

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONSULTATION REQUIREMENTS UNDER THE  
5 MONTANA ENVIRONMENTAL POLICY ACT; CLARIFYING THE REQUIREMENT THAT STATE AGENCIES  
6 CONSULT WITH LOCAL GOVERNMENTS WHEN DRAFTING ENVIRONMENTAL IMPACT STATEMENTS;  
7 AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A  
8 RETROACTIVE APPLICABILITY DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 **Section 1.** Section 75-1-201, MCA, is amended to read:

13 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes  
14 and directs that, to the fullest extent possible:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (F) any irreversible and irretrievable commitments of resources that would be involved in the proposed  
 2 action if it is implemented;
- 3 (G) the customer fiscal impact analysis, if required by 69-2-216; and
- 4 (H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the  
 5 economic advantages and disadvantages of the proposal;
- 6 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe  
 7 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts  
 8 concerning alternative uses of available resources;
- 9 (vi) recognize the national and long-range character of environmental problems and, when consistent  
 10 with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to  
 11 maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;
- 12 (vii) make available to counties, municipalities, institutions, and individuals advice and information useful  
 13 in restoring, maintaining, and enhancing the quality of the environment;
- 14 (viii) initiate and use ecological information in the planning and development of resource-oriented  
 15 projects; and
- 16 (ix) assist the environmental quality council established by 5-16-101;
- 17 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state  
 18 official shall consult with and obtain the comments of:
- 19 (i) any state agency that has jurisdiction by law or special expertise with respect to any environmental  
 20 impact involved; ~~and with~~
- 21 (ii) any local government, as defined in 7-12-1103, that may be directly impacted by the project. The  
 22 responsible state official complies with the provisions of this subsection (1)(c) by:
- 23 (A) sending a formal invitation to the local government to participate in the scoping process;
- 24 (B) after the scoping process has been completed, providing the governing body of the local government  
 25 with a written summary of the issues and alternatives that the responsible state official intends to analyze in the  
 26 detailed statement as a result of the scoping process and allowing the local government to submit written  
 27 comments on the issues and alternatives. The comments must indicate whether there are county land use plans,  
 28 growth policies, planning or zoning requirements, or land use ordinances that apply to the area in which the  
 29 project is located and, if so, must include copies of those documents;
- 30 (C) if within 30 days of receiving the written summary the governing body of the local government has

1 submitted comments pursuant to subsection (1)(c)(ii)(B) and makes a written request for a meeting to discuss  
2 the summary, meeting with the governing body of the local government or its designee. If the local government  
3 requests that the meeting be held within the local government's jurisdictional area, the responsible state official  
4 may hold the meeting either in person or by electronic means.

5 (D) allowing the local governing body to submit additional written comments by a date determined by  
6 the responsible state official that is before the responsible state official issues the draft detailed statement for  
7 public comment.

8 (iii) shall also consult with and obtain comments from any state agency with respect to any regulation of  
9 private property involved. Copies of the statement and the comments and views of the appropriate state, federal,  
10 and local agencies that are authorized to develop and enforce environmental standards must be made available  
11 to the governor, the environmental quality council, and the public and must accompany the proposal through the  
12 existing agency review processes.

13 (d) if a local government elects to participate in the consultation process pursuant to subsection (1)(c)(ii),  
14 the local government is responsible for all costs of its participation in the consultation process.

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

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

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

30 (b) When new, material, and significant evidence or issues relating to the adequacy or content of the

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

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

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

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

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

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

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

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

30 (b) Any action or proceeding under subsection (6)(a)(ii) must take precedence over other cases or

1 matters in the district court unless otherwise provided by law.

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

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

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

12

13 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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15 **NEW SECTION. Section 3. Retroactive applicability -- consultation process not required for**  
16 **previously submitted statements.** (1) Except as provided in subsection (2), [this act] applies retroactively, within  
17 the meaning of 1-2-109, to detailed statements pursuant to 75-1-201(1)(b)(iv) that have not been completed  
18 before [the effective date of this act].

19 (2) An agency that has submitted a draft detailed statement to the public for comment before [the  
20 effective date of this act] is not required to complete the local government consultation process.

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