible.

FISCAL NOTE 4:P/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-18-83

1 STATEMENT OF INTENT

2 SENATE BILL 140

3
4 A statement of intent is required because this bill
5 modifies existing rulemaking authority in sections 4 and 5.
6 Section 4 will require the department of health and
7 environmental sciences to make a new rule setting out how it
8 will certify local governments as competent to review
9 proposed subdivisions. Criteria for certification should be
10 limited to the availability to the unit of registered
11 sanitarians or registered professional engineers, either on
12 staff or by contract. Qualifications should include
13 registration with state licensing authorities and a
14 reasonable amount of experience, not more than the
15 department would require in hiring such persons to perform
16 these duties on its staff. Contractual arrangements may be
17 with other units of local government or with consultants
18 having no conflicts of interest.

19 Section 4 also adds the words "or standards" after
20 "rules". This is not intended to broaden authority or to
21 affect the substance of present rules adopted by the
22 department in ARM 16, chapter 16, except as the bill
23 otherwise limits the application of these rules by the
24 department to those subdivisions where the department
25 retains reviewing authority.

1 Section 5 of the bill will require the department to
2 amend ARM 16.16.804, Disposition of Fees, to reflect that
3 the local government receives and keeps the entire fee when
4 it is the reviewing authority, and that the department
5 receives and keeps the entire fee, as provided in the new
6 second sentence of 76-4-105, when it is the reviewing
7 authority.

Approved by Comm.
on Local Government

SENATE BILL NO. 140

INTRODUCED BY STORY, MARKS,

MCCALLUM, CONOVER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE REVIEW AND APPROVAL AUTHORITY TO LOCAL GOVERNING BODIES FOR SANITATION REQUIREMENTS IN SUBDIVISIONS PROPOSED IN THEIR JURISDICTIONAL AREAS; AMENDING SECTIONS 76-3-504 ~~75-6-112,~~ 76-4-102, 76-4-104 THROUGH 76-4-108, 76-4-121 THROUGH 76-4-125, 76-4-127, 76-4-129, AND 76-4-130, MCA; REPEALING SECTION 76-4-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

~~Section 75-6-112, MCA, is amended to read:~~

~~"76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:~~

~~(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;~~

~~(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;~~

~~(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;~~

~~(4) provide for the identification of areas which because of natural or man-caused hazards are unsuitable for~~

~~subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;~~

~~(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by title 76, chapter 5, or determined to be subject to flooding by the governing body;~~

~~(6) prescribe standards for:~~

~~(a) the design and arrangement of lots, streets, and roads;~~

~~(b) grading and drainage;~~

~~(c) water supply and sewage and solid waste disposal which, at a minimum, meet the regulations or standards adopted by the department of health and environmental sciences or the appropriate reviewing authority under 76-4-104;~~

~~(d) the location and installation of utilities;~~

~~(7) provide procedures for the administration of the park and open space requirements of this chapter; and~~

~~(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of~~

~~any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."~~

SECTION 1. SECTION 75-6-112, MCA, IS AMENDED TO READ:

"75-6-112. Prohibited acts. A person shall not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) construct, alter, or extend any system of water supply, water distribution, sewer, drainage, wastewater, or sewage disposal without first submitting necessary maps, plans, and specifications to the department or appropriate

reviewing authority certified by the department under 76-4-104 for its review and approval;

(5) operate or maintain any public water supply system which exceeds a maximum contaminant level established by the board unless he has been granted or has an application pending for a variance or exemption pursuant to this part."

Section 2. 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) "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.

(5) "REGISTERED SANITARIAN" MEANS A PERSON LICENSED TO

PRACTICE AS A SANITARIAN UNDER TITLE 37, CHAPTER 40.

~~(6)~~ "REGISTERED PROFESSIONAL ENGINEER" MEANS A PERSON LICENSED TO PRACTICE AS A PROFESSIONAL ENGINEER UNDER TITLE 37, CHAPTER 47.

~~(5)(7)~~ "Reviewing authority" means the governmental unit responsible under 76-4-104 for reviewing and approving a proposed subdivision under this part.

~~(5)(6)(8)~~ "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.

~~(6)(7)(9)~~ "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.

~~(7)(8)(10)~~ "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, 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 size, which provides permanent multiple space for

recreational camping vehicles or mobile homes."

Section 3. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules-for-administration Administration and enforcement -- rules and standards. (1) IF THE GOVERNING BODY OR BODIES HAVE BEEN CERTIFIED BY THE DEPARTMENT AS COMPETENT TO REVIEW A SUBDIVISION OF THE NUMBER OF UNITS PROPOSED, THE following governmental units shall review and approve or disapprove all subdivision proposals to insure compliance with this part:

(a) the city or town governing body when the proposed subdivision lies entirely within the boundaries of an incorporated city or town;

(b) the county governing body when the proposed subdivision lies entirely in an unincorporated area;

(c) the city or town and the county governing bodies jointly when the proposed subdivision lies partly within an incorporated city or town;

(d) the department when:

(i) the local governing body does not have a registered sanitarian on staff or on contract to perform the necessary review under this part HAS NOT BEEN CERTIFIED BY THE DEPARTMENT AS COMPETENT TO REVIEW A SUBDIVISION OF THE NUMBER OF UNITS PROPOSED;

(ii) a proposed subdivision will impact more than one jurisdictional area and the respective governing bodies are

1 ~~in disagreement concerning approval of or conditions to be~~
2 ~~imposed on the proposed subdivision; or~~

3 ~~(iii) the local governing body elects not to perform~~
4 ~~the review required under this part.~~

5 ~~(1) (2) The department reviewing--authority DEPARTMENT~~
6 ~~shall adopt reasonable rules and standards, including~~
7 ~~adoption of sanitary standards, necessary for administration~~
8 ~~and enforcement of this part. THE DEPARTMENT SHALL ALSO~~
9 ~~ESTABLISH AND ADOPT STANDARDS AND PROCEDURES FOR CERTIFYING~~
10 ~~A GOVERNING BODY AS COMPETENT TO REVIEW A SUBDIVISION OF A~~
11 ~~SPECIFIED NUMBER OF UNITS OR TO REVIEW SPECIFICATIONS OF~~
12 ~~CONSTRUCTION, ALTERATION, OR EXTENSION OF A WATER SUPPLY OR~~
13 ~~WASTEWATER SYSTEM UNDER SUBSECTION (4) OF 75-6-112, OR BOTH.~~

14 ~~(2) (3) The rules and standards shall provide the basis~~
15 ~~for approving subdivision plats for various types of water,~~
16 ~~sewage facilities, and solid waste disposal, both public and~~
17 ~~private, and shall be related to size of lots, contour of~~
18 ~~land, porosity of soil, groundwater level, distance from~~
19 ~~lakes, streams, and wells, type and construction of private~~
20 ~~water and sewage facilities, and other factors affecting~~
21 ~~public health and the quality of water for uses relating to~~
22 ~~agriculture, industry, recreation, and wildlife.~~

23 ~~(3) (4) The rules and standards shall further provide~~
24 ~~for:~~

25 ~~(a) the furnishing to the department reviewing~~

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

3 (i) total development area;

4 (ii) total number of proposed dwelling units;

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

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

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

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

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

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

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

25 (i) requiring evidence to establish that, if a public

sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(5) If the reviewing authority is a local governing body, it shall, upon approval of a subdivision under this part, notify the department of such action and shall submit to the department a copy of the information provided for under subsection (4)."

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

"76-4-105. Lot fees. (1) The department reviewing authority shall adopt reasonable ~~rules setting forth~~ fees, not to exceed \$30 per parcel, for services rendered in the review of plats and subdivisions. ~~The department shall adopt rules shall provide providing~~ for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund provided for in 17-2-102. ~~The~~ All fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

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

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

~~(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 28 days after receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.~~

~~(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.~~"

Section 5. Section 76-4-106, MCA, is amended to read:

"76-4-106. Cooperation with other governmental agencies. (1) The department reviewing authority may require the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and city municipal officers and employees, including local health officers and sanitarians, shall cooperate with the ~~board and the department reviewing~~ authority in furthering the purposes of this part so far as is practical and consistent with their own duties.

(1) ~~Local government units without a registered sanitarian OR REGISTERED PROFESSIONAL ENGINEER to conduct a review under this part may contract with another local government unit for the services of its registered sanitarian OR REGISTERED PROFESSIONAL ENGINEER to perform such review.~~

Section 6. Section 76-4-107, MCA, is amended to read:

"76-4-107. Authority to inspect and monitor. In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the department or the board reviewing authority, whenever a public water supply or public sewage disposal system is proposed or has been constructed, may:

(1) enter upon any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the department reviewing authority, to inspect such systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, standards, or orders are being satisfied;

(2) require as a condition of approval that records concerning the operation of a public sewage disposal or

public water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality."

Section 7. Section 76-4-108, MCA, is amended to read:

"76-4-108. Enforcement. (1) If a written complaint alleging violation is made to the department reviewing authority or if the department reviewing authority has reason to believe that a person has violated this part or any rule or standard thereunder and if a violation is found to exist, the department reviewing authority shall issue notice and hold a hearing. ~~If the reviewing authority is the department, the hearing shall be held~~ pursuant to the Montana Administrative Procedure Act.

(2) In addition to or instead of issuing an order, the department reviewing authority may initiate appropriate action for injunction or for recovery of penalty as provided in this part."

Section 8. Section 76-4-121, MCA, is amended to read:

"76-4-121. Restrictions on subdivision activities. Until the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste or that the department reviewing authority has indicated that the subdivision is subject to no restrictions, a person may not file a subdivision plat with a county clerk and

recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision."

Section 9. 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 not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

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

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department reviewing authority, and the department reviewing authority has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction whenever department reviewing authority approval is necessary; or

(b) whenever department reviewing authority approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the

subdivision is inside a master planning area and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste."

Section 10. Section 76-4-123, MCA, is amended to read:

"76-4-123. Department---review Review and approval required outside master planning areas. Outside master planning areas adopted pursuant to chapter 1, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the department reviewing authority has indicated that the subdivision is subject to no sanitary restriction."

Section 11. Section 76-4-124, MCA, is amended to read:

"76-4-124. Type of review and approval required within master planning areas. (1) Within master planning areas adopted pursuant to chapter 1, a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal 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 reviewing authority approval is not necessary.

1 (2) To the extent that municipal facilities for the
2 supply of water or disposal of sewage or solid waste are not
3 to be provided for a subdivision as certified to by the
4 governing body, the person wishing to subdivide must obtain
5 department reviewing__authority approval as provided in
6 76-4-122(2)(a)."

7 Section 12. Section 76-4-125, MCA, is amended to read:
8 "76-4-125. Review of subdivisions excluded from all or
9 some of the provisions of the subdivision and platting act.

10 (1) When a subdivision as defined in this part is excluded
11 from the provisions of 76-3-302 and 76-3-401 through
12 76-3-403, but not 76-3-201, and the subdivision is otherwise
13 subject to the provisions of this part, plans and
14 specifications of the subdivision as defined in this part
15 shall be submitted to the department reviewing__authority and
16 the department reviewing__authority shall indicate by
17 certificate that it has approved the plans and
18 specifications and that the subdivision is not subject to a
19 sanitary restriction. The plan review by the department
20 reviewing__authority shall be as follows:

21 (a) At any time after the developer has submitted an
22 application under the Montana Subdivision and Platting Act,
23 the developer shall present to the department reviewing
24 authority a preliminary plan of the proposed development,
25 whatever information the developer feels necessary for its

1 subsequent review, and information required by the
2 department reviewing__authority.

3 (b) The department reviewing__authority must give final
4 action of the proposed plan within 60 days unless an
5 environmental impact statement is required, at which time
6 this deadline may be increased to 120 days.

7 (2) A subdivision excluded from the provisions of
8 chapter 3 shall be submitted for review by the department
9 reviewing__authority according to the provisions of this
10 part, except that the following divisions are not subject to
11 review by the department reviewing__authority:

12 (a) the exclusions cited in 76-3-201 and 76-3-204;

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

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

22 SECTION 13. SECTION 76-4-126, MCA, IS AMENDED TO READ:

23 "76-4-126. Right to hearing. (1) Upon denial of
24 approval of subdivision plans and specifications relating to
25 environmental health facilities, the person who is aggrieved

1 by such denial may request a hearing before the board.

2 ~~(2) If denial of approval has been by the local~~
3 ~~governing body, the person who is aggrieved by such denial~~
4 ~~may request a hearing before the department.~~

5 (3) Such hearings will be held pursuant to the Montana
6 Administrative Procedure Act."

7 Section 14. Section 76-4-127, MCA, is amended to read:

8 "76-4-127. Notice of certification to department
9 reviewing authority that water and waste services will be
10 provided by local government. (1) When a subdivision is
11 reviewed under the master plan provisions of 76-4-124, the
12 local governing body shall, within 20 days after receiving
13 an application under the Montana Subdivision and Platting
14 Act, send notice of certification to the department
15 reviewing authority that a subdivision has been submitted
16 for approval and that municipal facilities for the supply of
17 water and disposal of sewage and solid waste will be
18 provided for the subdivision.

19 (2) The notice of certification shall include the
20 following:

21 (a) the name and address of the applicant;

22 (b) a copy of the preliminary plat or a final plat
23 where a preliminary plat is not necessary;

24 (c) the number of proposed parcels in the subdivision;

25 (d) a copy of any applicable zoning ordinances in

1 effect;

2 (e) how construction of the sewage disposal and water
3 supply systems or extensions will be financed;

4 (f) a copy of the master plan if one has not yet been
5 submitted to the department reviewing authority;

6 (g) the relative location of the subdivision to the
7 city or town; and

8 (h) certification that adequate municipal facilities
9 for the supply of water and disposal of sewage and solid
10 waste are available or will be provided within 1 year after
11 the notice of certification is issued."

12 Section 15. Section 76-4-129, MCA, is amended to read:

13 "76-4-129. Joint application form and concurrent
14 review. (1) Within 90 days after July 27, 1977 ~~[the effective~~
15 ~~date of this act]~~, the department ~~each reviewing authority~~
16 shall prepare and distribute a joint application form that
17 can be used by an applicant to apply for approval of a
18 subdivision under the provisions of this part and the
19 provisions of chapter 3. When an application is received by
20 either the department or a local government, the department
21 or local government is responsible for forwarding the
22 appropriate parts of the application to the other entity.

23 (2) The review required by this part and the
24 provisions of chapter 3 shall occur concurrently."

25 Section 16. Section 76-4-130, MCA, is amended to read:

1 "76-4-130. Deviation from plans or specifications. A
2 person may not construct or use a facility which deviates
3 from the plans and specifications filed with the department
4 ~~reviewing authority~~ until the department ~~reviewing authority~~
5 has approved the deviation."

6 NEW_SECTION. Section 17. Repealer. Section 76-4-128,
7 MCA, is repealed.

8 NEW_SECTION. Section 18. Effective date. This act is
9 effective July 1, 1983.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 140

3
4 A statement of intent is required because this bill
5 modifies existing rulemaking authority in sections 4 and 5.
6 Section 4 will require the department of health and
7 environmental sciences to make a new rule setting out how it
8 will certify local governments as competent to review
9 proposed subdivisions. Criteria for certification should be
10 limited to the availability to the unit of registered
11 sanitarians or registered professional engineers, either on
12 staff or by contract. Qualifications should include
13 registration with state licensing authorities and a
14 reasonable amount of experience, not more than the
15 department would require in hiring such persons to perform
16 these duties on its staff. Contractual arrangements may be
17 with other units of local government or with consultants
18 having no conflicts of interest.

19 Section 4 also adds the words "or standards" after
20 "rules". This is not intended to broaden authority or to
21 affect the substance of present rules adopted by the
22 department in ARM 16, chapter 16, except as the bill
23 otherwise limits the application of these rules by the
24 department to those subdivisions where the department
25 retains reviewing authority.

1 Section 5 of the bill will require the department to
2 amend ARM 16.16.804, Disposition of Fees, to reflect that
3 the local government receives and keeps the entire fee when
4 it is the reviewing authority, and that the department
5 receives and keeps the entire fee, as provided in the new
6 second sentence of 76-4-105, when it is the reviewing
7 authority.

SENATE BILL NO. 140
INTRODUCED BY STORY, MARKS,
MCCALLUM, CONOVER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE REVIEW AND APPROVAL AUTHORITY TO LOCAL GOVERNING BODIES FOR SANITATION REQUIREMENTS IN SUBDIVISIONS PROPOSED IN THEIR JURISDICTIONAL AREAS; AMENDING SECTIONS 76-3-504 ~~75-6-112~~, 76-4-102, 76-4-104 THROUGH 76-4-108, 76-4-121 THROUGH 76-4-125, 76-4-127, 76-4-129, AND 76-4-130, MCA; REPEALING SECTION 76-4-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

~~Section 14--Section 76-3-504, MCA, is amended to read:~~

~~"76-3-504--Minimum--requirements--for--subdivision regulations--The subdivision regulations adopted under this chapter shall, at a minimum:~~

~~(1)--require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;~~

~~(2)--establish procedures consistent with this chapter for the submission and review of subdivision plats;~~

~~(3)--prescribe the form and contents of preliminary plats and the documents to accompany final plats;~~

~~(4)--provide for the identification of areas which because of natural or man-caused hazards, are unsuitable for~~

~~subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;~~

~~(5)--prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, or determined to be subject to flooding by the governing body;~~

~~(6)--prescribe standards for:~~

~~(a)--the design and arrangement of lots, streets, and roads;~~

~~(b)--grading and drainage;~~

~~(c)--water supply and sewage and solid waste disposal~~

~~which, at a minimum, meet the regulations or standards adopted by the department of health and environmental sciences as the appropriate reviewing authority under 76-4-104;~~

~~(d)--the location and installation of utilities;~~

~~(f)--provide procedures for the administration of the park and open space requirements of this chapter; and~~

~~(g)--provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of~~

~~any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."~~

~~SECTION 1. SECTION 75-6-112, MCA, IS AMENDED TO READ:~~

~~"75-6-112. Prohibited acts. A person shall not:~~

~~(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;~~

~~(2) discharge sewage, drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;~~

~~(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:~~

~~(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and~~

~~(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;~~

~~(4) construct, alter, or extend any system of water supply, water distribution, sewer, drainage, wastewater, or sewage disposal without first submitting necessary maps, plans, and specifications to the department or appropriate~~

~~reviewing authority certified by the department under 76-4-104 for its review and approval;~~

~~(5) operate or maintain any public water supply system which exceeds a maximum contaminant level established by the board unless he has been granted or has an application pending for a variance or exemption pursuant to this part."~~

~~Section 2. 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) "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.~~

~~(5) "REGISTERED SANITARIAN" MEANS A PERSON LICENSED TO~~

PRACTICE AS A SANITARIAN UNDER TITLE 37, CHAPTER 40.

(61) "REGISTERED PROFESSIONAL ENGINEER" MEANS A PERSON LICENSED TO PRACTICE AS A PROFESSIONAL ENGINEER UNDER TITLE 37, CHAPTER 67.

(51)(7) "Reviewing authority" means the governmental unit responsible under 76-4-104 for reviewing and approving a proposed subdivision under this part.

(5)(61)(8) "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.

(6)(7)(9) "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.

(7)(8)(10) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, 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 size, which provides permanent multiple space for

recreational camping vehicles or mobile homes."

Section 3. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules-for-administration Administration and enforcement -- rules and standards. (1) IF THE GOVERNING BODY OR BODIES HAVE BEEN CERTIFIED BY THE DEPARTMENT AS COMPETENT TO REVIEW A SUBDIVISION OF THE NUMBER OF UNITS PROPOSED, THE following governmental units shall review and approve or disapprove all subdivision proposals to insure compliance with this part:

(a) the city or town governing body when the proposed subdivision lies entirely within the boundaries of an incorporated city or town;

(b) the county governing body when the proposed subdivision lies entirely in an unincorporated area;

(c) the city or town and the county governing bodies jointly when the proposed subdivision lies partly within an incorporated city or town;

(d) the department when:

(i) the local governing body does not have a registered sanitarian on staff or on contract to perform the necessary review under this part HAS NOT BEEN CERTIFIED BY THE DEPARTMENT AS COMPETENT TO REVIEW A SUBDIVISION OF THE NUMBER OF UNITS PROPOSED;

(ii) a proposed subdivision will impact more than one jurisdictional area and the respective governing bodies are

1 ~~in disagreement concerning approval of or conditions to be~~
 2 ~~imposed on the proposed subdivision; or~~
 3 ~~(iii) the local governing body elects not to perform~~
 4 ~~the review required under this part.~~

5 ~~{1}(2) The department reviewing--authority~~ DEPARTMENT
 6 shall adopt reasonable rules and standards, including
 7 adoption of sanitary standards, necessary for administration
 8 and enforcement of this part. ~~THE DEPARTMENT SHALL ALSO~~
 9 ~~ESTABLISH AND ADOPT STANDARDS AND PROCEDURES FOR CERTIFYING~~
 10 ~~A GOVERNING BODY AS COMPETENT TO REVIEW A SUBDIVISION OF A~~
 11 ~~SPECIFIED NUMBER OF UNITS OR TO REVIEW SPECIFICATIONS OF~~
 12 ~~CONSTRUCTION, ALTERATION, OR EXTENSION OF A WATER SUPPLY OR~~
 13 ~~WASTEWATER SYSTEM UNDER SUBSECTION (4) OF 75-6-112, OR BOTH.~~

14 ~~{2}(3) The rules and standards shall provide the basis~~
 15 for approving subdivision plats for various types of water,
 16 sewage facilities, and solid waste disposal, both public and
 17 private, and shall be related to size of lots, contour of
 18 land, porosity of soil, groundwater level, distance from
 19 lakes, streams, and wells, type and construction of private
 20 water and sewage facilities, and other factors affecting
 21 public health and the quality of water for uses relating to
 22 agriculture, industry, recreation, and wildlife.

23 ~~{3}(4) The rules and standards shall further provide~~
 24 for:

25 (a) the furnishing to the department ~~reviewing~~

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

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

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

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

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

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

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

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

25 (i) requiring evidence to establish that, if a public

sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

(5) If the reviewing authority is a local governing body, it shall, upon approval of a subdivision under this part, notify the department of such action and shall submit to the department a copy of the information provided for under subsection (4)."

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

"76-4-105. Lot fees. (1) The department reviewing authority shall adopt reasonable rates ~~setting forth~~ fees, not to exceed \$30 per parcel, for services rendered in the review of plats and subdivisions. The department shall adopt rules ~~shall provide~~ providing for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund provided for in 17-2-102. The ~~All~~ fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

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

(c) the type of sewage disposal to serve the development; and

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

~~(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.~~

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(2) State, county, and city municipal officers and employees, including local health officers and sanitarians, shall cooperate with the ~~board and the department~~ reviewing authority in furthering the purposes of this part so far as is practical and consistent with their own duties.

1 ~~(1) Local government units without a registered~~
 2 ~~sanitarian OR REGISTERED PROFESSIONAL ENGINEER to conduct a~~
 3 ~~review under this part may contract with another local~~
 4 ~~government unit for the services of its registered~~
 5 ~~sanitarian OR REGISTERED PROFESSIONAL ENGINEER to perform~~
 6 ~~such review."~~

7 Section 6. Section 76-4-107, MCA, is amended to read:

8 "76-4-107. Authority to inspect and monitor. In order
 9 to carry out the objectives of this part, to monitor the
 10 installation of sewage disposal and water supply systems,
 11 and to prevent the occurrence of water pollution problems
 12 associated with subdivision development, the department or
 13 the board reviewing authority, whenever a public water
 14 supply or public sewage disposal system is proposed or has
 15 been constructed, may:

16 (1) enter upon any public or private property, at
 17 reasonable times and after presentation of appropriate
 18 credentials by an authorized representative of the
 19 department reviewing authority, to inspect such systems in
 20 order to assure that the plans and specifications approved
 21 for the system have been adhered to and that the provisions
 22 of this part, rules, standards, or orders are being
 23 satisfied;

24 (2) require as a condition of approval that records
 25 concerning the operation of a public sewage disposal or

1 public water supply system be maintained or that monitoring
 2 equipment or wells be installed, used, and maintained for
 3 the collection of data related to water quality."

4 Section 7. Section 76-4-108, MCA, is amended to read:

5 "76-4-108. Enforcement. (1) If a written complaint
 6 alleging violation is made to the department reviewing
 7 authority or if the department reviewing authority has
 8 reason to believe that a person has violated this part or
 9 any rule or standard thereunder and if a violation is found
 10 to exist, the department reviewing authority shall issue
 11 notice and hold a hearing. ~~If the reviewing authority is the~~
 12 ~~department, the hearing shall be held~~ pursuant to the
 13 Montana Administrative Procedure Act.

14 (2) In addition to or instead of issuing an order, the
 15 department reviewing authority may initiate appropriate
 16 action for injunction or for recovery of penalty as provided
 17 in this part."

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19 "76-4-121. Restrictions on subdivision activities.
 20 Until the local governing body has certified that a
 21 subdivision is to be provided with municipal facilities for
 22 a supply of water and disposal of sewage and solid waste or
 23 that the department reviewing authority has indicated that
 24 the subdivision is subject to no restrictions, a person may
 25 not file a subdivision plat with a county clerk and

recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision."

Section 9. 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 not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

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

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department reviewing authority, and the department reviewing authority has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction whenever department reviewing authority approval is necessary; or

(b) whenever department reviewing authority approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the

subdivision is inside a master planning area and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste."

Section 10. Section 76-4-123, MCA, is amended to read:

"76-4-123. Department---review Review and approval required outside master planning areas. Outside master planning areas adopted pursuant to chapter 1, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the department reviewing authority has indicated that the subdivision is subject to no sanitary restriction."

Section 11. Section 76-4-124, MCA, is amended to read:

"76-4-124. Type of review and approval required within master planning areas. (1) Within master planning areas adopted pursuant to chapter 1, a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal 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 reviewing authority approval is not necessary.

(2) 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, the person wishing to subdivide must obtain department reviewing authority approval as provided in 76-4-122(2)(a)."

Section 12. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivisions excluded from all or some of the provisions of the subdivision and platting act.

(1) When a subdivision as defined in this part is excluded from the provisions of 76-3-302 and 76-3-401 through 76-3-403, but not 76-3-201, and the subdivision is otherwise subject to the provisions of this part, plans and specifications of the subdivision as defined in this part shall be submitted to the department reviewing authority and the department reviewing authority shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department reviewing authority shall be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the department reviewing authority a preliminary plan of the proposed development, whatever information the developer feels necessary for its

subsequent review, and information required by the department reviewing authority.

(b) The department reviewing authority must give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review by the department reviewing authority according to the provisions of this part, except that the following divisions are not subject to review by the department reviewing authority:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel; 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~~ reviewing authority may specify."

~~SECTION 13. SECTION 76-4-126, MCA, IS AMENDED TO READ:~~

"76-4-126. Right to hearing. (1) Upon denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved

1 by such denial may request a hearing before the board.

2 ~~(2) If denial of approval has been by the local~~
3 ~~governing body, the person who is aggrieved by such denial~~
4 ~~may request a hearing before the department.~~

5 (3) Such hearings will be held pursuant to the Montana
6 Administrative Procedure Act."

7 Section 14. Section 76-4-127, MCA, is amended to read:

8 "76-4-127. Notice of certification to department
9 ~~reviewing authority~~ that water and waste services will be
10 provided by local government. (1) When a subdivision is
11 reviewed under the master plan provisions of 76-4-124, the
12 local governing body shall, within 20 days after receiving
13 an application under the Montana Subdivision and Platting
14 Act, send notice of certification to the department
15 ~~reviewing authority~~ that a subdivision has been submitted
16 for approval and that municipal facilities for the supply of
17 water and disposal of sewage and solid waste will be
18 provided for the subdivision.

19 (2) The notice of certification shall include the
20 following:

- 21 (a) the name and address of the applicant;
- 22 (b) a copy of the preliminary plat or a final plat
- 23 where a preliminary plat is not necessary;
- 24 (c) the number of proposed parcels in the subdivision;
- 25 (d) a copy of any applicable zoning ordinances in

1 effect;

2 (e) how construction of the sewage disposal and water
3 supply systems or extensions will be financed;

4 (f) a copy of the master plan if one has not yet been
5 submitted to the department ~~reviewing authority~~;

6 (g) the relative location of the subdivision to the
7 city or town; and

8 (h) certification that adequate municipal facilities
9 for the supply of water and disposal of sewage and solid
10 waste are available or will be provided within 1 year after
11 the notice of certification is issued."

12 Section 15. Section 76-4-129, MCA, is amended to read:

13 "76-4-129. Joint application form and concurrent
14 review. (1) Within 90 days after ~~July 1, 1977~~ [the effective
15 date of this act], the department ~~each reviewing authority~~
16 shall prepare and distribute a joint application form that
17 can be used by an applicant to apply for approval of a
18 subdivision under the provisions of this part and the
19 provisions of chapter 3. When an application is received by
20 either the department or a local government, the department
21 or local government is responsible for forwarding the
22 appropriate parts of the application to the other entity.

23 (2) The review required by this part and the
24 provisions of chapter 3 shall occur concurrently."

25 Section 16. Section 76-4-130, MCA, is amended to read:

1 "76-4-130. Deviation from plans or specifications. A
2 person may not construct or use a facility which deviates
3 from the plans and specifications filed with the department
4 reviewing authority until the department reviewing authority
5 has approved the deviation."

6 ~~NEW_SECTION.~~ Section 17. Repealer. Section 76-4-128,
7 MCA, is repealed.

8 ~~NEW_SECTION.~~ Section 18. Effective date. This act is
9 effective July 1, 1983.

-End-