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SENATE BILL NO. 408

INTRODUCED BY B. MCCARTHY, C. YOUNKIN, BECK, P. CLARK, COLE, CRISMORE, CURTISS,
DOHERTY, ELLIS, G. FORRESTER, GALLUS, GILLAN, GRIMES, GROSFIELD, HALLIGAN, KEANE,
LINDEEN, MCNUTT, D. MOOD, SHEA, F. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT AN AGENCY DETERMINATION OF ENVIRONMENTAL IMPACT SIGNIFICANCE OR RECOMMENDATION THAT A DETERMINATION OF SIGNIFICANCE BE MADE FOR A PROJECT SUBJECT TO THE MONTANA ENVIRONMENTAL POLICY ACT BE ENDORSED BY THE AGENCY DIRECTOR; AUTHORIZING THE PROJECT SPONSOR TO REQUEST A REVIEW OF THE SIGNIFICANCE DETERMINATION OR RECOMMENDATION BY THE APPROPRIATE BOARD; PROVIDING A DEFINITION; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

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

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, 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 environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

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

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

5 (B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

6 (C) alternatives to the proposed action;

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

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

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

15 (v) study, develop, and describe appropriate alternatives to recommend courses of action in any
16 proposal that involves unresolved conflicts concerning alternative uses of available resources;

17 (vi) recognize the national and long-range character of environmental problems and, when
18 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs
19 designed to maximize national cooperation in anticipating and preventing a decline in the quality of the
20 world environment;

21 (vii) make available to counties, municipalities, institutions, and individuals advice and information
22 useful in restoring, maintaining, and enhancing the quality of the environment;

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

25 (ix) assist the environmental quality council established by 5-16-101;

26 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible
27 state official shall consult with and obtain the comments of any state agency that has jurisdiction by law
28 or special expertise with respect to any environmental impact involved. The responsible state official shall
29 also consult with and obtain comments from any state agency with respect to any regulation of private
30 property involved. Copies of the statement and the comments and views of the appropriate state, federal,

1 and local agencies that are authorized to develop and enforce environmental standards must be made
 2 available to the governor, the environmental quality council, and the public and must accompany the
 3 proposal through the existing agency review processes.

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

8 (2) The department of public service regulation, in the exercise of its regulatory authority over
 9 rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts
 10 1 through 3.

11 (3) (a) In any action challenging or seeking review of an agency's decision that a statement
 12 pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof
 13 is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the
 14 adequacy of a statement, a court may not consider any issue or evidence that was not first presented to
 15 the agency for the agency's consideration prior to the agency's decision. A court may not set aside the
 16 agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary
 17 or capricious or not in compliance with law.

18 (b) When new, material, and significant evidence is presented to the district court that had not
 19 previously been presented to the agency for its consideration, the district court shall remand the new
 20 evidence back to the agency for the agency's consideration and an opportunity to modify its findings of
 21 fact and administrative decision before the district court considers the evidence within the administrative
 22 record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district
 23 court shall review the agency's findings and decision to determine whether they are supported by
 24 substantial, credible evidence within the administrative record under review.

25 ~~(4) For any determination of significance made under subsection (1)(b)(iv), the~~ THE director of the
 26 ~~agency responsible for the significance determination OR RECOMMENDATION shall endorse in writing the ANY~~
 27 ~~determination of significance MADE UNDER SUBSECTION (1)(B)(IV) OR ANY RECOMMENDATION THAT A DETERMINATION~~
 28 ~~OF SIGNIFICANCE BE MADE.~~

29 (5) A project sponsor may request a review of the significance determination OR RECOMMENDATION
 30 made under subsection (4) to BY the appropriate board, if any. The appropriate board may, at its discretion,

1 submit an advisory recommendation to the agency regarding the issue. [THE PERIOD OF TIME BETWEEN THE
 2 REQUEST FOR A REVIEW AND COMPLETION OF A REVIEW UNDER THIS SUBSECTION MAY NOT BE INCLUDED FOR THE
 3 PURPOSES OF DETERMINING COMPLIANCE WITH THE TIME LIMITS ESTABLISHED FOR ENVIRONMENTAL REVIEW IN [SECTION
 4 1 OF SENATE BILL NO. 377]]."

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6 NEW SECTION. Section 2. Definition. For the purposes of this part, "appropriate board" means,
 7 for administrative actions taken under this part by the:

8 (1) department of environmental quality, the board of environmental review, as provided for in
 9 2-15-3502;

10 (2) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided
 11 for in 2-15-3402;

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

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

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

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

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19 NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an
 20 integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to
 21 [section 2].

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23 NEW SECTION. SECTION 4. COORDINATION INSTRUCTION. (1) IF SENATE BILL NO. 377 IS NOT PASSED AND
 24 APPROVED, THEN THE BRACKETED LANGUAGE IN [SECTION 1(5) OF THIS ACT] THAT AMENDS 75-1-201 IS VOID.

25 (2) IF SENATE BILL NO. 377 IS PASSED AND APPROVED AND IF IT DOES NOT ESTABLISH TIME LIMITS FOR
 26 ENVIRONMENTAL REVIEW, THEN THE BRACKETED LANGUAGE IN [SECTION 1(5) OF THIS ACT] THAT AMENDS 75-1-201 IS
 27 VOID.

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

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