

HOUSE BILL NO. 412

INTRODUCED BY K. FLYNN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A CONDEMNOR TO MAKE AN EFFORT TO MEET
5 WITH PROPERTY OWNERS IN DETERMINING GREATEST PUBLIC GOOD AND LEAST PRIVATE INJURY;
6 CLARIFYING THAT REVIEWS UNDER THE MAJOR FACILITY SITING ACT AND MONTANA
7 ENVIRONMENTAL POLICY ACT MAY NOT DETERMINE A LOCATION THAT IS COMPATIBLE WITH THE
8 GREATEST PUBLIC GOOD AND THE LEAST PRIVATE INJURY FOR A PROJECT THAT IS A PUBLIC USE;
9 REQUIRING THAT A PRIVATE PROPERTY ANALYSIS IN AN ENVIRONMENTAL REVIEW COMPLY WITH
10 THE REQUIREMENTS FOR DETERMINING A LOCATION; REQUIRING THE APPLICANT FOR A
11 CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT TO COMPLY WITH REQUIREMENTS FOR
12 DETERMINING A LOCATION; AMENDING SECTIONS 70-30-103, 70-30-110, 75-1-201, 75-20-103, 75-20-208,
13 AND 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16

17 **Section 1.** Section 70-30-103, MCA, is amended to read:

18 **"70-30-103. What property may be taken.** (1) The property that may be taken under this chapter
19 includes:

- 20 (a) all real property belonging to any person;
- 21 (b) land that belongs to this state or to any county, city, or town and that is not appropriated to some
22 public use;
- 23 (c) property appropriated to a public use, but the property may not be taken unless for a more necessary
24 public use than that to which it has already been appropriated;
- 25 (d) franchises for roads, bridges, and ferries and all other franchises; but the franchises may not be taken
26 unless for free highways, free bridges, railroads, or another more necessary public use; or
- 27 (e) a right-of-way for any public use mentioned in 70-30-102 and any structures and improvements on
28 the right-of-way. The land held and used in connection with the right-of-way must be subject to being connected
29 with, crossed, or intersected by any other right-of-way improvements or structures on the right-of-way. The
30 improvements or structures must also be subject to a limited use in common with the owner of the improvements

1 or structures when necessary. However, the uses, crossings, intersections, and connections must be made in
2 the manner that is most compatible with the greatest public benefit and least private injury pursuant to 70-30-110.

3 (2) All classes of private property not enumerated may be taken for public use when the taking is
4 authorized by law."

5

6 **Section 2.** Section 70-30-110, MCA, is amended to read:

7 **"70-30-110. Survey and location of property to be taken -- greatest public good -- least private**
8 **injury.** (1) (a) In all cases in which land is required for public use, the state or its agents in charge of the public
9 use may survey and locate the land to be used.

10 (b) The use must be located in accordance with subsections (3) and (4) in the manner that will be most
11 compatible with the greatest public good and the least private injury, and the location is subject to the provisions
12 of 70-30-206.

13 (c) The state or its agents in charge of the public use may, after giving 30 days' written notice to the
14 owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps
15 of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries
16 resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall
17 provide the names and addresses of all persons who are in possession of the owner's land within 14 days from
18 receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish
19 written notice to the listed persons.

20 (2) Prior to or at the time of rejection of the final written offer as referred to in 70-30-111(4), the
21 condemnee may provide to the condemnor the condemnee's claim of appropriate measures that the condemnee
22 considers necessary to minimize damages to the property directly affected by the project as well as to minimize
23 damages incurred to the remaining parcel of property.

24 (3) Any draft or final project review under the provisions of the Montana Major Facility Siting Act, Title
25 75, chapter 20, or any draft or final environmental review conducted in accordance with the Montana
26 Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, may not determine a location that is the most
27 compatible with the greatest public good and the least private injury during negotiations pursuant to this part.

28 (4) (a) Except as provided in subsection (4)(c), in order to determine a location that is most compatible
29 with the greatest public good and the least private injury, the condemnor shall meet with owners and persons in
30 possession of the land prior to or during the siting of a project under the provisions of the Major Facility Siting Act

1 or during an environmental review process conducted in accordance with the Montana Environmental Policy Act
 2 and make a determination of location after considering the public costs of alternative sites and considering the
 3 least private injury to the property owners and persons in possession of the land.

4 (b) The condemnor may meet with owners and persons in possession of land either individually or in a
 5 group. If a group meeting is held, the condemnor shall make an effort to invite each owner or person in
 6 possession of land, either personally or by certified mail, to attend the meeting and may not issue an invitation
 7 by advertising the meeting in a publication.

8 (c) If the owner or person in possession of the land refuses to meet with the condemnor or does not
 9 respond to an invitation issued in accordance with subsection (4)(b), the condemnor may, prior to or during the
 10 siting or environmental review process, send a certified letter to an owner or person in possession of the land
 11 explaining the process and that the condemnor may condemn the owner's or person's property for a public use."

12

13 **Section 3.** Section 75-1-201, MCA, is amended to read:

14 **"75-1-201. (Temporary) General directions -- environmental impact statements.** (1) The legislature
 15 authorizes and directs that, to the fullest extent possible:

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

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

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

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

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

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

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

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

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

8 (B) any adverse effects on Montana's environment that cannot be avoided if the proposal is
9 implemented;

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

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

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

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

22 (D) any regulatory impacts on private property rights, including whether alternatives that reduce,
23 minimize, or eliminate the regulation of private property rights have been analyzed. In cases in which land is
24 required for a public use pursuant to Title 70, chapter 30, the analysis in this subsection (1)(b)(iv)(D) must include
25 verification by the agency that the requirements of 70-30-110(4) have been met. The analysis in this subsection
26 (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

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

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

- 1 (G) the customer fiscal impact analysis, if required by 69-2-216; and
- 2 (H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the
3 economic advantages and disadvantages of the proposal;
- 4 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe
5 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts
6 concerning alternative uses of available resources. If the alternatives analysis is conducted for a project that is
7 not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement
8 the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to
9 take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a
10 specific course of action.
- 11 (vi) recognize the potential long-range character of environmental impacts in Montana and, when
12 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs
13 designed to maximize cooperation in anticipating and preventing a decline in the quality of Montana's
14 environment;
- 15 (vii) make available to counties, municipalities, institutions, and individuals advice and information useful
16 in restoring, maintaining, and enhancing the quality of Montana's environment;
- 17 (viii) initiate and use ecological information in the planning and development of resource-oriented
18 projects; and
- 19 (ix) assist the legislature and the environmental quality council established by 5-16-101;
- 20 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state
21 official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special
22 expertise with respect to any environmental impact involved in Montana and with any Montana local government,
23 as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also
24 consult with and obtain comments from any state agency in Montana with respect to any regulation of private
25 property involved. Copies of the statement and the comments and views of the appropriate state, federal, and
26 local agencies that are authorized to develop and enforce environmental standards must be made available to
27 the governor, the environmental quality council, and the public and must accompany the proposal through the
28 existing agency review processes.
- 29 (d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use
30 or permission to act by an agency, either singly or in combination with other state agencies, does not trigger

1 review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or
2 unless otherwise provided by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (c) The remedy in any action brought for failure to comply with or for inadequate compliance with a

1 requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the
2 environmental review conducted pursuant to subsection (1).

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

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

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

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

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

19 (9) A project sponsor may request a review of the significance determination or recommendation made
20 under subsection (8) by the appropriate board, if any. The appropriate board may, at its discretion, submit an
21 advisory recommendation to the agency regarding the issue. The period of time between the request for a review
22 and completion of a review under this subsection may not be included for the purposes of determining compliance
23 with the time limits established for environmental review in 75-1-208. (Terminates on occurrence of
24 contingency--sec. 11, Ch. 396, L. 2011.)

25 **75-1-201. (Effective on occurrence of contingency) General directions -- environmental impact**
26 **statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

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

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

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

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

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

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

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

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

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

19 (B) any adverse effects on Montana's environment that cannot be avoided if the proposal is
20 implemented;

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

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

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

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

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

3 (D) any regulatory impacts on private property rights, including whether alternatives that reduce,
4 minimize, or eliminate the regulation of private property rights have been analyzed. In cases in which land is
5 required for a public use pursuant to Title 70, chapter 30, the analysis in this subsection (1)(b)(iv)(D) must include
6 verification by the agency that the requirements of 70-30-110(4) have been met. The analysis in this subsection
7 (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 19 (i) the department of fish, wildlife, and parks for the management of wildlife and fish;
20 (ii) an agency reviewing an application for a project that is not a state-sponsored project to the extent that
21 the review is required by law, rule, or regulation; or
22 (iii) a state agency and a federal agency to the extent the review is required by the federal agency.

23 (3) 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 (4) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act
26 based on parts 1 through 3 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

29 (b) (i) When a party challenging the decision or the adequacy of the environmental review or decision
30 presents information not in the record certified by the agency, the challenging party shall certify under oath in an

1 affidavit that the information is new, material, and significant evidence that was not publicly available before the
2 agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

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

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

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

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

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

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

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

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

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

30 (d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or

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

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

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

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

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

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

26

27 **Section 4.** Section 75-20-103, MCA, is amended to read:

28 **"75-20-103. Chapter supersedes other laws or rules.** This chapter supersedes other laws or
 29 regulations except as provided in 70-30-110(3) and 75-20-401. If any provision of this chapter is in conflict with
 30 any other law of this state or any rule promulgated ~~thereunder~~ under any other law of this state, this chapter shall

1 ~~govern~~ governs and ~~control~~ controls and the other law or rule ~~shall be deemed~~ is superseded for the purpose of
 2 this chapter. Amendments to this chapter shall have the same effect."

3

4 **Section 5.** Section 75-20-208, MCA, is amended to read:

5 **"75-20-208. Certain electric transmission lines -- verification of requirements.** (1) Prior to
 6 constructing a transmission line under 75-20-104(8)(a)(ii), the person planning to construct the line shall provide
 7 to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended
 8 by the department for good cause:

9 (a) a statement signed by the person planning to construct the line confirming that the requirements of
 10 70-30-110(4) will be or have already been met, if applicable;

11 ~~(a)~~(b) copies of the right-of-way agreements or options for a right-of-way containing sufficient information
 12 to establish landowner consent to construct the line; and

13 ~~(b)~~(c) sufficient information for the department to verify that the requirements of 75-20-104(8)(a)(ii) are
 14 satisfied.

15 (2) The provisions of 75-20-104(8)(a)(ii) do not apply to any facility for which public notice under
 16 75-20-207 has been given but for which the requirements of subsection (1) of this section have not been complied
 17 with."

18

19 **Section 6.** Section 75-20-303, MCA, is amended to read:

20 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application
 21 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

22 (2) If the department has found that any regional or local law or regulation that would be otherwise
 23 applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

24 (3) A certificate issued by the department must include the following:

25 (a) an environmental evaluation statement related to the facility being certified. The statement must
 26 include but is not limited to analysis of the following information:

27 (i) the environmental impact of the proposed facility; and

28 (ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

29 (b) a plan for monitoring environmental effects of the proposed facility;

30 (c) a plan for monitoring the certified facility site between the time of certification and completion of

1 construction;

2 (d) a time limit as provided in subsection (4); ~~and~~

3 (e) a statement signed by the applicant confirming that the requirements of 70-30-110(4) have been met
4 by the applicant, if applicable; and

5 ~~(e)~~(f) a statement signed by the applicant showing agreement to comply with the requirements of this
6 chapter and the conditions of the certificate.

7 (4) (a) The department shall issue as part of the certificate the following time limits:

8 (i) For a facility as defined in 75-20-104(8)(a) that is more than 30 miles in length and for a facility defined
9 in 75-20-104(8)(b), construction must be completed within 10 years.

10 (ii) For a facility as defined in 75-20-104(8)(a) that is 30 miles or less in length, construction must be
11 completed within 5 years.

12 (iii) For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue with
13 due diligence in accordance with preliminary construction plans established in the certificate.

14 (b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of
15 the facility is not commenced within the time limits provided in this section.

16 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the
17 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and
18 (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or
19 federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

20 (d) Construction may begin immediately upon issuance of a certificate unless the department finds that
21 there is substantial and convincing evidence that a delay in the commencement of construction is necessary and
22 should be established for a particular facility.

23 (5) (a) For a facility defined in 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant
24 to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a 1-mile-wide facility siting
25 corridor along the facility route.

26 (b) The department shall site a corridor of at least 500 feet in width for the facility within the 1-mile-wide
27 corridor in accordance with 75-20-301.

28 (c) If the certificate holder complies with subsection (6), a certificate holder may modify the siting of the
29 facility within the 1-mile-wide corridor without complying with the provisions of 75-20-219 if the alternate siting
30 is done in a manner that minimizes the impact on residential areas, crop land, and sensitive sites.

1 (6) (a) A certificate holder may submit an adjustment of the location of a facility outside the corridor
2 designated pursuant to subsection (5) to the department. The adjustment must be accompanied by the written
3 agreement of the affected property owner and all contiguous property owners that would be affected. The
4 submission must include a map showing the approved facility location and the proposed adjustment.

5 (b) The certificate holder may construct the facility as described in the submission unless the department
6 notifies the certificate holder within 15 days of the submission that the department has determined that:

7 (i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the
8 department would have selected a different location for the facility; or

9 (ii) the adjustment would materially increase unmitigated adverse impacts.

10 (c) Siting of a facility within the corridor designated pursuant to subsection (5) or an adjustment pursuant
11 to subsection (6)(a) is not subject to:

12 (i) Title 75, chapter 1, part 2;

13 (ii) a certificate amendment under 75-20-219; or

14 (iii) a board review under 75-20-223."

15

16 **NEW SECTION. Section 7. Saving clause.** [This act] does not affect rights and duties that matured,
17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18

19 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

20

21 **NEW SECTION. Section 9. Applicability.** [This act] applies to complaints for condemnation,
22 applications for a certificate under the Major Facility Siting Act, and permit applications requiring an environmental
23 review pursuant to Title 75, chapter 1, parts 1 through 3, filed on or after [the effective date of this act].

24

- END -