

HOUSE BILL NO. 971

INTRODUCED BY J. KASSMIER, M. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE ENVIRONMENTAL POLICY ACT; CLARIFYING AND EXCLUDING THE USE OF GREENHOUSE GAS EVALUATIONS; PROVIDING AN APPROPRIATION; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Exemption from environmental review.** In conformance with 75-2-102, the department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing permits, amendments, revisions, modifications, or any other proposed actions pursuant to this chapter.

NEW SECTION. **Section 2. Exemption from environmental review.** In conformance with 82-4-102, the department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing permits, amendments, revisions, modifications, or any other proposed actions pursuant to this part.

NEW SECTION. **Section 3. Exemption from environmental review.** In conformance with 82-4-202, the department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing permits, amendments, revisions, modifications, or any other proposed actions pursuant to this part.

NEW SECTION. **Section 4. Exemption from environmental review.** In conformance with 82-4-301, the department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing permits, amendments, revisions, modifications, or any other proposed actions pursuant to this part.

NEW SECTION. **Section 5. Exemption from environmental review.** In conformance with 82-4-402, the department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing permits,

1 amendments, revisions, modifications, or any other proposed actions pursuant to this part.

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3 **Section 6.** Section 75-1-201, MCA, is amended to read:

4 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes
5 and directs that, to the fullest extent possible:

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

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

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

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

14 (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency
15 considers alternatives, the alternative analysis will be in compliance with the provisions of subsections
16 (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
17 necessary, subsection (1)(b)(iv)(C)(III);

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

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

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

27 (A) the environmental impact of the proposed action;

28 (B) any adverse effects on Montana's environment that cannot be avoided if the proposal is

1 implemented;

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

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

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

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

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

18 (E) the relationship between local short-term uses of the Montana human environment and the
19 maintenance and enhancement of long-term productivity;

20 (F) any irreversible and irretrievable commitments of resources that would be involved in the
21 proposed action if it is implemented;

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

23 (H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and
24 the economic advantages and disadvantages of the proposal;

25 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe
26 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts
27 concerning alternative uses of available resources. If the alternatives analysis is conducted for a project that is
28 not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to

1 implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project
2 sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection
3 (4)(b) to a specific course of action.

4 (vi) recognize the potential long-range character of environmental impacts in Montana and, when
5 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs
6 designed to maximize cooperation in anticipating and preventing a decline in the quality of Montana's
7 environment;

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

10 (viii) initiate and use ecological information in the planning and development of resource-oriented
11 projects; and

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

13 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible
14 state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or
15 special expertise with respect to any environmental impact involved in Montana and with any Montana local
16 government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state
17 official shall also consult with and obtain comments from any state agency in Montana with respect to any
18 regulation of private property involved. Copies of the statement and the comments and views of the appropriate
19 state, federal, and local agencies that are authorized to develop and enforce environmental standards must be
20 made available to the governor, the environmental quality council, and the public and must accompany the
21 proposal through the existing agency review processes.

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

26 (2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to
27 subsection (1) may not include ~~a review of actual or potential impacts beyond Montana's borders. It may not~~
28 ~~include actual or potential impacts that are regional, national, or global in nature~~ an evaluation of greenhouse

1 gas emissions or corresponding impacts to the climate in the state or beyond the state's borders.

2 (b) An environmental review conducted pursuant to subsection (1) may include an evaluation if: a
3 review of actual or potential impacts beyond Montana's borders if it is conducted by:

4 (i) ~~the department of fish, wildlife, and parks for the management of wildlife and fish;~~

5 (ii) ~~an agency reviewing an application for a project that is not a state-sponsored project to the extent~~
6 ~~that the review is required by law, rule, or regulation; or~~

7 (iii)(i) conducted by a state agency and a federal agency to the extent the review is required by the
8 federal agency; or

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

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

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

15 (b) Nothing in this subsection (4) prevents a project sponsor and an agency from mutually
16 developing measures that may, at the request of a project sponsor, be incorporated into a permit or other
17 authority to act.

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

20 (5) (a) (i) A challenge to an agency action under this part may only be brought against a final
21 agency action and may only be brought in district court or in federal court, whichever is appropriate.

22 (ii) Any action or proceeding challenging a final agency action alleging failure to comply with or
23 inadequate compliance with a requirement under this part must be brought within 60 days of the action that is
24 the subject of the challenge.

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

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

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

5 (6) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of
6 parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or
7 a claim that the environmental review is inadequate, the agency shall compile and submit to the court the
8 certified record of its decision at issue, and except as provided in subsection (6)(b), the person challenging the
9 decision has the burden of proving the claim by clear and convincing evidence contained in the record.

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

15 (iii) Except as provided in subsection (6)(b), the court shall confine its review to the record certified
16 by the agency. The court shall affirm the agency's decision or the environmental review unless the court
17 specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance
18 with law.

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

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

27 (ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and
28 significant evidence that was not publicly available before the agency's decision and that is relevant to the

1 decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to
2 the agency for the agency's consideration and an opportunity to modify its decision or environmental review
3 before the court considers the evidence as a part of the administrative record under review.

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

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

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

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

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

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

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

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

26 (d) The court may issue a temporary restraining order, preliminary injunction, permanent
27 injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court
28 in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any

1 party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial
 2 decision in the case. If the party seeking an injunction or a temporary restraining order objects to the amount of
 3 the written undertaking for any reason, including but not limited to its asserted inability to pay, that party shall
 4 file an affidavit with the court that states the party's income, assets, and liabilities in order to facilitate the court's
 5 consideration of the amount of the written undertaking that is required. The affidavit must be served on the
 6 party enjoined.

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

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

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

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

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

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 26 **NEW SECTION. Section 7. Appropriation.** There is appropriated \$500 from the general fund to the
 27 department of environmental quality for the biennium beginning July 1, 2023, to update guidance documents
 28 related to 75-1-201.

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NEW SECTION. Section 8. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 2, part 1, and the provisions of Title 75, chapter 2, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 82, chapter 4, part 1, and the provisions of Title 82, chapter 4, part 1, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [section 5].

NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 10. Effective date. (1) Except as provided in subsection (2) [this act] is effective on passage and approval.

(2) If the Montana Supreme Court finds the amendments to 75-1-201 in [this act] are unconstitutional or otherwise voids those amendments, [sections 1 through 5] are effective on the day after the effective date of the voidness or of the finding of unconstitutionality. The court shall notify the secretary of state and the code commissioner when this contingency is met.

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