

1 SENATE BILL NO. 233

2 INTRODUCED BY J. KEANE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ENVIRONMENTAL IMPACT LAWS; REVISING
5 STATUTES RELATED TO AN ENVIRONMENTAL IMPACT ANALYSIS AND AN ENVIRONMENTAL
6 ASSESSMENT; PROVIDING DEFINITIONS; CLARIFYING THAT ALTERNATIVES INCLUDED IN AN
7 ALTERNATIVES ANALYSIS ARE DISCRETIONARY; PROVIDING THAT THE SCOPE OF AN
8 ENVIRONMENTAL REVIEW IS ONLY WITHIN MONTANA'S BORDERS; PROVIDING THE REMEDY FOR
9 FAILURE BY AN AGENCY TO COMPLY WITH THE REQUIREMENTS OF THE MONTANA ENVIRONMENTAL
10 POLICY ACT; AMENDING SECTIONS 75-1-102, 75-1-201, 75-1-208, AND 75-1-220, MCA; AND PROVIDING
11 AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

12

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

14

15 **Section 1.** Section 75-1-102, MCA, is amended to read:

16 **"75-1-102. Intent -- purpose.** (1) The legislature, mindful of its constitutional obligations under Article
17 II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The
18 Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts
19 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that:

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

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

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

29 (3) (a) The purpose of requiring an environmental assessment and an environmental impact statement
30 under part 2 of this chapter is to assist the legislature in determining whether laws are adequate to address

1 impacts to Montana's environment and to inform the public of potential impacts resulting from decisions made
 2 by state agencies.

3 (b) Except to the extent that an applicant agrees to the incorporation of measures in a permit pursuant
 4 to 75-1-201(6)(b), it is not the purpose of parts 1 through 3 of this chapter to provide for regulatory authority,
 5 beyond authority explicitly provided for in existing statute, to a state agency."

6
 7 **Section 2.** Section 75-1-201, MCA, is amended to read:

8 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes
 9 and directs that, to the fullest extent possible:

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

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

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

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

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

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

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

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

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

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

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

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

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

13 ~~(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection~~
14 ~~(1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's~~
15 ~~determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion,~~
16 ~~submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project~~
17 ~~sponsor for any of its activities associated with any review under this section. The period of time between the~~
18 ~~request for a review and completion of a review under this subsection may not be included for the purposes of~~
19 ~~determining compliance with the time limits established for environmental review in 75-1-208.~~

20 ~~(IV)(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 (6)(b) to a
10 specific course of action.
- 11 (vi) recognize the ~~national and potential~~ long-range character of environmental ~~problems~~ impacts in
12 Montana and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions,
13 and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality
14 of ~~the world~~ Montana's environment;
- 15 (vii) make available to counties, municipalities, institutions, and individuals advice and information useful
16 in restoring, maintaining, and enhancing the quality of ~~the~~ Montana's 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) An environmental review conducted pursuant to subsection (1) may not include a review of actual
 4 or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional,
 5 national, or global in nature.

6 ~~(2)(3)~~ The department of public service regulation, in the exercise of its regulatory authority over rates
 7 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

8 ~~(3)(4)~~ (a) In any action challenging or seeking review of an agency's decision that a statement pursuant
 9 to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person
 10 challenging the decision. Except as provided in subsection ~~(3)(b)~~ (4)(b), in a challenge to the adequacy of a
 11 statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental
 12 review document or evidence that was not first presented to the agency for the agency's consideration prior to
 13 the agency's decision. ~~A court may not set aside the agency's decision unless it finds that there is clear and~~
 14 ~~convincing evidence that the decision was arbitrary or capricious or not in compliance with law.~~ A customer fiscal
 15 impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may
 16 not be used as the basis of any action challenging or seeking review of the agency's decision.

17 (b) When new, material, and significant evidence or issues relating to the adequacy or content of the
 18 agency's environmental review document are presented to the district court that had not previously been
 19 presented to the agency for its consideration, the district court shall remand the new evidence or issue relating
 20 to the adequacy or content of the agency's environmental review document back to the agency for the agency's
 21 consideration and an opportunity to modify its ~~findings of fact and administrative decision~~ environmental review
 22 document before the district court considers the evidence or issue relating to the adequacy or content of the
 23 agency's environmental review document within the administrative record under review. Immaterial or insignificant
 24 evidence or issues relating to the adequacy or content of the agency's environmental review document may not
 25 be remanded to the agency. ~~The district court shall review the agency's findings and decision to determine~~
 26 ~~whether they are supported by substantial, credible evidence within the administrative record under review.~~

27 ~~(4)(5)~~ To the extent that the requirements of ~~subsections~~ subsection (1)(b)(iv)(C)(I) and ~~(1)(b)(iv)(C)(III)~~
 28 are inconsistent with federal requirements, the requirements of ~~subsections~~ subsection (1)(b)(iv)(C)(I) and
 29 ~~(1)(b)(iv)(C)(III)~~ do not apply to an environmental review that is being prepared by a state agency pursuant to this
 30 part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that

1 is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

2 ~~(5)~~(6) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to
3 act based on parts 1 through 3 of this chapter.

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

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

8 ~~(6)~~(7) (a) (i) A challenge to an agency action under this part may only be brought against a final agency
9 action and may only be brought in district court or in federal court, whichever is appropriate.

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

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

17 (b) Any action or proceeding under subsection ~~(6)~~(a)(ii) (7)(a)(ii) must take precedence over other cases
18 or matters in the district court unless otherwise provided by law.

19 (c) Any judicial action or proceeding brought in district court under subsection ~~(6)~~(a) (7)(a) involving an
20 equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

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

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

27 ~~(7)~~(8) The director of the agency responsible for the determination or recommendation shall endorse in
28 writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a
29 determination of significance be made.

30 ~~(8)~~(9) A project sponsor may request a review of the significance determination or recommendation

1 made under subsection (7) (8) by the appropriate board, if any. The appropriate board may, at its discretion,
2 submit an advisory recommendation to the agency regarding the issue. The period of time between the request
3 for a review and completion of a review under this subsection may not be included for the purposes of
4 determining compliance with the time limits established for environmental review in 75-1-208."

5

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

7 **"75-1-208. Environmental review procedure.** (1) (a) Except as provided in 75-1-205(4) and subsection
8 (1)(b) of this section, an agency shall comply with this section when completing any environmental review
9 required under this part.

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

14 (2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality
15 council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the
16 project. The environmental quality council shall ensure that the appropriate agency personnel are available to
17 answer questions.

18 (3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the
19 agency regarding an environmental review, the project sponsor may submit a written request to the agency
20 director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow
21 the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director,
22 the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the
23 remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency
24 and the board to prepare for the meeting.

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

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

30 (ii) 90 days to complete an environmental review unless a detailed statement pursuant to

1 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and

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

3 (b) The period of time between the request for a review by a board and the completion of a review by
4 a board under ~~75-1-201(1)(b)(iv)(C)(III) or (8)~~ 75-1-201(9) or subsection (10) of this section may not be included
5 for the purposes of determining compliance with the time limits established for conducting an environmental
6 review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216,
7 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

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

13 (6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that
14 the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate
15 board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

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

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

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

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

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

1 advisory recommendation to the agency regarding the issue.

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

6

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

8 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

9 (1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control
10 measures that would accomplish the same objectives as those included in the proposed action by the applicant.
11 For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to
12 the proposed project itself.

13 ~~(1)~~(2) "Appropriate board" means, for administrative actions taken under this part by the:

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

15 (b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in
16 2-15-3402;

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

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

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

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

23 ~~(2)~~(3) "Complete application" means, for the purpose of complying with this part, an application for a
24 permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and
25 signatures required to be included with the application sufficient for the agency to approve the application under
26 the applicable statutes and rules.

27 ~~(3)~~(4) "Cumulative impacts" means the collective impacts on the human environment within the borders
28 of Montana of the proposed action when considered in conjunction with other past, present, and future actions
29 related to the proposed action by location or generic type.

30 ~~(4)~~(5) "Environmental review" means any environmental assessment, environmental impact statement,

1 or other written analysis required under this part by a state agency of a proposed action to determine, examine,
 2 or document the effects and impacts of the proposed action on the quality of the human and physical environment
 3 within the borders of Montana as required under this part.

4 ~~(5)~~(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing
 5 an action that requires an environmental review. If the action involves state agency-initiated actions on state trust
 6 lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of
 7 Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through
 8 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 329).

9 ~~(6)~~(7) "Public scoping process" means any process to determine the scope of an environmental review.

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

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

12 (ii) a project or activity supported through a contract, grant, subsidy, loan, or other form of funding
 13 assistance from a state agency, either singly or in combination with one or more other state agencies; or

14 (iii) a project or activity authorized by a state agency acting in a land management capacity for a lease,
 15 easement, license, or other authorization to act.

16 (b) The term does not include:

17 (i) the issuance of permits, licenses, or other authorizations to act by the:

18 (A) department of environmental quality pursuant to Titles 75, 76, or 82;

19 (B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

20 (C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

21 (D) department of natural resources and conservation pursuant to Title 85; or

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

25
 26 **NEW SECTION. Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable
 27 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
 28 remains in effect in all valid applications that are severable from the invalid applications.

29
 30 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

