

## 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

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

10 (2) (a) The purpose of parts 1 through 3 of this chapter is to: ~~declare a state policy that will~~  
 11 (i) establish an environmental quality council;  
 12 (ii) guide courts in the review of final agency actions under parts 1 through 3 of this chapter;  
 13 (iii) encourage productive, economically healthy, free enterprise and enjoyable harmony between humans  
 14 and their environment, to protect by protecting the right to use and enjoy private property and pursue life's basic  
 15 necessities free of undue government regulation; to  
 16 (iv) promote efforts that will moderate, prevent, or eliminate damage to the environment and biosphere  
 17 and stimulate unreasonable depletion and degradation of natural resources and the environmental life support  
 18 system while also protecting and enhancing the health and welfare of humans, including their economic welfare,  
 19 by protecting the right to a clean and healthful environment; and to  
 20 (v) enrich the understanding of the ecological systems and natural resources important to the state, and  
 21 to establish an environmental quality council of the state, while facilitating natural resource development and use.  
 22 (b) It is not the purpose of parts 1 through 3 of this chapter to provide, enhance, or supplement any  
 23 regulatory authority of any state agency beyond that explicitly provided in other statutes.  
 24 (c) The legislature finds and declares the accomplishment of these purposes to be vital to the moral and  
 25 material well-being of the people of Montana."

26  
 27 **Section 2.** Section 75-1-103, MCA, is amended to read:  
 28 **"75-1-103. Policy.** (1) The legislature, recognizing the profound and positive impact of a healthy state  
 29 economy on the moral and material well-being of the people of Montana, recognizing the many opportunities and  
 30 benefits presented by natural resource development to substantially support and improve this economy,

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

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

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

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

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

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

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

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

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

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

6 (3) The legislature recognizes that each person is entitled to a clean and healthful environment, that each  
7 person is entitled to use and enjoy that person's private property free of undue government regulation, that each  
8 person has the right to pursue life's basic necessities, and that each person has a responsibility to contribute to  
9 the ~~preservation~~ conservation and enhancement of the environment. The ~~implementation~~ administration,  
10 enforcement, and protection of these rights requires the balancing by the legislature of the competing interests  
11 associated with the rights, including the fundamental constitutional rights, of the people of Montana by the  
12 ~~legislature~~ in order to protect those rights and the public health, safety, and welfare."  
13

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

15 **"75-1-104. Specific statutory obligations unimpaired.** (1) Sections 75-1-103 and 75-1-201- Parts 1  
16 through 3 of this chapter do not affect, expand, limit, or alter the specific statutory obligations and authority of any  
17 agency of the state to:

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

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

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

22 (2) Nothing in parts 1 through 3 of this chapter expands or provides additional or supplementary  
23 substantive regulatory authority to any state agency."  
24

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

26 **"75-1-105. Policies and goals supplementary.** (1) The policies and goals set forth in parts 1 through  
27 3 are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the  
28 state.

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

1

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

3 **"75-1-106. Private property protection -- ongoing programs of state government.** Nothing in  
4 ~~75-1-102, 75-1-103, or 75-1-201~~ parts 1 through 3 expands or diminishes private property protection afforded in  
5 the U.S. or Montana constitutions. Nothing in ~~75-1-102, 75-1-103, or 75-1-201~~ parts 1 through 3 may be  
6 construed to preclude ongoing programs of state government pending the completion of any statements that may  
7 be required by ~~75-1-102, 75-1-103, or 75-1-201~~ parts 1 through 3."

8

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

10 **"75-1-107. Determination of constitutionality.** (1) In any action filed in district court invoking the court's  
11 original jurisdiction to challenge the constitutionality of a licensing or permitting decision made pursuant to Title  
12 75 or Title 82, or activities taken pursuant to a license or permit issued under Title 75 or Title 82, or a decision  
13 made, statement issued, or action taken or not taken pursuant to parts 1 through 3 of this chapter, the plaintiff  
14 shall first establish the unconstitutionality of the underlying statute.

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

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

19

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

21 **"75-1-108. Venue.** A proceeding to challenge an action taken pursuant to parts 1 through 3 or an action  
22 taken pursuant to Title 75 or Title 82 must be brought in the county in which the activity that is the subject of the  
23 action is proposed to occur, ~~or will occur,~~ or is occurring. If an activity is proposed to occur, ~~or will occur,~~ or is  
24 occurring in more than one county, the proceeding may be brought in any of ~~the counties in which the activity is~~  
25 ~~proposed to occur or will occur~~ those counties."

26

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

28 **"75-1-201. General directions -- environmental impact statements -- alternative analyses -- judicial**  
29 **review and remedies.** (1) The legislature authorizes and directs that, to the fullest extent possible:

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

1 with the policies set forth in parts 1 through 3;

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

4 (i) use a systematic, interdisciplinary approach to undertake the reasonable and timely compilation,  
5 analysis, and disclosure of existing, publicly available, relevant information directly concerning the reasonably  
6 foreseeable environmental and economic impacts of a proposed state action AND THE ENVIRONMENTAL AND  
7 ECONOMIC IMPACTS OF MAJOR ACTIONS OF STATE GOVERNMENT PURSUANT TO SUBSECTION (3) that will ensure:

8 (A) the integrated use of the natural and social sciences and the environmental design arts in ~~planning~~  
9 ~~and in decisionmaking that may have an impact on the human environment~~ analyzing environmental and  
10 economic impacts of the proposed state action AND THE ENVIRONMENTAL AND ECONOMIC IMPACTS OF MAJOR ACTIONS  
11 OF STATE GOVERNMENT PURSUANT TO SUBSECTION (3); and

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

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

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

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

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

28 ~~\_\_\_\_\_ (A) the environmental impact of the proposed action;~~

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

30 ~~\_\_\_\_\_ (C) alternatives to the proposed action. An analysis of any alternative included in the environmental~~

1 review must comply with the following criteria:

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

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

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

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

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

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

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

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

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

30 ~~———(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe~~

1 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts  
2 concerning alternative uses of available resources;

3 ~~——— (vi) recognize the national and long-range character of environmental problems and, when consistent~~  
4 ~~with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to~~  
5 ~~maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;~~  
6 ~~——— (vii) make available to counties, municipalities, institutions, and individuals advice and information useful~~  
7 ~~in restoring, maintaining, and enhancing the quality of the environment;~~  
8 ~~——— (viii) initiate and use ecological information in the planning and development of resource-oriented~~  
9 ~~projects; and~~

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

11 ~~——— (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state~~  
12 ~~official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special~~  
13 ~~expertise with respect to any environmental impact involved and with any local government, as defined in~~  
14 ~~7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and~~  
15 ~~obtain comments from any state agency with respect to any regulation of private property involved. Copies of the~~  
16 ~~statement and the comments and views of the appropriate state, federal, and local agencies that are authorized~~  
17 ~~to develop and enforce environmental standards must be made available to the governor, the environmental~~  
18 ~~quality council, and the public and must accompany the proposal through the existing agency review processes.~~

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

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

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



1 convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal  
 2 impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may  
 3 not be used as the basis of any action challenging or seeking review of the agency's decision.

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

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

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

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

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

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

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

1 (b) A project sponsor may:

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

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

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

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

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

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

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

17 (ii) THE AGENCY DIRECTOR, NOT A DESIGNEE, MAKES A FINDING THAT THE CONDITIONS IN SUBSECTION (3)(A)(I)  
 18 ARE MET AND AN ANALYSIS OF THE REASONABLY FORESEEABLE ENVIRONMENTAL IMPACTS DETERMINED BASED ON  
 19 EXISTING, PUBLICLY AVAILABLE INFORMATION CANNOT BE ADEQUATELY COMPLETED WITHOUT THE PROPOSED ORIGINAL  
 20 SCIENTIFIC STUDY. IF THE AGENCY DIRECTOR MAKES A FINDING UNDER THIS SUBSECTION (3)(A)(II) REQUIRING THE AGENCY  
 21 TO UNDERTAKE A STUDY, THIS FINDING IS IMMEDIATELY REVIEWABLE IN DISTRICT COURT. THE AGENCY MAY CHARGE THE  
 22 PROJECT SPONSOR FOR ITS ACTIVITIES ASSOCIATED WITH ORIGINAL SCIENTIFIC STUDIES CONDUCTED IN ACCORDANCE  
 23 WITH THIS SUBSECTION (3)(A).

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

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

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

1 perform;

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

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

4 (iv) be economically feasible as determined solely by the economic viability of the project or similar  
 5 projects having similar conditions and physical locations, without regard to the economic strength of the specific  
 6 project sponsor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (8) The compilation, analysis, research, study, or other regulatory process performed in response to an  
19 application for a lease, permit, license, certificate, or other entitlement for use or for permission to act by an  
20 agency that is the functional equivalent of any part of an environmental review conducted under parts 1 through  
21 3, including public notice and comment, must be incorporated in the environmental and economic review, is  
22 considered to be in compliance with the requirements of parts 1 through 3, and may not be duplicated.

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

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

27 (11) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1  
28 through 3, including a challenge to an agency's decision that an environmental review pursuant to subsection (3)  
29 is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to  
30 the court the certified record of its decision at issue, and except as provided in subsection (11)(b), the person

1 challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the  
2 record.

3 (ii) Except as provided in subsection (11)(b), in a challenge to the agency's decision or the adequacy of  
4 an environmental review, a court may not consider any information, including but not limited to an issue,  
5 comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for  
6 the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

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

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

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

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

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

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

27 (ii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings  
28 of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent  
29 injunction, or other equitable relief may not enjoin the issuance or effectiveness of a license or permit or a part  
30 of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party

1 requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts  
2 in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction,  
3 a permanent injunction, or other equitable relief, that the:

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

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

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

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

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

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

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

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

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

1 to the National Environmental Policy Act.

2 ~~(5) (a) (13) (a)~~ The agency may not withhold, delay, deny, or impose conditions on any existing or  
3 requested lease, permit, license, certificate, or other entitlement or other authority to act based on parts 1 through  
4 3 of this chapter.

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

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

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

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

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

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

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

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

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

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

28 ~~(7) (16)~~ The director of the agency responsible for the determination or recommendation shall endorse  
29 in writing any determination of significance made under subsection ~~(4) (b) (iv) (3)~~ or any recommendation that a  
30 determination of significance be made.

1           ~~(6)~~(17) A project sponsor may request a review of the significance determination or recommendation  
 2 made under subsection ~~(7)~~ (16) by the appropriate board, if any. The appropriate board may, at its discretion,  
 3 submit an advisory recommendation to the agency regarding the issue. The period of time between the request  
 4 for a review and completion of a review under this subsection may not be included for the purposes of  
 5 determining compliance with the time limits established for environmental review in 75-1-208."

6  
 7           **Section 9.** Section 75-1-202, MCA, is amended to read:

8           **"75-1-202. Agency rules to prescribe fees.** Each agency of state government charged with the  
 9 responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt  
 10 rules prescribing fees that must be paid by a person, corporation, partnership, firm, association, or other private  
 11 entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile  
 12 an environmental impact statement as prescribed by 75-1-201 and the agency has not made the finding under  
 13 75-1-205(1)(a). An agency shall determine whether it will be necessary to compile an environmental impact  
 14 statement and assess a fee as prescribed by this section within any statutory timeframe for issuance of the lease,  
 15 permit, contract, license, or certificate or, if no statutory timeframe is provided, within 90 days. Except as provided  
 16 in 85-2-124, the fee assessed under this section may be used only to ~~gather data and information necessary to~~  
 17 ~~compile an environmental impact statement as defined~~ reasonably and timely compile, analyze, and disclose to  
 18 the public existing, publicly available, relevant information directly concerning the reasonably foreseeable  
 19 economic and environmental impacts of a proposed state action as provided in parts 1 through 3. A fee may not  
 20 be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have  
 21 a significant impact on the human environment."

22  
 23           **Section 10.** Section 75-1-203, MCA, is amended to read:

24           **"75-1-203. Fee schedule -- maximums.** (1) In prescribing fees to be assessed against applicants ~~for~~  
 25 ~~a lease, permit, contract, license, or certificate~~ as specified in 75-1-202, an agency may adopt a fee schedule that  
 26 may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed  
 27 unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring  
 28 expenses in excess of \$2,500 to compile an environmental impact statement.

29           (2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up  
 30 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



1 cost over \$20 million and up to \$100 million, plus 1/4 of 1% of any estimated cost over \$100 million and up to  
 2 \$300 million, plus 1/8 of 1% of any estimated cost in excess of \$300 million.

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

6 (4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every  
 7 2 years.

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

14

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

16 **"75-1-205. Collection and use of fees and costs.** (1) A person who applies to a state agency for a  
 17 permit, license, or other authorization that the agency determines requires preparation of an environmental impact  
 18 statement is responsible for paying:

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

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

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

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

1 environmental impact statement, and the final environmental impact statement;

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

4 (c) the costs of attending meetings and hearings on the environmental impact statement, including  
5 meetings and hearings held to determine the scope of the environmental impact statement; and

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

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

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

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

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

16 (4) (a) Whenever the agency makes the determination in subsection (1)(a), it shall notify the applicant  
17 of the cost of conducting the process to determine the scope of the environmental impact statement. The  
18 applicant shall pay that cost, and the agency shall then conduct the scoping process. The timeframe in  
19 75-1-208(4)(a)(i) and any statutory timeframe for a decision on the application are tolled until the applicant pays  
20 the cost of the scoping process.

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

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

29 (i) the applicant shall pay the cost of the environmental impact statement as determined by the agency  
30 after consultation with the applicant. In determining the cost, the agency shall identify and consult with the

1 applicant regarding the data and information that must be ~~gathered and studies that must be conducted~~ compiled  
 2 and analyzed.

3 (ii) the agency shall prepare the environmental impact statement within a reasonable time ~~determined~~  
 4 ~~by the agency after consultation with the applicant and set out in the agreement. This timeframe supersedes any~~  
 5 ~~timeframe in statute or rule. If the applicant and the agency cannot agree on a timeframe, the agency shall~~  
 6 ~~prepare the environmental impact statement within any timeframe provided by statute or rule~~ as provided in  
 7 75-1-208 unless other time limits are provided by law;-

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

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

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

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

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

26 (d) If the applicant does not agree with costs determined under subsection (4)(c)(i) or proposed under  
 27 subsection (4)(c)(v), the applicant may initiate the informal review process pursuant to 75-1-208(3). If the  
 28 applicant does not agree to a time extension proposed by the agency under subsection (4)(c)(v), the agency may  
 29 initiate an informal review by an appropriate board under 75-1-208(3). The period of time for completion of the  
 30 environmental impact statement provided in the agreement is tolled from the date of submission of a request for

1 a review by the appropriate board until the date of completion of the review by the appropriate board. The  
2 appropriate board shall review and decide the dispute at its next regularly scheduled meeting unless the applicant  
3 requests otherwise. However, the agency shall continue to work on preparation of the environmental impact  
4 statement during this period if the applicant has advanced money to pay for this work.

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

9

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

11 **"75-1-208. Environmental review procedure.** (1) (a) Except as provided in 75-1-205(4) and subsection  
12 (1)(b) of this section, an agency shall comply with this section when completing any environmental review  
13 required under this part.

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

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

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

29 (4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental  
30 review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are

1 provided by law. All time limits are measured from the date the agency receives a complete application. An  
2 agency has:

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

4 (ii) 90 days to complete an environmental review unless a detailed statement pursuant to  
5 ~~75-1-201(1)(b)(iv)~~ 75-1-201(3) or 75-1-205(4) is required; and

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

7 (b) The period of time between the request for a review by a board and the completion of a review by  
8 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  
9 for the purposes of determining compliance with the time limits established for conducting an environmental  
10 review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216,  
11 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

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

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

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

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

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

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

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

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

13

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

15 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

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

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

18 (b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in  
 19 2-15-3402;

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

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

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

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

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

29 ~~(2)~~(3) "Complete application" means, for the purpose of complying with this part, an application for a  
 30 permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and

1 signatures required to be included with the application sufficient for the agency to approve the application under  
2 the applicable statutes and rules.

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

6 ~~(4)~~(5) "Environmental review" means any environmental assessment, environmental impact statement,  
7 or other written analysis required under this part by a state agency of a proposed action to determine, examine,  
8 or document the effects and impacts of the proposed action on the quality of the human and physical environment  
9 as required under this part.

10 ~~(5)~~(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing  
11 an action that requires an environmental review. If the action involves state agency-initiated actions on state trust  
12 lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of  
13 Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through  
14 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 329).

15 ~~(6)~~(7) "Public scoping process" means any process to determine the scope of an environmental review."  
16

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

18 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule  
19 provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

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

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

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

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

3 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment  
4 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the  
5 application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may  
6 not operate the oil or gas well facility and is liable for a violation of this section for every day of construction,  
7 installation, or operation of the facility.

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

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

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

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

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

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

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

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

22 (f) procedures for the transfer of permits;

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

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

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

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



1 department in advance of each change in location.

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

4 (5) Department approval of an application to transfer a portable emission source from one location to  
5 another is exempt from the provisions of ~~75-1-201(1)~~ 75-1-201.

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

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

10 (8) An application is not considered filed until the applicant has submitted all fees required under  
11 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
12 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
13 an application that the application is incomplete and fails to list the reasons why the application is considered  
14 incomplete, the application is considered filed as of the date of the purported filing.

15 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the  
16 preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter  
17 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

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

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

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

26 (b) If an application does not require the preparation of an environmental impact statement, is not subject  
27 to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475,  
28 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt of a filed  
29 application, as provided in subsection (8), of its approval or denial of the application, except as provided in  
30 subsection (14).

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

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

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

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

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

21 (10) Except as provided in 75-2-213, when the department approves or denies the application for a permit  
22 under this section, a person who is directly and adversely affected by the department's decision may request a  
23 hearing before the board. The request for hearing must be filed within 15 days after the department renders its  
24 decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department  
25 renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter  
26 4, part 6, apply to a hearing before the board under this subsection.

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

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

30 (b) the filing of a request for hearing does not stay the department's decision. However, the board may

1 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

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

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

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

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

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

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

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

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

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

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

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

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

23 (i) general permits covering multiple similar sources; or

24 (ii) other permits covering multiple similar sources.

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

27

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

29 **"77-5-201. Sale of timber.** (1) Under the direction of the board, the department may sell the timber crop  
30 and other crops of the forests after examination, estimate, appraisal, and report and under any rules established

1 by the board. Timber or forest products sold from state trust lands may be sold by a stumpage method or a  
 2 lump-sum method or marketed by the state through contract harvesting as provided in 77-5-214 through  
 3 77-5-219.

4 (2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county  
 5 in which the timber is situated for a period of at least 30 days, during which time the department must receive  
 6 sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

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

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

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

19 (c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply  
 20 with the provisions of ~~75-1-201(4)~~ 75-1-201 to the extent that compliance is precluded by limited time available  
 21 to take advantage of the sales opportunities described by this subsection (3)."

22

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

24 **"77-5-212. Commercial permits for timber sale.** (1) Permits may be issued to citizens of the state for  
 25 commercial purposes, at commercial rates, without advertising, and under restrictions and rules that the board  
 26 may approve for the sale of timber:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29

30 NEW SECTION. **Section 17. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
2 the part remains in effect in all valid applications that are severable from the invalid applications.

3

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

5

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

8

- END -