HOUSE BILL NO. 613

INTRODUCED BY T. MANZELLA

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING COUNTIES TO REVIEW CERTAIN FEDERAL OR STATE REGULATIONS ON WOOD-BURNING DEVICES; PROHIBITING REQUIREMENTS TO REMOVE CERTAIN WOOD-BURNING DEVICES; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 75-2-207 AND 75-2-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, wood from dead or dying trees is an important natural resource in Montana; and

WHEREAS, Montana's public and private forests need and benefit from extraction of dead or dying timber; and

WHEREAS, burning wood for structural heat uses a renewable resource that is affordable and carbon neutral; and

WHEREAS, many Montana citizens are logistically or economically dependent on burning wood to heat structures, and for some, burning wood means the difference between surviving and not surviving; and

WHEREAS, federal regulations that make burning wood to heat structures more difficult, more expensive, or impossible are contrary to the needs and best interests of the citizens of Montana.

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

NEW SECTION. **Section 1. County government review of state or federal wood-burning device limits -- prohibiting certain removal.** (1) (a) Except as provided in subsection (1)(b), a county government may review the implementation of state or federal wood-burning device regulatory programs that impose particulate limits more restrictive than 7.5 grams per hour.

(b) If the regulatory program applies to a wood-burning device manufactured on or after February 3, 2015, a county government may not review the implementation of the program.

(2) A county shall inform the department of a review conducted pursuant to subsection (1) and may:

(a) submit recommendations for state or federal wood-burning device regulatory programs; or

(b) establish a local air pollution control program pursuant to Title 75, chapter 2, part 3.

(3) An agency of this state, as defined in 2-18-101, may not require the removal of a wood-burning device

manufactured on or before January 1, 2015, because of a change in ownership or a change in the use or occupation of a residence, barn, shop, garage, or commercial building or any other building that is not industrial in nature.

(4) An agency of this state, as defined in 2-18-101, may implement or enforce a state or federal regulation, rule, or policy for fire safety.

(5) For purposes of this section, "wood-burning devices" includes fireplaces and wood-burning stoves for heating and cooking.

Section 2. Section 75-2-207, MCA, is amended to read:

"75-2-207. State regulations no more stringent than federal regulations or guidelines -- exceptions -- procedure. (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless required by state law, the board or department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. ~~The~~ Except as provided in [section 1], the board or department may incorporate by reference comparable federal regulations or guidelines.

(2) (a) ~~The~~ Except as provided in [section 1], the board or department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement:

(A) protects public health or the environment;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.

(c) (i) A person or entity affected by a rule of the board or department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule.

(ii) If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed $250.

(iv) A person may also petition the board or department for a rule review under subsection (2)(a) if the board or department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.

(3) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1)."

Section 3. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs -- consistency with state and federal regulations -- procedure for public notice and comment required. (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) (a) Except as provided in [section 1] and subsection (5) of this section, the board by order may approve a local air pollution control program that:

(i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate administrative and judicial processes; and

(iii) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air

pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(b) Board approval of a rule, ordinance, or local law that is more stringent than the comparable state law is subject to the provisions of subsection (4).

(4) (a) ~~A~~ Except as provided in [section 1], a local air pollution control program may, subject to approval by the board, adopt a rule, ordinance, or local law to implement this chapter that is more stringent than comparable state or federal regulations or guidelines only if:

(i) a public hearing is held;

(ii) public comment is allowed; and

(iii) the board or the local air pollution control program makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed local standard or requirement:

(A) protects public health or the environment of the area;

(B) can mitigate harm to the public health or the environment; and

(C) is achievable with current technology.

(b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the local air pollution control program's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or federal regulations or guidelines may petition the board or the local air pollution control program to review the rule, ordinance, or local law.

(ii) If the board or local air pollution control program determines that the rule, ordinance, or local law is more stringent than state or federal regulations or guidelines, the board or local air pollution control program shall either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.

(5) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter

1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(6) If the board finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(7) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(8) If, after the hearing, the board determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(9) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(10) If the board finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(11) A jurisdiction in which the department administers all or part of its air pollution control program under

subsection (9) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

(12) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(13) Local air pollution control programs established under this section shall provide procedures for public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection (13)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (13)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests

to be included on the list.

(f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the public on the intended action.

(g) The local air pollution control program shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action."

NEW SECTION. **Section 4. Appropriation.** There is appropriated from the general fund to the department of environmental quality $100 to notify counties of the authority granted in [section 2].

NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 1].

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2015.

- END -