

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CATEGORICAL EXCLUSIONS IN THE  
5 MONTANA ENVIRONMENTAL POLICY ACT; PROVIDING AN EXEMPTION TO THE DEPARTMENT OF  
6 ADMINISTRATION FOR THE CONSTRUCTION OF BUILDINGS; PROVIDING AN EXEMPTION TO THE  
7 DEPARTMENT OF COMMERCE FOR HISTORIC PRESERVATION GRANTS; AMENDING SECTION 75-1-  
8 220, MCA; AND PROVIDING AN EFFECTIVE DATE."

9  
10 WHEREAS, in 2024, the Department of Environmental Quality formed a dedicated work group to  
11 review and facilitate numerous open public discussions about the agency's implementation of the Montana  
12 Environmental Policy Act;

13 WHEREAS, the department work group found that the definitions of certain terms in statute and rule, or  
14 the lack of definitions, creates unnecessary confusion and challenges in the implementation of a defensible  
15 Montana Environmental Policy Act;

16 WHEREAS, recommendation 3C from the department work group's final report suggests presenting  
17 legislation to clarify problematic terms and definitions to provide more certainty for decisionmakers,  
18 practitioners, applicants, and the public and to reduce the need for the courts to rely on federal definitions or  
19 case law;

20 WHEREAS, the department work group specifically identified the term "categorical exclusion" as  
21 lacking a definition in statute, although it is defined in model rules;

22 WHEREAS, the federal government, both in rulemaking and statute, has previously adopted numerous  
23 categorical exclusions under the National Environmental Policy Act; and

24 WHEREAS, it is the will of the Legislature to add clarity to the Montana Environmental Policy Act by  
25 codifying the term "categorical exclusions" to clearly provide state agencies with the authority to identify actions  
26 that do not have a significant impact on the human environment and to exclude those actions from the Montana  
27 Environmental Policy Act.

28

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

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3 NEW SECTION. Section 1. Agency determination of categorical exclusion. (1) (a) A state agency  
4 as defined in 2-4-102 shall identify actions that meet the definition of a categorical exclusion as provided in 75-  
5 1-220.

6 (b) A state action identified by a state agency as a categorical exclusion is exempt from the  
7 provisions of Title 75, chapter 1, parts 1 and 2.

8 (c) A state action determined by the state agency as meeting the requirements of a categorical  
9 exclusion under the National Environmental Policy Act, 42 U.S.C. 4321 et seq., and 40 CFR, parts 1500  
10 through 1508, is exempt from the provisions of Title 75, chapter 1, parts 1 and 2.

11 (2) For a state action identified by a state agency as a categorical exclusion, there is a rebuttable  
12 presumption that extraordinary circumstances do not exist and that neither an environmental analysis nor an  
13 environmental impact statement is required.

14 (3) This section does not alter, diminish, or impair exemptions from environmental review under  
15 Title 75, chapter 1, parts 1 and 2, including for:

16 (a) inspection, contracting, funds transfer, bonding, inventorying, and other general powers and  
17 duties of the department of administration for the construction of a building pursuant to [section 3];

18 (b) grants awarded under the historic preservation grant program pursuant to [section 4];

19 (c) funding for a snowmobile area operator previously reviewed pursuant to 23-2-657;

20 (d) small business licensing pursuant to 30-16-103;

21 (e) certain oversized load permits pursuant to 61-10-121;

22 (f) legislation pursuant to 75-1-201;

23 (g) certain ownership interests, entitlements, or permissions pursuant to 75-1-201;

24 (h) activities of the public service commission pursuant to 75-1-201;

25 (i) transfer of permits for portable emission sources pursuant to 75-2-211;

26 (j) registration of certain animal or human crematoriums pursuant to 75-2-215;

27 (k) coal-fired generation unit remediation plans pursuant to 75-8-106;

28 (l) sanitation review of certain subdivisions pursuant to 76-4-136;

- 1 (m) siting adjustment within a major facility siting corridor pursuant to 75-20-303;
- 2 (n) issuance of grants from the department of natural resources and conservation for authorized
- 3 activities to conserve habitat, reduce wildfire risk, or improve forest health pursuant to 76-13-119;
- 4 (o) grants, loans, or bonds for conservation district activities pursuant to 76-15-107;
- 5 (p) issuance of a license from the department of natural resources and conservation or the board
- 6 of land commissioners subject to further permitting by the department of environmental quality pursuant to 77-
- 7 1-121;
- 8 (q) issuance of trust land lease renewals pursuant to 77-1-121;
- 9 (r) nonaction of the department of natural resources and conservation or the board of land
- 10 commissioners even when authorized to act pursuant to 77-1-121;
- 11 (s) actions of the department of natural resources and conservation or the board of land
- 12 commissioners to comply with local planning and zoning pursuant to 77-1-121;
- 13 (t) actions on certain maintenance activities by the department of natural resources and
- 14 conservation or the board of land commissioners related to agricultural or grazing leases pursuant to 77-1-121;
- 15 (u) issuance of historic right-of-way deeds across state lands pursuant to 77-1-130;
- 16 (v) a qualified exemption for reciprocal access agreements on state lands pursuant to 77-1-617;
- 17 (w) authorization of historic use of a navigable river bed pursuant to 77-1-1112;
- 18 (x) right-of-way easements on state lands pursuant to 77-2-103;
- 19 (y) sale of a parcel formerly leased as a cabin or home site pursuant to 77-2-363;
- 20 (z) certain emergency timber sales or time-dependent land access for a timber sale pursuant to
- 21 77-5-201;
- 22 (aa) grants, loans, or bonds related to conservation, reclamation, and renewable resource activities
- 23 pursuant to 80-7-1031;
- 24 (bb) minor revisions to coal and uranium mine permits and reclamation plans pursuant to 82-4-229;
- 25 (cc) transfer of certain coal mine operating permits pursuant to 82-4-250;
- 26 (dd) authorized small miners pursuant to 82-4-305;
- 27 (ee) certain actions that involve minor amendments to a hard-rock mine operating permit pursuant
- 28 to 82-4-342;

(ff) grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to 85-1-632;

(gg) sale of a leased cabin or home site pursuant to 85-1-812;

(hh) domestic livestock trailing on land owned or controlled by the department of fish, wildlife, and parks pursuant to 87-1-303;

(ii) grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to 90-2-1122

(jj) emergency energy orders issued by the governor pursuant to 90-4-310;

(kk) certain coal board grants pursuant to 90-6-213; and

(ll) department of commerce grants for the Montana coal endowment program pursuant to 90-6-716.

(4) State agencies retain all existing authority provided in Title 75, chapter 1, parts 1 and 2, to identify and adopt, as authorized by rule, categorical exclusions and programmatic environmental assessments.

**NEW SECTION. Section 2. Report to legislature.** State agencies as defined in 2-4-102 shall track the number and use of categorical exclusions and make those available upon request of the environmental quality council established in 5-16-101.

**NEW SECTION. Section 3. Exemption from environmental review.** The department of administration is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when inspecting, contracting, transferring funds, bonding, inventorying, and carrying out other general powers and duties of the department of administration for the construction of a building.

**NEW SECTION. Section 4. Exemption from environmental review.** The department of commerce is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, administering a grant program, or creating a grant program related to historic preservation pursuant to this part.

**Section 5.** Section 75-1-220, MCA, is amended to read:

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

2           (1)     "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or  
3     control measures that would accomplish the same objectives as those included in the proposed action by the  
4     applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an  
5     alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter  
6     20.

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

8           (a)     department of environmental quality, the board of environmental review, as provided for in 2-  
9     15-3502;

10          (b)     department of fish, wildlife, and parks, the fish and wildlife commission, as provided for in 2-15-  
11     3402, and the state parks and recreation board, as provided for in 2-15-3406;

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

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

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

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

18          (3)     "Categorical exclusion" means a state action that does not individually, collectively, or  
19     cumulatively require an environmental analysis or environmental impact statement, as determined by agency  
20     rulemaking, programmatic review, or statute, unless extraordinary circumstances exist as defined by the  
21     agency rulemaking, programmatic review, or statute.

22          (3) (4) "Complete application" means, for the purpose of complying with this part, an application for a  
23     permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and  
24     signatures required to be included with the application sufficient for the agency to approve the application under  
25     the applicable statutes and rules.

26          (4) (5) "Cumulative impacts" means the collective impacts on the human environment within the  
27     borders of Montana of the proposed action when considered in conjunction with other past, present, and future  
28     actions related to the proposed action by location or generic type.

1           ~~(5)~~ (6) "Environmental review" means any environmental assessment, environmental impact  
2 statement, or other written analysis required under this part by a state agency of a proposed action to  
3 determine, examine, or document the effects and impacts of the proposed action on the quality of the human  
4 and physical environment within the borders of Montana as required under this part.

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

10          ~~(7)~~ (8) "Public scoping process" means any process to determine the scope of an environmental  
11 review.

12          ~~(8)~~ (9) (a) "State-sponsored project" means:

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

14           (ii) except as provided in subsection ~~(8)(b)(i)~~ (9)(b)(i), a project or activity supported through a  
15 contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in  
16 combination with one or more other state agencies; or

17           (iii) except as provided in subsection ~~(8)(b)(i)~~ (9)(b)(i), a project or activity authorized by a state  
18 agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

19          (b) The term does not include:

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

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

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

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

25           (D) department of natural resources and conservation or the board of land commissioners pursuant  
26 to Titles 76, 77, 82, and 85; or

27           (ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement  
28 for permission to act by another agency acting in a regulatory capacity, either singly or in combination with

1 other state agencies."

2

3 NEW SECTION. Section 6. Codification instruction. (1) [Sections 1 and 2] are intended to be  
4 codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply  
5 to [sections 1 and 2].

6 (2) [Section 3] is intended to be codified as an integral part of Title 18, chapter 2, and the  
7 provisions of Title 18, chapter 2, apply to [section 3].

8 (3) [Section 4] is intended to be codified as an integral part of Title 22, chapter 3, part 13, and the  
9 provisions of Title 22, chapter 3, part 13, apply to [section 4].

10

11 NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
13 the part remains in effect in all valid applications that are severable from the invalid applications.

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15 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

16 - END -