

SENATE BILL NO. 109

INTRODUCED BY M. PHILLIPS

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE SCOPE OF AN ENVIRONMENTAL REVIEW MAY INCLUDE AN EXAMINATION OF IMPACTS BEYOND MONTANA'S BORDERS; AMENDING SECTIONS 75-1-102, 75-1-201, 75-1-208, AND 75-1-220, 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 75-1-102, MCA, is amended to read:

**"75-1-102. Intent -- purpose.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that:

(a) environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations; and

(b) the public is informed of the anticipated impacts ~~in Montana~~ of potential state actions.

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

(3) (a) The purpose of requiring an environmental assessment and an environmental impact statement under part 2 of this chapter is to assist the legislature in determining whether laws are adequate to address impacts to ~~Montana's~~ the environment and to inform the public and public officials of potential impacts resulting from decisions made by state agencies.

(b) Except to the extent that an applicant agrees to the incorporation of measures in a permit pursuant to ~~75-1-201(4)(b)~~ 75-1-201(3)(b), it is not the purpose of parts 1 through 3 of this chapter to provide for regulatory



1 authority, beyond authority explicitly provided for in existing statute, to a state agency."

2

3 **Section 2.** Section 75-1-201, MCA, is amended to read:

4 **"75-1-201. (Temporary) General directions -- environmental impact statements.** (1) The legislature  
5 authorizes and directs that, to the fullest extent possible:

6 (a) the policies, regulations, and laws of the state must be interpreted and administered in accordance  
7 with the policies set forth in parts 1 through 3;

8 (b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsections~~  
9 ~~(2) and (3)~~ subsection (2), shall:

10 (i) use a systematic, interdisciplinary approach that will ensure:

11 (A) the integrated use of the natural and social sciences and the environmental design arts in planning  
12 and in decisionmaking for a state-sponsored project that may have an impact on the ~~Montana~~ human  
13 environment ~~by projects in Montana~~; and

14 (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency  
15 considers alternatives, the alternative analysis will be in compliance with the provisions of subsections  
16 (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(II) and, if requested by the project sponsor or if determined by the agency to be  
17 necessary, subsection (1)(b)(iv)(C)(III);

18 (ii) identify and develop methods and procedures that will ensure that presently unquantified  
19 environmental amenities and values may be given appropriate consideration in decisionmaking for  
20 state-sponsored projects, along with economic and technical considerations;

21 (iii) identify and develop methods and procedures that will ensure that state government actions that may  
22 impact the human environment ~~in Montana~~ are evaluated for regulatory restrictions on private property, as  
23 provided in subsection (1)(b)(iv)(D);

24 (iv) include in each recommendation or report on proposals for projects, programs, and other major  
25 actions of state government significantly affecting the quality of the human environment ~~in Montana~~ a detailed  
26 statement on:

27 (A) the environmental impact of the proposed action;

28 (B) any adverse environmental effects ~~on Montana's environment~~ that cannot be avoided if the proposal  
29 is implemented;

30 (C) alternatives to the proposed action. An analysis of any alternative included in the environmental

1 review must comply with the following criteria:

2 (I) any alternative proposed must be reasonable, in that the alternative must be achievable under current  
3 technology and the alternative must be economically feasible as determined solely by the economic viability for  
4 similar projects having similar conditions and physical locations and determined without regard to the economic  
5 strength of the specific project sponsor;

6 (II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed  
7 alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding  
8 the proposed alternative;

9 (III) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative  
10 analysis must include the projected beneficial and adverse environmental, social, and economic impact of the  
11 project's noncompletion.

12 (D) any regulatory impacts on private property rights, including whether alternatives that reduce,  
13 minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this  
14 subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private  
15 property.

16 (E) the relationship between local short-term uses of the ~~Montana~~ human environment and the  
17 maintenance and enhancement of long-term productivity;

18 (F) any irreversible and irretrievable commitments of resources that would be involved in the proposed  
19 action if it is implemented;

20 (G) the customer fiscal impact analysis, if required by 69-2-216; and

21 (H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the  
22 economic advantages and disadvantages of the proposal;

23 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe  
24 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts  
25 concerning alternative uses of available resources. If the alternatives analysis is conducted for a project that is  
26 not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement  
27 the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to  
28 take a recommended course of action, but the project sponsor may agree pursuant to subsection ~~(4)(b)~~ (3)(b)  
29 to a specific course of action.

30 (vi) recognize the ~~potential~~ long-range character of environmental ~~impacts in Montana~~ problems and,

1 when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs  
 2 designed to maximize cooperation in anticipating and preventing a decline in the quality of ~~Montana's~~ the  
 3 environment;

4 (vii) make available to counties, municipalities, institutions, and individuals advice and information useful  
 5 in restoring, maintaining, and enhancing the quality of ~~Montana's~~ the environment;

6 (viii) initiate and use ecological information in the planning and development of resource-oriented  
 7 projects; and

8 (ix) assist the legislature and the environmental quality council established by 5-16-101;

9 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state  
 10 official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special  
 11 expertise with respect to any environmental impact involved in ~~Montana~~ and with any Montana local government,  
 12 as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also  
 13 consult with and obtain comments from any state agency in Montana with respect to any regulation of private  
 14 property involved. Copies of the statement and the comments and views of the appropriate state, federal, and  
 15 local agencies that are authorized to develop and enforce environmental standards must be made available to  
 16 the governor, the environmental quality council, and the public and must accompany the proposal through the  
 17 existing agency review processes.

18 (d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use  
 19 or permission to act by an agency, either singly or in combination with other state agencies, does not trigger  
 20 review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or  
 21 unless otherwise provided by law.

22 ~~(2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to~~  
 23 ~~subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not~~  
 24 ~~include actual or potential impacts that are regional, national, or global in nature.~~

25 ~~———— (b) An environmental review conducted pursuant to subsection (1) may include a review of actual or~~  
 26 ~~potential impacts beyond Montana's borders if it is conducted by:~~

27 ~~———— (i) the department of fish, wildlife, and parks for the management of wildlife and fish;~~

28 ~~———— (ii) an agency reviewing an application for a project that is not a state-sponsored project to the extent that~~  
 29 ~~the review is required by law, rule, or regulation; or~~

30 ~~———— (iii) a state agency and a federal agency to the extent the review is required by the federal agency.~~

1           ~~(3)~~(2) The department of public service regulation, in the exercise of its regulatory authority over rates  
2 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

3           ~~(4)~~(3) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to  
4 act based on parts 1 through 3 of this chapter.

5           (b) Nothing in this subsection ~~(4)~~ (3) prevents a project sponsor and an agency from mutually developing  
6 measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

7           (c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to  
8 modify a proposed project or action.

9           ~~(5)~~(4) (a) (i) A challenge to an agency action under this part may only be brought against a final agency  
10 action and may only be brought in district court or in federal court, whichever is appropriate.

11           (ii) Any action or proceeding challenging a final agency action alleging failure to comply with or  
12 inadequate compliance with a requirement under this part must be brought within 60 days of the action that is  
13 the subject of the challenge.

14           (iii) For an action taken by the board of land commissioners or the department of natural resources and  
15 conservation under Title 77, "final agency action" means the date that the board of land commissioners or the  
16 department of natural resources and conservation issues a final environmental review document under this part  
17 or the date that the board approves the action that is subject to this part, whichever is later.

18           (b) Any action or proceeding under subsection ~~(5)(a)(ii)~~ (4)(a)(ii) must take precedence over other cases  
19 or matters in the district court unless otherwise provided by law.

20           (c) Any judicial action or proceeding brought in district court under subsection ~~(5)(a)~~ (4)(a) involving an  
21 equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

22           ~~(6)~~(5) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts  
23 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim  
24 that the environmental review is inadequate, the agency shall compile and submit to the court the certified record  
25 of its decision at issue, and except as provided in subsection ~~(6)(b)~~ (5)(b), the person challenging the decision  
26 has the burden of proving the claim by clear and convincing evidence contained in the record.

27           (ii) Except as provided in subsection ~~(6)(b)~~ (5)(b), in a challenge to the agency's decision or the adequacy  
28 of an environmental review, a court may not consider any information, including but not limited to an issue,  
29 comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for  
30 the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

1 (iii) Except as provided in subsection ~~(6)(b)~~ (5)(b), the court shall confine its review to the record certified  
2 by the agency. The court shall affirm the agency's decision or the environmental review unless the court  
3 specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with  
4 law.

5 (iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal  
6 impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the  
7 agency's decision.

8 (b) (i) When a party challenging the decision or the adequacy of the environmental review or decision  
9 presents information not in the record certified by the agency, the challenging party shall certify under oath in an  
10 affidavit that the information is new, material, and significant evidence that was not publicly available before the  
11 agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

12 (ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and  
13 significant evidence that was not publicly available before the agency's decision and that is relevant to the  
14 decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to  
15 the agency for the agency's consideration and an opportunity to modify its decision or environmental review  
16 before the court considers the evidence as a part of the administrative record under review.

17 (iii) If the court finds that the information in the affidavit does not meet the requirements of subsection  
18 ~~(6)(b)(i)~~ (5)(b)(i), the court may not remand the matter to the agency or consider the proffered information in  
19 making its decision.

20 (c) The remedy in any action brought for failure to comply with or for inadequate compliance with a  
21 requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the  
22 environmental review conducted pursuant to subsection (1).

23 (d) A permit, license, lease, or other authorization issued by an agency is valid and may not be enjoined,  
24 voided, nullified, revoked, modified, or suspended pending the completion of an environmental review that may  
25 be remanded by a court.

26 (e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority  
27 to act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the  
28 state as a matter of right if the individual or entity has not been named as a defendant.

29 (f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance  
30 or inadequate compliance with a requirement of parts 1 through 3.

1           ~~(7)~~(6) For purposes of judicial review, to the extent that the requirements of this section are inconsistent  
 2 with the provisions of the National Environmental Policy Act, the requirements of this section apply to an  
 3 environmental review or any severable portion of an environmental review within the state's jurisdiction that is  
 4 being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant  
 5 to the National Environmental Policy Act.

6           ~~(6)~~(7) The director of the agency responsible for the determination or recommendation shall endorse in  
 7 writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a  
 8 determination of significance be made.

9           ~~(9)~~(8) A project sponsor may request a review of the significance determination or recommendation  
 10 made under subsection ~~(8)~~ (7) by the appropriate board, if any. The appropriate board may, at its discretion,  
 11 submit an advisory recommendation to the agency regarding the issue. The period of time between the request  
 12 for a review and completion of a review under this subsection may not be included for the purposes of  
 13 determining compliance with the time limits established for environmental review in 75-1-208. (Terminates on  
 14 occurrence of contingency--sec. 11, Ch. 396, L. 2011.)

15           **75-1-201. (Effective on occurrence of contingency) General directions -- environmental impact**  
 16 **statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

17           (a) the policies, regulations, and laws of the state must be interpreted and administered in accordance  
 18 with the policies set forth in parts 1 through 3;

19           (b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsections~~  
 20 ~~(2) and (3)~~ subsection (2), shall:

21           (i) use a systematic, interdisciplinary approach that will ensure:

22           (A) the integrated use of the natural and social sciences and the environmental design arts in planning  
 23 and in decisionmaking for a state-sponsored project that may have an impact on the ~~Montana~~ human  
 24 environment ~~by projects in Montana~~; and

25           (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency  
 26 considers alternatives, the alternative analysis will be in compliance with the provisions of subsections  
 27 (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(II) and, if requested by the project sponsor or if determined by the agency to be  
 28 necessary, subsection (1)(b)(iv)(C)(III);

29           (ii) identify and develop methods and procedures that will ensure that presently unquantified  
 30 environmental amenities and values may be given appropriate consideration in decisionmaking for

1 state-sponsored projects, along with economic and technical considerations;

2 (iii) identify and develop methods and procedures that will ensure that state government actions that may  
3 impact the human environment in ~~Montana~~ are evaluated for regulatory restrictions on private property, as  
4 provided in subsection (1)(b)(iv)(D);

5 (iv) include in each recommendation or report on proposals for projects, programs, and other major  
6 actions of state government significantly affecting the quality of the human environment in ~~Montana~~ a detailed  
7 statement on:

8 (A) the environmental impact of the proposed action;

9 (B) any adverse environmental effects on ~~Montana's environment~~ that cannot be avoided if the proposal  
10 is implemented;

11 (C) alternatives to the proposed action. An analysis of any alternative included in the environmental  
12 review must comply with the following criteria:

13 (I) any alternative proposed must be reasonable, in that the alternative must be achievable under current  
14 technology and the alternative must be economically feasible as determined solely by the economic viability for  
15 similar projects having similar conditions and physical locations and determined without regard to the economic  
16 strength of the specific project sponsor;

17 (II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed  
18 alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding  
19 the proposed alternative;

20 (III) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative  
21 analysis must include the projected beneficial and adverse environmental, social, and economic impact of the  
22 project's noncompletion.

23 (D) any regulatory impacts on private property rights, including whether alternatives that reduce,  
24 minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this  
25 subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private  
26 property.

27 (E) the relationship between local short-term uses of the ~~Montana~~ human environment and the  
28 maintenance and enhancement of long-term productivity;

29 (F) any irreversible and irretrievable commitments of resources that would be involved in the proposed  
30 action if it is implemented;



- 1 (G) the customer fiscal impact analysis, if required by 69-2-216; and
- 2 (H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the  
3 economic advantages and disadvantages of the proposal;
- 4 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe  
5 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts  
6 concerning alternative uses of available resources. If the alternatives analysis is conducted for a project that is  
7 not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement  
8 the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to  
9 take a recommended course of action, but the project sponsor may agree pursuant to subsection ~~(4)(b)~~ (3)(b)  
10 to a specific course of action.
- 11 (vi) recognize the ~~potential~~ long-range character of environmental ~~impacts in Montana~~ problems and,  
12 when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs  
13 designed to maximize cooperation in anticipating and preventing a decline in the quality of ~~Montana's~~ the  
14 environment;
- 15 (vii) make available to counties, municipalities, institutions, and individuals advice and information useful  
16 in restoring, maintaining, and enhancing the quality of ~~Montana's~~ the environment;
- 17 (viii) initiate and use ecological information in the planning and development of resource-oriented  
18 projects; and
- 19 (ix) assist the legislature and the environmental quality council established by 5-16-101;
- 20 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state  
21 official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special  
22 expertise with respect to any environmental impact involved in ~~Montana~~ and with any Montana local government,  
23 as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also  
24 consult with and obtain comments from any state agency in Montana with respect to any regulation of private  
25 property involved. Copies of the statement and the comments and views of the appropriate state, federal, and  
26 local agencies that are authorized to develop and enforce environmental standards must be made available to  
27 the governor, the environmental quality council, and the public and must accompany the proposal through the  
28 existing agency review processes.
- 29 (d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use  
30 or permission to act by an agency, either singly or in combination with other state agencies, does not trigger

1 review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or  
 2 unless otherwise provided by law.

3 ~~(2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to~~  
 4 ~~subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not~~  
 5 ~~include actual or potential impacts that are regional, national, or global in nature.~~

6 ~~\_\_\_\_\_ (b) An environmental review conducted pursuant to subsection (1) may include a review of actual or~~  
 7 ~~potential impacts beyond Montana's borders if it is conducted by:~~

8 ~~\_\_\_\_\_ (i) the department of fish, wildlife, and parks for the management of wildlife and fish;~~

9 ~~\_\_\_\_\_ (ii) an agency reviewing an application for a project that is not a state-sponsored project to the extent that~~  
 10 ~~the review is required by law, rule, or regulation; or~~

11 ~~\_\_\_\_\_ (iii) a state agency and a federal agency to the extent the review is required by the federal agency.~~

12 ~~(3)(2)~~ The department of public service regulation, in the exercise of its regulatory authority over rates  
 13 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

14 ~~(4)(3)~~ (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to  
 15 act based on parts 1 through 3 of this chapter.

16 (b) Nothing in this subsection ~~(4) (3)~~ prevents a project sponsor and an agency from mutually developing  
 17 measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

18 (c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to  
 19 modify a proposed project or action.

20 ~~(5)(4)~~ (a) (i) A challenge to an agency action under this part may only be brought against a final agency  
 21 action and may only be brought in district court or in federal court, whichever is appropriate.

22 (ii) Any action or proceeding challenging a final agency action alleging failure to comply with or  
 23 inadequate compliance with a requirement under this part must be brought within 60 days of the action that is  
 24 the subject of the challenge.

25 (iii) For an action taken by the board of land commissioners or the department of natural resources and  
 26 conservation under Title 77, "final agency action" means the date that the board of land commissioners or the  
 27 department of natural resources and conservation issues a final environmental review document under this part  
 28 or the date that the board approves the action that is subject to this part, whichever is later.

29 (b) Any action or proceeding under subsection ~~(5)(a)(ii)~~ (4)(a)(ii) must take precedence over other cases  
 30 or matters in the district court unless otherwise provided by law.

1 (c) Any judicial action or proceeding brought in district court under subsection ~~(5)(a)~~ (4)(a) involving an  
2 equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

3 ~~(6)(5)~~ (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts  
4 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim  
5 that the environmental review is inadequate, the agency shall compile and submit to the court the certified record  
6 of its decision at issue, and except as provided in subsection ~~(6)(b)~~ (5)(b), the person challenging the decision  
7 has the burden of proving the claim by clear and convincing evidence contained in the record.

8 (ii) Except as provided in subsection ~~(6)(b)~~ (5)(b), in a challenge to the agency's decision or the adequacy  
9 of an environmental review, a court may not consider any information, including but not limited to an issue,  
10 comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for  
11 the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

12 (iii) Except as provided in subsection ~~(6)(b)~~ (5)(b), the court shall confine its review to the record certified  
13 by the agency. The court shall affirm the agency's decision or the environmental review unless the court  
14 specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with  
15 law.

16 (iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal  
17 impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the  
18 agency's decision.

19 (b) (i) When a party challenging the decision or the adequacy of the environmental review or decision  
20 presents information not in the record certified by the agency, the challenging party shall certify under oath in an  
21 affidavit that the information is new, material, and significant evidence that was not publicly available before the  
22 agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

23 (ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and  
24 significant evidence that was not publicly available before the agency's decision and that is relevant to the  
25 decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to  
26 the agency for the agency's consideration and an opportunity to modify its decision or environmental review  
27 before the court considers the evidence as a part of the administrative record under review.

28 (iii) If the court finds that the information in the affidavit does not meet the requirements of subsection  
29 ~~(6)(b)(i)~~ (5)(b)(i), the court may not remand the matter to the agency or consider the proffered information in  
30 making its decision.

1 (c) (i) The remedies provided in this section for successful challenges to a decision of the agency or the  
2 adequacy of the statement are exclusive.

3 (ii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings  
4 of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent  
5 injunction, or other equitable relief may not enjoin the issuance or effectiveness of a license or permit or a part  
6 of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party  
7 requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts  
8 in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction,  
9 a permanent injunction, or other equitable relief, that the:

10 (A) party requesting the relief will suffer irreparable harm in the absence of the relief;

11 (B) issuance of the relief is in the public interest. In determining whether the grant of the relief is in the  
12 public interest, a court:

13 (I) may not consider the legal nature or character of any party; and

14 (II) shall consider the implications of the relief on the local and state economy and make written findings  
15 with respect to both.

16 (C) relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and the  
17 irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the extent  
18 possible, that the project or as much of the project as possible can go forward while also providing the relief to  
19 which the applicant has been determined to be entitled.

20 (d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or  
21 other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount  
22 reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may  
23 be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the  
24 case. If the party seeking an injunction or a temporary restraining order objects to the amount of the written  
25 undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit  
26 with the court that states the party's income, assets, and liabilities in order to facilitate the court's consideration  
27 of the amount of the written undertaking that is required. The affidavit must be served on the party enjoined.

28 (e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority  
29 to act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the  
30 state as a matter of right if the individual or entity has not been named as a defendant.

1 (f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance  
2 or inadequate compliance with a requirement of parts 1 through 3.

3 ~~(7)(6)~~ For purposes of judicial review, to the extent that the requirements of this section are inconsistent  
4 with the provisions of the National Environmental Policy Act, the requirements of this section apply to an  
5 environmental review or any severable portion of an environmental review within the state's jurisdiction that is  
6 being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant  
7 to the National Environmental Policy Act.

8 ~~(8)(7)~~ The director of the agency responsible for the determination or recommendation shall endorse in  
9 writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a  
10 determination of significance be made.

11 ~~(9)(8)~~ A project sponsor may request a review of the significance determination or recommendation  
12 made under subsection ~~(8)~~ (7) by the appropriate board, if any. The appropriate board may, at its discretion,  
13 submit an advisory recommendation to the agency regarding the issue. The period of time between the request  
14 for a review and completion of a review under this subsection may not be included for the purposes of  
15 determining compliance with the time limits established for environmental review in 75-1-208."  
16

17 **Section 3.** Section 75-1-208, MCA, is amended to read:

18 **"75-1-208. Environmental review procedure.** (1) (a) Except as provided in 75-1-205(4) and subsection  
19 (1)(b) of this section, an agency shall comply with this section when completing any environmental review  
20 required under this part.

21 (b) To the extent that the requirements of this section are inconsistent with federal requirements, the  
22 requirements of this section do not apply to an environmental review that is being prepared jointly by a state  
23 agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an  
24 environmental review that must comply with the requirements of the National Environmental Policy Act.

25 (2) (a) Except as provided in subsection (2)(b), a project sponsor may, after providing a 30-day notice,  
26 appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding  
27 the agency's environmental review of the project. The environmental quality council shall ensure that the  
28 appropriate agency personnel are available to answer questions.

29 (b) If the primary concern of the agency's environmental review of a project is the quality or quantity of  
30 water, a project sponsor may, after providing a 30-day notice, appear before the water policy committee

1 established in 5-5-231 at any regularly scheduled meeting to discuss issues regarding the agency's  
2 environmental review of the project. The water policy committee shall ensure that the appropriate agency  
3 personnel are available to answer questions.

4 (3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the  
5 agency regarding an environmental review, the project sponsor may submit a written request to the agency  
6 director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow  
7 the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director,  
8 the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the  
9 remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency  
10 and the board to prepare for the meeting.

11 (4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental  
12 review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are  
13 provided by law. All time limits are measured from the date the agency receives a complete application. An  
14 agency has:

15 (i) 60 days to complete a public scoping process, if any;

16 (ii) 90 days to complete an environmental review unless a detailed statement pursuant to  
17 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and

18 (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

19 (b) The period of time between the request for a review by a board and the completion of a review by  
20 a board under ~~75-1-201(9)~~ 75-1-201(8) or subsection (10) of this section may not be included for the purposes  
21 of determining compliance with the time limits established for conducting an environmental review under this  
22 subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216, 75-20-231, 76-4-125,  
23 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

24 (5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that  
25 an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time,  
26 and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension,  
27 the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the  
28 extension.

29 (6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that  
30 the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate

1 board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

2 (7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review  
3 by the expiration of the original or extended time period, the agency may not withhold a permit or other authority  
4 to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval  
5 to act would result in the violation of a statutory or regulatory requirement.

6 (b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82,  
7 chapter 4, parts 1 and 2.

8 (8) Under this part, an agency may only request information from the project sponsor that is relevant to  
9 the environmental review required under this part.

10 (9) An agency shall ensure that the notification for any public scoping process associated with an  
11 environmental review conducted by the agency is presented in an objective and neutral manner and that the  
12 notification does not speculate on the potential impacts of the project.

13 (10) An agency may not require the project sponsor to provide engineering designs in greater detail than  
14 that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate  
15 board, if any, review an agency's request regarding the level of design detail information that the agency believes  
16 is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an  
17 advisory recommendation to the agency regarding the issue.

18 (11) An agency shall, when appropriate, evaluate the cumulative impacts of a proposed project. However,  
19 related future actions may only be considered when these actions are under concurrent consideration by any  
20 agency through preimpact statement studies, separate impact statement evaluations, or permit processing  
21 procedures."

22

23 **Section 4.** Section 75-1-220, MCA, is amended to read:

24 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

25 (1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control  
26 measures that would accomplish the same objectives as those included in the proposed action by the applicant.  
27 For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to  
28 the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.

29 (2) "Appropriate board" means, for administrative actions taken under this part by the:

30 (a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

1 (b) department of fish, wildlife, and parks, the fish and wildlife commission, as provided for in 2-15-3402,  
2 and the state parks and recreation board, as provided for in 2-15-3406;

3 (c) department of transportation, the transportation commission, as provided for in 2-15-2502;

4 (d) department of natural resources and conservation for state trust land issues, the board of land  
5 commissioners, as provided for in Article X, section 4, of the Montana constitution;

6 (e) department of natural resources and conservation for oil and gas issues, the board of oil and gas  
7 conservation, as provided for in 2-15-3303; and

8 (f) department of livestock, the board of livestock, as provided for in 2-15-3102.

9 (3) "Complete application" means, for the purpose of complying with this part, an application for a permit,  
10 license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures  
11 required to be included with the application sufficient for the agency to approve the application under the  
12 applicable statutes and rules.

13 (4) "Cumulative impacts" means the collective impacts on the human environment ~~within the borders of~~  
14 ~~Montana~~ of the proposed action when considered in conjunction with other past, present, and future actions  
15 related to the proposed action by location or generic type.

16 (5) "Environmental review" means any environmental assessment, environmental impact statement, or  
17 other written analysis required under this part by a state agency of a proposed action to determine, examine, or  
18 document the effects and impacts of the proposed action on the quality of the human and physical environment  
19 ~~within the borders of Montana~~ as required under this part.

20 (6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an  
21 action that requires an environmental review. If the action involves state agency-initiated actions on state trust  
22 lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of  
23 Congress, approved February 22, 1899, 25 Stat. 676, as amended, the Morrill Act of 1862, 7 U.S.C. 301 through  
24 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

25 (7) "Public scoping process" means any process to determine the scope of an environmental review.

26 (8) (a) "State-sponsored project" means:

27 (i) a project, program, or activity initiated and directly undertaken by a state agency;

28 (ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant,  
29 subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one  
30 or more other state agencies; or



1 (iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in  
 2 a land management capacity for a lease, easement, license, or other authorization to act.

3 (b) The term does not include:

4 (i) a project or activity undertaken by a private entity that is made possible by the issuance of permits,  
 5 licenses, leases, easements, grants, loans, or other authorizations to act by the:

6 (A) department of environmental quality pursuant to Titles 75, 76, or 82;  
 7 (B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;  
 8 (C) board of oil and gas conservation pursuant to Title 82, chapter 11; or  
 9 (D) department of natural resources and conservation or the board of land commissioners pursuant to  
 10 Titles 76, 77, 82, and 85; or

11 (ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for  
 12 permission to act by another agency acting in a regulatory capacity, either singly or in combination with other  
 13 state agencies."

14

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

16

17 **NEW SECTION. Section 6. Applicability.** [This act] applies to an environmental assessment and an  
 18 environmental impact statement begun on or after [the effective date of this act].

19 - END -