

SENATE BILL NO. 248

INTRODUCED BY

Senator HARP Harding

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Cole

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FROM CESSPOOL, SEPTIC TANK, AND PRIVY CLEANER REGULATION; REQUIRING LOCAL HEALTH BOARDS TO REGULATE CESSPOOL, SEPTIC TANK, AND PRIVY CLEANERS; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO SET MINIMUM STANDARDS FOR LOCAL HEALTH BOARD RULES; AUTHORIZING LOCAL HEALTH OFFICERS AND REGISTERED SANITARIANS TO DENY, SUSPEND, OR REVOKE LICENSES FOR VIOLATIONS; PROVIDING LOCAL HEALTH BOARDS AND COUNTY COMMISSIONERS WITH ENFORCEMENT AUTHORITY; AMENDING SECTIONS 37-41-101, 37-41-103, 37-41-104, 37-41-211, 37-41-212, AND 50-2-116, MCA; REPEALING SECTIONS 37-41-201, 37-41-202, AND 37-41-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because additional rulemaking, beyond that already granted under 37-41-103, is granted to the department of health and environmental sciences. This rulemaking authority will allow the department to adopt rules for the regulation of cesspool, septic tank, and privy cleaning and disposal businesses and to establish standards for hearings. These rules will serve as minimum standards for local health boards in regulating these businesses.

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

Section 1. Section 37-41-101, MCA, is amended to read:

"37-41-101. ~~License required~~ Regulation by local health board. (1) A local health board shall regulate all persons engaged in cleaning cesspools, septic tanks, and privies or in disposing of septage within that local health board's jurisdiction.

(2) ~~No~~ A local health board may require that a person ~~may engage~~ engaged in the business of cleaning cesspools, septic tanks, or privies ~~and disposal~~ or in disposing of septage ~~therefrom unless licensed~~

1 ~~by the department~~ obtain a license from the local health board."

2

3 **Section 2.** Section 37-41-103, MCA, is amended to read:

4 **"37-41-103. ~~Rulemaking power~~ Authority of department and local health board.** (1) If a local
 5 health board requires persons engaged in the business of cleaning or disposing of septage from septic
 6 tanks, cesspools, or privies to be licensed, an application for a license must be made to the local health
 7 board on application forms provided by the local health board.

8 (2) The department of health and environmental sciences shall adopt ~~necessary~~ rules for the
 9 implementation of the provisions of this chapter, ~~that are minimum standards for each local health board.~~
 10 These rules must be adopted by September 30, 1995. The rules may include ~~including~~ rules pertaining to:

11 ~~(1)(a) (i) licensure but not the operation of septic tank, cesspool, and privy cleaning businesses~~
 12 ~~handling and disposal of septage; and~~

13 (ii) septage disposal sites; ~~and~~

14 ~~(2) requirements for temporary and permanent sites for disposal of septage; and~~

15 (b) hearings held under this chapter.

16 (3) Each local health board shall adopt rules that are at least as stringent as those adopted pursuant
 17 to subsection (2).

18 (4) The local health board may charge a fee for a license and for a late renewal of a license."

19

20 **Section 3.** Section 37-41-104, MCA, is amended to read:

21 **"37-41-104. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,
 22 the following definitions apply:

23 (1) ~~"Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

24 ~~(2) "Department" means the department of health and environmental sciences provided for in Title~~
 25 ~~2, chapter 15, part 21.~~

26 ~~(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of~~
 27 septage into or onto the land or water.

28 (2) "Local health board" means a local board as defined in 50-2-101.

29 (3) "Local health officer" means a local health officer as defined in 50-2-101.

30 (4) "Person" means an individual, firm, partnership, association, corporation, city, town, local

1 government entity, or other government or private entity, whether organized for profit or not.

2 (5) "Registered sanitarian" means a registered sanitarian, as defined in 37-40-101, who works for
3 or contracts with a local health board.

4 ~~(6)~~ "Septage" means waste material from cesspools, septic tanks, or privies."
5

6 **Section 4.** Section 37-41-211, MCA, is amended to read:

7 **"37-41-211. Denial, suspension, or revocation of license.** ~~The department~~ A local health officer
8 or registered sanitarian may deny, suspend, or revoke a license for noncompliance with this chapter or rules
9 adopted by the ~~department~~ local health board. Upon denial, suspension, or revocation, the applicant or
10 licensee may request a hearing within 30 days after receipt of a written notice of the ~~department's~~
11 by the local health officer or registered sanitarian. The hearing must be held before the local health board
12 and in accordance with the Montana Administrative Procedure Act."
13

14 **Section 5.** Section 37-41-212, MCA, is amended to read:

15 **"37-41-212. Enforcement responsibility -- penalty -- deposit of fines.** (1) ~~State and local~~ Local
16 health officers boards or the county commissioners shall enforce this chapter and rules adopted by the local
17 health board.

18 (2) A person who violates this chapter or a rule of the ~~department~~ local health board is guilty of
19 a misdemeanor and upon conviction shall be fined not more than \$500.

20 (3) All fines collected under this section, except those collected by a justice's court, ~~shall~~ must be
21 deposited in the general fund of the county in which the action is brought."
22

23 **Section 6.** Section 50-2-116, MCA, is amended to read:

24 **"50-2-116. Powers and duties of local boards.** (1) Local boards shall:

25 (a) appoint a local health officer who is a physician or a person with a master's degree in public
26 health or the equivalent and with appropriate experience, as determined by the department, and shall fix
27 ~~his~~ the health officer's salary;

28 (b) elect a ~~chairman~~ presiding officer and other necessary officers;

29 (c) employ necessary qualified staff;

30 (d) adopt bylaws to govern meetings;

- 1 (e) hold regular meetings quarterly and hold special meetings as necessary;
- 2 (f) supervise destruction and removal of all sources of filth that cause disease;
- 3 (g) guard against the introduction of communicable disease;
- 4 (h) supervise inspections of public establishments for sanitary conditions;
- 5 (i) adopt necessary regulations that are ~~no less~~ at least as stringent than as state standards for
- 6 persons engaged in cleaning cesspools, septic tanks, or privies and for the control and disposal of sewage
- 7 from private and public buildings that ~~is~~ are not regulated by Title 75, chapter 6, or Title 76, chapter 4.
- 8 The regulations must describe standards for granting variances from the minimum requirements that are
- 9 identical to standards promulgated by the board of health and environmental sciences and must provide for
- 10 appeal of variance decisions to the department as required by 75-5-305. These regulations must be
- 11 adopted by December 31, 1995.
- 12 (2) Local boards may:
- 13 (a) quarantine persons who have communicable diseases;
- 14 (b) require isolation of persons or things that are infected with communicable diseases;
- 15 (c) furnish treatment for persons who have communicable diseases;
- 16 (d) prohibit the use of places that are infected with communicable diseases;
- 17 (e) require and provide means for disinfecting places that are infected with communicable diseases;
- 18 (f) accept and spend funds received from a federal agency, the state, a school district, or other
- 19 persons;
- 20 (g) contract with another local board for all or a part of local health services;
- 21 (h) reimburse local health officers for necessary expenses incurred in official duties;
- 22 (i) abate nuisances affecting public health and safety or bring action necessary to restrain the
- 23 violation of public health laws or rules;
- 24 (j) adopt necessary fees to administer regulations for the control and disposal of sewage from
- 25 private and public buildings (fees must be deposited with the county treasurer);
- 26 (k) adopt rules that do not conflict with rules adopted by the department:
- 27 (i) for the control of communicable diseases;
- 28 (ii) for the removal of filth that might cause disease or adversely affect public health;
- 29 (iii) on sanitation in public buildings that affects public health;
- 30 (iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might

1 endanger human lives; and

2 (v) for the maintenance of sewage treatment systems that do not discharge an effluent directly into
3 state waters and that are not required to have an operating permit as required by rules adopted under
4 75-5-401."

5

6 **NEW SECTION. Section 7. Repealer.** Sections 37-41-201, 37-41-202, and 37-41-205, MCA, are
7 repealed.

8

9 **NEW SECTION. Section 8. Applicability.** [This act] applies to licenses granted or renewed after
10 January 1, 1996.

11

12 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.

13

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0248, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act removing the Department of Health and Environmental Sciences (DHES) from cesspool, septic tank, and privy cleaner regulation, requiring DHES to set minimum standards for local health board rules, authorizing local health officers and registered sanitarians to deny, suspend, or revoke licenses for violations, and providing local health boards and county commissioners with enforcement authority.

ASSUMPTIONS:

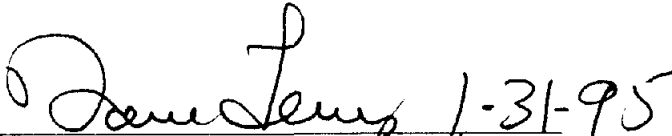
1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The state cesspool, septic tank, and privy cleaner license fee requirement would be repealed, resulting in a loss of the \$25.00 annual fee and the \$25.00 late license fee penalty.
3. There are approximately 130 licensed septic tank pumpers statewide. Net license revenue from these sources is \$3,250 annually (130 x \$25 = \$3,250).
4. For each of the 130 license septic tank pumpers statewide, counties receive 80% (or \$2,600) of each annual license fee and the state receives 20% (or \$650) for each annual license fee.
5. Assuming that 26 licensees (approximately 20%) annually pay the late license fee penalty, \$650 is generated in late fee revenue, which is all retained by the state. (26 x \$25 = \$650)
6. Net annual loss of revenue to the counties will be \$2,600 and the net loss of revenue to the state will be \$1,300.
7. DHES will provide a technical update of the rules by Sept. 30, 1995.
8. Counties may enact a local septic tank pumper license fee to cover the cost of regulation at the local level.

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	(1,300)	(1,300)
Local Grants	<u>(2,600)</u>	<u>(2,600)</u>
Total	(3,900)	(3,900)
<u>Funding:</u>		
License Fees (02)	(3,900)	(3,900)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local health agencies would no longer share the license fees distribution of \$2,600 per year for work to approve waste disposal sites or investigate complaints received on licensed septic tank pumpers. This bill requires that all local boards of health adopt minimum regulations for waste disposal at least as stringent as state standards and allows local license fees.


 DAVE LEWIS, BUDGET DIRECTOR DATE 1-31-95
 Office of Budget and Program Planning

 2-1-95
 WILLIAM CRISMORE, PRIMARY SPONSOR DATE