

HOUSE BILL NO. 515

INTRODUCED BY B. HARRIS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PARTY THAT IS SEEKING AN INJUNCTION OR A  
5 RESTRAINING ORDER AGAINST AN INDUSTRIAL OPERATION OR ACTIVITY OR AGAINST A PARTY TO  
6 ANY STATE ACTION FOR WHICH AN ENVIRONMENTAL REVIEW IS REQUIRED TO DISCLOSE THE NAMES  
7 OF INDIVIDUALS AND ORGANIZATIONS THAT PROVIDE A CERTAIN AMOUNT OF FINANCIAL  
8 ASSISTANCE TO THE PARTY SEEKING THE RELIEF; AMENDING SECTIONS 27-19-306, 75-1-201, 75-2-211,  
9 AND 75-2-218, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

12  
13 **Section 1.** Section 27-19-306, MCA, is amended to read:

14 **"27-19-306. Security for damages -- disclosure of financial assistance.** (1) Subject to 25-1-402, on  
15 granting an injunction or restraining order, the judge shall require a written undertaking to be given by the  
16 applicant for the payment of the costs and damages that may be incurred or suffered by any party who is found  
17 to have been wrongfully enjoined or restrained. Except as provided in subsection (2), the undertaking:

18 (a) must be fixed at a sum that the judge considers proper; and

19 (b) may be waived:

20 (i) in domestic disputes; or

21 (ii) in the interest of justice.

22 (2) (a) If a party seeks an injunction or restraining order against an industrial operation or activity, the  
23 judge shall require a written undertaking to be filed by the applicant. The amount of the written undertaking must  
24 be set in an amount that includes all of the wages, salaries, and benefits of the employees of the party enjoined  
25 or restrained during the anticipated time that the injunction or restraining order will be in effect. The amount of  
26 the written undertaking may not exceed \$50,000 unless the interests of justice require. The written undertaking  
27 must be conditioned to indemnify the employees of the party enjoined or restrained against lost wages, salaries,  
28 and benefits sustained by reason of the injunction or restraining order.

29 (b) As used in subsection (2)(a), "industrial operation or activity" includes but is not limited to  
30 construction, mining, timber, and grazing operations.

1 (3) Within 30 days after the service of the injunction, the party enjoined may object to the sufficiency of  
 2 the sureties. If the party enjoined fails to object, all objections to the sufficiency of the sureties are waived. When  
 3 objected to, the applicant's sureties, upon notice to the party enjoined of not less than 2 or more than 5 days, shall  
 4 justify before a judge or clerk in the same manner as upon bail on arrest. If the sureties fail to justify or if others  
 5 in their place fail to justify at the time and place appointed, the order granting the injunction must be dissolved.

6 (4) (a) A party seeking an injunction or a restraining order against an industrial operation or activity shall  
 7 file an affidavit with the court that discloses the names of individuals and organizations that provide financial  
 8 assistance in the amount of \$100 or more to the party seeking the injunction or restraining order.

9 (b) A party obtaining an injunction or a restraining order shall serve or have served a copy of the affidavit  
 10 upon the party enjoined or restrained at the time that the affidavit is filed pursuant to subsection (4)(a).

11 ~~(4)(5)~~ This section does not prohibit a person who is wrongfully enjoined from filing an action for any  
 12 claim for relief otherwise available to that person in law or equity and does not limit the recovery that may be  
 13 obtained in that action."  
 14

15 **Section 2.** Section 75-1-201, MCA, is amended to read:

16 **"75-1-201. (Temporary) General directions -- environmental impact statements.** (1) The legislature  
 17 authorizes and directs that, to the fullest extent possible:

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

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

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

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

26 (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency  
 27 considers alternatives, the alternative analysis will be in compliance with the provisions of subsections  
 28 (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  
 29 necessary, subsection (1)(b)(iv)(C)(III);

30 (ii) identify and develop methods and procedures that will ensure that presently unquantified

1 environmental amenities and values may be given appropriate consideration in decisionmaking for  
2 state-sponsored projects, along with economic and technical considerations;

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

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

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

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

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

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

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

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

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

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

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

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

1 or permission to act by an agency, either singly or in combination with other state agencies, does not trigger  
2 review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or  
3 unless otherwise provided by law.

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

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

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

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

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

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

15 (4) (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 (4) 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 (5) (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 (5)(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 (5)(a) involving an equine  
3 slaughter or processing facility must comply with 81-9-240 and 81-9-241.

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

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

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

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

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

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

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

1 (c) The remedy in any action brought for failure to comply with or for inadequate compliance with a  
2 requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the  
3 environmental review conducted pursuant to subsection (1).

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

7 (e) (i) A party bringing an action for failure to comply with or for inadequate compliance with a  
8 requirement of parts 1 through 3 of this chapter shall file an affidavit with the court that discloses the names of  
9 individuals and organizations that provide financial assistance in the amount of \$100 or more to the party bringing  
10 the action.

11 (ii) The party bringing the action shall serve or have served a copy of the affidavit upon the state agency  
12 subject to the action at the time that the affidavit is filed pursuant to subsection (6)(e)(i).

13 (iii) After the issuance of a court order pursuant to this section, the state agency shall make available to  
14 the public a copy of the affidavit filed pursuant to subsection (6)(e)(i) upon request.

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

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

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

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

28 (9) A project sponsor may request a review of the significance determination or recommendation made  
29 under subsection (8) by the appropriate board, if any. The appropriate board may, at its discretion, submit an  
30 advisory recommendation to the agency regarding the issue. The period of time between the request for a review

1 and completion of a review under this subsection may not be included for the purposes of determining compliance  
 2 with the time limits established for environmental review in 75-1-208. (Terminates on occurrence of  
 3 contingency--sec. 11, Ch. 396, L. 2011.)

4 **75-1-201. (Effective on occurrence of contingency) General directions -- environmental impact**  
 5 **statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

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

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

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

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

14 (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency  
 15 considers alternatives, the alternative analysis will be in compliance with the provisions of subsections  
 16 (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  
 17 necessary, subsection (1)(b)(iv)(C)(III);

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

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

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

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

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

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

1 review must comply with the following criteria:

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

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

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

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

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

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

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

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

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

30 (vi) recognize the potential long-range character of environmental impacts in Montana and, when

1 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs  
2 designed to maximize cooperation in anticipating and preventing a decline in the quality of Montana's  
3 environment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (ii) (A) A party seeking a temporary restraining order, preliminary injunction, permanent injunction, or  
17 other injunctive relief shall file an affidavit with the court that discloses the names of individuals and organizations  
18 that provide financial assistance in the amount of \$100 or more to the party seeking the temporary restraining  
19 order, preliminary injunction, permanent injunction, or other injunctive relief.

20 (B) A party obtaining a temporary restraining order, preliminary injunction, permanent injunction, or other  
21 injunctive relief shall serve or have served a copy of the affidavit upon the state agency subject to the relief  
22 granted at the time that the affidavit is filed pursuant to subsection (6)(d)(ii)(A).

23 (C) After the issuance of a court order pursuant to this section, the state agency shall make available  
24 to the public a copy of the affidavit filed pursuant to subsection (6)(d)(ii)(A) upon request.

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

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

30 (7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent

1 with the provisions of the National Environmental Policy Act, the requirements of this section apply to an  
2 environmental review or any severable portion of an environmental review within the state's jurisdiction that is  
3 being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant  
4 to the National Environmental Policy Act.

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

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

13

14 **Section 3.** Section 75-2-211, MCA, is amended to read:

15 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule  
16 provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

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

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

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

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

30 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment

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

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

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

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

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

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

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

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

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

19 (f) procedures for the transfer of permits;

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

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

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

25 (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations  
26 at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the  
27 requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the  
28 department in advance of each change in location.

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

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

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

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

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

12 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the  
13 preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter  
14 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

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

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

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

23 (b) If an application does not require the preparation of an environmental impact statement, is not subject  
24 to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475,  
25 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt of a filed  
26 application, as provided in subsection (8), of its approval or denial of the application, except as provided in  
27 subsection (14).

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

1 approval or denial of the application.

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

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

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

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

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

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

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

27 (b) the filing of a request for hearing does not stay the department's decision. However, the board may  
28 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

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

30 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person

1 requesting the stay.

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

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

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

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

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

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

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

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

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

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

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

21 (ii) other permits covering multiple similar sources.

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

24

25 **Section 4.** Section 75-2-218, MCA, is amended to read:

26 **"75-2-218. Permits for operation -- application completeness -- action by department -- application**

27 **shield -- review by board.** (1) An application for an operating permit or renewal is not considered filed until the  
28 department has determined that it is complete. An application is complete if all fees required under 75-2-220 and  
29 all information and completed application forms required under 75-2-217 have been submitted. A complete  
30 application must contain all of the information required for the department to begin processing the application.

1 If the department fails to notify the applicant in writing within 60 days after submittal of an application that the  
2 application is incomplete and fails to list the reasons why the application is considered incomplete, the application  
3 is considered filed on the date of the department's receipt of the application. The department may request  
4 additional information after a completeness determination has been made. The board shall adopt rules that  
5 contain criteria for use in determining both when an application is complete and when additional information is  
6 required after a completeness determination has been made.

7 (2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall,  
8 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an  
9 operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing.  
10 Failure of the department to act in a timely manner does not constitute approval or denial of the application. This  
11 does not limit or abridge the right of any person to seek available judicial remedies to require the department to  
12 act in a timely manner.

13 (3) The board may by rule provide for a transition schedule for both the submittal to the department of  
14 initial applications for operating permits by existing sources and action by the department on these initial permit  
15 applications. The board may require that one-third of all operating permit applications required for existing  
16 sources be submitted within the first calendar year after the adoption of rules implementing an operating permit  
17 program under 75-2-217.

18 (4) If an applicant submits a timely and complete application for an operating permit, the applicant's  
19 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete  
20 application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a  
21 violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired  
22 operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant  
23 is not entitled to the protection of this subsection if the delay in final action by the department on the application  
24 results from the applicant's failure to submit in a timely manner information requested by the department to  
25 process the application.

26 (5) Except as provided in subsection (8), if the department approves or denies an application for an  
27 operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any  
28 person that participated in the public comment process required under 75-2-217(7) may request a hearing before  
29 the board. The request for a hearing must be filed within 30 days after the department renders its decision and  
30 must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana

1 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

2 (6) (a) Except as provided in subsection (8), the department's decision on any application is not final until  
3 30 days have elapsed from the date of the decision.

4 (b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's  
5 decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and  
6 opportunity for an informal hearing, that:

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

8 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
9 requesting the hearing.

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

14 (7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to  
15 suspend, revoke, modify, or amend an operating permit issued under this section.

16 (8) The denial by the department of an application under 75-2-217 and this section is not subject to  
17 review by the board or judicial review if the basis for denial is the written objection of the appropriate federal  
18 agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

19 (9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is  
20 considered to be compliance with the requirements of this chapter only if the permit expressly includes those  
21 requirements or an express determination that those requirements are not applicable. This subsection does not  
22 apply to general permits provided for under 75-2-217."

23

24 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

25

26 **NEW SECTION. Section 6. Applicability.** [This act] applies to proceedings initiated after [the effective  
27 date of this act].

28

- END -