

1 HOUSE BILL NO. 285

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ENVIRONMENTAL LAWS RELATED TO  
6 THE POLICY, PURPOSE, INTENT, VENUE, PROCEDURES, AND CONSTITUTIONAL CONSIDERATIONS  
7 OF THE MONTANA ENVIRONMENTAL POLICY ACT; ELIMINATING CERTAIN LAWS ON POLICIES,  
8 GOALS, CONSTITUTIONAL DETERMINATIONS, AND VENUES OF THE MONTANA ENVIRONMENTAL  
9 POLICY ACT; ESTABLISHING THE REVISED POLICY, PURPOSE, AND INTENT OF THE ACT AND THE  
10 PURPOSE OF ENVIRONMENTAL ANALYSIS; REAFFIRMING EXISTING LAW THAT THE MONTANA  
11 ENVIRONMENTAL POLICY ACT IS PROCEDURAL; PROVIDING THAT A PLAINTIFF HAS THE BURDEN OF  
12 ESTABLISHING THE UNCONSTITUTIONALITY OF THE UNDERLYING STATUTE FOR LICENSING OR  
13 PERMITTING DECISIONS OR ACTIVITIES UNDER TITLES 75 OR 82; PROVIDING THAT VENUE IN  
14 DISTRICT COURT MUST BE IN THE COUNTY WHERE THE ACTIVITY SUBJECT TO THE PROCEEDING IS  
15 PROPOSED TO OCCUR OR WILL OCCUR; AMENDING SECTIONS 5-16-102, 75-1-102, 75-1-104, 75-1-106,  
16 75-1-201, 75-1-208, AND 75-1-324, MCA; REPEALING SECTIONS 75-1-103, 75-1-105, 75-1-107, AND 75-1-  
17 108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

18  
19 WHEREAS, the Department of Environmental Quality convened a multidisciplinary work group to  
20 review and recommend updates to the Montana Environmental Policy Act (MEPA) during the summer of 2024.  
21 That work group recommended that the Legislature confirm the importance of MEPA as a valuable data  
22 gathering and analytical tool intended to provide sound and objective information to the public, agency  
23 decisionmakers, and lawmakers as each strives to make fully informed decisions; and

24 WHEREAS, Article II, section 3, of the Montana Constitution enumerates inalienable rights, including  
25 the right to a clean and healthful environment, rights to pursue life's basic necessities, rights to enjoy and  
26 defend their lives and liberties, rights to acquire, possess, and protect property, and rights to seek safety,  
27 health, and happiness in all lawful ways, and neither the Constitution nor the Legislature through the passage of  
28 MEPA has identified a prioritization of one right over any other. As such, MEPA requires a balanced view of

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2 NEW SECTION. Section 10. Repealer. The following sections of the Montana Code Annotated are

3 repealed:

4 75-1-103. Policy.

5 75-1-105. Policies and goals supplementary.

6 75-1-107. Determination of constitutionality.

7 75-1-108. Venue.

8

9 NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be codified

10 as an integral part of Title 75, chapter 1, part 1, and the provisions of Title 75, chapter 1, part 1, apply to

11 [sections 1 and 2].

12

13 COORDINATION SECTION. Section 12. Coordination instruction. If both Senate Bill No. 221 and

14 [this act] are passed and approved and if both contain a section that amends 75-1-201, then the sections

15 amending 75-1-201 are void and 75-1-201 must be amended as follows:

16 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes

17 and directs that, to the fullest extent possible:

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

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

22 (i) use a systematic, interdisciplinary approach that ~~will~~ must ensure:

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

26 (B) that in any environmental review that is not subject to subsection ~~(1)(b)(iv)(1)(a)(iv)~~, when an  
27 agency considers alternatives, the alternative analysis ~~will~~ must be in compliance with the provisions of  
28 subsections ~~(1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(II) (1)(a)(iv)(C)(I) and (1)(a)(iv)(C)(II)~~ and, if requested by the

project sponsor or if determined by the agency to be necessary, subsection ~~(1)(b)(iv)(C)(III)~~ (1)(a)(iv)(C)(III);

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

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

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

(A) the proximate environmental ~~impact~~ impacts of the proposed action;

(B) any proximate adverse effects on Montana's environment that cannot be avoided if the ~~proposal~~ proposed action is implemented;

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

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

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

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

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

1 of private property.

2 ~~(E) —the relationship between local short term uses of the Montana human environment and the~~  
3 ~~maintenance and enhancement of long term productivity;~~

4 ~~(F)(E)~~ any irreversible and irretrievable commitments of resources that would be involved in the  
5 proposed action if it is implemented;

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

7 ~~(H)(G)~~ the details of the beneficial aspects of the proposed project, both short-term and long-term, and  
8 the economic advantages and disadvantages of the proposal;

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

16 ~~(vi) —recognize the potential long range character of environmental impacts in Montana and, when~~  
17 ~~consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs~~  
18 ~~designed to maximize cooperation in anticipating and preventing a decline in the quality of Montana's~~  
19 ~~environment;~~

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

22 ~~(viii)(vii)~~ initiate and use ecological information in the planning and development of resource-oriented  
23 projects; and

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

25 ~~(e)(b)~~ prior to making any detailed statement as provided in subsection ~~(1)(b)(iv)(1)(a)(v)~~, the  
26 responsible state official shall consult with and obtain request the comments of any state agency that has  
27 jurisdiction by law or special expertise with respect to any environmental impact involved in Montana and with  
28 any Montana local government, as defined in 7-12-1103, that may be directly impacted by the project. The

1 responsible state official shall also consult with and ~~obtain request~~ comments from any state agency in  
2 Montana with respect to any regulation of private property involved. Copies of the statement and the comments  
3 ~~and views~~ of the appropriate state, federal, and local agencies that are authorized to develop and enforce  
4 environmental standards must be made available to the governor, the environmental quality council, and the  
5 public and must accompany the proposal through the existing agency review processes.

6 ~~(d)(c)~~ a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for  
7 use or permission to act by an agency, either singly or in combination with other state agencies, does not  
8 trigger review under subsection ~~(4)(b)(iv)-(1)(a)(iv)~~ if there is not a material change in terms or conditions of the  
9 entitlement or unless otherwise provided by law.

10 (2) (a) ~~Except as provided in subsection (2)(b), an An~~ environmental review conducted pursuant to  
11 subsection (1) may ~~not include an evaluation of greenhouse gas emissions and corresponding impacts to the~~  
12 ~~climate in the state or beyond the state's borders~~ a greenhouse gas assessment subject to [section 1 of Senate  
13 Bill No. 221]. The department of environmental quality shall develop a guidance document for use by state  
14 agencies to determine when a greenhouse gas assessment may be necessary. The guidance must include  
15 direction on methodologies for completing a greenhouse gas assessment. Prior to finalizing this guidance, the  
16 department shall provide public notice of the draft guidance and allow for public comment.

17 (b) An environmental review conducted pursuant to subsection (1) may include an evaluation of  
18 the reasonably foreseeable environmental impacts of a proposed action if:

19 (i) ~~conducted jointly by a state agency and a federal agency to the extent the review~~ of the  
20 expanded assessment is required by the federal agency; ~~or~~

21 (ii) ~~the United States congress amends the federal Clean Air Act to include carbon dioxide~~  
22 ~~emissions as a regulated pollutant.~~

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

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

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

~~authority to act.~~

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

~~(5)(4)~~ (a) (i) A challenge to an agency's environmental review under this part may only be brought against a ~~final agency action~~ state action approved in a final decision document and may only be brought in district court or in federal court, whichever is appropriate. A challenge may only be brought by a person who submits formal comments on the agency's environmental review prior to the issuance of the agency's final decision document, and the challenge must be limited to those issues ~~addressed~~ raised in those comments.

(ii) Any action or proceeding challenging a ~~final agency action~~ state action approved in a final decision document alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

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

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

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

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

~~(ii) — An action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim~~

that the environmental review is inadequate based in whole or in part upon greenhouse gas emissions and impacts to the climate in Montana or beyond Montana's borders, cannot vacate, void, or delay a lease, permit, license, certificate, authorization, or other entitlement or authority unless the review is required by a federal agency or the United States congress amends the federal Clean Air Act to include carbon dioxide as a regulated pollutant.

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

~~(iv)(iii)~~ Except as provided in subsection ~~(6)(b)(5)(b)~~, the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious.

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

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

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

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

information in making its decision.

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

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

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

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

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

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

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

(d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the case, including but not limited to lost wages of employees and lost project revenues for 1 year. If the party seeking an injunction or a temporary restraining order objects to the amount of the written undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit with the court that states the party's income, assets, and liabilities in order to facilitate the court's consideration of the

amount of the written undertaking that is required. The affidavit must be served on the party enjoined. If a challenge for noncompliance or inadequate compliance with a requirement of parts 1 through 3 seeks to vacate, void, or delay a lease, permit, license, certificate, or other entitlement or authority, the party shall, as an initial matter, seek an injunction related to a lease, permit, license, certificate, or other entitlement or authority, and an injunction may only be issued if the challenger:

(i) proves there is a likelihood of succeeding on the merits;

(ii) proves there is a violation of an established law or regulation on which the lease, permit, license, certificate, or other entitlement or authority is based; and

(iii) subject to the demonstration of the inability to pay, posts the appropriate written undertaking.

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

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

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

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

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