

Amendments to House Bill No. 470
1st Reading Copy

EXHIBIT 18
DATE 2.18.05
HR 470

Requested by Representative Paul Clark

For the House Natural Resources Committee

Prepared by Joe Kolman
February 18, 2005 (12:42pm)

1. Title, page 1, line 4.

Following: "COSTS"

Insert: "AND FEES"

2. Title, page 1, line 5.

Following: "SECTIONS"

Insert: "75-1-202,"

Following: "75-1-207,"

Strike: "75-1-220,"

Insert: "75-1-208,"

3. Title, page 1, line 6.

Strike: "75-10-929,"

Strike: "75-20-301,"

4. Title, line 7 through line 8.

Strike: "REPEALING" on line 7 through "75-1-204, MCA;" on line 8

5. Page 1, line 12.

Insert: "Section 1. Section 75-1-202, MCA, is amended to read:

"75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which ~~shall that must~~ be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201 and the agency has not made the finding under 75-1-205(1)(a). An agency ~~must shall~~ determine ~~within 30 days after a completed application is filed~~ whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this part section within any statutory timeframe for issuance of the lease, permit, contract, license, or certificate or, if no statutory timeframe is provided, within 90 days. ~~The~~ Except as provided in 85-2-124, the fee assessed under this part section shall ~~may~~ be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. ~~No~~ A fee may not be assessed if an agency intends only to file a negative declaration

stating that the proposed project will not have a significant impact on the human environment."

{ Internal References to 75-1-202:
75-1-203x }

Renumber: subsequent sections

6. Page 1, line 14.

Following: "fees"

Insert: "and costs"

7. Page 1, line 16.

Following: "paying"

Insert: ":

(a) "

8. Page 1, line 17.

Following: "process"

Insert: "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 subsection (1) (a) "

9. Page 1, line 22.

Following: "distributing"

Insert: "a reasonable number of copies of"

10. Page 1, line 26.

Following: "distributing"

Insert: "a reasonable number of copies of"

11. Page 1, line 29.

Following: "(3)"

Insert: "(a) "

Following: "include"

Insert: ":

(a) "

12. Page 1, line 30.

Following: "statement"

Strike: "and"

Insert: ";

(b) "

Following: "of"

Insert: "an"

Following: "agency"

Strike: "employees"

Insert: "employee who is designated as the agency's coordinator for preparation of the environmental impact statement"

13. Page 2, line 1.

Following: "those activities"

Insert: "; and

(c) travel and per diem expenses for other agency personnel for attendance at meetings and hearings on the environmental impact statement"

14. Page 2, line 2 through line 6.

Strike: subsections (4) and (5) in their entirety

Insert: "(4) (a) Whenever the agency makes the determination in subsection (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 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 subsection (1) (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.

(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 supersedes any timeframe in statute or rule. If the applicant and the agency cannot agree on a timeframe, 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 during

which a stop-work order is in effect for failure to make advance payment.

(v) (A) if the agency determines 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, the agency shall submit proposed modifications to the agreement to the applicant;

(B) if the applicant does not agree to an extension of the time for preparation of the environmental impact statement, the agency may initiate the informal review process under subsection (4) (d). Upon completion of the informal review process, the agreement may be amended only with the consent of the applicant.

(C) if the applicant does not agree with the increased costs proposed by the agency, the applicant 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 is not justified or, if applicable, the reason that a portion of the increased cost is not justified. The applicant may also request an informal review as provided in subsection (4) (d). If the applicant provides a written statement pursuant to this subsection (4) (c) (v) (C), the agreement must be amended to require the applicant to pay all undisputed increased cost and 75% of the disputed increased cost and to provide that the agency is responsible for 25% of the disputed increased cost. If the applicant does not provide the statement, the agreement must be amended to require the applicant to pay all increased costs.

(d) If the applicant does not agree with costs determined under subsection (4) (c) (i) or proposed under subsection (4) (c) (v), the applicant may initiate the informal review process pursuant to 75-1-208(3). If the applicant does not agree to a time extension proposed by the agency under subsection (4) (c) (v), the agency may initiate an informal review by an appropriate board under 75-1-208(3). The period of time for completion of the environmental impact statement provided in the agreement is tolled from the date of submission of a request for a review by the appropriate board until the date of completion of the review by the appropriate board. However, the agency shall continue to work on preparation of the environmental impact statement during this period if the applicant has advanced money to pay for this work."

Renumber: subsequent subsection

15. Page 2, line 7.
Following: "fees"
Insert: "and costs"

16. Page 2, line 8.
Following: "fees"
Insert: "and costs"

17. Page 2, line 17.

Strike: "of environmental quality"

Following: "under"

Strike: "75-1-205"

Insert: "75-1-205(1) (a) "

18. Page 2, line 20 through page 3, line 19.

Strike: section 3 in its entirety

Renumber: subsequent sections

Insert: "**Section 4.** Section 75-1-208, MCA, is amended to read:

"75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

- (i) 60 days to complete a public scoping process, if any;
- (ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) or 75-1-205(4), is required; and
- (iii) 180 days to complete a detailed statement pursuant to

75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 75-1-201(1)(b)(iv)(C)(III) or (8) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures."

{ Internal References to 75-1-208:

75-1-201x	75-1-201x	75-2-211x	75-2-211x
75-2-211x	75-2-211x	75-2-218x	75-10-922x
75-20-216x	75-20-216x	75-20-231x	76-4-125x
82-4-122x	82-4-231x	82-4-231x	82-4-231x
82-4-337x	82-4-337x	82-4-337x	82-4-337x
82-4-432x	}		

Renumber: subsequent sections

19. Page 5, line 24 through line 30.

Strike: "At" on line 24 through "75-1-205." on line 30

20. Page 6, line 1.

Following: "in"

Insert: "75-1-205(4) and"

21. Page 6, line 4.

Strike: "if the department prepares the environmental impact statement,"

22. Page 6, line 6 through line 8.

Following: "~~statement,~~"

Strike: remainder of line 6 through "costs." on line 8

Insert: "if the department prepares the environmental impact statement;"

23. Page 10, line 6 through page 12.

Strike: "At" on line 6 through "75-1-205." on line 12

24. Page 10, line 13.

Following: "in"

Insert: "75-1-205(4) and"

25. Page 10, line 16.

Strike: "if the department prepares the environmental impact statement,"

26. Page 10, line 18 through line 20.

Following: "~~statement,~~"

Strike: remainder of line 18 through "costs." on line 20

Insert: "if the department prepares the environmental impact statement;"

27. Page 12, line 26 through page 13, line 1.

Strike: "At" on line page 12, line 26, through "75-1-205." on

page 13, line 1

28. Page 13, line 3.

Strike: "and payment of any estimated cost pursuant to 75-1-205"

29. Page 13, line 7.

Following: "in"

Insert: "75-1-205(4) and"

30. Page 13, line 8 through line 9.

Strike: "and" on line 8 through "75-1-205" on line 9

31. Page 13, line 14 through page 14, line 11.

Strike: section 7 in its entirety

Renumber: subsequent sections

32. Page 15, line 8.

Strike: "(a)"

33. Page 15, line 9.

Following: "~~(a)~~"

Strike: "(i)"

Insert: "(a)"

34. Page 15, line 10.

Following: "~~(b)~~"

Strike: "(ii)"

Insert: "(b)"

35. Page 15, line 13 through line 18.

Strike: subsection (b) in its entirety

36. Page 15, line 20.

Strike: "and payment of any estimated cost required to be paid under 75-1-205"

37. Page 15, line 25.

Following: "in"

Insert: "75-1-205(4),"

Following: "75-1-208(4) (b) "

Insert: ", "

38. Page 15, line 26 through line 27.

Strike: "and" on line 26 through "75-1-205" on line 27

39. Page 16, line 4.

Following: "in"

Insert: "75-1-205(4),"

Following: "75-1-208(4) (b) "

Insert: ", "

40. Page 16, line 5 through line 6.
Strike: "and" on line 5 through "75-1-205" on line 6
41. Page 16, line 23 through page 18, line 4.
Strike: section 10 in its entirety
Renumber: subsequent sections
42. Page 19, line 25.
Following: "in"
Insert: "75-1-205(4) and"
43. Page 19, line 28 through line 30.
Strike: "after" on line 28 through "costs" on line 30
44. Page 21, line 4 through line 9.
Strike: "At" on line 4 through "75-1-205." on line 9
45. Page 21, line 10.
Following: "in"
Insert: "75-1-205(4) and"
46. Page 21, line 11 through line 12.
Strike: "and" on line 11 through "75-1-205" on line 12
47. Page 21, line 14.
Strike: "after payment of any additional cost required to be paid by 75-1-205(5)"
48. Page 22, line 17.
Strike: "The" through "._"
49. Page 23, line 16.
Following: "in"
Insert: "75-1-205(4) and"
50. Page 23, line 17 through line 18.
Strike: "if" on line 17 through "necessary" on line 18
51. Page 24, line 5.
Strike: "(i)"
Following: "in"
Insert: "75-1-205(4) and"
52. Page 24, line 10.
Strike: "(ii)"
Following: "on"
Strike: ":",
53. Page 24, line 11.

Strike: "(A)"

54. Page 24, line 11 through line 13.

Strike: "if" on line 11 through "(B)" on line 13

55. Page 24, line 13 through line 15.

Strike: "or" on line 13 through "later" on line 15

56. Page 24, line 16.

Strike: "(iii)"

57. Page 27, line 29 through page 28, line 4.

Strike: "At" on page 27, line 29 through "75-5-205." on page 28, line 4

58. Page 28, line 5.

Following: "in"

Insert: "75-1-205(4) and"

59. Page 28, line 30 through page 29, line 2.

Strike: "If" on page 28, line 30, through "75-1-205." on page 29, line 2

60. Page 29, line 10 through line 11.

Strike; "However" on line 10 through "costs." on line 11

61. Page 32, line 22.

Following: "Costs"

Insert: "and fees"

62. Page 32, line 26.

Following: "applicant"

Insert: "shall follow the process and"

63. Page 32, line 27.

Following: "costs"

Insert: "or fees"

Following: "in"

Strike: "75-5-205"

Insert: "Title 75, chapter 1, parts 1 and 2"

64. Page 32, line 27 through page 33, line 1.

Strike: "The" on line 27 through "(2)" on page 33, line 1

65. Page 33, line 7.

Following: "costs"

Insert: "and fees"

66. Page 33, line 9 through line 24.

Strike: "Any" on line 9 through "expense." on line 24

67. Page 33, line 25.

Strike: "(5)"

Insert: "(4)"

Following: "Costs"

Insert: "or fees"

68. Page 34, line 2.

Strike: "(6)"

Insert: "(5)"

Following: "costs"

Insert: "or fees"

69. Page 34, line 3.

Strike: "(7)"

Insert: "(6)"

70. Page 35, line 19.

Following: "costs"

Insert: "or fees"

71. Page 35, line 22 through line 23.

Strike: section 22 in its entirety

Renumber: subsequent sections

- END -

