

HOUSE BILL NO. 658

INTRODUCED BY J. HINKLE, C. HINKLE, L. BREWSTER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL BOARD OF HEALTH POWERS RELATED TO SANITATION; REMOVING THE ABILITY TO ADOPT SANITATION-RELATED RULES THAT ARE MORE STRINGENT THAN STATE STANDARDS; PROVIDING THAT SUBSURFACE ONSITE WASTEWATER TREATMENT SYSTEMS ALREADY INSTALLED AND FUNCTIONING ARE NOT SUBJECT TO AMENDMENTS OR UPDATES TO LOCAL BOARD OF HEALTH RULES; AMENDING SECTIONS 50-2-116 AND 50-2-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards of health. (1) Except as provided in subsection (5), in order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

- (a) recommend to the governing body the appointment of a local health officer who is:
 - (i) a physician;
 - (ii) a person with a master's degree in public health; or
 - (iii) a person with equivalent education and experience, as determined by the department;
- (b) elect a presiding officer and other necessary officers;
- (c) adopt bylaws to govern meetings;
- (d) hold regular meetings at least quarterly and hold special meetings as necessary;
- (e) identify, assess, prevent, and ameliorate conditions of public health importance through:
 - (i) epidemiological tracking and investigation;
 - (ii) screening and testing;

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- 1 (iii) isolation and quarantine measures;
- 2 (iv) diagnosis, treatment, and case management;
- 3 (v) abatement of public health nuisances;
- 4 (vi) inspections;
- 5 (vii) collecting and maintaining health information;
- 6 (viii) education and training of health professionals; or
- 7 (ix) other public health measures as allowed by law;
- 8 (f) protect the public from the introduction and spread of communicable disease or other
- 9 conditions of public health importance, including through actions to ensure the removal of filth or other
- 10 contaminants that might cause disease or adversely affect public health;
- 11 (g) supervise or make inspections for conditions of public health importance and issue written
- 12 orders for compliance or for correction, destruction, or removal of the conditions;
- 13 (h) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the
- 14 violation of public health laws, rules, and local regulations;
- 15 (i) identify to the department an administrative liaison for public health. The liaison must be the
- 16 local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a
- 17 full-time local health officer, the liaison must be the highest ranking public health professional employed by the
- 18 jurisdiction.
- 19 (j) subject to the provisions of ~~50-2-130~~ subsection (8), propose for adoption by the local
- 20 governing body necessary regulations that are not less stringent than state standards for the control and
- 21 disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6,
- 22 or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum
- 23 requirements that are identical to standards promulgated by the department of environmental quality and must
- 24 provide for appeal of variance decisions to the department of environmental quality as required by 75-5-305. If
- 25 the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a
- 26 well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the
- 27 authorization of the private property owner.

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- 1 (2) Local boards of health may:
- 2 (a) accept and spend funds received from a federal agency, the state, a school district, or other
- 3 persons or entities;
- 4 (b) propose for adoption by the local governing body necessary fees to administer regulations for
- 5 the control and disposal of sewage from private and public buildings and facilities;
- 6 (c) propose for adoption by the local governing body regulations that do not conflict with 50-50-126
- 7 or rules adopted by the department:
- 8 (i) for the control of communicable diseases;
- 9 (ii) for the removal of filth that might cause disease or adversely affect public health;
- 10 (iii) subject to the provisions of ~~50-2-130~~ subsection (8), for sanitation in public and private
- 11 buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do
- 12 not discharge effluent directly into state water and that are not required to have an operating permit as required
- 13 by rules adopted under 75-5-401;
- 14 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing
- 15 establishments and that are not less stringent than state standards for tattooing and body-piercing
- 16 establishments;
- 17 (v) for the establishment of institutional controls that have been selected or approved by the:
- 18 (A) United States environmental protection agency as part of a remedy for a facility under the
- 19 federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et
- 20 seq.; or
- 21 (B) department of environmental quality as part of a remedy for a facility under the Montana
- 22 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and
- 23 (vi) to implement the public health laws;
- 24 (d) adopt rules necessary to implement and enforce regulations adopted by the local governing
- 25 body; and
- 26 (e) promote cooperation and formal collaborative agreements between the local board of health
- 27 and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,

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information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.

(4) A directive, mandate, or order issued by a local board of health in response to a declaration of emergency or disaster by the governor as allowed in 10-3-303 or by the principal executive officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

(a) remains in effect only during the declared state of emergency or disaster or until the governing body holds a public meeting and allows public comment and the majority of the governing body moves to amend, rescind, or otherwise change the directive, mandate, or order; and

(b) may not interfere with or otherwise limit, modify, or abridge a person's physical attendance at or operation of a religious facility, church, synagogue, or other place of worship.

(5) A regulation allowed in subsection (2)(c)(i), (2)(c)(ii), or (2)(c)(vi) adopted or a directive, mandate, or order implemented to carry out the provisions of this part that applies to the entire jurisdictional area of a town, city, or county under the jurisdiction of the local health board may not:

(a) compel a private business to deny a customer of the private business access to the premises or access to goods or services;

(b) deny a customer of a private business the ability to access goods or services provided by the private business; or

(c) include any of the following actions for noncompliance of actions described in subsections (5)(a) and (5)(b):

(i) require the assessment of a fee or fine;

(ii) require the revocation of a license required for the operation of a private business;

(iii) find a private business owner guilty of a misdemeanor; or

(iv) bring any other retributive action against a private business owner, including but not limited to an action allowed under 50-2-123, a penalty allowed under 50-2-124, or any other criminal charge.

(6) The prohibition provided for in subsection (5)(b) does not apply to persons confirmed to have a

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communicable disease and who are currently under a public isolation order.

(7) The prohibitions provided for in subsection (5) do not restrict a local board of health from exercising its authority under this section to enforce and ensure compliance by private businesses with all lawfully adopted regulations, directives, and orders.

(8) (a) Subsurface onsite wastewater treatment systems that are currently installed and in operation that do not show signs of failure are not subject to any amendment or update to local health board rules adopted after the date that the subsurface onsite wastewater system was approved and installed. Nothing in this subsection (8)(a) may restrict a local board of health from adopting rules that apply to a failed or failing component of a subsurface onsite wastewater treatment system.

(b) (i) The local board of health shall provide to landowners in writing all requirements and directives from the local board of health for the installation of a new subsurface onsite wastewater treatment system and any subsequent amendments, revisions, or updates to the requirements for a newly installed or existing subsurface onsite wastewater treatment system.

(ii) A local board of health may not place additional requirements on a landowner for the installation of a new subsurface onsite wastewater treatment system or for the update of existing subsurface onsite wastewater treatment systems unless additional written directives that include clear, documented evidence are provided to the landowner.

(c) If a subsurface onsite wastewater treatment system was originally installed with multiple components that provide a similar function and the primary component fails, the secondary component may be used without approval under subsection (1)(j).

(d) If a landowner seeks a change of use from residential to commercial and the landowner's proposed commercial wastewater treatment use will be at the same capacity or less than the currently approved and installed subsurface onsite wastewater treatment system, the local board of health shall approve the change of use and update the septic permit. If the proposed commercial wastewater treatment use is greater than the capacity of the currently approved and installed subsurface onsite wastewater treatment system, the landowner is required to apply for a new septic permit.

~~(8)(9)~~ As used in this section, "private business" means an individual or entity that is not principally a

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part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company."

Section 2. Section 50-2-130, MCA, is amended to read:

"50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not propose for adoption by the local governing body a rule under 50-2-116(1)(j), (2)(c)(iii), or (2)(c)(iv) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may propose for adoption by the local governing body a rule to implement 50-2-116(1)(j), ~~(2)(c)(iii), or (2)(c)(iv)~~ that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and
(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The