

1 SENATE BILL NO. 233

2 INTRODUCED BY J. KEANE, VUCKOVICH, OLSON, KLOCK, HINER, MCCHESENEY, TUTVEDT, ANKNEY,
3 WINDY BOY, HAMLETT

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ENVIRONMENTAL IMPACT LAWS; REVISING
6 STATUTES RELATED TO AN ENVIRONMENTAL IMPACT ANALYSIS AND AN ENVIRONMENTAL
7 ASSESSMENT; PROVIDING DEFINITIONS; CLARIFYING THAT ALTERNATIVES INCLUDED IN AN
8 ALTERNATIVES ANALYSIS ARE DISCRETIONARY; PROVIDING THAT THE SCOPE OF AN
9 ENVIRONMENTAL REVIEW IS ONLY WITHIN MONTANA'S BORDERS; PROVIDING THE REMEDY FOR
10 FAILURE BY AN AGENCY TO COMPLY WITH THE REQUIREMENTS OF THE MONTANA ENVIRONMENTAL
11 POLICY ACT; REVISING THE ENVIRONMENTAL REVIEW FEE ASSESSMENT; AMENDING SECTIONS
12 75-1-102, 75-1-201, 75-1-203, 75-1-208, AND 75-1-220, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE~~
13 ~~DATE AND AN APPLICABILITY DATE~~ EFFECTIVE DATES, AN APPLICABILITY DATE, AND A CONTINGENT
14 TERMINATION DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **Section 1.** Section 75-1-102, MCA, is amended to read:

19 **"75-1-102. Intent -- purpose.** (1) The legislature, mindful of its constitutional obligations under Article
20 II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The
21 Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts
22 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that:

23 (a) environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional
24 obligations; and

25 (b) the public is informed of the anticipated impacts in Montana of potential state actions.

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

1 environmental quality council.

2 (3) (a) The purpose of requiring an environmental assessment and an environmental impact statement
 3 under part 2 of this chapter is to assist the legislature in determining whether laws are adequate to address
 4 impacts to Montana's environment and to inform the public AND PUBLIC OFFICIALS of potential impacts resulting
 5 from decisions made by state agencies.

6 (b) Except to the extent that an applicant agrees to the incorporation of measures in a permit pursuant
 7 to 75-1-201(6)(b), it is not the purpose of parts 1 through 3 of this chapter to provide for regulatory authority,
 8 beyond authority explicitly provided for in existing statute, to a state agency."

9

10 **Section 2.** Section 75-1-201, MCA, is amended to read:

11 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes
 12 and directs that, to the fullest extent possible:

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

15 (b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection~~
 16 ~~(2)~~ subsections (2) and (3), shall:

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

18 (A) the integrated use of the natural and social sciences and the environmental design arts in planning
 19 and in decisionmaking for a state-sponsored project that may have an impact on the Montana human
 20 environment by projects in Montana; and

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

25 (ii) identify and develop methods and procedures that will ensure that presently unquantified
 26 environmental amenities and values may be given appropriate consideration in decisionmaking for
 27 state-sponsored projects, along with economic and technical considerations;

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

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

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

5 (B) any adverse ~~environmental~~ effects on Montana's environment that cannot be avoided if the proposal
 6 is implemented;

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

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

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

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

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

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

30 (E) the relationship between local short-term uses of the Montana human environment and the

1 maintenance and enhancement of long-term productivity;

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

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

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

7 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe
8 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts
9 concerning alternative uses of available resources; If the alternatives analysis is conducted for a project that is
10 not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement
11 the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to
12 take a recommended course of action, but the project sponsor may agree pursuant to subsection (6)(b) to a
13 specific course of action.

14 (vi) recognize the ~~national and potential~~ long-range character of environmental ~~problems~~ impacts in
15 Montana and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions,
16 and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality
17 of ~~the world~~ Montana's environment;

18 (vii) make available to counties, municipalities, institutions, and individuals advice and information useful
19 in restoring, maintaining, and enhancing the quality of ~~the~~ Montana's environment;

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

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

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

1 existing agency review processes.

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

6 ~~(2) An~~ (A) EXCEPT AS PROVIDED IN SUBSECTION (2)(B), AN ENVIRONMENTAL REVIEW CONDUCTED PURSUANT TO
7 subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not
8 include actual or potential impacts that are regional, national, or global in nature.

9 (B) AN ENVIRONMENTAL REVIEW CONDUCTED PURSUANT TO SUBSECTION (1) MAY INCLUDE A REVIEW OF ACTUAL
10 OR POTENTIAL IMPACTS BEYOND MONTANA'S BORDERS IF IT IS CONDUCTED BY:

11 (I) THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR THE MANAGEMENT OF WILDLIFE AND FISH;

12 (II) AN AGENCY REVIEWING AN APPLICATION FOR A PROJECT THAT IS NOT A STATE-SPONSORED PROJECT TO THE
13 EXTENT THAT THE REVIEW IS REQUIRED BY LAW, RULE, OR REGULATION; OR

14 (III) BY A STATE AGENCY AND A FEDERAL AGENCY TO THE EXTENT THE REVIEW IS REQUIRED BY THE FEDERAL
15 AGENCY.

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

18 ~~(3)(4)~~ (a) In any action challenging or seeking review of an agency's decision that a statement pursuant
19 to 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)~~ (4)(b), in a challenge to the adequacy of a
21 statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental
22 review document or evidence that was not first presented to the agency for the agency's consideration prior to
23 the 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 environmental review
 2 document before the district court considers the evidence or issue relating to the adequacy or content of the
 3 agency's environmental review document within the administrative record under review. Immaterial or insignificant
 4 evidence or issues relating to the adequacy or content of the agency's environmental review document may not
 5 be remanded to the agency. ~~The district court shall review the agency's findings and decision to determine~~
 6 ~~whether they are supported by substantial, credible evidence within the administrative record under review.~~

7 ~~(4)(5)~~ To the extent that the requirements of ~~subsections subsection (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III)~~
 8 are inconsistent with federal requirements, the requirements of ~~subsections subsection (1)(b)(iv)(C)(I) and~~
 9 ~~(1)(b)(iv)(C)(III)~~ do not apply to an environmental review that is being prepared by a state agency pursuant to this
 10 part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that
 11 is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

12 ~~(5)(6)~~ (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to
 13 act based on parts 1 through 3 of this chapter.

14 (b) Nothing in this subsection ~~(5)(6)~~ prevents a project sponsor and an agency from mutually developing
 15 measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

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

18 ~~(6)(7)~~ (a) (i) A challenge to an agency action under this part may only be brought against a final agency
 19 action and may only be brought in district court or in federal court, whichever is appropriate.

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

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

27 (b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ (7)(a)(ii) must take precedence over other cases
 28 or matters in the district court unless otherwise provided by law.

29 (c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ (7)(a) involving an
 30 equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

1 (d) The remedy in any action brought for failure to comply with or for inadequate compliance with a
 2 requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the
 3 environmental review conducted pursuant to subsection (1).

4 (e) A permit, license, lease, or other authorization issued by an agency is valid and may not be enjoined,
 5 voided, nullified, revoked, modified, or suspended pending the completion of an environmental review that may
 6 be remanded by a court.

7 ~~(7)~~(8) The director of the agency responsible for the determination or recommendation shall endorse in
 8 writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a
 9 determination of significance be made.

10 ~~(8)~~(9) A project sponsor may request a review of the significance determination or recommendation
 11 made under subsection ~~(7)~~ (8) by the appropriate board, if any. The appropriate board may, at its discretion,
 12 submit an advisory recommendation to the agency regarding the issue. The period of time between the request
 13 for a review and completion of a review under this subsection may not be included for the purposes of
 14 determining compliance with the time limits established for environmental review in 75-1-208."
 15

16 **SECTION 3. SECTION 75-1-203, MCA, IS AMENDED TO READ:**

17 **"75-1-203. Fee schedule -- maximums.** (1) In prescribing fees to be assessed against applicants for
 18 a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule that
 19 may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed
 20 unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring
 21 expenses in excess of ~~\$2,500~~ \$2,501 to compile an environmental impact statement.

22 (2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up
 23 to \$1 million, plus 1% of any estimated cost over \$1 million and up to \$20 million, plus 1/2 of 1% of any estimated
 24 cost over \$20 million and up to \$100 million, plus 1/4 of 1% of any estimated cost over \$100 million and up to
 25 \$300 million, plus 1/8 of 1% of any estimated cost in excess of \$300 million.

26 (3) If an application consists of two or more facilities, the filing fee must be based on the total estimated
 27 cost of the combined facilities. The estimated cost must be determined by the agency and the applicant at the
 28 time the application is filed.

29 (4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every
 30 2 years.

1 (5) In calculating fees under this section, the agency may not include in the estimated project cost the
2 project sponsor's property or other interests already owned by the project sponsor at the time the application is
3 submitted. Any fee assessed may be based only on the projected cost of acquiring all of the information and data
4 needed for the environmental impact statement."
5

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

7 **"75-1-208. Environmental review procedure.** (1) (a) Except as provided in 75-1-205(4) and subsection
8 (1)(b) of this section, an agency shall comply with this section when completing any environmental review
9 required under this part.

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

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

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

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

29 (i) 60 days to complete a public scoping process, if any;

30 (ii) 90 days to complete an environmental review unless a detailed statement pursuant to

1 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and

2 (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

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

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

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

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

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

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

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

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

1 advisory recommendation to the agency regarding the issue.

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

6

7 **Section 5.** Section 75-1-220, MCA, is amended to read:

8 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

9 (1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control
 10 measures that would accomplish the same objectives as those included in the proposed action by the applicant.
 11 For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to
 12 the proposed project itself. THE TERM INCLUDES ALTERNATIVES REQUIRED PURSUANT TO TITLE 75, CHAPTER 20.

13 ~~(1)(2)~~ "Appropriate board" means, for administrative actions taken under this part by the:

14 (a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

15 (b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in
 16 2-15-3402;

17 (c) department of transportation, the transportation commission, as provided for in 2-15-2502;

18 (d) department of natural resources and conservation for state trust land issues, the board of land
 19 commissioners, as provided for in Article X, section 4, of the Montana constitution;

20 (e) department of natural resources and conservation for oil and gas issues, the board of oil and gas
 21 conservation, as provided for in 2-15-3303; and

22 (f) department of livestock, the board of livestock, as provided for in 2-15-3102.

23 ~~(2)(3)~~ "Complete application" means, for the purpose of complying with this part, an application for a
 24 permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and
 25 signatures required to be included with the application sufficient for the agency to approve the application under
 26 the applicable statutes and rules.

27 ~~(3)(4)~~ "Cumulative impacts" means the collective impacts on the human environment within the borders
 28 of Montana of the proposed action when considered in conjunction with other past, present, and future actions
 29 related to the proposed action by location or generic type.

30 ~~(4)(5)~~ "Environmental review" means any environmental assessment, environmental impact statement,

1 or other written analysis required under this part by a state agency of a proposed action to determine, examine,
 2 or document the effects and impacts of the proposed action on the quality of the human and physical environment
 3 within the borders of Montana as required under this part.

4 ~~(5)~~(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing
 5 an action that requires an environmental review. If the action involves state agency-initiated actions on state trust
 6 lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of
 7 Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through
 8 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 329).

9 ~~(6)~~(7) "Public scoping process" means any process to determine the scope of an environmental review.

10 (8) (a) "State-sponsored project" means:

11 (i) a project, program, or activity initiated and directly undertaken by a state agency;

12 (ii) EXCEPT AS PROVIDED IN SUBSECTION (8)(B)(I)~~(D)~~, a project or activity supported through a contract, grant,
 13 subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one
 14 or more other state agencies; or

15 (iii) EXCEPT AS PROVIDED IN SUBSECTION (8)(B)(I)~~(D)~~, a project or activity authorized by a state agency acting
 16 in a land management capacity for a lease, easement, license, or other authorization to act.

17 (b) The term does not include:

18 (i) A PROJECT OR ACTIVITY UNDERTAKEN BY A PRIVATE ENTITY THAT IS MADE POSSIBLE BY the issuance of
 19 permits, licenses, LEASES, EASEMENTS, GRANTS, LOANS, or other authorizations to act by the:

20 (A) department of environmental quality pursuant to Titles 75, 76, or 82;

21 (B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

22 (C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

23 (D) department of natural resources and conservation OR THE BOARD OF LAND COMMISSIONERS pursuant
 24 to ~~Title~~ TITLES 76, 77, 82, AND 85; or

25 (ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for
 26 permission to act by another agency acting in a regulatory capacity, either singly or in combination with other
 27 state agencies."

28
 29 COORDINATION SECTION. SECTION 6. COORDINATION INSTRUCTION. IF [THIS ACT] IS PASSED AND
 30 APPROVED AND SENATE BILL NO. 317 IS NOT PASSED AND APPROVED OR IF BOTH [THIS ACT] AND SENATE BILL NO. 317

1 ARE PASSED AND APPROVED, THEN SENATE BILL NO. 317 IS VOID, THE AMENDMENTS TO 75-1-201 CONTAINED IN
 2 [SECTION 2 OF THIS ACT] ARE VOID, AND 75-1-201 MUST BE AMENDED AS FOLLOWS:

3 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and
 4 directs that, to the fullest extent possible:

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

7 (b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection~~
 8 ~~(2)~~ subsections (2) and (3), shall:

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

10 (A) the integrated use of the natural and social sciences and the environmental design arts in planning
 11 and in decisionmaking for a state-sponsored project that may have an impact on the Montana human
 12 environment by projects in Montana; and

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

17 (ii) identify and develop methods and procedures that will ensure that presently unquantified
 18 environmental amenities and values may be given appropriate consideration in decisionmaking for
 19 state-sponsored projects, along with economic and technical considerations;

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

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

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

27 (B) any adverse ~~environmental~~ effects on Montana's environment that cannot be avoided if the proposal
 28 is implemented;

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

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

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

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

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

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

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

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

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

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

29 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe
30 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts

1 concerning alternative uses of available resources; If the alternatives analysis is conducted for a project that is
2 not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement
3 the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to
4 take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a
5 specific course of action.

6 (vi) recognize the ~~national and potential~~ long-range character of environmental ~~problems~~ impacts in
7 Montana and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions,
8 and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality
9 of ~~the world~~ Montana's environment;

10 (vii) make available to counties, municipalities, institutions, and individuals advice and information useful
11 in restoring, maintaining, and enhancing the quality of ~~the~~ Montana's environment;

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

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

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

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

28 (2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to
29 subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not
30 include actual or potential impacts that are regional, national, or global in nature.

1 (b) An environmental review conducted pursuant to subsection (1) may include a review of actual or
 2 potential impacts beyond Montana's borders if it is conducted by:

3 (i) the department of fish, wildlife, and parks for the management of wildlife and fish;

4 (ii) an agency reviewing an application for a project that is not a state-sponsored project to the extent that
 5 the review is required by law, rule, or regulation; or

6 (iii) a state agency and a federal agency to the extent the review is required by the federal agency.

7 ~~(2)(3)~~ The department of public service regulation, in the exercise of its regulatory authority over rates
 8 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

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

18 ~~———— (b) When new, material, and significant evidence or issues relating to the adequacy or content of the~~
 19 ~~agency's environmental review document are presented to the district court that had not previously been~~
 20 ~~presented to the agency for its consideration, the district court shall remand the new evidence or issue relating~~
 21 ~~to the adequacy or content of the agency's environmental review document back to the agency for the agency's~~
 22 ~~consideration and an opportunity to modify its findings of fact and administrative decision before the district court~~
 23 ~~considers the evidence or issue relating to the adequacy or content of the agency's environmental review~~
 24 ~~document within the administrative record under review. Immaterial or insignificant evidence or issues relating~~
 25 ~~to the adequacy or content of the agency's environmental review document may not be remanded to the agency.~~
 26 ~~The district court shall review the agency's findings and decision to determine whether they are supported by~~
 27 ~~substantial, credible evidence within the administrative record under review.~~

28 ~~———— (4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent~~
 29 ~~with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to~~
 30 ~~an environmental review that is being prepared by a state agency pursuant to this part and a federal agency~~

1 pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state
2 agency to comply with the requirements of the National Environmental Policy Act.

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

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

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

9 ~~(6)~~(5) (a) (i) A challenge to an agency action under this part may only be brought against a final agency
10 action and may only be brought in district court or in federal court, whichever is appropriate.

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

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

18 (b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ (5)(a)(ii) must take precedence over other cases
19 or matters in the district court unless otherwise provided by law.

20 (c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ (5)(a) involving an
21 equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

22 (6) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1
23 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim
24 that the environmental review is inadequate, the agency shall compile and submit to the court the certified record
25 of its decision at issue, and except as provided in subsection (6)(b), the person challenging the decision has the
26 burden of proving the claim by clear and convincing evidence contained in the record.

27 (ii) Except as provided in subsection (6)(b), in a challenge to the agency's decision or the adequacy of
28 an environmental review, a court may not consider any information, including but not limited to an issue,
29 comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for
30 the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

1 (iii) Except as provided in subsection (6)(b), the court shall confine its review to the record certified by
2 the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically
3 finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

4 (iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal
5 impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the
6 agency's decision.

7 (b) (i) When a party challenging the decision or the adequacy of the environmental review or decision
8 presents information not in the record certified by the agency, the challenging party shall certify under oath in an
9 affidavit that the information is new, material, and significant evidence that was not publicly available before the
10 agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

11 (ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and
12 significant evidence that was not publicly available before the agency's decision and that is relevant to the
13 decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to
14 the agency for the agency's consideration and an opportunity to modify its decision or environmental review
15 before the court considers the evidence as a part of the administrative record under review.

16 (iii) If the court finds that the information in the affidavit does not meet the requirements of subsection
17 (6)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its
18 decision.

19 (c) The remedy in any action brought for failure to comply with or for inadequate compliance with a
20 requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the
21 environmental review conducted pursuant to subsection (1).

22 (d) A permit, license, lease, or other authorization issued by an agency is valid and may not be enjoined,
23 voided, nullified, revoked, modified, or suspended pending the completion of an environmental review that may
24 be remanded by a court.

25 (e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to
26 act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the state
27 as a matter of right if the individual or entity has not been named as a defendant.

28 (f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance
29 or inadequate compliance with a requirement of parts 1 through 3.

30 (7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with

1 the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental
 2 review or any severable portion of an environmental review within the state's jurisdiction that is being prepared
 3 by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National
 4 Environmental Policy Act.

5 ~~(7)~~(8) 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)~~(9) A project sponsor may request a review of the significance determination or recommendation
 9 made under subsection ~~(7)~~ (8) by the appropriate board, if any. The appropriate board may, at its discretion,
 10 submit an advisory recommendation to the agency regarding the issue. The period of time between the request
 11 for a review and completion of a review under this subsection may not be included for the purposes of
 12 determining compliance with the time limits established for environmental review in 75-1-208."

13
 14 COORDINATION SECTION. SECTION 7. COORDINATION INSTRUCTION. IF [THIS ACT] IS PASSED AND
 15 APPROVED AND SENATE BILL NO. 317 IS NOT PASSED AND APPROVED OR IF BOTH [THIS ACT] AND SENATE BILL NO. 317
 16 ARE PASSED AND APPROVED, THEN SENATE BILL NO. 317 IS VOID, THE AMENDMENTS TO 75-1-201 CONTAINED IN
 17 [SECTION 2 OF THIS ACT] ARE VOID, AND 75-1-201 MUST BE AMENDED AS FOLLOWS:

18 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and
 19 directs that, to the fullest extent possible:

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

22 (b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection~~
 23 ~~(2)~~ subsections (2) and (3), shall:

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

25 (A) the integrated use of the natural and social sciences and the environmental design arts in planning
 26 and in decisionmaking for a state-sponsored project that may have an impact on the Montana human
 27 environment by projects in Montana; and

28 (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency
 29 considers alternatives, the alternative analysis will be in compliance with the provisions of subsections
 30 (1)(b)(iv)(C)(I) ~~through (1)(b)(iv)(C)(III)~~ and (1)(b)(iv)(C)(II) and, if requested by the project sponsor or if

1 determined by the agency to be necessary, subsection ~~(1)(b)(iv)(C)(IV)~~ (1)(b)(iv)(C)(III);

2 (ii) identify and develop methods and procedures that will ensure that presently unquantified
3 environmental amenities and values may be given appropriate consideration in decisionmaking for
4 state-sponsored projects, along with economic and technical considerations;

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

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

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

12 (B) any adverse ~~environmental~~ effects on Montana's environment that cannot be avoided if the proposal
13 is implemented;

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

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

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

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

30 ~~(IV)(III)~~ the agency shall complete a meaningful no-action alternative analysis. The no-action alternative

1 analysis must include the projected beneficial and adverse environmental, social, and economic impact of the
2 project's noncompletion.

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

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

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

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

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

14 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe
15 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts
16 concerning alternative uses of available resources; If the alternatives analysis is conducted for a project that is
17 not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement
18 the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to
19 take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a
20 specific course of action.

21 (vi) recognize the ~~national and potential~~ long-range character of environmental ~~problems~~ impacts in
22 Montana and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions,
23 and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality
24 of ~~the world~~ Montana's environment;

25 (vii) make available to counties, municipalities, institutions, and individuals advice and information useful
26 in restoring, maintaining, and enhancing the quality of ~~the~~ Montana's environment;

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

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

30 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state

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

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

13 (2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to
 14 subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not
 15 include actual or potential impacts that are regional, national, or global in nature.

16 (b) An environmental review conducted pursuant to subsection (1) may include a review of actual or
 17 potential impacts beyond Montana's borders if it is conducted by:

18 (i) the department of fish, wildlife, and parks for the management of wildlife and fish;

19 (ii) an agency reviewing an application for a project that is not a state-sponsored project to the extent that
 20 the review is required by law, rule, or regulation; or

21 (iii) a state agency and a federal agency to the extent the review is required by the federal agency.

22 ~~(2)(3)~~ The department of public service regulation, in the exercise of its regulatory authority over rates
 23 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

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

1 impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may
 2 not be used as the basis of any action challenging or seeking review of the agency's decision.

3 ~~———— (b) When new, material, and significant evidence or issues relating to the adequacy or content of the
 4 agency's environmental review document are presented to the district court that had not previously been
 5 presented to the agency for its consideration, the district court shall remand the new evidence or issue relating
 6 to the adequacy or content of the agency's environmental review document back to the agency for the agency's
 7 consideration and an opportunity to modify its findings of fact and administrative decision before the district court
 8 considers the evidence or issue relating to the adequacy or content of the agency's environmental review
 9 document within the administrative record under review. Immaterial or insignificant evidence or issues relating
 10 to the adequacy or content of the agency's environmental review document may not be remanded to the agency.
 11 The district court shall review the agency's findings and decision to determine whether they are supported by
 12 substantial, credible evidence within the administrative record under review.~~

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

20 (b) Nothing in this subsection ~~(5)~~ (4) 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)(5)~~ (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)~~ (5)(a)(ii) must take precedence over other cases
4 or matters in the district court unless otherwise provided by law.

5 (c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ (5)(a) involving an
6 equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

7 (6) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1
8 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim
9 that the environmental review is inadequate, the agency shall compile and submit to the court the certified record
10 of its decision at issue, and except as provided in subsection (6)(b), the person challenging the decision has the
11 burden of proving the claim by clear and convincing evidence contained in the record.

12 (ii) Except as provided in subsection (6)(b), in a challenge to the agency's decision or the adequacy of
13 an environmental review, a court may not consider any information, including but not limited to an issue,
14 comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for
15 the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

16 (iii) Except as provided in subsection (6)(b), the court shall confine its review to the record certified by
17 the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically
18 finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

19 (iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal
20 impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the
21 agency's decision.

22 (b) (i) When a party challenging the decision or the adequacy of the environmental review or decision
23 presents information not in the record certified by the agency, the challenging party shall certify under oath in an
24 affidavit that the information is new, material, and significant evidence that was not publicly available before the
25 agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

26 (ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and
27 significant evidence that was not publicly available before the agency's decision and that is relevant to the
28 decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to
29 the agency for the agency's consideration and an opportunity to modify its decision or environmental review
30 before the court considers the evidence as a part of the administrative record under review.

1 (iii) If the court finds that the information in the affidavit does not meet the requirements of subsection
2 (6)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its
3 decision.

4 (c) (i) The remedies provided in this section for successful challenges to a decision of the agency or the
5 adequacy of the statement are exclusive.

6 (ii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings
7 of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent
8 injunction, or other equitable relief may not enjoin the issuance or effectiveness of a license or permit or a part
9 of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party
10 requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts
11 in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction,
12 a permanent injunction, or other equitable relief, that the:

13 (A) party requesting the relief will suffer irreparable harm in the absence of the relief;

14 (B) issuance of the relief is in the public interest. In determining whether the grant of the relief is in the
15 public interest, a court:

16 (I) may not consider the legal nature or character of any party; and

17 (II) shall consider the implications of the relief on the local and state economy and make written findings
18 with respect to both.

19 (C) relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and the
20 irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the extent
21 possible, that the project or as much of the project as possible can go forward while also providing the relief to
22 which the applicant has been determined to be entitled.

23 (d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or
24 other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount
25 reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may
26 be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the
27 case. If the party seeking an injunction or a temporary restraining order objects to the amount of the written
28 undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit
29 with the court that states the party's income, assets, and liabilities in order to facilitate the court's consideration
30 of the amount of the written undertaking that is required. The affidavit must be served on the party enjoined.

1 (e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to
 2 act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the state
 3 as a matter of right if the individual or entity has not been named as a defendant.

4 (f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance
 5 or inadequate compliance with a requirement of parts 1 through 3.

6 (7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with
 7 the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental
 8 review or any severable portion of an environmental review within the state's jurisdiction that is being prepared
 9 by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National
 10 Environmental Policy Act.

11 ~~(7)~~(8) The director of the agency responsible for the determination or recommendation shall endorse in
 12 writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a
 13 determination of significance be made.

14 ~~(8)~~(9) A project sponsor may request a review of the significance determination or recommendation
 15 made under subsection ~~(7)~~ (8) by the appropriate board, if any. The appropriate board may, at its discretion,
 16 submit an advisory recommendation to the agency regarding the issue. The period of time between the request
 17 for a review and completion of a review under this subsection may not be included for the purposes of
 18 determining compliance with the time limits established for environmental review in 75-1-208."

19
 20 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable
 21 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
 22 remains in effect in all valid applications that are severable from the invalid applications.

23
 24 ~~NEW SECTION. Section 6. Effective date.~~ [This act] is effective on passage and approval.

25
 26 NEW SECTION. SECTION 9. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS
 27 EFFECTIVE ON PASSAGE AND APPROVAL.

28 (2) THE AMENDMENTS TO 75-1-201 CONTAINED IN [SECTION 7] ARE EFFECTIVE ON THE DATE THAT THE
 29 CONTINGENCY PROVIDED FOR IN [SECTION 11] OCCURS.

