

HOUSE BILL NO. 142

INTRODUCED BY DEVLIN

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE STATE OFFICIAL RESPONSIBLE FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT TO CONSULT WITH ANY LOCAL GOVERNMENT THAT MAY BE DIRECTLY IMPACTED BY A PROJECT; AMENDING SECTIONS 75-1-104 AND 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 75-1-104, MCA, is amended to read:

"75-1-104. Specific statutory obligations unimpaired. ~~Nothing in Sections 75-1-103 or and 75-1-201 shall in any way do not~~ affect the specific statutory obligations of any agency of the state to:

- (1) comply with criteria or standards of environmental quality;
- (2) coordinate or consult with any ~~other local government,~~ OTHER state agency, or federal agency; or
- (3) act or refrain from acting contingent upon the recommendations or certification of any other ~~local government,~~ state agency, or federal agency."

Section 2. 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) under this part, 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:
 - (A) 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; and
 - (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections



1 (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency
2 to be necessary, subsection (1)(b)(iv)(C)(IV);

3 (ii) identify and develop methods and procedures that will ensure that presently unquantified
4 environmental amenities and values may be given appropriate consideration in decisionmaking, along with
5 economic and technical considerations;

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

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

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

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

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

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

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

23 (III) if the project sponsor believes that an alternative is not reasonable as provided in subsection
24 (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's
25 determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion,
26 submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project
27 sponsor for any of its activities associated with any review under this section. The period of time between the
28 request for a review and completion of a review under this subsection may not be included for the purposes of
29 determining compliance with the time limits established for environmental review in 75-1-208.

30 (IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative

1 analysis must include the projected beneficial and adverse environmental, social, and economic impact of the
2 project's noncompletion.

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

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

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

11 (G) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the
12 economic advantages and disadvantages of the proposal;

13 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe
14 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts
15 concerning alternative uses of available resources;

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

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

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

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

24 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state
25 official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special
26 expertise with respect to any environmental impact involved and with any local government, AS DEFINED IN
27 7-12-1103, that may be DIRECTLY impacted by the project. The responsible state official shall also consult with
28 and obtain comments from any state agency with respect to any regulation of private property involved. Copies
29 of the statement and the comments and views of the appropriate state, federal, and local agencies that are
30 authorized to develop and enforce environmental standards must be made available to the governor, the

1 environmental quality council, and the public and must accompany the proposal through the existing agency
2 review processes.

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

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

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

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

26 (4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are
27 inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do
28 not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal
29 agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared
30 by a state agency to comply with the requirements of the National Environmental Policy Act.

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

3 (b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing
4 measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

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

7 (6) (a) A challenge to an agency action under this part may only be brought against a final agency action
8 and may only be brought in district court or in federal court, whichever is appropriate. Any action or proceeding
9 challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement
10 under this part must be brought within 60 days of the action that is the subject of the challenge.

11 (b) Any action or proceeding under subsection (6)(a) must take precedence over other cases or matters
12 in the district court unless otherwise provided by law.

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

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

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22 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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24 **NEW SECTION. Section 4. Applicability.** [This act] applies to environmental impact statements
25 commenced on or after [the effective date of this act].

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