_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURE FOR CHALLENGING APPROVAL DECISIONS UNDER LAWS GOVERNING SANITATION IN PUBLIC WATER SUPPLY AND SEWAGE SYSTEMS AND SUBDIVISIONS; PROVIDING THAT CHALLENGES MUST BE BROUGHT WITHIN 30 DAYS OF THE ISSUANCE OF A FINAL DECISION OF APPROVAL; PROVIDING A DEFINITION; AMENDING SECTIONS 75-6-111 AND 76-4-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 75-6-111, MCA, is amended to read:

"**75-6-111. Appeal from rule or standard -- challenge of final decision to approve -- injunction to require compliance.** (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court, except as otherwise provided in 75-6-109. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The court may award the department costs and expenses incurred in investigating and abating the violation. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113 or a civil penalty as provided in 75-6-114.

(3) (a) A challenge to the district court of the department's approval of facilities subject to the provisions of this part:

(i) may only be brought against a final decision to approve; and

(ii) must be brought within 30 days after the date of issuance of the final decision to approve.

(b) Attorney fees or costs may not be awarded to the prevailing party in an action challenging a final decision to approve.

(c) (i) For the purposes of this subsection (3), "final decision to approve" means the department's decision to approve necessary maps, plans, and specifications and authorize a person to commence or continue the 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.

(ii) The term does not include a decision made by the department while its review of maps, plans, or specifications submitted is ongoing or any other interim or interlocutory decision made that does not authorize any action or conduct by an applicant."

Section 2. Section 76-4-126, MCA, is amended to read:

"**76-4-126. Right to hearing -- challenge of final decision to approve.** (1) Upon a denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing before the board. A hearing request must be filed, in writing, within 30 days after receipt of the notice of denial and must state the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(2) If the grounds for a denial of approval under this part include noncompliance with local laws or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and disposal of sewage, the board shall upon receipt of a hearing request refer the local compliance issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination regarding the local compliance issues, and the board shall incorporate the determination of the local authority in the board's final decision.

(3) (a) A person aggrieved by the department's approval of subdivision plans and specifications issued pursuant to this part may challenge the decision in the district court. The challenge:

(i) may only be brought against a final decision to approve; and

(ii) must be brought within 30 days after the date of issuance of the final decision to approve.

(b) Attorney fees or costs may not be awarded to the prevailing party in an action challenging a final decision to approve.

(c) (i) For the purposes of this subsection (3), "final decision to approve" means the department's decision to approve an application and issue a certificate of subdivision approval pursuant to 76-4-114 or the department's decision to approve a modification to a certificate of subdivision approval under 76-4-130(1).

(ii) The term does not include a decision made by the department while its review of an application or a request for a modification is ongoing or any other interim or interlocutory decision made that does not authorize any action or conduct by an applicant."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Applicability.** [This act] applies to decisions made by the department of environmental quality on or after [the effective date of this act].

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