SENATE BILL NO. 317

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA ENVIRONMENTAL POLICY ACT; CLARIFYING THE PURPOSE AND POLICY STATEMENTS; FURTHER CLARIFYING THAT OTHER SPECIFIC STATUTORY OBLIGATIONS ARE UNIMPAIRED; FURTHER CLARIFYING THAT PROVISIONS OF THE ACT ARE PROCEDURAL ONLY AND NOT REGULATORY IN NATURE; REVISING THE PROCEDURES FOR THE DETERMINATION OF CONSTITUTIONALITY; CLARIFYING VENUE REQUIREMENTS; CLARIFYING THE ENVIRONMENTAL REVIEW PROCESS; CLARIFYING TERMS AND DEFINITIONS; REVISING THE PROCEDURES FOR LEGAL CHALLENGES UNDER THE ACT; FURTHER CLARIFYING THAT A STATE AGENCY MAY NOT CONDITION A STATE ACTION UNDER THE ACT; CLARIFYING THE FEE PROCESS AS IT RELATES TO AGENCY RULES, SCHEDULES, COST, COLLECTION, AND USE; AMENDING SECTIONS 75-1-102, 75-1-103, 75-1-104, 75-1-105, 75-1-106, 75-1-107, 75-1-108, 75-1-201, 75-1-202, 75-1-203, 75-1-205, 75-1-208, 75-1-220, 75-2-211, 77-5-201, AND 77-5-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

"75-1-102. Intent -- purpose. (1) The legislature, mindful of ~~its constitutional obligations under~~ individuals' fundamental constitutional rights enumerated in Article II, section 3, and its constitutional obligations under Article IX of the Montana constitution to provide for the administration, enforcement, and protection of these rights, has enacted the Montana Environmental Policy Act to be implemented in conjunction with substantive environmental regulatory laws that the legislature has also provided for the administration, enforcement, and

protection of these rights. The Montana Environmental Policy Act is procedural~~, and it~~ only, requiring a state agency with jurisdiction over a proposed state action to conduct an environmental review of a proposed action by performing the reasonable and timely compilation, analysis, and disclosure to the public of existing, publicly available, relevant information directly concerning the reasonably foreseeable environmental and economic impacts of the proposed state action. It is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that reasonably foreseeable environmental and economic attributes are ~~fully considered~~ adequately understood, analyzed, and disclosed by state agencies when taking a state action and that the public and the legislature are provided access to this information.

(2) (a) The purpose of parts 1 through 3 of this chapter is to: ~~declare a state policy that will~~

(i) establish an environmental quality council;

(ii) guide courts in the review of final agency actions under parts 1 through 3 of this chapter;

(iii) encourage productive, economically healthy, free enterprise and enjoyable harmony between humans and their environment~~, to protect~~ by protecting the right to use and enjoy private property and pursue life's basic necessities free of undue government regulation;~~, to~~

(iv) promote efforts that will moderate, prevent, or eliminate ~~damage to the environment and biosphere and stimulate~~ unreasonable depletion and degradation of natural resources and the environmental life support system while also protecting and enhancing the health and welfare of humans, including their economic welfare, by protecting the right to a clean and healthful environment; and ~~to~~

(v) enrich the understanding of the ecological systems and natural resources ~~important to the state, and to establish an environmental quality council~~ of the state, while facilitating natural resource development and use.

(b) It is not the purpose of parts 1 through 3 of this chapter to provide, enhance, or supplement any regulatory authority of any state agency beyond that explicitly provided in other statutes.

(c) The legislature finds and declares the accomplishment of these purposes to be vital to the ~~moral and material~~ well-being of the people of Montana."

Section 2. Section 75-1-103, MCA, is amended to read:

"75-1-103. Policy. (1) The legislature, recognizing the profound and positive impact of a healthy state economy on the ~~moral and material~~ well-being of the people of Montana, recognizing the many opportunities and benefits presented by natural resource development to substantially support and improve this economy,

recognizing that the lack of a healthy state economy over time profoundly distorts and undermines society, harming families and the development of children in particular, recognizing the impact of human activity on the interrelations of all components of the natural environment~~, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining~~ as well as the importance of economic and environmental ~~quality~~ health to the overall welfare and human development, and ~~further~~ recognizing that when governmental regulation ~~may~~ unnecessarily ~~restrict~~ restricts the use, development, and enjoyment of private property it adversely impacts the fundamental rights of individuals and their general well-being, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote job creation and economic growth and the general welfare, both economically and environmentally, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize ~~and appropriately facilitate~~ the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources so that the state may:

(a) fulfill the responsibilities of each generation as trustee of society and of the environment for succeeding generations;

(b) ensure for all Montanans a safe, healthful, and productive society and economy in which to live, ~~and aesthetically and culturally pleasing surroundings~~ along with a clean and healthful environment;

(c) attain the widest range of beneficial uses of the environment without unreasonable degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) protect the right to use and enjoy private property and pursue life's basic necessities free of undue government regulation;

(e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(f) achieve a balance between a thriving population and resource use that will permit high standards of living and a wide sharing of life's amenities; ~~and~~

(g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources; and

(h) maximize the rights to use private property and to pursue life's basic necessities by ~~encouraging~~ ALLOWING prudent development, utilization, and management of Montana's rich and diverse natural resources to promote the health and welfare and the ~~moral and material~~ well-being of Montana citizens.

(3) The legislature recognizes that each person is entitled to a clean and healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, that each person has the right to pursue life's basic necessities, and that each person has a responsibility to contribute to the ~~preservation~~ conservation and enhancement of the environment. The ~~implementation~~ administration, enforcement, and protection of these rights requires the balancing by the legislature of the competing interests associated with the rights, including the fundamental constitutional rights, of the people of Montana ~~by the legislature~~ in order to protect those rights and the public health, safety, and welfare."

Section 3. Section 75-1-104, MCA, is amended to read:

"75-1-104. Specific statutory obligations unimpaired. (1) ~~Sections 75-1-103 and 75-1-201~~ Parts 1 through 3 of this chapter do not affect, expand, limit, or alter the specific statutory obligations and authority of any agency of the state to:

~~(1)~~(a) comply with criteria or standards of environmental quality;

~~(2)~~(b) coordinate or consult with any local government, other state agency, or federal agency; or

~~(3)~~(c) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

(2) Nothing in parts 1 through 3 of this chapter expands or provides additional or supplementary substantive regulatory authority to any state agency."

Section 4. Section 75-1-105, MCA, is amended to read:

"75-1-105. Policies and goals supplementary. (1) The policies and goals set forth in parts 1 through 3 are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

(2) The policies and goals set forth in parts 1 through 3 do not provide any supplementary substantive regulatory authority to any boards, commissions, or agencies of the state."

Section 5. Section 75-1-106, MCA, is amended to read:

"75-1-106. Private property protection -- ongoing programs of state government. Nothing in ~~75-1-102, 75-1-103, or 75-1-201~~ parts 1 through 3 expands or diminishes private property protection afforded in the U.S. or Montana constitutions. Nothing in ~~75-1-102, 75-1-103, or 75-1-201~~ parts 1 through 3 may be construed to preclude ongoing programs of state government pending the completion of any statements that may be required by ~~75-1-102, 75-1-103, or 75-1-201~~ parts 1 through 3."

Section 6. Section 75-1-107, MCA, is amended to read:

"75-1-107. Determination of constitutionality. (1) In any action filed in district court invoking the court's original jurisdiction to challenge the constitutionality of a licensing or permitting decision made pursuant to Title 75 or Title 82, ~~or~~ activities taken pursuant to a license or permit issued under Title 75 or Title 82, or a decision made, statement issued, or action taken or not taken pursuant to parts 1 through 3 of this chapter, the plaintiff shall first establish the unconstitutionality of the underlying statute.

(2) (a) A litigant shall bring forward in the initial complaint all claims for which relief is available, including constitutional claims and claims provided for in this section, within 60 days of the state action or inaction at issue.

(b) All claims for which relief is available at the time of filing the initial complaint are waived if they are omitted from the complaint."

Section 7. Section 75-1-108, MCA, is amended to read:

"75-1-108. Venue. A proceeding to challenge an action taken pursuant to parts 1 through 3 or an action taken pursuant to Title 75 or Title 82 must be brought in the county in which the activity that is the subject of the action is proposed to occur, ~~or~~ will occur, or is occurring. If an activity is proposed to occur, ~~or~~ will occur, or is occurring in more than one county, the proceeding may be brought in any of ~~the counties in which the activity is proposed to occur or will occur~~ those counties."

Section 8. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions -- environmental impact statements -- alternative analyses -- judicial review and remedies. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance

with the policies set forth in parts 1 through 3;

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

(i) use a systematic, interdisciplinary approach to undertake the reasonable and timely compilation, analysis, and disclosure of existing, publicly available, relevant information directly concerning the reasonably foreseeable environmental and economic impacts of a proposed state action that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in ~~planning and in decisionmaking that may have an impact on the human environment~~ analyzing environmental and economic impacts of the proposed state action; and

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

(B) that the information and analysis resulting from this process are made available to the public, state agencies, and the legislature for planning and decisionmaking not related to the issuance, denial, modification, or conditioning of a permit or an authority to act that may have an impact on the human environment by projects in Montana;

(ii) identify and develop methods and procedures that will ensure that ~~presently unquantified~~ impacts on economic and environmental amenities and values ~~may be~~ are given appropriate ~~consideration in decisionmaking, along with economic and technical considerations~~ analysis and disclosure;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment in Montana are evaluated for regulatory restrictions on private property, as provided in subsection ~~(1)(b)(iv)(D)~~ ~~(3)(c)~~ (3)(D);

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

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

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

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

~~(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current~~

~~technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~not be used as the basis of any action challenging or seeking review of the agency's decision.~~

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

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

(iv) recognize the long-range character of environmental and economic impacts in Montana;

(v) make available to counties, municipalities, institutions, and individuals information obtained pursuant to parts 1 through 3; ~~and~~

(vi) assist the environmental quality council established in 5-16-101~~.~~; AND

(VII) INITIATE AND USE ECOLOGICAL INFORMATION IN THE PLANNING AND DEVELOPMENT OF RESOURCE-ORIENTED STATE-SPONSORED PROJECTS.

(2) (a) In an environmental review under parts 1 through 3, except as provided in subsections (2)(b), (2)(c), and ~~(3)(h)~~ (3)(I) or unless otherwise ~~required by another statute under which an agency regulates a~~ AUTHORIZED AND WITHIN THE SCOPE OF AN AGENCY'S AUTHORITY TO CONSIDER ALTERNATIVES UNDER THE SUBSTANTIVE REGULATORY ACT UNDER WHICH IT IS REGULATING THE proposed action, an agency may not analyze an alternative to the proposed action, EXCEPT AS PROVIDED IN THIS SECTION. However, an agency may suggest reasonable alternatives for study to the project sponsor.

(b) A project sponsor may:

(i) agree to the analysis of a reasonable alternative suggested by the agency; and

(ii) request that the environmental review analyze reasonable alternatives to the proposal. Only those alternatives that the project sponsor agrees to or requests may be analyzed, and the agency may decline to analyze any alternative.

(c) If the state agency is a project sponsor, the environmental review must analyze the proposed action and those alternatives the agency develops that are reasonable pursuant to subsection ~~(3)(b)~~ (3)(C).

(d) A state agency may not analyze an alternative that fails to comply with the criteria in subsection ~~(3)(b)~~ (3)(C).

(3) Each environmental review of proposals for projects, programs, and other major actions of state government that will significantly affect the quality of the human environment in Montana must include:

(a) a detailed statement of the reasonably foreseeable environmental ~~and economic~~ impacts of the proposed action in Montana~~;~~. AN AGENCY MAY CONDUCT ORIGINAL SCIENTIFIC STUDIES ONLY IF:

(I) THE SUBJECT OF THE STUDY IS DIRECTLY RELEVANT TO THE IMPACTS OF THE PROJECT AT ISSUE AND THE AGENCY HAS THE AUTHORITY TO REGULATE THE APPLICANT IN REGARD TO THAT SUBJECT UNDER THE SUBSTANTIVE REGULATORY ACT UNDER WHICH THE AGENCY IS PROCEEDING; AND

(II) THE AGENCY DIRECTOR, NOT A DESIGNEE, MAKES A FINDING THAT THE CONDITIONS IN SUBSECTION (3)(A)(I) ARE MET AND AN ANALYSIS OF THE REASONABLY FORESEEABLE ENVIRONMENTAL IMPACTS DETERMINED BASED ON EXISTING, PUBLICLY AVAILABLE INFORMATION CANNOT BE ADEQUATELY COMPLETED WITHOUT THE PROPOSED ORIGINAL SCIENTIFIC STUDY. IF THE AGENCY DIRECTOR MAKES A FINDING UNDER THIS SUBSECTION (3)(A)(II) REQUIRING THE AGENCY TO UNDERTAKE A STUDY, THIS FINDING IS IMMEDIATELY REVIEWABLE IN DISTRICT COURT.

(B) A STATEMENT OF THE REASONABLY FORESEEABLE ECONOMIC IMPACTS OF THE PROPOSED ACTION IN MONTANA, BASED ON INFORMATION IN THE RECORD AND OTHER PUBLICLY AVAILABLE ECONOMIC INFORMATION THAT THE AGENCY, IN ITS SOLE DISCRETION, DECIDES TO GATHER AND ANALYZE;

~~(b)~~(C) subject to subsection (2)(b), a statement of the reasonable alternatives, if any, to the proposed action analyzed in the environmental review. A reasonable alternative eligible to be analyzed in the environmental review must:

(i) be within the legal authority of an applicant to perform or a state agency to permit the applicant to perform;

(ii) allow the sponsor to achieve the goals of its proposal in a reasonable time;

(iii) be achievable using currently existing commercially viable practices and technology; and

(iv) be economically feasible as determined solely by the economic viability of the project or similar

projects having similar conditions and physical locations, without regard to the economic strength of the specific project sponsor.

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

~~(d)~~(E) a statement of the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

~~(e)~~(F) a statement of any irreversible and irretrievable commitments of resources that would be involved if the proposed action is implemented;

~~(f)~~(G) a statement of the customer fiscal impact analysis if required by 69-2-216;

~~(g)~~(H) a statement of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

~~(h)~~(I) a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impacts of the project's noncompletion.

~~(i)~~(J) a statement that the state action is a major state action requiring an environmental and economic review complying with this section.

(4) (a) If an agency determines that it is appropriate, an environmental review may contain a statement of probable, quantifiable impacts beyond Montana's borders. Consideration of environmental impacts related to greenhouse gases must be limited to disclosure of reasonably anticipated, quantifiable emissions of those gases arising from the state action at issue stated in proportion to the existing and reasonably anticipated, quantifiable emissions of those gases from all other sources.

(b) The adequacy of the statement in subsection (4)(a) or a decision not to include the statement is not subject to judicial review and may not be the basis of any judicial relief.

(5) (a) If the project sponsor does not agree to the analysis of an alternative, the agency may not charge the project sponsor for any of its activities associated with that alternative.

(b) (i) The time limits established for an environmental and economic review that is not subject to the provisions of subsection (3) may not be extended, except with the project sponsor's agreement.

(ii) The time limits in 75-1-208 for an environmental review subject to the provisions of subsection (3) may be extended for 60 days without agreement of the project sponsor. An extension beyond an initial 60 days

requires the project sponsor's agreement.

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

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

(8) The compilation, analysis, research, study, or other regulatory process performed in response to an application for a lease, permit, license, certificate, or other entitlement for use or for permission to act by an agency that is the functional equivalent of any part of an environmental review conducted under parts 1 through 3~~, including public notice and comment,~~ must be incorporated in the environmental and economic review, is considered to be in compliance with the requirements of parts 1 through 3, and may not be duplicated.

(9) Each agency subject to the provisions of parts 1 through 3 shall adopt by rule a listing of categorically excluded actions.

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

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

(ii) Except as provided in subsection (11)(b), in a challenge to the agency's decision or the adequacy of an environmental review, a court may not consider any information, including but not limited to an issue,

comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

(iii) Except as provided in subsection (11)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

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

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

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

(iii) If the court finds that the information in the affidavit does not meet the requirements of subsection (11)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its decision.

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

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

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

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

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

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

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

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

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

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

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

~~(5) (a)~~(13) (a) The agency may not withhold, delay, deny, or impose conditions on any existing or requested lease, permit, license, certificate, or other entitlement or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection ~~(5)~~ (13) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a lease, permit, license, certificate, or other entitlement or other authority to act.

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

(14) Parts 1 through 3 of this chapter do not:

(a) affect an agency's authority or obligations under any other statute; or

(b) confer authority to an agency to require the amendment or modification of an existing or proposed project or action or to condition a lease, permit, license, certificate, or other entitlement or authority to act that is a state action being reviewed pursuant to parts 1 through 3 of this chapter.

~~(6) (a) (i)~~(15) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court ~~or in federal court, whichever is appropriate~~.

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

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

(b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ (15)(a)(ii) ~~must take~~ takes precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ (15)(a) involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

~~(7)~~(16) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection ~~(1)(b)(iv)~~ (3) or any recommendation that a determination of significance be made.

~~(8)~~(17) A project sponsor may request a review of the significance determination or recommendation made under subsection ~~(7)~~ (16) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of

determining compliance with the time limits established for environmental review in 75-1-208."

Section 9. Section 75-1-202, MCA, is amended to read:

"75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees that must be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201 and the agency has not made the finding under 75-1-205(1)(a). An agency shall determine whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this section within any statutory timeframe for issuance of the lease, permit, contract, license, or certificate or, if no statutory timeframe is provided, within 90 days. Except as provided in 85-2-124, the fee assessed under this section may be used only to ~~gather data and information necessary to compile an environmental impact statement as defined~~ reasonably and timely compile, analyze, and disclose to the public existing, publicly available, relevant information directly concerning the reasonably foreseeable economic and environmental impacts of a proposed state action as provided in parts 1 through 3. A fee may not be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment."

Section 10. Section 75-1-203, MCA, is amended to read:

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

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

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

time the application is filed.

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

(5) In calculating fees under this section, the agency may not include in the estimated project cost the project sponsor's property or other interests already owned by the project sponsor at the time the application is submitted. Any fee assessed may be based only on the projected cost of ~~acquiring all of the information and data needed for the environmental impact statement~~ reasonably and timely compiling, analyzing, and disclosing to the public existing, publicly available, relevant information directly concerning the reasonably foreseeable economic and environmental impacts of a proposed state action."

Section 11. Section 75-1-205, MCA, is amended to read:

"75-1-205. Collection and use of fees and costs. (1) A person who applies to a state agency for a permit, license, or other authorization that the agency determines requires preparation of an environmental impact statement is responsible for paying:

(a) the agency's costs of preparing the environmental impact statement and conducting the environmental impact statement process if the agency makes a written determination, based on material evidence identified in the determination, that there will be a significant environmental impact ~~or a potential for a significant environmental impact~~. If a customer fiscal impact analysis is required under 69-2-216, the applicant shall also pay the staff and consultant costs incurred by the office of consumer counsel in preparing the analysis.

(b) a fee as provided in 75-1-202 if the agency does not make the determination provided for in subsection (1)(a).

(2) Costs payable under subsection (1) include:

(a) the costs of ~~generating, gathering, and compiling data and information that is not available from the applicant~~ reasonably and timely compiling, analyzing, and disclosing to the public existing, publicly available, relevant information directly concerning the reasonably foreseeable economic and environmental impacts of a proposed state action and ~~to prepare~~ preparing the draft environmental impact statement, any supplemental draft environmental impact statement, and the final environmental impact statement;

(b) the costs of writing, reviewing, editing, printing, and distributing a reasonable number of copies of the draft environmental impact statement;

(c) the costs of attending meetings and hearings on the environmental impact statement, including

meetings and hearings held to determine the scope of the environmental impact statement; and

(d) the costs of preparing, printing, and distributing a reasonable number of copies of any supplemental draft environmental impact statement and the final environmental impact statement, including the cost of reviewing and preparing responses to public comment.

(3) Costs payable under subsection (1) include:

(a) payments to contractors hired to work on the environmental impact statement;

(b) salaries and expenses of an agency employee who is designated as the agency's coordinator for preparation of the environmental impact statement for time spent performing the activities described in subsection (2) or for managing those activities; and

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

(4) (a) Whenever the agency makes the determination in subsection (1)(a), it shall notify the applicant of the cost of conducting the process to determine the scope of the environmental impact statement. The applicant shall pay that cost, and the agency shall then conduct the scoping process. The timeframe in 75-1-208(4)(a)(i) and any statutory timeframe for a decision on the application are tolled until the applicant pays the cost of the scoping process.

(b) If the agency decides to hire a third-party contractor to prepare the environmental impact statement, the agency shall prepare a list of no fewer than four contractors acceptable to the agency and shall provide the applicant with a copy of the list. If fewer than four acceptable contractors are available, the agency shall include all acceptable contractors on the list. The applicant shall provide the agency with a list of at least 50% of the contractors from the agency's list. The agency shall select its contractor from the list provided by the applicant.

(c) Upon completion of the scoping process and subject to subsection (1)(d), the agency and the applicant shall negotiate an agreement for the preparation of the environmental impact statement. The agreement must provide that:

(i) the applicant shall pay the cost of the environmental impact statement as determined by the agency after consultation with the applicant. In determining the cost, the agency shall identify and consult with the applicant regarding the data and information that must be ~~gathered and studies that must be conducted~~ compiled and analyzed.

(ii) the agency shall prepare the environmental impact statement within a reasonable time ~~determined by the agency after consultation with the applicant and set out in the agreement. This timeframe supersedes any~~

~~timeframe in statute or rule. If the applicant and the agency cannot agree on a timeframe, the agency shall prepare the environmental impact statement within any timeframe provided by statute or rule~~ as provided in 75-1-208 unless other time limits are provided by law;~~.~~

(iii) the applicant shall make periodic advance payments to cover work to be performed;

(iv) the agency may order work on the environmental impact statement to stop if the applicant fails to make advance payment as required by the agreement. The time for preparation of the environmental impact statement is tolled for any period during which a stop-work order is in effect for failure to make advance payment.

(v) (A) if the agency determines that the actual cost of preparing the environmental impact statement will exceed the cost set out in the agreement or that more time is necessary to prepare the environmental impact statement, the agency shall submit proposed modifications to the agreement to the applicant;

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

(C) if the applicant does not agree with the increased costs proposed by the agency, the applicant may refuse to agree to the modification and may also provide the agency with a written statement providing the reason that payment of the increased cost is not justified or, if applicable, the reason that a portion of the increased cost is not justified. The applicant may also request an informal review as provided in subsection (4)(d). If the applicant provides a written statement pursuant to this subsection (4)(c)(v)(C), the agreement must be amended to require the applicant to pay all undisputed increased cost and ~~75%~~ ~~50%~~ 75% of the disputed increased cost and to provide that the agency is responsible for ~~25%~~ ~~50%~~ 25% of the disputed increased cost. If the applicant does not provide the statement, the agreement must be amended to require the applicant to pay all increased costs.

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

(5) All fees and costs collected under this part must be deposited in the state special revenue fund as provided in 17-2-102. All fees and costs paid pursuant to this part must be used as provided in this part. Upon completion of the necessary work, each agency shall make an accounting to the applicant of the funds expended and refund all unexpended funds without interest."

Section 12. Section 75-1-208, MCA, is amended to read:

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

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

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

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

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

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

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

~~75-1-201(1)(b)(iv)~~ 75-1-201(3) or 75-1-205(4) is required; and

(iii) 180 days to complete a detailed statement pursuant to ~~75-1-201(1)(b)(iv)~~ 75-1-201(3).

(b) The period of time between the request for a review by a board and the completion of a review by a board under ~~75-1-201(1)(b)(iv)(C)(III) or (8)~~ 75-1-201(17) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

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

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

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

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

(8) Under ~~this part~~ ~~parts 1 through 3~~ THIS PART, an agency may only request that information from the project sponsor that is relevant to the environmental review required under ~~this part~~ ~~parts 1 through 3 and that is necessary to reasonably and timely compile, analyze, and disclose to the public existing, publicly available, relevant information directly concerning the reasonably foreseeable economic and environmental impacts of a proposed state action~~ THIS PART.

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

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than

that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

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

Section 13. Section 75-1-220, MCA, is amended to read:

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

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

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

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

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

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

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

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

(2) "Categorically excluded action" means a type of action that does not individually, collectively, or cumulatively require an environmental review as determined by agency rule unless extraordinary circumstances, as defined by rule, occur.

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

~~(3)~~(4) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action

by location or generic type.

~~(4)~~(5) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

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

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

Section 14. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the

application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to

another is exempt from the provisions of ~~75-1-201(1)~~ 75-1-201.

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) Except as provided in 75-2-213, when the department approves or denies the application for a permit under this section, a person who is directly and adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) Except as provided in 75-2-213:

(a) the department's decision on the application is not final until 15 days have elapsed from the date of the decision;

(b) the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

(a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 15. Section 77-5-201, MCA, is amended to read:

"77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under any rules established by the board. Timber or forest products sold from state trust lands may be sold by a stumpage method or a lump-sum method or marketed by the state through contract harvesting as provided in 77-5-214 through 77-5-219.

(2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county

in which the timber is situated for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency because of fire, insect, fungus, parasite, or blowdown or to address forest health concerns or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 1 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of ~~75-1-201(1)~~ 75-1-201 to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3)."

Section 16. Section 77-5-212, MCA, is amended to read:

"77-5-212. Commercial permits for timber sale. (1) Permits may be issued to citizens of the state for commercial purposes, at commercial rates, without advertising, and under restrictions and rules that the board may approve for the sale of timber:

(a) in quantities of less than 100,000 board feet; and

(b) in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than 500,000 board feet.

(2) To apply for a permit under this section, an individual shall:

(a) complete a permit application on a form provided by the department and submit the completed application to the department office that is responsible for management of the state land where the proposed sale is located;

(b) using ribbon, mark the area of the proposed sale; and

(c) designate on a U.S. geological survey map or other approved map the area proposed for sale and existing roads that would be used to remove timber from the site.

(3) For sales of less than 30,000 board feet, an individual shall provide proof of vehicle liability insurance and $1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in an amount not to exceed $1,000.

(4) For sales of 30,000 board feet or more, an individual shall provide proof of vehicle liability insurance and $1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in accordance with 77-5-202.

(5) Unless the timber proposed for sale is already sold or is part of another proposed sale being reviewed by the department, the department shall review completed permit applications within 30 days of the application's submittal. If the proposed sale complies with existing state and federal laws and regulations, the department shall perform an appraisal within 60 days of the application's submittal.

(6) The department shall issue a permit within 5 working days of the date that the applicant agrees to the terms of the proposed sale, unless the parties mutually agree upon a time extension.

(7) Repeated permits of this kind may not be issued to avoid advertising and the consequent competition secured by advertising.

(8) Permit applications pursuant to subsection (1)(b) are categorical exclusions as defined by rule, and the department is not required to comply with the provisions of ~~75-1-201(1)~~ 75-1-201 in reviewing those applications.

(9) Proposed timber sales under subsection (1)(b) do not take precedence over the timely sale and harvest of green timber pursuant to 77-5-207.

(10) Permit applications made pursuant to this section may be subject to further environmental review, and the number of permits may be limited if the department determines that sales may have a cumulative effect on geographic area."

NEW SECTION. **Section 17. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

NEW SECTION. **Section 19. Applicability.** [This act] applies to environmental reviews begun after [the effective date of this act].

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