

SENATE BILL NO. 415

INTRODUCED BY HARDING, GAGE, ANDERSON,
REHBERG, NEUMAN, PINSONEAULT

IN THE SENATE

February 14, 1985	Introduced and referred to Committee on Local Government. Fiscal Note requested.
February 20, 1985	Fiscal Note returned.
February 23, 1985	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
February 25, 1985	Bill printed and placed on members' desks.
February 26, 1985	Second reading, do pass. Considered correctly engrossed.
February 27, 1985	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 7, 1985	Introduced and referred to Committee on Natural Resources.
March 25, 1985	Committee recommend bill be concurrred in. Report adopted.
March 26, 1985	Motion pass consideration.
March 30, 1985	Second reading, concurrred in.
April 1, 1985	Third reading, concurrred in. Returned to Senate.

IN THE SENATE

April 1, 1985

Received from House.

April 2, 1985

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *415*
 2 INTRODUCED BY *Harding (H), Anderson, Redberg*
 3 *Norman Russell*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN OPTION FOR
 5 LOCAL DEPARTMENTS OR BOARDS OF HEALTH TO REVIEW CERTAIN
 6 SUBDIVISIONS; PROVIDING ADDITIONAL ADMINISTRATIVE AND
 7 JUDICIAL REMEDIES; AMENDING SECTIONS 76-4-102, 76-4-104
 8 THROUGH 76-4-109, 76-4-121 THROUGH 76-4-128, AND 76-4-130,
 9 MCA; AND PROVIDING AN EFFECTIVE DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

13 "76-4-102. Definitions. As used in this part, unless
 14 the context clearly indicates otherwise, the following words
 15 or phrases have the following meanings:

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

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

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

25 (4) "Public water supply system" or "public sewage

1 disposal system" means, respectively, a water supply or
 2 sewage disposal system that serves 10 or more families or 25
 3 or more persons for at least 60 days out of the calendar
 4 year.

5 (5) "Registered professional engineer" means a person
 6 licensed to practice as a professional engineer under Title
 7 37, chapter 67.

8 (6) "Registered sanitarian" means a person licensed to
 9 practice as a sanitarian under Title 37, chapter 40.

10 (7) "Reviewing authority" means the department or a
 11 local department or board of health certified to conduct
 12 review under 76-4-104.

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

20 (9) "Solid wastes" means all putrescible and
 21 nonputrescible solid wastes (except body wastes), including
 22 garbage, rubbish, street cleanings, dead animals, yard
 23 clippings, and solid market and solid industrial wastes.

24 (10) "Subdivision" means a division of land or land
 25 so divided which creates one or more parcels containing less



1 than 20 acres, exclusive of public roadways, in order that
2 the title to or possession of the parcels may be sold,
3 rented, leased, or otherwise conveyed and includes any
4 resubdivision and any condominium or area, regardless of
5 size, which provides permanent multiple space for
6 recreational camping vehicles or mobile homes."

7 Section 2. Section 76-4-104, MCA, is amended to read:
8 "76-4-104. Rules for administration and enforcement.

9 (1) The department shall adopt reasonable rules, including
10 adoption of sanitary standards, necessary for administration
11 and enforcement of this part.

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

21 (3) The rules shall provide for the review of the
22 following divisions of land by a local department or board
23 of health, as described in Title 50, chapter 2, part 1, if
24 the local department or board of health employs a registered
25 sanitarian or a registered professional engineer and if the

1 department certifies under subsection (4) that the local
2 department or board is competent to review these divisions
3 of land:

4 (a) divisions of land containing five or fewer
5 parcels, whenever each parcel will contain individual onsite
6 water and sewage disposal facilities; and

7 (b) divisions of land proposed to connect to public or
8 community water and waste water systems previously approved
9 by the department, if no extension of the systems is
10 required.

11 (4) The department shall also adopt standards and
12 procedures for certification and maintaining certification
13 to ensure that a local department or board of health is
14 competent to review the divisions of land described in
15 subsection (3).

16 (5) The department shall review those divisions of
17 land described in subsection (3) if:

18 (a) a proposed division of land lies within more than
19 one jurisdictional area and the respective governing bodies
20 are in disagreement concerning approval of or conditions to
21 be imposed on the proposed subdivision; or

22 (b) the local department or board of health elects not
23 to be certified.

24 {3}(6) The rules shall further provide 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

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

6 (7) If the reviewing authority is a local department
7 or board of health, it shall, upon approval of a division of
8 land under this part, notify the department of the approval
9 and submit to the department a copy of the approval
10 statement."

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

12 "76-4-105. Lot fees. (1) The department reviewing
13 authority shall adopt reasonable rules setting forth fees,
14 not to exceed \$48 per parcel, for services rendered in the
15 review of plats and subdivisions. The rules shall provide
16 for a schedule of fees to be paid by the applicant for plat
17 or subdivision review to the department for deposit in the
18 state special revenue fund provided for in 17-2-102 or, if
19 applicable, to another reviewing authority for deposit in
20 the general fund of the reviewing authority's jurisdiction.
21 The fees shall be used for review of plats and subdivisions
22 based on the complexity of the subdivision, including but
23 not limited to:

- 24 (a) number of lots in the subdivision;
- 25 (b) the type of water system to serve the development;

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

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

5 ~~(2) The department shall adopt rules to determine the~~
6 ~~distribution of lot fees between the local governing body~~
7 ~~and the department as provided in 76-4-120.~~ When a
8 subdivision is reviewed under the master plan provisions of
9 76-4-124, the local governing body shall, within 20 days
10 after receiving an application under the Montana Subdivision
11 and Platting Act, distribute the lot fees ~~as determined by~~
12 this subsection according to the fee schedule adopted under
13 this section.

14 (3) When a local department or board of health
15 conducts a review under the provisions of 76-4-104, it shall
16 submit to the department, along with its approval statement,
17 a fee of \$5 per reviewed lot, for purposes of offsetting
18 costs incurred in providing certification to a local
19 reviewing authority and other administrative costs.

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

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

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

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

10 (3) A local reviewing authority without a registered
11 sanitarian or a registered professional engineer to conduct
12 a review under this part may contract with another local
13 reviewing authority for the services of its registered
14 sanitarian or registered professional engineer to conduct
15 the review."

16 Section 5. Section 76-4-107, MCA, is amended to read:

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

25 (1) enter upon any public or private property, at

1 reasonable times and after presentation of appropriate
 2 credentials by an authorized representative of the
 3 department reviewing authority, to inspect such systems in
 4 order to assure that the plans and specifications approved
 5 for the system have been adhered to and that the provisions
 6 of this part, rules, or orders are being satisfied;

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

12 Section 6. Section 76-4-108, MCA, is amended to read:

13 "76-4-108. Enforcement. (1) ~~if a written complaint~~
 14 ~~alleging violation is made to the department or if the~~
 15 ~~department has reason to believe that a person has violated~~
 16 ~~this part or any rule thereunder and if a violation is found~~
 17 ~~to exist, the department shall issue notice and hold a~~
 18 ~~hearing pursuant to the Montana Administrative Procedure~~
 19 ~~Act. If the reviewing authority has reason to believe that a~~
 20 ~~violation of this part or a rule made under it has occurred,~~
 21 ~~it may have written notice served personally or by mail to~~
 22 ~~the last-known address of the alleged violator or his agent.~~
 23 ~~The notice shall state the provision alleged to be violated,~~
 24 ~~the facts alleged to constitute the violation, the~~
 25 ~~corrective action required by the reviewing authority, and~~

1 the time within which the action is to be taken. For the
 2 purpose of this part, service by mail is complete on the
 3 date of mailing. The alleged violator may, no later than 30
 4 days after service of a notice under this section, request a
 5 hearing before the reviewing authority or the board. If a
 6 request is filed, a hearing shall be held within a
 7 reasonable time.

8 (2) In addition to or instead of issuing an order, the
 9 department reviewing authority may initiate appropriate
 10 action ~~for injunction or for recovery of penalty as provided~~
 11 ~~in to compel compliance with this part.~~

12 (3) The provisions of this part may be enforced by a
 13 reviewing authority other than the department or board only
 14 for those divisions described in 76-4-104(3). If a local
 15 reviewing authority fails to adequately enforce the
 16 provisions of this part, the department or the board may
 17 compel compliance with this part under the provisions of
 18 this section."

19 Section 7. 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 fine 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.

8 ~~(3)~~(4) The purpose of this section is to provide
 9 additional and cumulative remedies."

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

11 "76-4-121. Restrictions on subdivision activities.
 12 Until the local governing body has certified that a
 13 subdivision is to be provided with municipal facilities for
 14 a supply of water and disposal of sewage and solid waste or
 15 that the department reviewing authority has indicated that
 16 the subdivision is subject to no restrictions, a person may
 17 not file a subdivision plat with a county clerk and
 18 recorder, make disposition of any lot within a subdivision,
 19 erect any facility for the supply of water or disposal of
 20 sewage or solid waste, erect any building or shelter in a
 21 subdivision which requires facilities for the supply of
 22 water or disposal of sewage or solid waste, or occupy any
 23 permanent buildings in a subdivision."

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

25 "76-4-122. Filing or recording of noncomplying map or

1 plat prohibited. (1) The county clerk and recorder shall not
 2 file or record any map or plat showing a subdivision unless
 3 it complies with the provisions of this part.

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

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

15 (b) whenever department reviewing authority approval
 16 is not necessary, the person wishing to file the plat has
 17 obtained a certificate from the governing body that the
 18 subdivision is inside a master planning area and will be
 19 provided with municipal facilities for the supply of water
 20 and disposal of sewage and solid waste."

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

22 "76-4-123. ~~Department--review~~ Review and approval
 23 required outside master planning areas. Outside master
 24 planning areas adopted pursuant to chapter 1, a person may
 25 not file a subdivision plat with a county clerk and

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

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

10 "76-4-124. Type of review and approval required within
 11 master planning areas. (1) Within master planning areas
 12 adopted pursuant to chapter 1, a subdivision is not subject
 13 to sanitary restrictions when the local governing body
 14 certifies that municipal facilities for the supply of water
 15 and disposal of sewage and solid waste will be provided for
 16 the subdivision as provided in 76-4-127. In this case,
 17 department reviewing authority approval is not necessary.

18 (2) To the extent that municipal facilities for the
 19 supply of water or disposal of sewage or solid waste are not
 20 to be provided for a subdivision as certified to by the
 21 governing body, the person wishing to subdivide must obtain
 22 department reviewing authority approval as provided in
 23 76-4-122(2)(a)."

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

25 "76-4-125. Review of ~~subdivisions-excluded-from-all-or~~

1 ~~some-of-the-provisions-of-the-subdivision-and-platting-act~~
 2 ~~development plans -- land divisions excluded from review.~~

3 (1) ~~When-a-subdivision-as-defined-in-this-part-is-excluded~~
 4 ~~from-the-provisions-of-76-3-302-and-76-3-401-through~~
 5 ~~76-3-403-but-not-76-3-201-and-the-subdivision-is-otherwise~~
 6 ~~subject-to-the-provisions-of-this-part,~~ plans Plans and
 7 specifications of the a subdivision as defined in this part
 8 shall be submitted to the department reviewing authority,
 9 and the department reviewing authority shall indicate by
 10 certificate that it has approved the plans and
 11 specifications and that the subdivision is not subject to a
 12 sanitary restriction. The plan review by the department
 13 reviewing authority shall be as follows:

14 (a) At any time after the developer has submitted an
 15 application under the Montana Subdivision and Platting Act,
 16 the developer shall present to the department reviewing
 17 authority a preliminary plan of the proposed development,
 18 whatever information the developer feels necessary for its
 19 subsequent review, and information required by the
 20 department reviewing authority.

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

25 (2) A subdivision excluded from the provisions of

1 chapter 3 shall be submitted for review ~~by-the-department~~
 2 according to the provisions of this part, except that the
 3 following divisions, unless such exclusions are used to
 4 evade the provisions of this part, are not subject to review
 5 ~~by-the-department:~~

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

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

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

16 Section 13. Section 76-4-126, MCA, is amended to read:

17 "76-4-126. Right to hearing. Upon denial of approval
 18 of subdivision plans and specifications relating to
 19 environmental health facilities, the person who is aggrieved
 20 by such denial may request a hearing before the board or the
 21 reviewing authority. Such hearings will be held pursuant to
 22 the Montana Administrative Procedure Act or according to
 23 procedures adopted by a local reviewing authority."

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

25 "76-4-127. Notice of certification ~~to-department~~ that

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

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

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

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

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

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

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

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

22 (g) the relative location of the subdivision to the
 23 city or town; and

24 (h) certification that adequate municipal facilities
 25 for the supply of water and disposal of sewage and solid

1 waste are available or will be provided within 1 year after
 2 the notice of certification is issued."

3 Section 15. Section 76-4-128, MCA, is amended to read:

4 "76-4-128. Delegation of department review to local
 5 government reviewing authority. (1) The department shall
 6 delegate to a local government reviewing authority the
 7 authority to review a subdivision under this part when the
 8 subdivision:

9 (a) involves five or fewer parcels and each parcel
 10 will contain individual onsite water and sewage disposal
 11 facilities; or

12 (b) involves divisions of land proposed to connect to
 13 public or community water and waste water systems previously
 14 approved by the department and no extension of the systems
 15 is required; and

16 (c) the local government has qualified personnel to
 17 adequately review determine whether the water supply and
 18 sewage and solid waste disposal facilities proposed for the
 19 subdivision meet the standards prescribed by the department.

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

1 final decision on the subdivision.

2 (3) In delegating authority pursuant to this section,
 3 the department shall enter into an agreement with the local
 4 government wherein the department shall agree to transfer
 5 not less than \$15 of the fee per parcel collected pursuant
 6 to 76-4-105 to the local government for the review of
 7 subdivisions containing five or fewer parcels.

8 (2) When a local reviewing authority exercises the
 9 authority delegated to it by this section, the local
 10 reviewing authority shall accept legal responsibility for
 11 its actions under this part."

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

13 "76-4-130. Deviation from plans or specifications. A
 14 person may not construct or use a facility which deviates
 15 from the plans and specifications filed with the department
 16 reviewing authority until the department reviewing authority
 17 has approved the deviation."

18 NEW SECTION. Section 17. Revocation of certificate of
 19 approval. If a violation of this part is found to exist, a
 20 reviewing authority may revoke a certificate of approval and
 21 reimpose sanitary restrictions on a subdivision, following a
 22 hearing before the reviewing authority under 76-4-108.

23 NEW SECTION. Section 18. Extension of authority. Any
 24 existing authority of the department of health and
 25 environmental sciences to make rules on the subject of the

1 provisions of this act is extended to the provisions of this
2 act.

3 NEW SECTION. Section 19. Codification instruction.
4 Section 17 is intended to be codified as an integral part of
5 Title 76, chapter 4, part 1, and the provisions of Title 76,
6 chapter 4, part 1, apply to section 17.

7 NEW SECTION. Section 20. Effective date. This act is
8 effective July 1, 1985.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 440-85

Form BD-15

In compliance with a written request received February 14, 19 85, there is hereby submitted a Fiscal Note for Senate Bill 415 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:

An act providing an option for local departments or boards of health to review certain subdivisions.

ASSUMPTIONS:

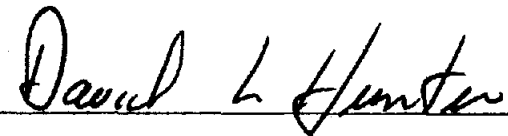
1. The current retention of \$13 per lot would drop to \$5.00 per lot.
2. There are 1,762 lot reviews which would be affected.
3. All 1,762 lot reviews would be done by local health departments.

FISCAL IMPACT:

Expenditures: No impact

Revenue:

	<u>FY 86</u>	<u>FY 87</u>
Current Law	\$ <u>22,906</u>	\$ <u>22,906</u>
Proposed Law	<u>8,810</u>	<u>8,810</u>
Revenue Reduction	\$(14,096)	\$(14,096)



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 20, 1985

SB 415

APPROVED BY COMM.
ON LOCAL GOVERNMENT

1 STATEMENT OF INTENT

2 SENATE BILL 415

3 Senate Local Government Committee

4

5 A statement of intent is needed for this bill because
6 it delegates additional rulemaking authority to the
7 department of health and environmental sciences in section
8 2. Under the provisions of section 2, the department must
9 adopt rules and standards for certifying and maintaining
10 certification to ensure that local boards of health are
11 competent to review those subdivisions described in section
12 2. The rules must provide for department delegation to local
13 boards of health of review of those subdivisions if the
14 department certifies that the local reviewing authority is
15 competent to undertake that review and if the local
16 reviewing authority chooses to do the review.

SENATE BILL NO. 415

INTRODUCED BY HARDING, GAGE, ANDERSON,
REHBERG, NEUMAN, PINSONEAULT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN OPTION FOR LOCAL DEPARTMENTS OR BOARDS OF HEALTH TO REVIEW CERTAIN SUBDIVISIONS; PROVIDING ADDITIONAL ADMINISTRATIVE AND JUDICIAL REMEDIES; AMENDING SECTIONS 76-4-102, 76-4-104 THROUGH 76-4-109, 76-4-121 THROUGH 76-4-128 76-4-127, AND 76-4-130, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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"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 professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(6) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(7) "Reviewing authority" means the department or a local department or board of health certified to conduct review under 76-4-104.

+5)+(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)+(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)+(10) "Subdivision" means a division of land or land

1 so divided which creates one or more parcels containing less
 2 than 20 acres, exclusive of public roadways, in order that
 3 the title to or possession of the parcels may be sold,
 4 rented, leased, or otherwise conveyed and includes any
 5 resubdivision and any condominium or area, regardless of
 6 size, which provides permanent multiple space for
 7 recreational camping vehicles or mobile homes."

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

9 "76-4-104. Rules for administration and enforcement.

10 (1) The department shall adopt reasonable rules, including
 11 adoption of sanitary standards, necessary for administration
 12 and enforcement of this part.

13 (2) The rules and standards shall provide the basis
 14 for approving subdivision plats for various types of water,
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 16 private, and shall be related to size of lots, contour of
 17 land, porosity of soil, groundwater level, distance from
 18 lakes, streams, and wells, type and construction of private
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 23 following divisions of land by a local department or board
 24 of health, as described in Title 50, chapter 2, part 1, if
 25 the local department or board of health employs a registered

1 sanitarian or a registered professional engineer and if the
 2 department certifies under subsection (4) that the local
 3 department or board is competent to review these divisions
 4 of land:

5 (a) divisions of land containing five or fewer
 6 parcels, whenever each parcel will contain individual onsite
 7 water and sewage disposal facilities; and

8 (b) divisions of land proposed to connect to public-or
 9 community EXISTING MUNICIPAL water and waste water systems
 10 previously approved by the department, if no extension of
 11 the systems is required.

12 (4) The department shall also adopt standards and
 13 procedures for certification and maintaining certification
 14 to ensure that a local department or board of health is
 15 competent to review the divisions of land described in
 16 subsection (3).

17 (5) The department shall review those divisions of
 18 land described in subsection (3) if:

19 (a) a proposed division of land lies within more than
 20 one jurisdictional area and the respective governing bodies
 21 are in disagreement concerning approval of or conditions to
 22 be imposed on the proposed subdivision; or

23 (b) the local department or board of health elects not
 24 to be certified.

25 (3)(6) The rules shall further provide for:

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

4 (i) total development area;

5 (ii) total number of proposed dwelling units;

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

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

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

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

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

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

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

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

7 (7) If the reviewing authority is a local department
 8 or board of health, it shall, upon approval of a division of
 9 land under this part, notify the department of the approval
 10 and submit to the department a copy of the approval
 11 statement."

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

13 "76-4-105. Lot fees. (1) The department reviewing
 14 authority DEPARTMENT shall adopt reasonable rules setting
 15 forth fees, not to exceed \$48 per parcel, for services
 16 rendered in the review of plats and subdivisions. The rules
 17 shall provide for a schedule of fees to be paid by the
 18 applicant for plat or subdivision review to the department
 19 for deposit in the state special revenue fund provided for
 20 in 17-2-102 or, if applicable, to another reviewing
 21 authority for deposit in the general fund of the reviewing
 22 authority's jurisdiction. The fees shall be used for review
 23 of plats and subdivisions based on the complexity of the
 24 subdivision, including but not limited to:

25 (a) number of lots in the subdivision;

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

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

6 ~~(2) The department shall adopt rules to determine the~~
7 ~~distribution of lot fees between the local governing body~~
8 ~~and the department as provided in 76-4-128. THE DEPARTMENT~~
9 SHALL ADOPT RULES TO DETERMINE THE DISTRIBUTION OF FEES
10 BETWEEN THE LOCAL GOVERNING BODY AND THE DEPARTMENT AS
11 PROVIDED IN 76-4-128. When a subdivision is reviewed under
12 the master plan provisions of 76-4-124, the local governing
13 body shall, within 20 days after receiving an application
14 under the Montana Subdivision and Platting Act, distribute
15 the lot fees ~~as determined by this subsection~~ according to
16 the fee schedule adopted under this section.

17 (3) When a local department or board of health
18 conducts a review under the provisions of 76-4-104, it shall
19 submit to the department, along with its approval statement,
20 a fee of \$5 per reviewed lot, for purposes of offsetting
21 costs incurred in providing certification to a local
22 reviewing authority and other administrative costs.

23 ~~(3)(4)~~ (4) A fee as described in this section is not
24 required for the review of subdivisions in which divisions
25 are made for the purpose of relocating common boundary lines

1 unless the division will result in the installation of
2 additional water supply or sewage disposal facilities."

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

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

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

13 (3) A local reviewing authority without a registered
14 sanitarian or a registered professional engineer to conduct
15 a review under this part may contract with another local
16 reviewing authority for the services of its registered
17 sanitarian or registered professional engineer to conduct
18 the review."

19 Section 5. Section 76-4-107, MCA, is amended to read:

20 "76-4-107. Authority to inspect and monitor. In order
21 to carry out the objectives of this part, to monitor the
22 installation of sewage disposal and water supply systems,
23 and to prevent the occurrence of water pollution problems
24 associated with subdivision development, the ~~department or~~
25 ~~the board~~ reviewing authority whenever a public any water

1 supply or public sewage disposal system is proposed or has
 2 been constructed may:

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

10 (2) require as a condition of approval that records
 11 concerning the operation of a public sewage disposal or
 12 public water supply system be maintained or that monitoring
 13 equipment or wells be installed, used, and maintained for
 14 the collection of data related to water quality."

15 Section 6. Section 76-4-108, MCA, is amended to read:

16 "76-4-108. Enforcement. (1) ~~if--a--written--complaint~~
 17 ~~alleging--violation--is--made--to--the--department--or--if--the~~
 18 ~~department--has--reason--to--believe--that--a--person--has--violated~~
 19 ~~this--part--or--any--rule--thereunder--and--if--a--violation--is--found~~
 20 ~~to--exist,--the--department--shall--issue--notice--and--hold--a~~
 21 ~~hearing--pursuant--to--the--Montana--Administrative--Procedure~~
 22 Act. If the reviewing authority has reason to believe that a
 23 violation of this part or a rule made under it has occurred,
 24 it may have written notice served personally or by mail to
 25 the last-known address of the alleged violator or his agent.

1 The notice shall state the provision alleged to be violated,
 2 the facts alleged to constitute the violation, the
 3 corrective action required by the reviewing authority, and
 4 the time within which the action is to be taken. For the
 5 purpose of this part, service by mail is complete on the
 6 date of mailing. The alleged violator may, no later than 30
 7 days after service of a notice under this section, request a
 8 hearing before the reviewing authority or the board. If a
 9 request is filed, a hearing shall be held within a
 10 reasonable time.

11 (2) In addition to or instead of issuing an order, the
 12 department reviewing authority may initiate appropriate
 13 action ~~for injunction or for recovery of penalty as provided~~
 14 in to compel compliance with this part.

15 (3) The provisions of this part may be enforced by a
 16 reviewing authority other than the department or board only
 17 for those divisions described in 76-4-104(3). If a local
 18 reviewing authority fails to adequately enforce the
 19 provisions of this part, the department or the board may
 20 compel compliance with this part under the provisions of
 21 this section.

22 (4) WHEN A LOCAL REVIEWING AUTHORITY EXERCISES THE
 23 AUTHORITY DELEGATED TO IT BY THIS SECTION, THE LOCAL
 24 REVIEWING AUTHORITY SHALL ACCEPT LEGAL RESPONSIBILITY FOR
 25 ITS ACTIONS UNDER THIS PART."

1 Section 7. Section 76-4-109, MCA, is amended to read:

2 "76-4-109. Penalties. (1) A person violating any
3 provision of this part, except 76-4-122(1), or any rule or
4 order issued under this part is guilty of an offense and
5 subject to a fine of not to exceed \$1,000.

6 (2) In addition to the fine specified in subsection
7 (1), a person who violates any provision of this part or any
8 rule or order issued under this part is subject to a civil
9 penalty not to exceed \$1,000. Each day of violation
10 constitutes a separate violation.

11 †2†(3) Action Penalties imposed under subsection (1)
12 or (2) does do not bar enforcement of this part or rules or
13 orders issued under it by injunction or other appropriate
14 remedy.

15 †3†(4) The purpose of this section is to provide
16 additional and cumulative remedies."

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

18 "76-4-121. Restrictions on subdivision activities.
19 Until the local governing body has certified that a
20 subdivision is to be provided with municipal facilities for
21 a supply of water and disposal of sewage and solid waste or
22 that the department reviewing authority has indicated that
23 the subdivision is subject to no restrictions, a person may
24 not file a subdivision plat 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 9. 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 not
9 file or record any map or plat showing a subdivision unless
10 it complies with the provisions of this part.

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

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

22 (b) whenever department reviewing authority approval
23 is not necessary, the person wishing to file the plat has
24 obtained a certificate from the governing body that the
25 subdivision is inside a master planning area and will be

1 provided with municipal facilities for the supply of water
2 and disposal of sewage and solid waste."

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

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

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

17 "76-4-124. Type of review and approval required within
18 master planning areas. (1) Within master planning areas
19 adopted pursuant to chapter 1, a subdivision is not subject
20 to sanitary restrictions when the local governing body
21 certifies that municipal facilities for the supply of water
22 and disposal of sewage and solid waste will be provided for
23 the subdivision as provided in 76-4-127. In this case,
24 department reviewing authority approval is not necessary.

25 (2) To the extent that municipal facilities for the

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

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

7 "76-4-125. Review of ~~subdivisions-excluded-from-all-or~~
8 ~~some-of-the-provisions-of-the-subdivision-and-platting-act~~
9 development plans -- land divisions excluded from review.

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 a subdivision as defined in this part
15 shall be submitted to the department reviewing authority,
16 and 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 according to the provisions of this part, except that the
10 following divisions, unless such exclusions are used to
11 evade the provisions of this part, are not subject to review
12 ~~by the department:~~

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

14 (b) divisions made for the purpose of acquiring
15 additional land to become part of an approved parcel,
16 provided that no dwelling or structure requiring water or
17 sewage disposal is to be erected on the additional acquired
18 parcel and that the division does not fall within a
19 previously platted or approved subdivision; and

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

23 Section 13. Section 76-4-126, MCA, is amended to read:

24 "76-4-126. Right to hearing. Upon denial of approval
25 of subdivision plans and specifications relating to

1 environmental health facilities, the person who is aggrieved
2 by such denial may request a hearing before the board or the
3 reviewing authority. Such hearings will be held pursuant to
4 the Montana Administrative Procedure Act ~~or according to~~
5 ~~procedures adopted by a local reviewing authority."~~

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

7 "76-4-127. Notice of certification ~~to department~~ that
8 water and waste services will be provided by local
9 government. (1) When a subdivision is reviewed under the
10 master plan provisions of 76-4-124, the local governing body
11 shall, within 20 days after receiving an application under
12 the Montana Subdivision and Platting Act, send notice of
13 certification to the department reviewing authority that a
14 subdivision has been submitted for approval and that
15 municipal facilities for the supply of water and disposal of
16 sewage and solid waste will be provided for the subdivision.

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

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

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

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

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

25 (e) how construction of the sewage disposal and water

1 supply systems or extensions will be financed;

2 (f) a copy of the master plan if one has not yet been

3 submitted to the department reviewing authority;

4 (g) the relative location of the subdivision to the

5 city or town; and

6 (h) certification that adequate municipal facilities

7 for the supply of water and disposal of sewage and solid

8 waste are available or will be provided within 1 year after

9 the notice of certification is issued."

10 ~~Section 15. Section 76-4-128, MCA, is amended to read:~~

11 ~~"76-4-128. Delegation of department review to local~~

12 ~~government reviewing authority. (1) The department shall~~

13 ~~delegate to a local government reviewing authority the~~

14 ~~authority to review a subdivision under this part when the~~

15 ~~subdivision:~~

16 ~~(a) involves five or fewer parcels and each parcel~~

17 ~~will contain individual onsite water and sewage disposal~~

18 ~~facilities; or~~

19 ~~(b) involves divisions of land proposed to connect to~~

20 ~~public or community water and waste water systems previously~~

21 ~~approved by the department and no extension of the systems~~

22 ~~is required; and~~

23 ~~(c) the local government has qualified personnel to~~

24 ~~adequately review determine whether the water supply and~~

25 ~~sewage and solid waste disposal facilities proposed for the~~

1 ~~subdivision meet the standards prescribed by the department.~~

2 ~~(2) When a local government has conducted a review of~~

3 ~~a subdivision containing five or fewer parcels pursuant to~~

4 ~~this section, it shall advise the department of its~~

5 ~~recommendation for approval or disapproval of the~~

6 ~~subdivision. The department shall within 10 days after~~

7 ~~receiving the recommendation of the local government, make a~~

8 ~~final decision on the subdivision.~~

9 ~~(3) In delegating authority pursuant to this section,~~

10 ~~the department shall enter into an agreement with the local~~

11 ~~government wherein the department shall agree to transfer~~

12 ~~not less than \$15 of the fee per parcel collected pursuant~~

13 ~~to 76-4-105 to the local government for the review of~~

14 ~~subdivisions containing five or fewer parcels.~~

15 ~~(2) When a local reviewing authority exercises the~~

16 ~~authority delegated to it by this section, the local~~

17 ~~reviewing authority shall accept legal responsibility for~~

18 ~~its actions under this part."~~

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

20 "76-4-130. Deviation from plans or specifications. A

21 person may not construct or use a facility which deviates

22 from the plans and specifications filed with the department

23 reviewing authority until the department reviewing authority

24 has approved the deviation."

25 NEW SECTION. Section 16. Revocation of certificate of

1 approval. If a violation of this part is found to exist, a
2 reviewing authority may revoke a certificate of approval and
3 reimpose sanitary restrictions on a subdivision, following a
4 hearing before the reviewing authority under 76-4-108.

5 NEW SECTION. Section 17. Extension of authority. Any
6 existing authority of the department of health and
7 environmental sciences to make rules on the subject of the
8 provisions of this act is extended to the provisions of this
9 act.

10 NEW SECTION. Section 18. Codification instruction.
11 Section ~~17~~ 16 is intended to be codified as an integral part
12 of Title 76, chapter 4, part 1, and the provisions of Title
13 76, chapter 4, part 1, apply to section ~~17~~ 16.

14 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF
15 HOUSE BILL NO. 633, INCLUDING THE SECTION OF THAT BILL THAT
16 APPROPRIATES MONEY TO THE DEPARTMENT FOR SUBDIVISION REVIEW
17 IN FISCAL YEARS 1986 AND 1987, IS NOT PASSED AND APPROVED,
18 SECTION 3, SUBSECTION (3) OF THIS ACT IS AMENDED TO PROVIDE
19 A FEE OF \$10 PER REVIEWED LOT.

20 NEW SECTION. Section 20. Effective date. This act is
21 effective July 1, 1985.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 415

3 Senate Local Government Committee

4
5 A statement of intent is needed for this bill because
6 it delegates additional rulemaking authority to the
7 department of health and environmental sciences in section
8 2. Under the provisions of section 2, the department must
9 adopt rules and standards for certifying and maintaining
10 certification to ensure that local boards of health are
11 competent to review those subdivisions described in section
12 2. The rules must provide for department delegation to local
13 boards of health of review of those subdivisions if the
14 department certifies that the local reviewing authority is
15 competent to undertake that review and if the local
16 reviewing authority chooses to do the review.

THIRD READING

SB 415

1 SENATE BILL NO. 415

2 INTRODUCED BY HARDING, GAGE, ANDERSON,

3 REHBERG, NEUMAN, PINSONEAULT

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN OPTION FOR
6 LOCAL DEPARTMENTS OR BOARDS OF HEALTH TO REVIEW CERTAIN
7 SUBDIVISIONS; PROVIDING ADDITIONAL ADMINISTRATIVE AND
8 JUDICIAL REMEDIES; AMENDING SECTIONS 76-4-102, 76-4-104
9 THROUGH 76-4-109, 76-4-121 THROUGH 76-4-128 ~~76-4-127~~, AND
10 76-4-130, MCA; AND PROVIDING AN EFFECTIVE DATE."

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) "Public water supply system" or "public sewage
2 disposal system" means, respectively, a water supply or
3 sewage disposal system that serves 10 or more families or 25
4 or more persons for at least 60 days out of the calendar
5 year.

6 (5) "Registered professional engineer" means a person
7 licensed to practice as a professional engineer under Title
8 37, chapter 67.

9 (6) "Registered sanitarian" means a person licensed to
10 practice as a sanitarian under Title 37, chapter 40.

11 (7) "Reviewing authority" means the department or a
12 local department or board of health certified to conduct
13 review under 76-4-104.

14 ~~†5~~(8) "Sanitary restriction" means a prohibition
15 against the erection of any dwelling, shelter, or building
16 requiring facilities for the supply of water or the
17 disposition of sewage or solid waste or the construction of
18 water supply or sewage or solid waste disposal facilities
19 until the department has approved plans for those
20 facilities.

21 ~~†6~~(9) "Solid wastes" means all putrescible and
22 nonputrescible solid wastes (except body wastes), including
23 garbage, rubbish, street cleanings, dead animals, yard
24 clippings, and solid market and solid industrial wastes.

25 ~~†7~~(10) "Subdivision" means a division of land or land

1 so divided which creates one or more parcels containing less
 2 than 20 acres, exclusive of public roadways, in order that
 3 the title to or possession of the parcels may be sold,
 4 rented, leased, or otherwise conveyed and includes any
 5 resubdivision and any condominium or area, regardless of
 6 size, which provides permanent multiple space for
 7 recreational camping vehicles or mobile homes."

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

9 "76-4-104. Rules for administration and enforcement.

10 (1) The department shall adopt reasonable rules, including
 11 adoption of sanitary standards, necessary for administration
 12 and enforcement of this part.

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

22 (3) The rules shall provide for the review of the
 23 following divisions of land by a local department or board
 24 of health, as described in Title 50, chapter 2, part 1, if
 25 the local department or board of health employs a registered

1 sanitarian or a registered professional engineer and if the
 2 department certifies under subsection (4) that the local
 3 department or board is competent to review these divisions
 4 of land:

5 (a) divisions of land containing five or fewer
 6 parcels, whenever each parcel will contain individual onsite
 7 water and sewage disposal facilities; and

8 (b) divisions of land proposed to connect to public-or
 9 community EXISTING MUNICIPAL water and waste water systems
 10 previously approved by the department, if no extension of
 11 the systems is required.

12 (4) The department shall also adopt standards and
 13 procedures for certification and maintaining certification
 14 to ensure that a local department or board of health is
 15 competent to review the divisions of land described in
 16 subsection (3).

17 (5) The department shall review those divisions of
 18 land described in subsection (3) if:

19 (a) a proposed division of land lies within more than
 20 one jurisdictional area and the respective governing bodies
 21 are in disagreement concerning approval of or conditions to
 22 be imposed on the proposed subdivision; or

23 (b) the local department or board of health elects not
 24 to be certified.

25 (3)(6) The rules shall further provide for:

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

4 (i) total development area;

5 (ii) total number of proposed dwelling units;

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

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

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

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

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

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

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

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

7 (7) If the reviewing authority is a local department
 8 or board of health, it shall, upon approval of a division of
 9 land under this part, notify the department of the approval
 10 and submit to the department a copy of the approval
 11 statement."

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

13 "76-4-105. Lot fees. (1) The department reviewing
 14 authority DEPARTMENT shall adopt reasonable rules setting
 15 forth fees, not to exceed \$48 per parcel, for services
 16 rendered in the review of plats and subdivisions. The rules
 17 shall provide for a schedule of fees to be paid by the
 18 applicant for plat or subdivision review to the department
 19 for deposit in the state special revenue fund provided for
 20 in 17-2-102 or, if applicable, to another reviewing
 21 authority for deposit in the general fund of the reviewing
 22 authority's jurisdiction. The fees shall be used for review
 23 of plats and subdivisions based on the complexity of the
 24 subdivision, including but not limited to:

25 (a) number of lots in the subdivision;

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

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

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

6 ~~(2) The department shall adopt rules to determine the~~
7 ~~distribution of lot fees between the local governing body~~
8 ~~and the department as provided in 76-4-128. THE DEPARTMENT~~
9 ~~SHALL ADOPT RULES TO DETERMINE THE DISTRIBUTION OF FEES~~
10 ~~BETWEEN THE LOCAL GOVERNING BODY AND THE DEPARTMENT AS~~
11 ~~PROVIDED IN 76-4-128.~~ When a subdivision is reviewed under
12 the master plan provisions of 76-4-124, the local governing
13 body shall, within 20 days after receiving an application
14 under the Montana Subdivision and Platting Act, distribute
15 the lot fees ~~as determined by this subsection~~ according to
16 ~~the fee schedule adopted under this section.~~

17 (3) When a local department or board of health
18 conducts a review under the provisions of 76-4-104, it shall
19 submit to the department, along with its approval statement,
20 a fee of \$5 per reviewed lot, for purposes of offsetting
21 costs incurred in providing certification to a local
22 reviewing authority and other administrative costs.

23 ~~(3)~~(4) A fee as described in this section is not
24 required for the review of subdivisions in which divisions
25 are made for the purpose of relocating common boundary lines

1 unless the division will result in the installation of
2 additional water supply or sewage disposal facilities."

3 Section 4. Section 76-4-106, MCA, is amended to read:
4 "76-4-106. Cooperation with other governmental
5 agencies. (1) The department reviewing authority may require
6 the use of records of all state, county, and municipal
7 agencies and may seek the assistance of those agencies.

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

13 (3) A local reviewing authority without a registered
14 sanitarian or a registered professional engineer to conduct
15 a review under this part may contract with another local
16 reviewing authority for the services of its registered
17 sanitarian or registered professional engineer to conduct
18 the review."

19 Section 5. Section 76-4-107, MCA, is amended to read:

20 "76-4-107. Authority to inspect and monitor. In order
21 to carry out the objectives of this part, to monitor the
22 installation of sewage disposal and water supply systems,
23 and to prevent the occurrence of water pollution problems
24 associated with subdivision development, the ~~department--or~~
25 ~~the--board~~ reviewing authority whenever ~~a public~~ any water

1 supply or public sewage disposal system is proposed or has
2 been constructed may:

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

10 (2) require as a condition of approval that records
11 concerning the operation of a public sewage disposal or
12 public water supply system be maintained or that monitoring
13 equipment or wells be installed, used, and maintained for
14 the collection of data related to water quality."

15 Section 6. Section 76-4-108, MCA, is amended to read:

16 "76-4-108. Enforcement. (1) ~~if a written complaint~~
17 ~~alleging violation is made to the department or if the~~
18 ~~department has reason to believe that a person has violated~~
19 ~~this part or any rule thereunder and if a violation is found~~
20 ~~to exist, the department shall issue notice and hold a~~
21 ~~hearing pursuant to the Montana Administrative Procedure~~
22 Act: If the reviewing authority has reason to believe that a
23 violation of this part or a rule made under it has occurred,
24 it may have written notice served personally or by mail to
25 the last-known address of the alleged violator or his agent.

1 The notice shall state the provision alleged to be violated,
2 the facts alleged to constitute the violation, the
3 corrective action required by the reviewing authority, and
4 the time within which the action is to be taken. For the
5 purpose of this part, service by mail is complete on the
6 date of mailing. The alleged violator may, no later than 30
7 days after service of a notice under this section, request a
8 hearing before the reviewing authority or the board. If a
9 request is filed, a hearing shall be held within a
10 reasonable time.

11 (2) In addition to or instead of issuing an order, the
12 department reviewing authority may initiate appropriate
13 action ~~for injunction or for recovery of penalty as provided~~
14 in to compel compliance with this part.

15 (3) The provisions of this part may be enforced by a
16 reviewing authority other than the department or board only
17 for those divisions described in 76-4-104(3). If a local
18 reviewing authority fails to adequately enforce the
19 provisions of this part, the department or the board may
20 compel compliance with this part under the provisions of
21 this section.

22 (4) WHEN A LOCAL REVIEWING AUTHORITY EXERCISES THE
23 AUTHORITY DELEGATED TO IT BY THIS SECTION, THE LOCAL
24 REVIEWING AUTHORITY SHALL ACCEPT LEGAL RESPONSIBILITY FOR
25 ITS ACTIONS UNDER THIS PART."

1 Section 7. Section 76-4-109, MCA, is amended to read:

2 "76-4-109. Penalties. (1) A person violating any
3 provision of this part, except 76-4-122(1), or any rule or
4 order issued under this part is guilty of an offense and
5 subject to a fine of not to exceed \$1,000.

6 (2) In addition to the fine specified in subsection
7 (1), a person who violates any provision of this part or any
8 rule or order issued under this part is subject to a civil
9 penalty not to exceed \$1,000. Each day of violation
10 constitutes a separate violation.

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

15 ~~(3)~~(4) The purpose of this section is to provide
16 additional and cumulative remedies."

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

18 "76-4-121. Restrictions on subdivision activities.
19 Until the local governing body has certified that a
20 subdivision is to be provided with municipal facilities for
21 a supply of water and disposal of sewage and solid waste or
22 that the department reviewing authority has indicated that
23 the subdivision is subject to no restrictions, a person may
24 not file a subdivision plat 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 9. 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 not
9 file or record any map or plat showing a subdivision unless
10 it complies with the provisions of this part.

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

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

22 (b) whenever department reviewing authority approval
23 is not necessary, the person wishing to file the plat has
24 obtained a certificate from the governing body that the
25 subdivision is inside a master planning area and will be

1 provided with municipal facilities for the supply of water
2 and disposal of sewage and solid waste."

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

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

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

17 "76-4-124. Type of review and approval required within
18 master planning areas. (1) Within master planning areas
19 adopted pursuant to chapter 1, a subdivision is not subject
20 to sanitary restrictions when the local governing body
21 certifies that municipal facilities for the supply of water
22 and disposal of sewage and solid waste will be provided for
23 the subdivision as provided in 76-4-127. In this case,
24 department reviewing authority approval is not necessary.

25 (2) To the extent that municipal facilities for the

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

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

7 "76-4-125. ~~Review of subdivisions-excluded-from-all-or~~
8 ~~some--of--the-provisions-of-the-subdivision-and-platting-act~~
9 ~~development plans -- land divisions excluded from review.~~

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 ~~76-3-4037-but-not-76-3-2017-and-the-subdivision-is-otherwise~~
13 ~~subject--to--the--provisions--of--this-part7-plans~~ Plans and
14 specifications of the a subdivision as defined in this part
15 shall be submitted to the department reviewing authority,
16 and 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 according to the provisions of this part, except that the
10 following divisions, unless such exclusions are used to
11 evade the provisions of this part, are not subject to review
12 ~~by-the-department:~~

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

14 (b) divisions made for the purpose of acquiring
15 additional land to become part of an approved parcel,
16 provided that no dwelling or structure requiring water or
17 sewage disposal is to be erected on the additional acquired
18 parcel and that the division does not fall within a
19 previously platted or approved subdivision; and

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

23 Section 13. Section 76-4-126, MCA, is amended to read:

24 "76-4-126. Right to hearing. Upon denial of approval
25 of subdivision plans and specifications relating to

1 environmental health facilities, the person who is aggrieved
2 by such denial may request a hearing before the board or the
3 reviewing authority. Such hearings will be held pursuant to
4 the Montana Administrative Procedure Act ~~or--according--to~~
5 ~~procedures-adopted-by-a-local-reviewing-authority."~~

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

7 "76-4-127. Notice of certification ~~to-department~~ that
8 water and waste services will be provided by local
9 government. (1) When a subdivision is reviewed under the
10 master plan provisions of 76-4-124, the local governing body
11 shall, within 20 days after receiving an application under
12 the Montana Subdivision and Platting Act, send notice of
13 certification to the department reviewing authority that a
14 subdivision has been submitted for approval and that
15 municipal facilities for the supply of water and disposal of
16 sewage and solid waste will be provided for the subdivision.

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

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

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

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

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

25 (e) how construction of the sewage disposal and water

1 supply systems or extensions will be financed;

2 (f) a copy of the master plan if one has not yet been

3 submitted to the department reviewing authority;

4 (g) the relative location of the subdivision to the

5 city or town; and

6 (h) certification that adequate municipal facilities

7 for the supply of water and disposal of sewage and solid

8 waste are available or will be provided within 1 year after

9 the notice of certification is issued."

10 Section 15, Section 76-4-128, MCA, is amended to read:

11 "76-4-128. Delegation of department review to local

12 government reviewing authority. (1) The department shall

13 delegate to a local government reviewing authority the

14 authority to review a subdivision under this part when the

15 subdivision:

16 (a) involves five or fewer parcels and each parcel

17 will contain individual onsite water and sewage disposal

18 facilities; or

19 (b) involves divisions of land proposed to connect to

20 public or community water and waste water systems previously

21 approved by the department and no extension of the systems

22 is required; and

23 (c) the local government has qualified personnel to

24 adequately review determine whether the water supply and

25 sewage and solid waste disposal facilities proposed for the

1 ~~subdivision meet the standards prescribed by the department.~~

2 ~~(2) When a local government has conducted a review of~~

3 ~~a subdivision containing five or fewer parcels pursuant to~~

4 ~~this section, it shall advise the department of its~~

5 ~~recommendation for approval or disapproval of the~~

6 ~~subdivision. The department shall, within 10 days after~~

7 ~~receiving the recommendation of the local government, make a~~

8 ~~final decision on the subdivision.~~

9 ~~(3) In delegating authority pursuant to this section,~~

10 ~~the department shall enter into an agreement with the local~~

11 ~~government wherein the department shall agree to transfer~~

12 ~~not less than \$15 of the fee per parcel collected pursuant~~

13 ~~to 76-4-105 to the local government for the review of~~

14 ~~subdivisions containing five or fewer parcels.~~

15 ~~(2) When a local reviewing authority exercises the~~

16 ~~authority delegated to it by this section, the local~~

17 ~~reviewing authority shall accept legal responsibility for~~

18 ~~its actions under this part."~~

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

20 "76-4-130. Deviation from plans or specifications. A

21 person may not construct or use a facility which deviates

22 from the plans and specifications filed with the department

23 reviewing authority until the department reviewing authority

24 has approved the deviation."

25 NEW SECTION. Section 16. Revocation of certificate of

1 approval. If a violation of this part is found to exist, a
2 reviewing authority may revoke a certificate of approval and
3 reimpose sanitary restrictions on a subdivision, following a
4 hearing before the reviewing authority under 76-4-108.

5 NEW SECTION. Section 17. Extension of authority. Any
6 existing authority of the department of health and
7 environmental sciences to make rules on the subject of the
8 provisions of this act is extended to the provisions of this
9 act.

10 NEW SECTION. Section 18. Codification instruction.
11 Section ~~17~~ 16 is intended to be codified as an integral part
12 of Title 76, chapter 4, part 1, and the provisions of Title
13 76, chapter 4, part 1, apply to section ~~17~~ 16.

14 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF
15 HOUSE BILL NO. 633, INCLUDING THE SECTION OF THAT BILL THAT
16 APPROPRIATES MONEY TO THE DEPARTMENT FOR SUBDIVISION REVIEW
17 IN FISCAL YEARS 1986 AND 1987, IS NOT PASSED AND APPROVED,
18 SECTION 3, SUBSECTION (3) OF THIS ACT IS AMENDED TO PROVIDE
19 A FEE OF \$10 PER REVIEWED LOT.

20 NEW SECTION. Section 20. Effective date. This act is
21 effective July 1, 1985.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 415

3 Senate Local Government Committee

4

5 A statement of intent is needed for this bill because
6 it delegates additional rulemaking authority to the
7 department of health and environmental sciences in section
8 2. Under the provisions of section 2, the department must
9 adopt rules and standards for certifying and maintaining
10 certification to ensure that local boards of health are
11 competent to review those subdivisions described in section
12 2. The rules must provide for department delegation to local
13 boards of health of review of those subdivisions if the
14 department certifies that the local reviewing authority is
15 competent to undertake that review and if the local
16 reviewing authority chooses to do the review.

1 SENATE BILL NO. 415

2 INTRODUCED BY HARDING, GAGE, ANDERSON,

3 REHBERG, NEUMAN, PINSONEAULT

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN OPTION FOR
6 LOCAL DEPARTMENTS OR BOARDS OF HEALTH TO REVIEW CERTAIN
7 SUBDIVISIONS; PROVIDING ADDITIONAL ADMINISTRATIVE AND
8 JUDICIAL REMEDIES; AMENDING SECTIONS 76-4-102, 76-4-104
9 THROUGH 76-4-109, 76-4-121 THROUGH ~~76-4-120~~ 76-4-127, AND
10 76-4-130, MCA; AND PROVIDING AN EFFECTIVE DATE."

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) "Public water supply system" or "public sewage
2 disposal system" means, respectively, a water supply or
3 sewage disposal system that serves 10 or more families or 25
4 or more persons for at least 60 days out of the calendar
5 year.

6 (5) "Registered professional engineer" means a person
7 licensed to practice as a professional engineer under Title
8 37, chapter 67.

9 (6) "Registered sanitarian" means a person licensed to
10 practice as a sanitarian under Title 37, chapter 40.

11 (7) "Reviewing authority" means the department or a
12 local department or board of health certified to conduct
13 review under 76-4-104.

14 ~~(5)~~(8) "Sanitary restriction" means a prohibition
15 against the erection of any dwelling, shelter, or building
16 requiring facilities for the supply of water or the
17 disposition of sewage or solid waste or the construction of
18 water supply or sewage or solid waste disposal facilities
19 until the department has approved plans for those
20 facilities.

21 ~~(6)~~(9) "Solid wastes" means all putrescible and
22 nonputrescible solid wastes (except body wastes), including
23 garbage, rubbish, street cleanings, dead animals, yard
24 clippings, and solid market and solid industrial wastes.

25 ~~(7)~~(10) "Subdivision" means a division of land or land

1 so divided which creates one or more parcels containing less
 2 than 20 acres, exclusive of public roadways, in order that
 3 the title to or possession of the parcels may be sold,
 4 rented, leased, or otherwise conveyed and includes any
 5 resubdivision and any condominium or area, regardless of
 6 size, which provides permanent multiple space for
 7 recreational camping vehicles or mobile homes."

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

9 "76-4-104. Rules for administration and enforcement.

10 (1) The department shall adopt reasonable rules, including
 11 adoption of sanitary standards, necessary for administration
 12 and enforcement of this part.

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

22 (3) The rules shall provide for the review of the
 23 following divisions of land by a local department or board
 24 of health, as described in Title 50, chapter 2, part 1, if
 25 the local department or board of health employs a registered

1 sanitarian or a registered professional engineer and if the
 2 department certifies under subsection (4) that the local
 3 department or board is competent to review these divisions
 4 of land:

5 (a) divisions of land containing five or fewer
 6 parcels, whenever each parcel will contain individual onsite
 7 water and sewage disposal facilities; and

8 (b) divisions of land proposed to connect to public or
 9 community EXISTING MUNICIPAL water and waste water systems
 10 previously approved by the department, if no extension of
 11 the systems is required.

12 (4) The department shall also adopt standards and
 13 procedures for certification and maintaining certification
 14 to ensure that a local department or board of health is
 15 competent to review the divisions of land described in
 16 subsection (3).

17 (5) The department shall review those divisions of
 18 land described in subsection (3) if:

19 (a) a proposed division of land lies within more than
 20 one jurisdictional area and the respective governing bodies
 21 are in disagreement concerning approval of or conditions to
 22 be imposed on the proposed subdivision; or

23 (b) the local department or board of health elects not
 24 to be certified.

25 (3)(6) The rules shall further provide for:

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

4 (i) total development area;

5 (ii) total number of proposed dwelling units;

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

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

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

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

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

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

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

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

7 (7) If the reviewing authority is a local department
 8 or board of health, it shall, upon approval of a division of
 9 land under this part, notify the department of the approval
 10 and submit to the department a copy of the approval
 11 statement."

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

13 "76-4-105. Lot fees. (1) The department reviewing
 14 authority DEPARTMENT shall adopt reasonable rules setting
 15 forth fees, not to exceed \$48 per parcel, for services
 16 rendered in the review of plats and subdivisions. The rules
 17 shall provide for a schedule of fees to be paid by the
 18 applicant for plat or subdivision review to the department
 19 for deposit in the state special revenue fund provided for
 20 in 17-2-102 or, if applicable, to another reviewing
 21 authority for deposit in the general fund of the reviewing
 22 authority's jurisdiction. The fees shall be used for review
 23 of plats and subdivisions based on the complexity of the
 24 subdivision, including but not limited to:

25 (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.~~ THE DEPARTMENT SHALL ADOPT RULES TO DETERMINE THE DISTRIBUTION OF 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~~ according to the fee schedule adopted under this section.

(3) When a local department or board of health conducts a review under the provisions of 76-4-104, it shall submit to the department, along with its approval statement, a fee of \$5 per reviewed lot, for purposes of offsetting costs incurred in providing certification to a local reviewing authority and other administrative costs.

~~††~~(4) 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 4. 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.

(3) A local reviewing authority without a registered sanitarian or a registered professional engineer to conduct a review under this part may contract with another local reviewing authority for the services of its registered sanitarian or registered professional engineer to conduct the review."

Section 5. 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~~ any water

1 supply or public sewage disposal system is proposed or has
2 been constructed may:

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

10 (2) require as a condition of approval that records
11 concerning the operation of a public sewage disposal or
12 public water supply system be maintained or that monitoring
13 equipment or wells be installed, used, and maintained for
14 the collection of data related to water quality."

15 Section 6. Section 76-4-108, MCA, is amended to read:

16 "76-4-108. Enforcement. (1) ~~If a written complaint~~
17 ~~alleging violation is made to the department or if the~~
18 ~~department has reason to believe that a person has violated~~
19 ~~this part or any rule thereunder and if a violation is found~~
20 ~~to exist, the department shall issue notice and hold a~~
21 ~~hearing pursuant to the Montana Administrative Procedure~~
22 ~~Act. If the reviewing authority has reason to believe that a~~
23 violation of this part or a rule made under it has occurred,
24 it may have written notice served personally or by mail to
25 the last-known address of the alleged violator or his agent.

1 The notice shall state the provision alleged to be violated,
2 the facts alleged to constitute the violation, the
3 corrective action required by the reviewing authority, and
4 the time within which the action is to be taken. For the
5 purpose of this part, service by mail is complete on the
6 date of mailing. The alleged violator may, no later than 30
7 days after service of a notice under this section, request a
8 hearing before the reviewing authority or the board. If a
9 request is filed, a hearing shall be held within a
10 reasonable time.

11 (2) In addition to or instead of issuing an order, the
12 department reviewing authority may initiate appropriate
13 action ~~for injunction or for recovery of penalty as provided~~
14 ~~in to compel compliance with this part.~~

15 (3) The provisions of this part may be enforced by a
16 reviewing authority other than the department or board only
17 for those divisions described in 76-4-104(3). If a local
18 reviewing authority fails to adequately enforce the
19 provisions of this part, the department or the board may
20 compel compliance with this part under the provisions of
21 this section.

22 (4) WHEN A LOCAL REVIEWING AUTHORITY EXERCISES THE
23 AUTHORITY DELEGATED TO IT BY THIS SECTION, THE LOCAL
24 REVIEWING AUTHORITY SHALL ACCEPT LEGAL RESPONSIBILITY FOR
25 ITS ACTIONS UNDER THIS PART."

1 Section 7. Section 76-4-109, MCA, is amended to read:

2 "76-4-109. Penalties. (1) A person violating any
3 provision of this part, except 76-4-122(1), or any rule or
4 order issued under this part is guilty of an offense and
5 subject to a fine of not to exceed \$1,000.

6 (2) In addition to the fine specified in subsection
7 (1), a person who violates any provision of this part or any
8 rule or order issued under this part is subject to a civil
9 penalty not to exceed \$1,000. Each day of violation
10 constitutes a separate violation.

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

15 ~~(3)~~(4) The purpose of this section is to provide
16 additional and cumulative remedies."

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

18 "76-4-121. Restrictions on subdivision activities.
19 Until the local governing body has certified that a
20 subdivision is to be provided with municipal facilities for
21 a supply of water and disposal of sewage and solid waste or
22 that the department reviewing authority has indicated that
23 the subdivision is subject to no restrictions, a person may
24 not file a subdivision plat 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 9. 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 not
9 file or record any map or plat showing a subdivision unless
10 it complies with the provisions of this part.

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

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

22 (b) whenever department reviewing authority approval
23 is not necessary, the person wishing to file the plat has
24 obtained a certificate from the governing body that the
25 subdivision is inside a master planning area and will be

1 provided with municipal facilities for the supply of water
2 and disposal of sewage and solid waste."

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

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

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

17 "76-4-124. Type of review and approval required within
18 master planning areas. (1) Within master planning areas
19 adopted pursuant to chapter 1, a subdivision is not subject
20 to sanitary restrictions when the local governing body
21 certifies that municipal facilities for the supply of water
22 and disposal of sewage and solid waste will be provided for
23 the subdivision as provided in 76-4-127. In this case,
24 department reviewing authority approval is not necessary.

25 (2) To the extent that municipal facilities for the

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

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

7 "~~76-4-125. Review of subdivisions-excluded-from-all-or~~
8 ~~some--of--the-provisions-of-the-subdivision-and-platting-act~~
9 development plans -- land divisions excluded from review.

10 (1) ~~When--a-subdivision-as-defined-in-this-part-is-excluded~~
11 ~~from--the--provisions--of--76-3-302--and--76-3-403---through~~
12 ~~76-3-403,-but-not-76-3-201,-and-the-subdivision-is-otherwise~~
13 ~~subject--to--the--provisions--of--this-party-plans~~ Plans and
14 specifications of the a subdivision as defined in this part
15 shall be submitted to the department reviewing authority,
16 and 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 according to the provisions of this part, except that the
10 following divisions, unless such exclusions are used to
11 evade the provisions of this part, are not subject to review
12 ~~by the department~~:

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

14 (b) divisions made for the purpose of acquiring
15 additional land to become part of an approved parcel,
16 provided that no dwelling or structure requiring water or
17 sewage disposal is to be erected on the additional acquired
18 parcel and that the division does not fall within a
19 previously platted or approved subdivision; and

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

23 Section 13. Section 76-4-126, MCA, is amended to read:

24 "76-4-126. Right to hearing. Upon denial of approval
25 of subdivision plans and specifications relating to

1 environmental health facilities, the person who is aggrieved
2 by such denial may request a hearing before the board or the
3 reviewing authority. Such hearings will be held pursuant to
4 the Montana Administrative Procedure Act ~~or according to~~
5 ~~procedures adopted by a local reviewing authority.~~"

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

7 "76-4-127. Notice of certification ~~to department~~ that
8 water and waste services will be provided by local
9 government. (1) When a subdivision is reviewed under the
10 master plan provisions of 76-4-124, the local governing body
11 shall, within 20 days after receiving an application under
12 the Montana Subdivision and Platting Act, send notice of
13 certification to the department reviewing authority that a
14 subdivision has been submitted for approval and that
15 municipal facilities for the supply of water and disposal of
16 sewage and solid waste will be provided for the subdivision.

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

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

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

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

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

25 (e) how construction of the sewage disposal and water

1 supply systems or extensions will be financed;

2 (f) a copy of the master plan if one has not yet been

3 submitted to the department reviewing authority;

4 (g) the relative location of the subdivision to the

5 city or town; and

6 (h) certification that adequate municipal facilities

7 for the supply of water and disposal of sewage and solid

8 waste are available or will be provided within 1 year after

9 the notice of certification is issued."

10 Section 15. Section 76-4-128, MCA, is amended to read:

11 "76-4-128. Delegation of department review to local

12 government reviewing authority. (1) The department shall

13 delegate to a local government reviewing authority the

14 authority to review a subdivision under this part when the

15 subdivision:

16 (a) involves five or fewer parcels and each parcel

17 will contain individual onsite water and sewage disposal

18 facilities; or

19 (b) involves divisions of land proposed to connect to

20 public or community water and waste water systems previously

21 approved by the department and no extension of the systems

22 is required; and

23 (c) the local government has qualified personnel to

24 adequately review determine whether the water supply and

25 sewage and solid waste disposal facilities proposed for the

1 ~~subdivision meet the standards prescribed by the department.~~

2 ~~(2) When a local government has conducted a review of~~

3 ~~a subdivision containing five or fewer parcels pursuant to~~

4 ~~this section, it shall advise the department of its~~

5 ~~recommendation for approval or disapproval of the~~

6 ~~subdivision. The department shall within 10 days after~~

7 ~~receiving the recommendation of the local government, make a~~

8 ~~final decision on the subdivision.~~

9 ~~(3) In delegating authority pursuant to this section,~~

10 ~~the department shall enter into an agreement with the local~~

11 ~~government wherein the department shall agree to transfer~~

12 ~~not less than \$15 of the fee per parcel collected pursuant~~

13 ~~to 76-4-105 to the local government for the review of~~

14 ~~subdivisions containing five or fewer parcels.~~

15 ~~(2) When a local reviewing authority exercises the~~

16 ~~authority delegated to it by this section, the local~~

17 ~~reviewing authority shall accept legal responsibility for~~

18 ~~its actions under this part."~~

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

20 "76-4-130. Deviation from plans or specifications. A

21 person may not construct or use a facility which deviates

22 from the plans and specifications filed with the department

23 reviewing authority until the department reviewing authority

24 has approved the deviation."

25 NEW SECTION. Section 16. Revocation of certificate of

1 approval. If a violation of this part is found to exist, a
2 reviewing authority may revoke a certificate of approval and
3 reimpose sanitary restrictions on a subdivision, following a
4 hearing before the reviewing authority under 76-4-108.

5 NEW SECTION. Section 17. Extension of authority. Any
6 existing authority of the department of health and
7 environmental sciences to make rules on the subject of the
8 provisions of this act is extended to the provisions of this
9 act.

10 NEW SECTION. Section 18. Codification instruction.
11 Section ~~17~~ 16 is intended to be codified as an integral part
12 of Title 76, chapter 4, part 1, and the provisions of Title
13 76, chapter 4, part 1, apply to section ~~17~~ 16.

14 NEW SECTION. SECTION 19. COORDINATION INSTRUCTION. IF
15 HOUSE BILL NO. 633, INCLUDING THE SECTION OF THAT BILL THAT
16 APPROPRIATES MONEY TO THE DEPARTMENT FOR SUBDIVISION REVIEW
17 IN FISCAL YEARS 1986 AND 1987, IS NOT PASSED AND APPROVED,
18 SECTION 3, SUBSECTION (3) OF THIS ACT IS AMENDED TO PROVIDE
19 A FEE OF \$10 PER REVIEWED LOT.

20 NEW SECTION. Section 20. Effective date. This act is
21 effective July 1, 1985.

-End-