

1 SENATE BILL NO. 417

2 INTRODUCED BY J. KEANE, ESSMANN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATUTES REGARDING AN ENVIRONMENTAL
5 IMPACT ANALYSIS AND AN ENVIRONMENTAL IMPACT STATEMENT TO PROVIDE FOR THE USE OF THE
6 ANALYSIS AND STATEMENT AS A PLANNING DOCUMENT ONLY AND PROHIBITING AN ACTION OR
7 PROCEEDING CHALLENGING AN AGENCY ACTION TAKEN PURSUANT TO TITLE 75, CHAPTER 1, PARTS
8 1 THROUGH 3, MCA; AMENDING SECTIONS 75-1-102, 75-1-201, AND 75-1-208, MCA; REPEALING SECTION
9 75-1-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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13 **Section 1.** Section 75-1-102, MCA, is amended to read:
14 **"75-1-102. Intent -- purpose.** (1) The legislature, mindful of its constitutional obligations under Article
15 II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The
16 Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts
17 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that environmental
18 attributes are fully considered by the legislature in enacting laws.

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

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

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29 **Section 2.** Section 75-1-201, MCA, is amended to read:
30 **"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 NOT RELATED TO THE ISSUANCE, DENIAL, MODIFICATION, OR
9 CONDITIONING OF A PERMIT OR AN AUTHORITY TO ACT that may have an impact on the human environment; and

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

14 (ii) identify and develop methods and procedures that will ensure that presently unquantified
15 environmental amenities and values may be given appropriate consideration ~~in decisionmaking~~ IN DECISIONMAKING
16 NOT RELATED TO THE ISSUANCE, DENIAL, MODIFICATION, OR CONDITIONING OF A PERMIT OR AN AUTHORITY TO ACT, along
17 with economic and technical considerations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 ~~(b) When new, material, and significant evidence or issues relating to the adequacy or content of the~~
 30 ~~agency's environmental review document are presented to the district court that had not previously been~~

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

9 ~~(4)~~(3) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are
 10 inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do
 11 not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal
 12 agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared
 13 by a state agency to comply with the requirements of the National Environmental Policy Act.

14 ~~(5)~~(4) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to
 15 act based on parts 1 through 3 of this chapter.

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

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

20 ~~(6)~~(5) (a) (i) A challenge to an agency action under this part may only be brought against a final agency
 21 action and may only be brought in district court or in federal court, whichever is appropriate.

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

25 ~~———— (iii) For an action taken by the board of land commissioners or the department of natural resources and~~
 26 ~~conservation under Title 77, "final agency action" means the date that the board of land commissioners or the~~
 27 ~~department of natural resources and conservation issues a final environmental review document under this part~~
 28 ~~or the date that the board approves the action that is subject to this part, whichever is later.~~

29 ~~———— (b) Any action or proceeding under subsection (6)(a)(ii) must take precedence over other cases or~~
 30 ~~matters in the district court unless otherwise provided by law~~ An action or proceeding may not be brought

1 challenging an agency action taken pursuant to parts 1 through 3 of this chapter, and a court has no jurisdiction
2 to review an agency action taken pursuant to those parts.

3 ~~(7)~~(6) The director of the agency responsible for the determination or recommendation shall endorse in
4 writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a
5 determination of significance be made.

6 ~~(6)~~(7) A project sponsor may request a review of the significance determination or recommendation
7 made under subsection ~~(7)~~ (6) by the appropriate board, if any. The appropriate board may, at its discretion,
8 submit an advisory recommendation to the agency regarding the issue. The period of time between the request
9 for a review and completion of a review under this subsection may not be included for the purposes of
10 determining compliance with the time limits established for environmental review in 75-1-208."
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12 **Section 3.** Section 75-1-208, MCA, is amended to read:

13 **"75-1-208. Environmental review procedure.** (1) (a) Except as provided in 75-1-205(4) and subsection
14 (1)(b) of this section, an agency shall comply with this section when completing any environmental review
15 required under this part.

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

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

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

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

- 5 (i) 60 days to complete a public scoping process, if any;
- 6 (ii) 90 days to complete an environmental review unless a detailed statement pursuant to
 7 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and
- 8 (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

9 (b) The period of time between the request for a review by a board and the completion of a review by
 10 a board under 75-1-201(1)(b)(iv)(C)(III) or ~~(8) (7)~~ or subsection (10) of this section may not be included for the
 11 purposes of determining compliance with the time limits established for conducting an environmental review under
 12 this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216,
 13 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

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

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

22 (7) ~~(a) Except as provided in subsection (7)(b), if~~ if (A) EXCEPT AS PROVIDED IN SUBSECTION (7)(B), IF an
 23 agency has not completed the environmental review by the expiration of the original or extended time period, the
 24 agency may not withhold a permit or other authority to act unless the agency makes a written finding that there
 25 is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory
 26 requirement.

27 (B) SUBSECTION (7)(A) DOES NOT APPLY TO A PERMIT GRANTED UNDER TITLE 75, CHAPTER 2, OR UNDER TITLE
 28 82, CHAPTER 4, PARTS 1 AND 2.

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

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

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

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

11 (11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project. However,
12 related future actions may only be considered when these actions are under concurrent consideration by any
13 agency through preimpact statement studies, separate impact statement evaluations, or permit processing
14 procedures."
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16 NEW SECTION. **Section 4. Repealer.** Section 75-1-108, MCA, is repealed.

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

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20 NEW SECTION. **Section 6. Applicability.** [This act] applies to an environmental impact analysis and
21 an environmental impact statement prepared on or after [the effective date of this act].

22 - END -