

HOUSE BILL NO. 291

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A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE ABILITY OF THE DEPARTMENT OF  
ENVIRONMENTAL QUALITY AND LOCAL AIR POLLUTION CONTROL PROGRAMS TO ADOPT AIR  
QUALITY STANDARDS MORE STRINGENT THAN FEDERAL REQUIREMENTS; REVISING THE CLEAN  
AIR ACT OF MONTANA; AMENDING SECTIONS 75-2-111, 75-2-203, 75-2-207, AND 75-2-301, MCA; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 75-2-111, MCA, is amended to read:

**"75-2-111. Powers of board.** The board shall, ~~subject to the provisions of 75-2-207:~~

(1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place  
designated by the board. The board may compel the attendance of witnesses and the production of evidence at  
hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter  
who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which ~~will~~  
must be available to the public at cost.

(2) issue orders necessary to effectuate the purposes of this chapter;

(3) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

**Section 2.** Section 75-2-203, MCA, is amended to read:

**"75-2-203. Department to set emission levels.** (1) The Subject to subsection (2), the department

1 may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from  
2 any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to  
3 this section, those levels, concentrations, or quantities are controlling, and no emission in excess of those  
4 levels is lawful.

5 (2) ~~(a) In any area where the concentration of air pollution sources or of population or where the~~  
6 ~~nature of the economy or of land and its uses may require, Except as provided in subsection (2)(b), the~~  
7 department may not fix more stringent requirements governing the emission of air pollutants than those in effect  
8 pursuant to ~~subsection (1) the federal standards or limitations established in the federal Clean Air Act for the~~  
9 ~~emission of regulated pollutants.~~

10 (b) Subsection (2)(a) does not apply to requirements:

11 (i) governing the emissions of air pollutants established prior to [the effective date of this act]; and

12 (ii) necessary in areas classified as nonattainment, or maintenance, OR TO PREVENT  
13 NONATTAINMENT, AS APPROVED BY THE DEPARTMENT, to comply with national ambient air quality standards as  
14 required in the federal Clean Air Act.

15 (3) The department may by rule use any widely recognized measuring system for measuring  
16 emission of air contaminants.

17 (4) ~~Should federal minimum standards of air pollution be set by federal law, the department may, if~~  
18 ~~necessary in some localities of this state, set more stringent standards by rule."~~

19  
20 **Section 3.** Section 75-2-207, MCA, is amended to read:

21 **"75-2-207. State regulations no more stringent than federal regulations or guidelines --**  
22 **exceptions -- procedure.** (1) After April 14, 1995, ~~except as provided in subsections (2) and (3) or unless~~  
23 ~~required by state law, Except as provided in subsection (2), the department may not adopt a rule to implement~~  
24 this chapter that is more stringent than the comparable federal regulations or guidelines that address the same  
25 circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

26 (2) ~~(a) The department may adopt a rule to implement this chapter that is more stringent than~~  
27 ~~comparable federal regulations or guidelines only if:~~

28 (i) ~~a public hearing is held;~~

(ii) ~~public comment is allowed; and~~

(iii) ~~the department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:~~

(A) ~~protects public health or the environment;~~

(B) ~~can mitigate harm to the public health or the environment; and~~

(C) ~~is achievable with current technology.~~

(b) ~~The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.~~

(c) ~~(i) A person or entity affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the department to review the rule.~~

(ii) ~~If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.~~

(iii) ~~A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.~~

(iv) ~~A person may also petition the department for a rule review under subsection (2)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.~~

~~(3)(2)~~ This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

**Section 4.** Section 75-2-301, MCA, is amended to read:

**"75-2-301. Local air pollution control programs -- consistency with state and federal**

**regulations -- procedure for public notice and comment required.** (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the department.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) ~~(a)~~ Except as provided in subsection ~~(5)~~ (4), the department by order may approve a local air pollution control program that:

~~(i)(a)~~ subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, ~~more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;~~

~~(ii)(b)~~ provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

~~(iii)(c)~~ provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of local air pollution control program permitting or registration activities.

~~(b) — Department approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).~~

~~(4) — (a) A local air pollution control program may, subject to approval by the department, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:~~

~~(i) — a public hearing is held;~~

~~(ii) — public comment is allowed; and~~

~~(iii) — the department or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:~~

(A) — protects public health or the environment of the area;

(B) — can mitigate harm to the public health or the environment; and

(C) — is achievable with current technology.

(b) — The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the department's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) — (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the department or the local air pollution control program to review the rule, ordinance, or local law.

(ii) — If the department or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the department or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(5)(4) Except for those emergency powers provided for in 75-2-402, the department may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(6)(5) If the department finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any

1 combination of these makes impracticable the maintenance of appropriate levels of air quality without an  
2 areawide air pollution control program, the department may determine the boundaries within which the program  
3 is necessary and require it as the only acceptable alternative to direct state administration.

4 ~~(7)~~(6) If the department has reason to believe that any part of an air pollution control program in force  
5 under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the  
6 program relates or is being administered in a manner inconsistent with this chapter, the department shall, on  
7 notice, conduct a hearing on the matter.

8 ~~(8)~~(7) If, after the hearing, the department determines that any part of the program is inadequate to  
9 prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes  
10 of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to  
11 exceed 60 days.

12 ~~(9)~~(8) If the jurisdiction fails to take these measures within the time required, the department shall  
13 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any  
14 applicable department order, that are necessary to correct the deficiencies found by the department. The  
15 department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and  
16 requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

17 ~~(10)~~(9) If the department finds that the control of a particular air pollutant source because of its  
18 complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently  
19 and economically performed at the state level, it may assume and retain control over that air pollutant source. A  
20 charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the  
21 basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in  
22 which they are located.

23 ~~(11)~~(10) A jurisdiction in which the department administers all or part of its air pollution control  
24 program under subsection ~~(9)~~ (8) may establish or resume an air pollution control program that meets the  
25 requirements of subsection (3).

26 ~~(12)~~(11) A municipality or county may administer all or part of its air pollution control program in  
27 cooperation with one or more municipalities or counties of this state or of other states.

28 ~~(13)~~(12) Local air pollution control programs established under this section shall provide

procedures for public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection ~~(13)(b)~~ (12)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection ~~(13)(a)~~ (12)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection ~~(13)(f)~~ (12)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection ~~(13)(c)(v)~~ (12)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection ~~(13)(a)~~ (12)(a) who have made

1 timely requests to be included on the list.

2 (f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or  
3 local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments  
4 from the public on the intended action.

5 (g) The local air pollution control program shall prepare a written response to all comments  
6 submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of  
7 the proposed rule, ordinance, or local law.

8 (h) A person who submits a written comment on a proposed action or who attends a public hearing  
9 in regard to a proposed action must be informed of the final action."

10

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

12 - END -