

1 HOUSE BILL NO. 593

2 INTRODUCED BY D. ANKNEY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO
5 REPEAL ARM 17.8.771 AND 17.8.772; PROHIBITING THE BOARD OF ENVIRONMENTAL REVIEW FROM
6 ADOPTING MERCURY RULES THAT ARE MORE STRINGENT THAN CORRESPONDING FEDERAL
7 REGULATIONS; AMENDING SECTION 75-2-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 NEW SECTION. **Section 1. Department to repeal rule.** Before December 31, 2011, the board of
12 environmental review shall repeal ARM 17.8.771 and 17.8.772.
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14 NEW SECTION. **Section 2. Mercury allowances -- stringency -- void.** (1) The board of environmental
15 review may not adopt a rule to implement a federal mercury regulation promulgated under 40 CFR, parts 60, 63,
16 72, or 75, that is more stringent than the comparable federal regulation or guidelines that address the same
17 circumstances.

18 (2) If a court of competent jurisdiction declares mercury rules promulgated by the environmental
19 protection agency invalid or if the environmental protection agency rescinds its mercury rules, any corresponding
20 rule adopted by the board relating to the regulation of mercury emissions is void.
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22 **Section 3.** Section 75-2-207, MCA, is amended to read:

23 **"75-2-207. State regulations no more stringent than federal regulations or guidelines -- exceptions**
24 **-- procedure.** (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless required by state
25 law, the board or department may not adopt a rule to implement this chapter that is more stringent than the
26 comparable federal regulations or guidelines that address the same circumstances. The board or department may
27 incorporate by reference comparable federal regulations or guidelines.

28 (2) (a) ~~The~~ Except as provided in [section 2], the board or department may adopt a rule to implement
29 this chapter that is more stringent than comparable federal regulations or guidelines only if:

30 (i) a public hearing is held;

- 1 (ii) public comment is allowed; and
- 2 (iii) the board or the department makes a written finding after the public hearing and comment period that
- 3 is based on evidence in the record that the proposed standard or requirement:
- 4 (A) protects public health or the environment;
- 5 (B) can mitigate harm to the public health or the environment; and
- 6 (C) is achievable with current technology.
- 7 (b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed
- 8 scientific studies contained in the record that form the basis for the board's or the department's conclusion. The
- 9 written finding must also include information from the hearing record regarding costs to the regulated community
- 10 that are directly attributable to the proposed standard or requirement.
- 11 (c) (i) A person or entity affected by a rule of the board or department adopted after January 1, 1990,
- 12 and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations
- 13 or guidelines may petition the board or department to review the rule.
- 14 (ii) If the board or department determines that the rule is more stringent than comparable federal
- 15 regulations or guidelines, the board or department shall either revise the rule to conform to the federal regulations
- 16 or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time,
- 17 not to exceed 6 months after receiving the petition.
- 18 (iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged
- 19 rule. The board or department may charge a petition filing fee in an amount not to exceed \$250.
- 20 (iv) A person may also petition the board or department for a rule review under subsection (2)(a) if the
- 21 board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines
- 22 existed and the federal government subsequently establishes comparable regulations or guidelines that are less
- 23 stringent than the previously adopted board or department rule.
- 24 (3) This section does not apply to a rule adopted under the emergency rulemaking provisions of
- 25 2-4-303(1)."

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27 **NEW SECTION. Section 4. Codification instruction.** [Section 2] is intended to be codified as an

28 integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to [section 2].

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30 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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