

HOUSE BILL NO. 566

INTRODUCED BY JONES, WINDY BOY, ANKNEY, SESSO, KEANE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~REVISING STATUTES REGARDING AN ENVIRONMENTAL IMPACT ANALYSIS AND AN ENVIRONMENTAL IMPACT STATEMENT TO PROVIDE FOR THE USE OF THE ANALYSIS AND STATEMENT AS A PLANNING DOCUMENT ONLY;~~ LIMITING THE REMEDY FOR AN AGENCY'S FAILURE TO COMPLY WITH THE ENVIRONMENTAL REVIEW PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING ~~SECTIONS 75-1-102 AND~~ SECTION 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 75-1-102, MCA, is amended to read:

~~"75-1-102. Intent -- purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that environmental attributes are fully considered by the legislature in enacting laws.~~

~~(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council:~~

~~(3) The purpose of requiring an environmental analysis and the preparation of an environmental impact statement in part 2 of this chapter is to assist the legislature in determining whether laws are adequate to address impacts to the environment."~~

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

"75-1-201. General directions -- environmental impact statements. (1) The legislature authorizes



1 and directs that, to the fullest extent possible:

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

4 (b) under this part, all agencies of the state, except the legislature and except as provided in subsection
5 (2), shall:

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

7 (A) the integrated use of the natural and social sciences and the environmental design arts in planning
8 ~~and in decisionmaking~~ AND IN DECISIONMAKING that may have an impact on the human environment; and

9 (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency
10 considers alternatives, the alternative analysis will be in compliance with the provisions of subsections
11 (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency
12 to be necessary, subsection (1)(b)(iv)(C)(IV);

13 (ii) identify and develop methods and procedures that will ensure that presently unquantified
14 environmental amenities and values may be given appropriate consideration ~~in decisionmaking~~ IN
15 DECISIONMAKING, along with economic and technical considerations;

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

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

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

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

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

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

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

1 the proposed alternative;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to
19 subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person
20 challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement,
21 a court may not consider any issue relating to the adequacy or content of the agency's environmental review
22 document or evidence that was not first presented to the agency for the agency's consideration prior to the
23 agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and
24 convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal
25 impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may
26 not be used as the basis of any action challenging or seeking review of the agency's decision.

27 (b) When new, material, and significant evidence or issues relating to the adequacy or content of the
28 agency's environmental review document are presented to the district court that had not previously been
29 presented to the agency for its consideration, the district court shall remand the new evidence or issue relating
30 to the adequacy or content of the agency's environmental review document back to the agency for the agency's

1 consideration and an opportunity to modify its findings of fact and administrative decision before the district court
2 considers the evidence or issue relating to the adequacy or content of the agency's environmental review
3 document within the administrative record under review. Immaterial or insignificant evidence or issues relating
4 to the adequacy or content of the agency's environmental review document may not be remanded to the agency.
5 The district court shall review the agency's findings and decision to determine whether they are supported by
6 substantial, credible evidence within the administrative record under review.

7 (c) The remedy in any action brought for failure to comply with or for inadequate compliance with a
8 requirement of this part is limited to remand to the agency. Upon any remand, the time limits established for
9 environmental review in 75-1-208 are applicable from the date of the order for the level of environmental review
10 ordered by the court. A permit, license, lease, or other authorization issued by an agency must remain valid and
11 may not be enjoined, revoked, modified, or suspended pending the completion by an agency of any
12 environmental review that may be remanded by a court.

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

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

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

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

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

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

29 (iii) For an action taken by the board of land commissioners or the department of natural resources and
30 conservation under Title 77, "final agency action" means the date that the board of land commissioners or the

1 department of natural resources and conservation issues a final environmental review document under this part
2 or the date that the board approves the action that is subject to this part, whichever is later.

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

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

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

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14 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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16 NEW SECTION. **Section 3. Applicability.** The provisions of 75-1-201(3)(c), apply to judicial
17 proceedings involving Title 75, chapter 1, part 2, initiated on or after [the effective date of this act].

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