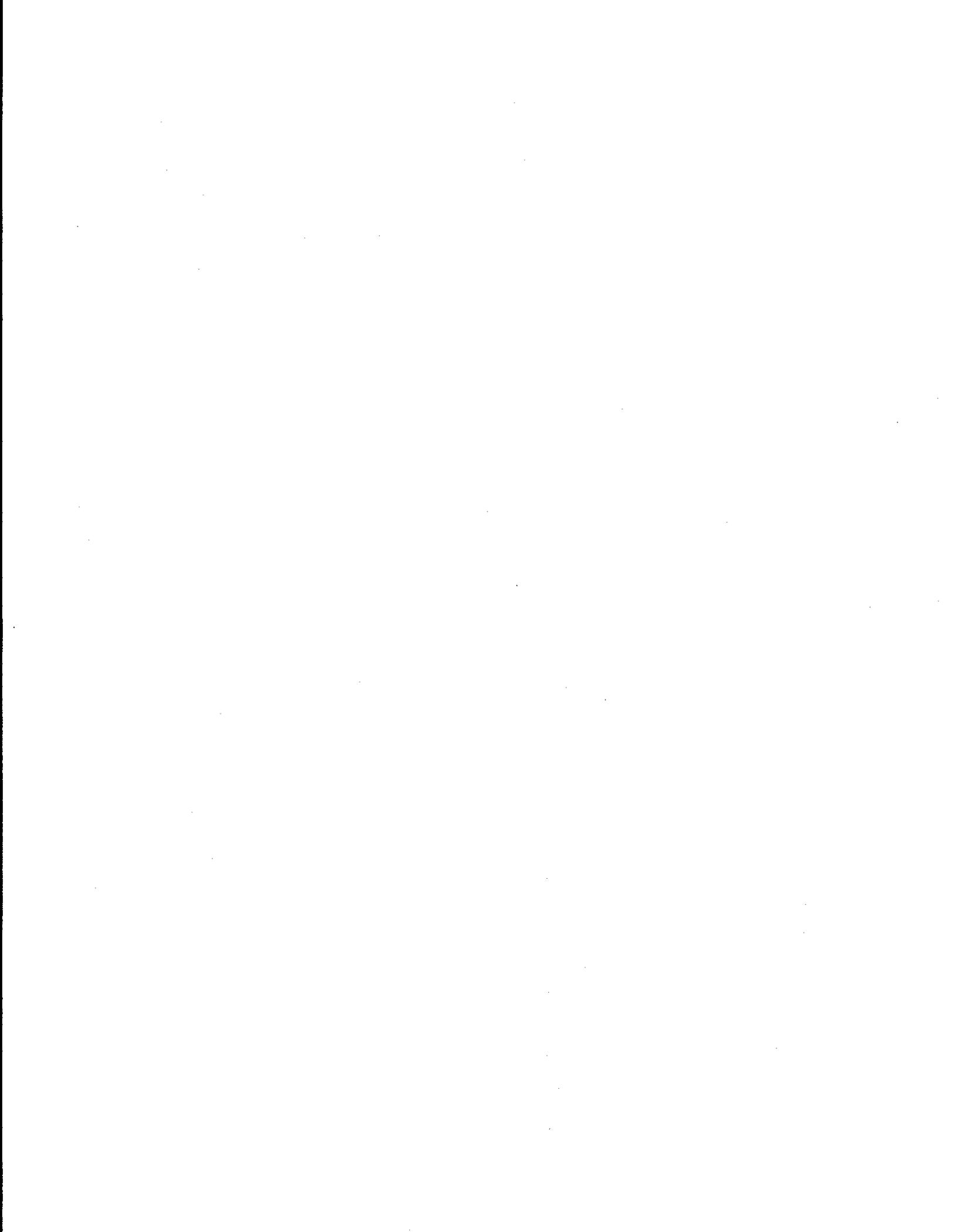


**Exhibit Number: 5**

**This exhibit is a paper copy of a  
CD - ROM Draft Copy, which  
was printed 2/16/05 12:38 PM.**

**This exhibit is regarding  
HB 470.**

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HB470GrB114

\*\*\* Bill No.

Introduced By \*\*\*\*\*

EXHIBIT 5  
DATE 2.16.05  
HB 470

A Bill for an Act entitled: "An Act to require applicants to pay costs for preparation of certain environmental impact statements; amending 75-1-202, 75-1-205, 75-1-207, 75-1-208, ~~75-1-220~~, 75-2-104, 75-2-211, 75-10-922, 75-10-929, 75-20-201, 75-20-216, 75-20-301, 75-20-401, 75-20-406, 76-4-125, 82-4-122, 82-4-231, 82-4-337, 82-4-349, 82-4-427, 82-4-436, 85-2-124, and 85-2-310, MCA; ~~repealing sections 75-1-202, 75-1-203, and 75-1-204~~, MCA; providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-205, MCA, is amended to read:

" 75-1-205. Use Collection and use of fees. (1) A person who applies to a state agency for a permit, license, or other authorization that the agency determines requires preparation of an environmental impact statement is responsible to pay:

(A) the agency's costs of preparing the environmental impact statement and conducting the environmental impact

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statement process IF THE AGENCY MAKES A WRITTEN  
DETERMINATION, BASED ON MATERIAL EVIDENCE IDENTIFIED IN THE  
DETERMINATION, THAT THERE WILL BE A SIGNIFICANT  
ENVIRONMENTAL IMPACT OR A POTENTIAL FOR A SIGNIFICANT  
ENVIRONMENTAL IMPACT; OR

(B) A FEE AS PROVIDED IN 75-1-202 IF THE AGENCY DOES  
NOT MAKE THE DETERMINATION PROVIDED FOR IN (A).

(2) Costs payable under subsection (1) include:

(a) the costs of generating, gathering, and compiling  
data and information that is not available from the  
applicant to prepare the draft environmental impact  
statement, any supplemental draft environmental impact  
statement, and the final environmental impact statement;

(b) the costs of writing, reviewing, editing,  
printing, and distributing A REASONABLE NUMBER OF COPIES OF  
the draft environmental impact statement;

(c) the costs of attending meetings and hearings on  
the environmental impact statement, including meetings and  
hearings held to determine the scope of the environmental  
impact statement; and

(d) the costs of preparing, printing, and distributing  
A REASONABLE NUMBER OF COPIES OF any supplemental draft  
environmental impact statement and the final environmental

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impact statement, including the cost of reviewing and preparing responses to public comment.

(3) Costs payable under (1)(A) include:]

(A) payments to contractors hired to work on the environmental impact statement; and

(B) salaries and expenses of AN agency employees EMPLOYEE WHO IS DESIGNATED AS THE AGENCY'S COORDINATOR FOR PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT for time spent performing the activities described in (2) or for managing those activities; AND

(C) TRAVEL AND PER DIEM EXPENSES FOR OTHER AGENCY PERSONNEL FOR ATTENDANCE AT MEETINGS AND HEARINGS ON THE ENVIRONMENTAL IMPACT STATEMENT.

(4) ~~The department may not initiate work on the environmental impact statement until the applicant has paid the estimated cost of completing the environmental impact statement, as determined by the agency.~~ (A) WHENEVER THE AGENCY MAKES THE DETERMINATION IN (1)(A), IT SHALL NOTIFY THE APPLICANT OF THE COST OF CONDUCTING THE PROCESS TO DETERMINE THE SCOPE OF THE ENVIRONMENTAL IMPACT STATEMENT. THE APPLICANT SHALL PAY THAT COST AND THE AGENCY SHALL THEN CONDUCT THE SCOPING PROCESS. THE TIMEFRAME IN 75-1-208(4)(A)(I) AND ANY STATUTORY TIMEFRAME FOR A DECISION ON

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THE APPLICATION IS TOLLED UNTIL THE APPLICANT PAYS THE COST OF THE SCOPING PROCESS.

(B) IF THE AGENCY DECIDES TO HIRE A THIRD-PARTY CONTRACTOR TO PREPARE THE ENVIRONMENTAL IMPACT STATEMENT, THE AGENCY SHALL PREPARE A LIST OF NO FEWER THAN FOUR CONTRACTORS ACCEPTABLE TO THE AGENCY AND SHALL PROVIDE THE APPLICANT WITH A COPY OF THE LIST. IF FEWER THAN FOUR ACCEPTABLE CONTRACTORS ARE AVAILABLE, THE AGENCY SHALL INCLUDE ALL ACCEPTABLE CONTRACTORS ON THE LIST. THE APPLICANT SHALL PROVIDE THE AGENCY WITH A LIST OF AT LEAST 50% OF THE CONTRACTORS FROM THE AGENCY'S LIST. THE AGENCY SHALL SELECT ITS CONTRACTOR FROM THE LIST PROVIDED BY THE APPLICANT;

(C) UPON COMPLETION OF THE SCOPING PROCESS AND SUBJECT TO (D), THE AGENCY AND THE APPLICANT SHALL NEGOTIATE AN AGREEMENT FOR THE PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT. THE AGREEMENT SHALL PROVIDE THAT:

(I) THE APPLICANT SHALL PAY THE COST OF THE ENVIRONMENTAL IMPACT STATEMENT AS DETERMINED BY THE AGENCY AFTER CONSULTATION WITH THE APPLICANT. IN DETERMINING THE COST, THE AGENCY SHALL IDENTIFY AND CONSULT WITH THE APPLICANT REGARDING THE DATA AND INFORMATION THAT MUST BE GATHERED AND STUDIES THAT MUST BE CONDUCTED;

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(II) THE AGENCY SHALL PREPARE THE ENVIRONMENTAL IMPACT STATEMENT WITHIN A REASONABLE TIME DETERMINED BY THE AGENCY AFTER CONSULTATION WITH THE APPLICANT AND SET OUT IN THE AGREEMENT. THIS TIMEFRAME SUPERCEDES ANY TIMEFRAME IN STATUTE OR RULE. IF THE APPLICANT AND THE AGENCY CANNOT AGREE ON A TIME, THE AGENCY SHALL PREPARE THE ENVIRONMENTAL IMPACT STATEMENT WITHIN ANY TIMEFRAME PROVIDED BY STATUTE OR RULE;

(III) THE APPLICANT SHALL MAKE PERIODIC ADVANCE PAYMENTS TO COVER WORK TO BE PERFORMED;

(IV) THE AGENCY MAY ORDER WORK ON THE ENVIRONMENTAL IMPACT STATEMENT TO STOP IF THE APPLICANT FAILS TO MAKE ADVANCE PAYMENT AS REQUIRED BY THE AGREEMENT. THE TIME FOR PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT IS TOLLED FOR ANY PERIOD THAT A STOP WORK ORDER FOR FAILURE TO MAKE ADVANCE PAYMENT IS IN EFFECT; AND

(V) (I) SHOULD THE AGENCY DETERMINE THAT THE ACTUAL COST OF PREPARING THE ENVIRONMENTAL IMPACT STATEMENT WILL EXCEED THE COST SET OUT IN THE AGREEMENT OR THAT MORE TIME IS NECESSARY TO PREPARE THE ENVIRONMENTAL IMPACT STATEMENT, IT SHALL SUBMIT PROPOSED MODIFICATIONS TO THE AGREEMENT TO THE APPLICANT.

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(II) IF THE APPLICANT DOES NOT AGREE TO AN EXTENSION OF THE TIME FOR PREPARATION OF THE ENVIROMENTAL IMPACT STATEMENT, THE AGENCY MAY INTIATE THE INFORMAL REVIEW PROCESS UNDER (4) (D). UPON COMPLETION OF THE INFORMAL REVIEW PROCESS, THE AGREEMENT MAY BE AMENDED ONLY WITH THE CONSENT OF THE APPLICANT.

(III) (A) IF THE APPLICANT DOES NOT AGREE THE INCREASED COSTS PROPOSED BY THE AGENCY, IT MAY REFUSE TO AGREE TO THE MODIFICATION AND MAY ALSO PROVIDE THE AGENCY WITH A WRITTEN STATEMENT PROVIDING THE REASON THAT PAYMENT OF THE INCREASED COST OR, IF APPLICABLE, A PORTION OF THE INCREASED COST, IS NOT JUSTIFIED. THE APPLICANT MAY ALSO REQUEST AN INFORMAL REVIEW AS PROVIDED IN (4) (D).

(B) IF THE APPLICANT PROVIDES WRITTEN STATEMENT PURSUANT TO (A), THE AGREEMENT SHALL BE AMENDED TO PROVIDE THAT THE APPLICANT SHALL PAY 75% OF THE INCREASED COST AND THAT THE AGENCY IS RESPONSIBLE FOR 25% OF THE INCREASED COST. IF THE APPLICANT DOES NOT PROVIDE THE STATEMENT, THE AGREEMENT SHALL BE AMENDED TO PROVIDE THAT THE APPLICANT SHALL PAY ALL ADDITIONAL COSTS.

(D) IF THE APPLICANT DOES NOT AGREE WITH COSTS DETERMINED UNDER (4) (C) (I) OR PROPOSED UNDER (4) (C) (IV), IT MAY INITIATE THE INFORMAL REVIEW PROCESS PURSUANT TO 75-1-