

HOUSE BILL NO. 466

INTRODUCED BY J. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CATEGORICAL EXCLUSIONS IN THE MONTANA ENVIRONMENTAL POLICY ACT; PROVIDING AN EXEMPTION TO THE DEPARTMENT OF ADMINISTRATION FOR CONSTRUCTION AND MAINTENANCE ON STATE LAND; PROVIDING AN EXEMPTION TO THE DEPARTMENT OF COMMERCE FOR HISTORIC PRESERVATION GRANTS; AMENDING SECTION 75-1-220, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

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

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

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

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

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

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

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

(3) 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, SUPERVISING, and carrying out other general powers and duties of the department of administration for the construction, renovation, or repair of a BUILDING, structure, or utility infrastructure located above or below ground on land owned by the state AND FOR PROJECTS AND DEVELOPMENTS IN THE LONG-RANGE BUILDING PROGRAM PURSUANT TO TITLE 17, CHAPTER 7, PART 2.

NEW SECTION. Section 4. Exemption from environmental review. The department of commerce

1 is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, administering a
2 grant program, or creating a grant program related to historic preservation pursuant to this part.

3
4 **Section 5.** Section 75-1-220, MCA, is amended to read:

5 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

6 (1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or
7 control measures that would accomplish the same objectives as those included in the proposed action by the
8 applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an
9 alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter
10 20.

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

12 (a) department of environmental quality, the board of environmental review, as provided for in 2-
13 15-3502;

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

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

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

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

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

22 (3) "Categorical exclusion" means a state action that does not individually, collectively, or
23 cumulatively RESULT IN A SIGNIFICANT ADVERSE EFFECT ON THE HUMAN ENVIRONMENT THAT WOULD require an
24 environmental analysis-ASSESSMENT or environmental impact statement, as determined by agency rulemaking,
25 programmatic review, or statute, unless extraordinary circumstances exist as defined by the agency
26 rulemaking, programmatic review, or statute THAT WOULD MAKE THE DESIGNATION OF CATEGORICAL EXCLUSION
27 INAPPROPRIATE.

28 (3)(4) "Complete application" means, for the purpose of complying with this part, an application for a

1 permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and
2 signatures required to be included with the application sufficient for the agency to approve the application under
3 the applicable statutes and rules.

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

7 ~~(5)~~(6) "Environmental review" means any environmental assessment, environmental impact
8 statement, or other written analysis required under this part by a state agency of a proposed action to
9 determine, examine, or document the effects and impacts of the proposed action on the quality of the human
10 and physical environment within the borders of Montana as required under this part.

11 ~~(6)~~(7) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is
12 proposing an action that requires an environmental review. If the action involves state agency-initiated actions
13 on state trust lands, the term also includes each institutional beneficiary of any trust as described in The
14 Enabling Act of Congress, approved February 22, 1899, 25 Stat. 676, as amended, the Morrill Act of 1862, 7
15 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

16 ~~(7)~~(8) "Public scoping process" means any process to determine the scope of an environmental
17 review.

18 ~~(8)~~(9) (a) "State-sponsored project" means:

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

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

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

25 (b) The term does not include:

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

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

1 (B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;
2 (C) board of oil and gas conservation pursuant to Title 82, chapter 11; or
3 (D) department of natural resources and conservation or the board of land commissioners pursuant
4 to Titles 76, 77, 82, and 85; or
5 (ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement
6 for permission to act by another agency acting in a regulatory capacity, either singly or in combination with
7 other state agencies."
8

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

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

14 (3) [Section 4] is intended to be codified as an integral part of Title 22, chapter 3, part 13, and the
15 provisions of Title 22, chapter 3, part 13, apply to [section 4].
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17 NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
19 the part remains in effect in all valid applications that are severable from the invalid applications.
20

21 COORDINATION SECTION. SECTION 8. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 346 AND [THIS
22 ACT] ARE PASSED AND APPROVED, THEN [SECTION 4 OF THIS ACT] IS VOID.
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24 NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.
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