SENATE BILL NO. 340

INTRODUCED BY D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE CHALLENGING OF AGENCY DECISIONS UNDER THE MONTANA ENVIRONMENTAL PROTECTION ACT; ESTABLISHING AN ADDITIONAL COURT FEE FOR FILING A CHALLENGE; REQUIRING EXPEDITED AGENCY ACTION AFTER A COURT REMAND; LIMITING SUBSEQUENT CHALLENGES TO NEW ISSUES; REQUIRING PLAINTIFFS PAY COSTS ASSOCIATED WITH RECORD PREPARATION BY AN AGENCY; PROHIBITING THE AWARDING OF FEES AND COSTS; AMENDING SECTIONS 25-1-201, 75-1-110, AND 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $90; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, $170; for filing a petition for legal separation, $150; and for filing a petition for a contested amendment of a final parenting plan, $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $50;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office in all criminal and civil proceedings, $1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, $5, and for a copy of a dissolution decree, $10;

(iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic means in all criminal and civil proceedings, 25 cents per page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for a search of court records, $2 for each name for each year searched, for a period of up to 7 years, and an additional $1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license:

(i) when one or both parties to the marriage are present at the solemnization, $53;

(ii) when neither party is present at the solemnization, $83;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $53;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75;

(r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page~~.~~ ; and

(s) at the commencement of the action for filing a civil action challenging an agency action under Title 75, chapter 1, parts 1 and 2, from the applicant or petitioner, an additional fee of $240.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must be deposited in the state general fund as specified by the supreme court administrator.

(3) (a) Of the fee for filing a petition for dissolution of marriage, $5 must be deposited in the children's trust fund account established in 52-7-102, $19 must be deposited in the civil legal assistance for

indigent victims of domestic violence account established in 3-2-714, and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, $5 must be deposited in the children's trust fund account established in 52-7-102 and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(6) The fees collected under subsections (1)(d), (1)(g), (1)(j), and (1)(r) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, $13 must be deposited in the domestic violence intervention account established by 44-7-202 and $10 must be deposited in the county district court fund, except that $30 must be deposited in the county district court fund when neither party to a marriage is present at the solemnization. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(8) Fees collected under subsection (1)(s) must be deposited in the environmental rehabilitation and response account established in 75-1-110.

~~(8)~~(9) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

Section 2. Section 75-1-110, MCA, is amended to read:

"**75-1-110. Environmental rehabilitation and response account.** (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;

(b) reimbursements received pursuant to 75-10-1403;

(c) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, and 82-4-424; ~~and~~

<u>(d) fees collected pursuant to 25-1-201(8); and</u>

~~(d)~~<u>(e)</u> interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

(b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(c) remediation of sites containing hazardous wastes as defined in 75-10-403, hazardous or deleterious substances as defined in 75-10-701, or solid waste as defined in 75-10-203; or

(d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 3. 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 subsections (2) and (3), 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 for a state-sponsored project that may have an impact on the Montana human environment by projects in Montana; 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) and (1)(b)(iv)(C)(II) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(III);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking for state-sponsored projects, 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 in Montana 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 in Montana a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse effects on Montana's environment 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) 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 Montana 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;

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

(H) 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. If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a specific course of action.

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

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

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

(ix) assist the legislature and 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 in Montana and with any Montana local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency in Montana 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) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include an evaluation of greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state's borders.

(b) An environmental review conducted pursuant to subsection (1) may include an evaluation if:

(i) conducted jointly by a state agency and a federal agency to the extent the review is required by the federal agency; or

(ii) the United States congress amends the federal Clean Air Act to include carbon dioxide emissions as a regulated pollutant.

(3) 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.

(4) (a) The 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 (4) 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 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.

(5) (a) (i) A challenge to an agency's environmental review under this part may only be brought against a final agency action decision and may only be brought in district court or in federal court, whichever is appropriate. A challenge may only be brought by a person who submits formal comments on the agency's environmental review prior to the agency's final decision, and the challenge must be limited to those issues addressed in those comments.

(ii) 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.

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

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

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

(6) (a) (i) In an action ~~alleging noncompliance or inadequate compliance with a requirement of~~ <u>brought under</u> parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to the court the certified record of its decision at issue. The agency, prior to submitting the certified record to the court, shall assess and collect from the person challenging the decision a fee to pay for actual costs to compile and submit the certified record. Except as provided in subsection (6)(b), the person challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the record.

(ii) An action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate based in whole or in part upon greenhouse gas emissions and impacts to the climate in Montana or beyond Montana's borders, cannot vacate, void, or delay a lease, permit, license, certificate, authorization, or other entitlement or authority unless the review is required by a federal agency or the United States congress amends the federal Clean Air Act to include carbon dioxide as a regulated pollutant.

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

(iv) Except as provided in subsection (6)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious.

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

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

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

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

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

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

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

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

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

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

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

(d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the case, including but not limited to lost wages of employees and lost project revenues for 1 year. If the party seeking an injunction or a temporary restraining order objects to the amount of the written undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit with the court that states the party's income, assets, and liabilities in order to facilitate the court's consideration of the amount of the written undertaking that is required. The affidavit must be served on the party enjoined. If a challenge for noncompliance or inadequate compliance with a requirement of parts 1 through 3 seeks to vacate, void, or delay a lease, permit, license, certificate, or other entitlement or authority, the party shall, as an initial matter, seek an injunction related to a lease, permit, license, certificate, or other entitlement or authority, and an injunction may only be issued if the challenger:

(i) proves there is a likelihood of succeeding on the merits;

(ii) proves there is a violation of an established law or regulation on which the lease, permit, license, certificate, or other entitlement or authority is based; and

(iii) subject to the demonstration of the inability to pay, posts the appropriate written undertaking.

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

(f) ~~Attorney~~ (i) Except as expressly authorized by statute, fees or costs may not be awarded to the prevailing party in an action ~~alleging noncompliance or inadequate compliance with a requirement of~~ brought under parts 1 through 3.

(ii) Subsection (6)(f)(i) does not affect any right to recover fees or costs that may exist under federal law.

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

(8) 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.

(9) A project sponsor may request a review of the significance determination or recommendation

made under subsection (8) 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.

(10) (a) If a court remands an agency's decision under parts 1 through 3, the responsible agency shall:

(i) complete all required environmental reviews or corrective actions and issue a final decision within 90 days of the court's remand order; and

(ii) provide notice of the final decision to all parties involved in the challenge and make the decision available to the public.

(b) The 90-day timeline may only be extended if:

(i) all parties to the action agree in writing to an extension; or

(ii) the agency demonstrates to the court that extraordinary circumstances require additional time, and the court approves a specified extension that may not exceed 60 days.

(11) (a) In a subsequent legal action challenging an agency's decision under parts 1 through 3 after a court-ordered remand and agency corrective action, a plaintiff may raise only those issues that:

(i) are materially different from issues raised in prior challenges; and

(ii) could not have been raised during the prior proceeding with reasonable diligence.

(b) This subsection (11) does not limit a plaintiff's right to challenge new or different environmental impacts resulting from changes to the proposed action."

NEW SECTION. **Section 4. 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 5. Applicability.** [This act] applies to actions filed on or after [the effective date of this act].

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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