

HOUSE BILL NO. 671  
INTRODUCED BY P. CLARK

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE FISH AND WILDLIFE PROTECTION ACT; PROVIDING FOR THE PROTECTION OF FISH AND WILDLIFE IN ENVIRONMENTAL PERMITTING DECISIONS AND PROTECTING THE ECONOMY DEPENDENT ON FISH AND WILDLIFE; REQUIRING THE MITIGATION OF IMPACTS AND AUTHORIZING THE CONDITIONING OF STATE GOVERNMENT ACTIONS THAT MAY HAVE SIGNIFICANT IMPACTS; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

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

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

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

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; and

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

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

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in

subsection (1)(b)(iv)(D);

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

(A) the environmental impact of the proposed action;

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

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

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

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

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

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

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

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

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed

action if it is implemented; and

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

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

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

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

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

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

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

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

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

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement,

a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

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

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

(5) (a) ~~The~~ Except as provided in [sections 2 through 8], an agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

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

(c) ~~Parts~~ Except as provided in [sections 2 through 8], parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(6) (a) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate. Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

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

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

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

**NEW SECTION. Section 2. Short title.** [Sections 2 through 8] may be cited as the "Fish and Wildlife Protection Act".

**NEW SECTION. Section 3. Findings and purpose.** (1) The legislature finds that healthy and diverse fish and wildlife populations are a critical component of the ecological system of the state that:

- (a) significantly impacts the extraordinary quality of life of the state's citizens and communities;
- (b) contributes to Montana's valuable hunting and fishing heritage and its recreational opportunities; and
- (c) provides significant revenue, taxes, and jobs through the recreation and tourism industries.

(2) The legislature finds that it is necessary to encourage productive and enjoyable harmony between the people of the state and proposed actions that may significantly impact the fish and wildlife of the state. The legislature declares that it is the public policy of this state to further the protection of its fish and wildlife resources for the benefit of all citizens.

(3) The purpose of [sections 2 through 8] is to:

- (a) protect fish and fish habitat from significant impacts that may result from proposed actions;
- (b) protect wildlife and wildlife habitat from significant impacts that may result from proposed actions;
- (c) maintain and enhance the quality of life for the citizens of the state;
- (d) ensure the economic growth and well-being of businesses and employees who are dependent on healthy fish and wildlife resources;
- (e) facilitate the enjoyment of the natural attractions of the state;
- (f) foster conditions and decisionmaking that minimize adverse impacts on fish and wildlife populations and habitats; and
- (g) fulfill the social, cultural, and other requirements of present and future generations of Montanans.

**NEW SECTION. Section 4. Definitions.** For the purposes of [sections 2 through 8], the following definitions apply:

(1) "Action" means:

- (a) a project, program, or activity directly undertaken by a state agency;
- (b) a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or
- (c) a project or activity involving the issuance by the state of a lease, permit, license, certificate, or other authority to act that is subject to review pursuant to Title 75, chapter 1, part 2, and the rules adopted to implement that part.

(2) "Environmental review" means an environmental assessment, environmental impact statement, or other written analysis required under Title 75, chapter 1, parts 1 through 3, by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment.

(3) "Mitigate" means:

- (a) avoiding an impact by not taking a certain action or parts of an action;
- (b) minimizing impacts by limiting the degree or magnitude of an action or its implementation;
- (c) rectifying an impact by repairing, rehabilitating, or restoring the affected fish, fish habitat, wildlife, or wildlife habitat; or
- (d) reducing or eliminating an impact over time by preservation and maintenance operations during the life of an action or during the time period that an impact continues.

(4) "Wildlife" means any wild mammal, bird, reptile, amphibian, or other wild animal or the egg or offspring of the animal.

**NEW SECTION. Section 5. General directions.** The legislature authorizes and directs state agencies to condition a proposed action if the action may result in a significant adverse impact on fish or fish habitat or wildlife or wildlife habitat as documented in an environmental review. The conditions imposed on a proposed action must be designed to mitigate the adverse impacts to the fullest extent possible, except that the conditions may not result in the total rejection of the proposal.

**NEW SECTION. Section 6. Specific statutory obligations unimpaired.** [Sections 2 through 8] may not affect the specific statutory obligations of a state agency to:

- (1) comply with criteria or standards of environmental quality;
- (2) coordinate or consult with any other state or federal agency; or
- (3) act or refrain from acting contingent upon the recommendation or certification of any other state or federal agency.

**NEW SECTION. Section 7. Policies and goals supplementary.** The policies and goals set forth in [sections 2 through 8] are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

**NEW SECTION. Section 8. Private property protection.** [Sections 2 through 8] do not expand or diminish private property protection afforded in the United States or Montana constitution.

**NEW SECTION. Section 9. Codification instruction.** [Sections 2 through 8] are intended to be codified as an integral part of Title 87, chapter 5, and the provisions of Title 87, chapter 5, apply to [sections 2 through 8].

**NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

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