

HOUSE BILL NO. 498

INTRODUCED BY L. SCHUBERT, S. KLAKKEN, E. ALBUS, T. SHARP, R. GREGG, M. THIEL, D. ZOLNIKOV,
D. EMRICH, S. GIST, S. VANCE, J. SCHILLINGER, G. OBLANDER, L. DEMING, B. BARKER, Z. WIRTH, J.

HINKLE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE FLUORIDATION OF PUBLIC WATER
SUPPLY SYSTEMS; AND AMENDING SECTIONS 75-6-112 AND 76-4-104, MCA."

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

Section 1. Section 75-6-112, MCA, is amended to read:

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

- (1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is intended to be used as a public water supply system or a system that is intended to be used as a public sewage system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;
- (2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the department unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;
- (3) introduce fluoride to a public water supply system;
- ~~(3)~~(4) violate any provision of this part or a rule adopted under this part; or
- (4)~~(5)~~ violate any condition or requirement of an approval issued pursuant to this part."

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

"76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135 and 75-6-112(3), adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

- (2) The rules and standards must provide the basis for approving subdivisions for various types of

1 public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste

2 disposal. The rules and standards must be related to:

3 (a) size of lots;

4 (b) contour of land;

5 (c) porosity of soil;

6 (d) ground water level;

7 (e) distance from lakes, streams, and wells;

8 (f) type and construction of private water and sewage facilities; and

9 (g) other factors affecting public health and the quality of water for uses relating to agriculture,
10 industry, recreation, and wildlife.

11 (3) The storm drainage review requirements of this chapter do not apply to divisions or parcels of
12 land that are exempt from review under 76-3-207(1)(a), (1)(d), (1)(e), or (1)(f) that:

13 (a) are used for a single-family residential purpose; and

14 (b) include no more than 25% that is impervious.

15 (4) (a) Except as provided in subsection (4)(b), the rules must provide for the review of
16 subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter
17 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional
18 engineer and if the department certifies under subsection (5) that the local department or board is competent to
19 conduct the review.

20 (b) (i) Except as provided in 75-6-121 and subsection (4)(b)(ii) of this section, a local department or
21 board of health may not review public water supply systems, public sewage systems, or extensions of or
22 connections to these systems.

23 (ii) A local department or board of health may be certified by the department to review subdivisions
24 proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems
25 previously approved by the department if no extension of the systems is required.

26 (5) (a) The department shall also adopt standards and procedures for certification and maintaining
27 certification to ensure that a local department, local board of health, or independent reviewer is competent to
28 review the subdivisions as described in subsection (4).

(b) On or before December 31, 2023, the department shall develop procedures for certification of prequalified independent reviewers and develop a training curriculum to ensure compliance with this part.

(6) The department shall review those subdivisions described in subsection (4) if:

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

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

(7) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed units and structures requiring facilities for water supply or sewage disposal;

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

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

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

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways, except that the rules must provide a basis for not requiring storm water review under this part for parcels 5 acres and larger on which the total impervious area does not and will not exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75, chapter 5, or rules adopted pursuant to Title 75, chapter 5.

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

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

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

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone

1 are located wholly within the boundaries of the proposed subdivision where the proposed drainfield or well is
2 located or that an easement or, for public land, other authorization has been obtained from the landowner to
3 place the proposed drainfield mixing zone or proposed well isolation zone outside the boundaries of the
4 proposed subdivision where the proposed drainfield or proposed well is located.

5 (i) A proposed drainfield mixing zone or a proposed well isolation zone for an individual water
6 system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of
7 the subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

8 (ii) This subsection (7)(i) does not apply to the divisions provided for in 76-3-207 except those
9 under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or
10 reconstruction of or other improvements to a public sewage system within a well isolation zone that extends
11 onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

12 (j) criteria for granting waivers and deviations from the standards and technical procedures
13 adopted under subsections (7)(e) through (7)(i);

14 (k) evidence to establish that, if a public water supply system or a public sewage system is
15 proposed, provision has been made for the system and, if other methods of water supply or sewage disposal
16 are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect
17 at the time of submission of the subdivision application under this chapter. Evidence that the systems will
18 comply with local laws and regulations must be in the form of a certification from the local health department as
19 provided by department rule.

20 (l) evidence to demonstrate that appropriate easements, covenants, agreements, and
21 management entities have been established to ensure the protection of human health and state waters and to
22 ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal
23 facilities;

24 (m) eligibility requirements for municipalities and county water and/or sewer districts to qualify as a
25 certifying authority under the provisions of 76-4-127;

26 (n) construction details for individual and shared onsite wastewater systems to be reviewed by the
27 local board of health at the time of septic permitting, except that the reviewing authority may require additional
28 construction detail if the wastewater is not residential strength;

1 (o) simplified methods for storm water reviews, including acceptable minimum storm water
2 volumes based solely on impervious area for proposed lots with one or two single-family residences; and

3 (p) a basis for exempting from review facilities previously approved under this chapter or by a local
4 reviewing authority of the facility is not proposed to be changed, is not affected by a proposed change to
5 another facility, and meets the design conditions of its existing approval under this chapter or by the local
6 authority and is operating properly. Existing systems must meet the current setbacks established in rule and
7 subsection (7)(i), unless the lot was created before the relevant effective dates for mixing zones and isolation
8 zones.

9 (8) The requirements of subsection (7)(i) regarding proposed drainfield mixing zones and proposed
10 well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after
11 October 1, 2021, except as provided in subsections (7)(i)(i) and (7)(i)(ii).

12 (9) The department shall:

13 (a) conduct a biennial review of experimental wastewater system components that have been
14 granted a waiver or deviation as provided in subsection (7)(j);

15 (b) utilize relevant analysis of wastewater system components approved in other states and data
16 from peer-reviewed third-party studies to conduct the review provided in subsection (9)(a);

17 (c) propose those experimental wastewater system components that meet the purposes and
18 provisions of this part for adoption into the rules pursuant to this section; and

19 (d) report to the local government interim committee biennially, in accordance with 5-11-210, the
20 number and type of experimental wastewater system components reviewed and the number and type of system
21 components approved and provide written findings to explain why a system component was reviewed but not
22 approved.

23 (10) Review and certification or denial of certification that a division of land is not subject to sanitary
24 restrictions under this part may occur only under those rules in effect when a complete application is submitted
25 to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot
26 was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied.
27 In the absence of specific requirements, minimum standards necessary to protect public health and water
28 quality apply.

1 (11) The reviewing authority may not deny or condition a certificate of subdivision approval under
2 this part unless it provides a written statement to the applicant detailing the circumstances of the denial or
3 condition imposition. The statement must include:

4 (a) the reason for the denial or condition imposition;

5 (b) the evidence that justifies the denial or condition imposition; and

6 (c) information regarding the appeal process for the denial or condition imposition.

7 (12) (a) Subject to subsection (12)(b), the department may adopt rules that provide technical details
8 and clarification regarding the water and sanitation information required to be submitted under 76-3-622.

9 (b) A subdivider may locate a water well anywhere on a lot, parcel, or tract of record if the
10 subdivider maintains the minimum setback distances adopted in rule. The reviewing authority may not limit a
11 subdivider to a single proposed well location.

12 (13) (a) The rules must provide for the review of subdivisions consistent with 76-4-114 by an
13 independent reviewer if the department certifies under subsection (5) of this section that the independent
14 reviewer is competent to conduct the review.

15 (b) (i) Except as provided in subsection (13)(b)(ii), an independent reviewer may not review public
16 water supply systems, public sewage systems, or extensions of or connections to these systems.

17 (ii) An independent reviewer may be certified by the department to review subdivisions proposed
18 to connect to existing municipal or county water and/or sewer district water and wastewater systems previously
19 approved by the department if no extension of the system is required.

20 (c) If 110 or more new files are submitted to the department for review in any 1 month, the
21 department shall assign applications received in that month to independent reviewers unless an independent
22 reviewer is not available.

23 (d) The department shall reimburse independent reviewers at the same rate the department
24 reimburses local departments or local boards of health certified under subsection (4).

25 (14) Prior to being assigned an application for review, an independent reviewer shall identify any
26 conflict of interest related to the project under potential review. If the independent reviewer identifies a conflict
27 of interest, the application for review must be assigned to a different independent reviewer.

28 (15) An independent reviewer acting under the requirements of this chapter shall comply with the

1 provisions of Title 2, chapter 6, for public information requests.

2 (16) An independent reviewer conducting reviews under this section shall complete documents

3 necessary to complete the review and to comply with:

4 (a) the Montana Environmental Policy Act provided for in Title 75, chapter 1, parts 1 through 3; and

5 (b) real property takings requirements in accordance with Title 70."

6 - END -