

HOUSE BILL NO. 593

INTRODUCED BY D. ANKNEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO
5 REPEAL ARM 17.8.771 AND 17.8.772 AND TO ADOPT NEW MERCURY RULES; PROHIBITING THE BOARD
6 OF ENVIRONMENTAL REVIEW FROM ADOPTING MERCURY RULES THAT ARE MORE STRINGENT THAN
7 CORRESPONDING FEDERAL REGULATIONS; AMENDING SECTION 75-2-207, MCA; AND PROVIDING AN
8 IMMEDIATE EFFECTIVE DATE."

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

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12 ~~NEW SECTION. Section 1. Department to repeal rule. Before December 31, 2011, the board of~~
13 ~~environmental review shall repeal ARM 17.8.771 and 17.8.772.~~

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15 NEW SECTION. SECTION 1. DEPARTMENT TO REPEAL RULES -- ADOPTION OF NEW RULES. (1) WITHIN 1 YEAR
16 OF THE ADOPTION OF FEDERAL MERCURY REGULATIONS BY THE ENVIRONMENTAL PROTECTION AGENCY, THE BOARD OF
17 ENVIRONMENTAL REVIEW SHALL REPEAL ARM 17.8.771 AND 17.8.772 AND ADOPT RULES FOR THE REGULATION OF
18 MERCURY THAT ARE NO MORE STRINGENT THAN FEDERAL REGULATIONS.

19 (2) IF A COURT OF COMPETENT JURISDICTION ISSUES A FINAL DECISION DECLARING MERCURY REGULATIONS
20 PROMULGATED BY THE ENVIRONMENTAL PROTECTION AGENCY INVALID OR IF THE ENVIRONMENTAL PROTECTION AGENCY
21 RESCINDS ITS MERCURY RULES, THE BOARD SHALL REPEAL ITS RULES AND THE DEPARTMENT MAY NOT ENFORCE ANY
22 CORRESPONDING RULE ADOPTED BY THE BOARD RELATING TO THE REGULATION OF MERCURY EMISSIONS.

23 (3) A FACILITY THAT INSTALLED AND OPERATED EQUIPMENT PURSUANT TO ARM 17.8.771 BEFORE [THE
24 EFFECTIVE DATE OF THIS ACT] SHALL MAINTAIN AND OPERATE THE EQUIPMENT, INCLUDING MONITORING EQUIPMENT, UNTIL
25 IT IS NECESSARY TO DEMONSTRATE COMPLIANCE WITH FEDERAL MERCURY REGULATIONS.

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27 NEW SECTION. Section 2. Mercury allowances -- stringency --void. (†) The board of environmental
28 review may not adopt a rule to implement a federal mercury regulation promulgated under 40 CFR, parts 60, 63,
29 72, or 75, that is more stringent than the comparable federal regulation or guidelines that address the same
30 circumstances.

1 ~~(2) If a court of competent jurisdiction declares mercury rules promulgated by the environmental~~
2 ~~protection agency invalid or if the environmental protection agency rescinds its mercury rules, any corresponding~~
3 ~~rule adopted by the board relating to the regulation of mercury emissions is void.~~

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5 **Section 3.** Section 75-2-207, MCA, is amended to read:

6 **"75-2-207. State regulations no more stringent than federal regulations or guidelines -- exceptions**
7 **-- procedure.** (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless required by state
8 law, the board or department may not adopt a rule to implement this chapter that is more stringent than the
9 comparable federal regulations or guidelines that address the same circumstances. The board or department may
10 incorporate by reference comparable federal regulations or guidelines.

11 (2) (a) ~~The~~ Except as provided in [section 2 SECTIONS 1 AND 2], the board or department may adopt a rule
12 to implement this chapter that is more stringent than comparable federal regulations or guidelines only if:

13 (i) a public hearing is held;

14 (ii) public comment is allowed; and

15 (iii) the board or the department makes a written finding after the public hearing and comment period that
16 is based on evidence in the record that the proposed standard or requirement:

17 (A) protects public health or the environment;

18 (B) can mitigate harm to the public health or the environment; and

19 (C) is achievable with current technology.

20 (b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed
21 scientific studies contained in the record that form the basis for the board's or the department's conclusion. The
22 written finding must also include information from the hearing record regarding costs to the regulated community
23 that are directly attributable to the proposed standard or requirement.

24 (c) (i) A person or entity affected by a rule of the board or department adopted after January 1, 1990,
25 and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations
26 or guidelines may petition the board or department to review the rule.

27 (ii) If the board or department determines that the rule is more stringent than comparable federal
28 regulations or guidelines, the board or department shall either revise the rule to conform to the federal regulations
29 or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time,
30 not to exceed 6 months after receiving the petition.

1 (iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged
2 rule. The board or department may charge a petition filing fee in an amount not to exceed \$250.

3 (iv) A person may also petition the board or department for a rule review under subsection (2)(a) if the
4 board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines
5 existed and the federal government subsequently establishes comparable regulations or guidelines that are less
6 stringent than the previously adopted board or department rule.

7 (3) This section does not apply to a rule adopted under the emergency rulemaking provisions of
8 2-4-303(1)."

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10 NEW SECTION. Section 4. Codification instruction. [~~Section 2~~ SECTIONS 1 AND 2] is ARE intended
11 to be codified as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to [~~section~~
12 2 SECTIONS 1 AND 2].

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

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