

1 SENATE BILL NO. 191

2 INTRODUCED BY S. FITZPATRICK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PRELIMINARY INJUNCTION AND TEMPORARY
5 RESTRAINING ORDER LAWS; INCORPORATING THE FEDERAL STANDARD FOR A PRELIMINARY
6 INJUNCTION INTO MONTANA LAW AS THE GENERAL STANDARD FOR A PRELIMINARY INJUNCTION
7 OR TEMPORARY RESTRAINING ORDER; REQUIRING THE APPLICANT FOR A PRELIMINARY
8 INJUNCTION OR TEMPORARY RESTRAINING ORDER TO SHOW WHY AN INJUNCTION OR
9 TEMPORARY RESTRAINING ORDER SHOULD BE GRANTED; PROVIDING A DECLARATION OF
10 LEGISLATIVE INTENT; AND AMENDING SECTIONS 27-19-201, 27-19-301, 27-19-315, AND 75-1-201,
11 MCA."

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

14
15 Section 1. Section 27-19-201, MCA, is amended to read:

16 "27-19-201. When preliminary injunction may be granted -- legislative intent. An injunction order
17 may be granted in the following cases:

18 (1) ~~when it appears that the applicant is entitled to the relief demanded and the relief or any part of~~
19 ~~the relief consists in restraining the commission or continuance of the act complained of, either for a limited~~
20 ~~period or perpetually;~~

21 (2) ~~when it appears that the commission or continuance of some act during the litigation would~~
22 ~~produce a great or irreparable injury to the applicant;~~

23 (3) ~~when it appears during the litigation that the adverse party is doing or threatens or is about to do~~
24 ~~or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of~~
25 ~~the action, and tending to render the judgment ineffectual;~~

26 (1) A preliminary injunction order or temporary restraining order may be granted when the
27 applicant establishes that:

28 (a) the applicant is likely to succeed on the merits;

1 **(b)** the applicant is likely to suffer irreparable harm in the absence of preliminary relief;

2 **(c)** the balance of equities tips in the applicant's favor; and

3 **(d)** the order is in the public interest.

4 **(2)** An injunction order may be granted in either of the following cases between persons, not
5 including a person being sued in that person's official capacity:

6 **(4)(a)** when it appears that the adverse party, during the pendency of ~~while~~ the action is pending,
7 threatens or is about to remove or to dispose of the adverse party's property with intent to defraud the applicant,
8 in which case an injunction order may be granted to restrain the removal or disposition; or

9 **(5)(b)** when it appears that the applicant has applied for an order under the provisions of 40-4-121 or
10 an order of protection under Title 40, chapter 15.

11 **(3)** The applicant for an injunction provided for in this section bears the burden of demonstrating
12 the need for an injunction order.

13 **(4)** It is the intent of the legislature that the language in subsection (1) mirror the federal
14 preliminary injunction standard, and that interpretation and application of subsection (1) closely follow United
15 States supreme court case law."

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17 **Section 2.** Section 27-19-301, MCA, is amended to read:

18 **"27-19-301. Notice of application -- hearing.** (1) No preliminary injunction order may be issued
19 without reasonable notice to the adverse party of the time and place of the making of the application therefor
20 that application for the injunction order was made.

21 (2) Before granting an injunction order, the court or judge shall make an order requiring cause to
22 be shown, at a specified time and place, why the injunction should ~~not~~ be granted, and the adverse party may
23 in the meantime be restrained as provided in 27-19-314."

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25 **Section 3.** Section 27-19-315, MCA, is amended to read:

26 **"27-19-315. When restraining order may be granted without notice.** A temporary restraining order
27 may be granted without written or oral notice to the adverse party or the party's attorney only if:

28 (1) ~~it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay~~

1 would cause immediate and irreparable injury to the applicant before the adverse party or the party's attorney
2 could be heard in opposition the applicant or the applicant's attorney makes a showing that the requirements of
3 27-19-201(1) are met; and and

4 (2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, that
5 have been made to give notice and the reasons supporting the applicant's claim that notice should not be
6 required; and

7 (3) the state or the state's departments, agencies, or officers being sued in their official capacities
8 are not the adverse party."

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10 **Section 4.** Section 75-1-201, MCA, is amended to read:

11 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes
12 and directs that, to the fullest extent possible:

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

15 (b) under this part, all agencies of the state, except the legislature and except as provided in
16 subsections (2) and (3), shall:

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

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

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

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

28 (iii) identify and develop methods and procedures that will ensure that state government actions