

SENATE BILL NO. 224

INTRODUCED BY VAUGHN, DARKO, BENGTSON, HARP, PETERSON
BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

IN THE SENATE

JANUARY 30, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LOCAL GOVERNMENT.

 FIRST READING.

FEBRUARY 16, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 19, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 45; NOES, 5.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LOCAL GOVERNMENT.

 FIRST READING.

MARCH 12, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

 POSTED ON CONSENT CALENDAR.

MARCH 13, 1991 CONSENT CALENDAR, QUESTIONS AND ANSWERS.

MARCH 14, 1991 THIRD READING, CONCURRED IN.
AYES, 91; NOES, 9.

 RETURNED TO SENATE.

IN THE SENATE

MARCH 15, 1991 RECEIVED FROM HOUSE.

 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *224*
 2 INTRODUCED BY *Thughin Marko Benjamin HART*
 3 BY REQUEST OF THE DEPARTMENT OF *Peterson*
 4 HEALTH AND ENVIRONMENTAL SCIENCES

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
 7 RELATING TO ESTABLISHING AND FUNDING LOCAL AIR POLLUTION
 8 CONTROL PROGRAMS; CLARIFYING EXISTING AUTHORITY RELATING TO
 9 THE COLLECTION OF PERMIT FEES BY LOCAL AIR POLLUTION CONTROL
 10 PROGRAMS; CLARIFYING THE RELATIONSHIP BETWEEN THE DEPARTMENT
 11 OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL AIR POLLUTION
 12 CONTROL PROGRAMS; AMENDING SECTIONS 75-2-301 AND 75-2-302,
 13 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 14

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

16 **Section 1.** Section 75-2-301, MCA, is amended to read:

17 ***75-2-301.** Local air pollution control programs. (1) A
 18 After public hearing, a municipality or county may establish
 19 and administer a local air pollution control program on
 20 being petitioned by 15% of the qualified electors in its
 21 jurisdiction and, if the program is consistent with this
 22 chapter and is approved by the board, after a public hearing
 23 conducted under 75-2-111, may thereafter administer in its
 24 jurisdiction the air pollution control program which:

25 (a) ~~provides by ordinance or local law for requirements~~

1 ~~compatible with, more stringent, or more extensive than~~
 2 ~~those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules~~
 3 ~~issued under these sections;~~

4 (b) ~~provides for the enforcement of these requirements~~
 5 ~~by appropriate administrative and judicial process; and~~

6 (c) ~~provides for administrative organization, staff,~~
 7 ~~financial, and other resources necessary to effectively and~~
 8 ~~efficiently carry out its program;~~

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

13 (3) The board may approve a local air pollution control
 14 program that:

15 (a) provides by ordinance or local law for requirements
 16 compatible with, more stringent than, or more extensive than
 17 those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212,
 18 75-2-215, and 75-2-402 and rules adopted under these
 19 sections;

20 (b) provides for the enforcement of requirements
 21 established under subsection (3)(a) by appropriate
 22 administrative and judicial processes; and

23 (c) provides for administrative organization, staff,
 24 financial resources, and other resources necessary to
 25 effectively and efficiently carry out the program. As part



1 of meeting these requirements, a local air pollution control
 2 program may administer the permit fee provisions of
 3 75-2-211. The permit fees collected by a local air pollution
 4 control program must be deposited in a county special
 5 revenue fund to be used by the local air pollution control
 6 program for administration of program activities conducted
 7 pursuant to 75-2-211 and 75-2-215.

8 ~~(2)~~(4) If the board finds that the location, character,
 9 or extent of particular concentrations of population, air
 10 contaminant sources, or geographic, topographic, or
 11 meteorological considerations or any combination of these
 12 are such as to make impracticable the maintenance of
 13 appropriate levels of air quality without an areawide air
 14 pollution control program, the board may determine the
 15 boundaries within which the program is necessary and require
 16 it as the only acceptable alternative to direct state
 17 administration.

18 ~~(3)~~(5) If the board has reason to believe that any part
 19 of an air pollution control program in force under this
 20 section is either inadequate to prevent and control air
 21 pollution in the jurisdiction to which the program relates
 22 or that--the--program is being administered in a manner
 23 inconsistent with this chapter, the board shall, on notice,
 24 conduct a hearing on the matter.

25 ~~(4)~~(6) If, after the hearing, the board determines that

1 any part of the program is inadequate to prevent and control
 2 air pollution in the jurisdiction to which it relates or
 3 that it is not accomplishing the purposes of this chapter,
 4 it shall require that necessary corrective measures be taken
 5 within a reasonable time, not to exceed 60 days.

6 ~~(5)~~(7) If the jurisdiction fails to take these measures
 7 within the time required, the department shall administer
 8 within such that jurisdiction all of the provisions of this
 9 chapter that are necessary to correct the deficiencies found
 10 by the board. The department's control program supersedes
 11 all municipal or county air pollution laws, rules,
 12 ordinances, and requirements in the affected jurisdiction.
 13 The cost of the ~~program~~ shall be department's action is a
 14 charge on the ~~municipality or county~~ jurisdiction.

15 ~~(6)~~(8) If the board finds that the control of a
 16 particular air contaminant source because of its complexity
 17 or magnitude is beyond the reasonable capability of the
 18 local jurisdiction or may be more efficiently and
 19 economically performed at the state level, it may direct the
 20 department to assume and retain control over that air
 21 contaminant source. No charge may be assessed against the
 22 jurisdiction therefor. Findings made under this subsection
 23 may be either on the basis of the nature of the sources
 24 involved or on the basis of their relationship to the size
 25 of the communities in which they are located.

1 ~~{7}~~{9} A jurisdiction in which the department
 2 administers all or part of its air pollution control program
 3 under subsection ~~{5}~~{7} of ~~this section~~ may, with the
 4 approval of the board, establish or resume an air pollution
 5 control program which that meets the requirements of
 6 subsection ~~{1}~~ {3} of ~~this section~~.

7 ~~{8}~~{10} A municipality or county may administer all or
 8 part of its air pollution control program in cooperation
 9 with one or more municipalities or counties of this state or
 10 of other states."

11 **Section 2.** Section 75-2-302, MCA, is amended to read:

12 "75-2-302. State and federal aid. (1) Any local air
 13 pollution control program meeting the requirements of this
 14 chapter and rules made pursuant thereto shall be eligible
 15 for state aid in an amount equal up to 30% of the locally
 16 funded annual operating cost thereof.

17 {2} Federal aid granted to the state for developing or
 18 maintaining a local air pollution control program that is
 19 subsequently granted to a local program is not considered
 20 state aid.

21 ~~{2}~~{3} Subdivisions of the state may make application
 22 for, receive, administer, and expend any federal aid for the
 23 control of air pollution or the development and
 24 administration of programs related to air pollution control,
 25 ~~provided that any such application is first submitted to and~~

1 ~~approved by the board. The board shall approve any such~~
 2 ~~application if it is consistent with this chapter and any~~
 3 ~~other applicable requirements of law~~ the program is
 4 currently approved by the board under 75-2-301."

5 NEW SECTION. Section 3. Effective date. [This act] is
 6 effective on passage and approval.

-End-

APPROVED BY COMM.
ON LOCAL GOVERNMENT

SENATE BILL NO. 224

INTRODUCED BY VAUGHN, DARKO, BENGTSON, HARP, PETERSON
BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
RELATING TO ESTABLISHING AND FUNDING LOCAL AIR POLLUTION
CONTROL PROGRAMS; CLARIFYING EXISTING AUTHORITY RELATING TO
THE COLLECTION OF PERMIT FEES BY LOCAL AIR POLLUTION CONTROL
PROGRAMS; CLARIFYING THE RELATIONSHIP BETWEEN THE DEPARTMENT
OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL AIR POLLUTION
CONTROL PROGRAMS; RESTRICTING THE TYPES OF AIR POLLUTION
SOURCES THAT MAY BE REGULATED BY A LOCAL AIR POLLUTION
CONTROL PROGRAM; AMENDING SECTIONS 75-2-301 AND 75-2-302,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs. (1) A
After public hearing, a municipality or county may establish
and administer a local air pollution control program on
being petitioned by 15% of the qualified electors in its
jurisdiction and, if the program is consistent with this
chapter and is approved by the board, after a public hearing
conducted under 75-2-111, may thereafter administer in its

~~jurisdiction the air pollution control program which:
(a) provides by ordinance or local law for requirements
compatible with, more stringent, or more extensive than
those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules
issued under these sections;~~

~~(b) provides for the enforcement of these requirements
by appropriate administrative and judicial process; and~~

~~(c) provides for administrative organization, staff,
financial, and other resources necessary to effectively and
efficiently carry out its program.~~

(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) The EXCEPT AS PROVIDED IN SUBSECTION (4), THE board
BY ORDER may approve a local air pollution control program
that:

(a) provides by 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, and 75-2-402 and rules adopted under these
sections;

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

SECOND READING



1 (c) provides for administrative organization, staff,
 2 financial resources, and other resources necessary to
 3 effectively and efficiently carry out the program. As part
 4 of meeting these requirements, a local air pollution control
 5 program may administer the permit fee provisions of
 6 75-2-211. The permit fees collected by a local air pollution
 7 control program must be deposited in a county special
 8 revenue fund to be used by the local air pollution control
 9 program for administration of program PERMITTING activities
 10 conducted-pursuant-to-75-2-211-and-75-2-215.

11 (4) EXCEPT FOR THOSE EMERGENCY POWERS PROVIDED FOR IN
 12 75-2-402, THE BOARD MAY NOT DELEGATE TO A LOCAL AIR
 13 POLLUTION CONTROL PROGRAM THE AUTHORITY TO CONTROL ANY AIR
 14 CONTAMINANT SOURCE THAT:

15 (A) REQUIRES THE PREPARATION OF AN ENVIRONMENTAL IMPACT
 16 STATEMENT IN ACCORDANCE WITH TITLE 75, CHAPTER 1, PART 2;

17 (B) IS SUBJECT TO REGULATION UNDER THE MONTANA MAJOR
 18 FACILITY SITING ACT, AS PROVIDED IN TITLE 75, CHAPTER 20; OR

19 (C) HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR OR MORE
 20 OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,
 21 INCLUDING FUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO
 22 CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION
 23 CONTROL PROGRAM PRIOR TO JANUARY 1, 1991.

24 (2)(4)(5) If the board finds that the location,
 25 character, or extent of particular concentrations of

1 population, air contaminant sources, or geographic,
 2 topographic, or meteorological considerations or any
 3 combination of these are such as to make impracticable the
 4 maintenance of appropriate levels of air quality without an
 5 areawide air pollution control program, the board may
 6 determine the boundaries within which the program is
 7 necessary and require it as the only acceptable alternative
 8 to direct state administration.

9 (3)(5)(6) If the board has reason to believe that any
 10 part of an air pollution control program in force under this
 11 section is either inadequate to prevent and control air
 12 pollution in the jurisdiction to which the program relates
 13 or that-the--program is being administered in a manner
 14 inconsistent with this chapter, the board shall, on notice,
 15 conduct a hearing on the matter.

16 (4)(6)(7) If, after the hearing, the board determines
 17 that any part of the program is inadequate to prevent and
 18 control air pollution in the jurisdiction to which it
 19 relates or that it is not accomplishing the purposes of this
 20 chapter, it shall require that necessary corrective measures
 21 be taken within a reasonable time, not to exceed 60 days.

22 (5)(7)(8) If the jurisdiction fails to take these
 23 measures within the time required, the department shall
 24 administer within such that jurisdiction all of the
 25 provisions of this chapter, INCLUDING THE TERMS CONTAINED IN

1 ANY APPLICABLE BOARD ORDER, that are necessary to correct
 2 the deficiencies found by the board. The department's
 3 control program supersedes all municipal or county air
 4 pollution laws, rules, ordinances, and requirements in the
 5 affected jurisdiction. The cost of the ~~program--shall--be~~
 6 department's action is a charge on the municipality or
 7 county jurisdiction.

8 ~~(6)(9)~~ (9) If the board finds that the control of a
 9 particular air contaminant source because of its complexity
 10 or magnitude is beyond the reasonable capability of the
 11 local jurisdiction or may be more efficiently and
 12 economically performed at the state level, it may direct the
 13 department to assume and retain control over that air
 14 contaminant source. No charge may be assessed against the
 15 jurisdiction therefor. Findings made under this subsection
 16 may be either on the basis of the nature of the sources
 17 involved or on the basis of their relationship to the size
 18 of the communities in which they are located.

19 ~~(7)(9)(10)~~ (10) A jurisdiction in which the department
 20 administers all or part of its air pollution control program
 21 under subsection ~~(5) (7) (8) of this section~~ may, with the
 22 approval of the board, establish or resume an air pollution
 23 control program which that meets the requirements of
 24 subsection ~~(1) (3) of this section.~~

25 ~~(8)(10)(11)~~ (11) A municipality or county may administer all

1 or part of its air pollution control program in cooperation
 2 with one or more municipalities or counties of this state or
 3 of other states."

4 **Section 2.** Section 75-2-302, MCA, is amended to read:

5 "75-2-302. State and federal aid. (1) Any local air
 6 pollution control program meeting the requirements of this
 7 chapter and rules made pursuant thereto shall be eligible
 8 for state aid in an amount equal up to 30% of the locally
 9 funded annual operating cost thereof.

10 (2) Federal aid granted to the state for developing or
 11 maintaining a local air pollution control program that is
 12 subsequently granted to a local program is not considered
 13 state aid.

14 ~~(2)(3)~~ (3) Subdivisions of the state may make application
 15 for, receive, administer, and expend any federal aid for the
 16 control of air pollution or the development and
 17 administration of programs related to air pollution control,
 18 ~~provided that any such application is first submitted to and~~
 19 ~~approved by the board. The board shall approve any such~~
 20 ~~application if it is consistent with this chapter and any~~
 21 ~~other applicable requirements of law~~ the program is
 22 currently approved by the board under 75-2-301."

23 **NEW SECTION. Section 3.** Effective date. [This act] is
 24 effective on passage and approval.

-End-

SENATE BILL NO. 224

INTRODUCED BY VAUGHN, DARKO, BENGTON, HARP, PETERSON

BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS RELATING TO ESTABLISHING AND FUNDING LOCAL AIR POLLUTION CONTROL PROGRAMS; CLARIFYING EXISTING AUTHORITY RELATING TO THE COLLECTION OF PERMIT FEES BY LOCAL AIR POLLUTION CONTROL PROGRAMS; CLARIFYING THE RELATIONSHIP BETWEEN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL AIR POLLUTION CONTROL PROGRAMS; RESTRICTING THE TYPES OF AIR POLLUTION SOURCES THAT MAY BE REGULATED BY A LOCAL AIR POLLUTION CONTROL PROGRAM; AMENDING SECTIONS 75-2-301 AND 75-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs. (1) After public hearing, a municipality or county may establish and administer a local air pollution control program on ~~being petitioned by 15% of the qualified electors in its~~ jurisdiction ~~and,~~ if the program is consistent with this chapter and is approved by the board, ~~after a public hearing conducted under 75-2-111, may thereafter administer in its~~

~~jurisdiction the air pollution control program which:~~

~~(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules issued under these sections;~~

~~(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and~~

~~(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program;~~

(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) The EXCEPT AS PROVIDED IN SUBSECTION (4), THE board BY ORDER may approve a local air pollution control program that:

(a) provides by 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, and 75-2-402 and rules adopted under these sections;

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

THIRD READING

1 (c) provides for administrative organization, staff,
 2 financial resources, and other resources necessary to
 3 effectively and efficiently carry out the program. As part
 4 of meeting these requirements, a local air pollution control
 5 program may administer the permit fee provisions of
 6 75-2-211. The permit fees collected by a local air pollution
 7 control program must be deposited in a county special
 8 revenue fund to be used by the local air pollution control
 9 program for administration of program PERMITTING activities
 10 conducted pursuant to 75-2-211 and 75-2-215.

11 (4) EXCEPT FOR THOSE EMERGENCY POWERS PROVIDED FOR IN
 12 75-2-402, THE BOARD MAY NOT DELEGATE TO A LOCAL AIR
 13 POLLUTION CONTROL PROGRAM THE AUTHORITY TO CONTROL ANY AIR
 14 CONTAMINANT SOURCE THAT:

15 (A) REQUIRES THE PREPARATION OF AN ENVIRONMENTAL IMPACT
 16 STATEMENT IN ACCORDANCE WITH TITLE 75, CHAPTER 1, PART 2;

17 (B) IS SUBJECT TO REGULATION UNDER THE MONTANA MAJOR
 18 FACILITY SITING ACT, AS PROVIDED IN TITLE 75, CHAPTER 20; OR

19 (C) HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR OR MORE
 20 OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,
 21 INCLUDING FUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO
 22 CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION
 23 CONTROL PROGRAM PRIOR TO JANUARY 1, 1991.

24 {2}{4}{5} If the board finds that the location,
 25 character, or extent of particular concentrations of

1 population, air contaminant sources, or geographic,
 2 topographic, or meteorological considerations or any
 3 combination of these are such as to make impracticable the
 4 maintenance of appropriate levels of air quality without an
 5 areawide air pollution control program, the board may
 6 determine the boundaries within which the program is
 7 necessary and require it as the only acceptable alternative
 8 to direct state administration.

9 {3}{5}{6} If the board has reason to believe that any
 10 part of an air pollution control program in force under this
 11 section is either inadequate to prevent and control air
 12 pollution in the jurisdiction to which the program relates
 13 or that the program is being administered in a manner
 14 inconsistent with this chapter, the board shall, on notice,
 15 conduct a hearing on the matter.

16 {4}{6}{7} If, after the hearing, the board determines
 17 that any part of the program is inadequate to prevent and
 18 control air pollution in the jurisdiction to which it
 19 relates or that it is not accomplishing the purposes of this
 20 chapter, it shall require that necessary corrective measures
 21 be taken within a reasonable time, not to exceed 60 days.

22 {5}{7}{8} If the jurisdiction fails to take these
 23 measures within the time required, the department shall
 24 administer within such that jurisdiction all of the
 25 provisions of this chapter, INCLUDING THE TERMS CONTAINED IN

1 ANY APPLICABLE BOARD ORDER, that are necessary to correct
 2 the deficiencies found by the board. The department's
 3 control program supersedes all municipal or county air
 4 pollution laws, rules, ordinances, and requirements in the
 5 affected jurisdiction. The cost of the program--~~shall~~--be
 6 department's action is a charge on the municipality or
 7 county jurisdiction.

8 ~~(6)~~~~(8)~~~~(9)~~ If the board finds that the control of a
 9 particular air contaminant source because of its complexity
 10 or magnitude is beyond the reasonable capability of the
 11 local jurisdiction or may be more efficiently and
 12 economically performed at the state level, it may direct the
 13 department to assume and retain control over that air
 14 contaminant source. No charge may be assessed against the
 15 jurisdiction therefor. Findings made under this subsection
 16 may be either on the basis of the nature of the sources
 17 involved or on the basis of their relationship to the size
 18 of the communities in which they are located.

19 ~~(7)~~~~(9)~~~~(10)~~ A jurisdiction in which the department
 20 administers all or part of its air pollution control program
 21 under subsection ~~(5)~~ ~~(7)~~ ~~(8)~~ of this section may, with the
 22 approval of the board, establish or resume an air pollution
 23 control program which that meets the requirements of
 24 subsection ~~(1)~~ ~~(3)~~ of this section.

25 ~~(8)~~~~(10)~~~~(11)~~ A municipality or county may administer all

1 or part of its air pollution control program in cooperation
 2 with one or more municipalities or counties of this state or
 3 of other states."

4 **Section 2.** Section 75-2-302, MCA, is amended to read:

5 "75-2-302. State and federal aid. (1) Any local air
 6 pollution control program meeting the requirements of this
 7 chapter and rules made pursuant thereto shall be eligible
 8 for state aid in an amount equal up to 30% of the locally
 9 funded annual operating cost thereof.

10 (2) Federal aid granted to the state for developing or
 11 maintaining a local air pollution control program that is
 12 subsequently granted to a local program is not considered
 13 state aid.

14 ~~(2)~~~~(3)~~ Subdivisions of the state may make application
 15 for, receive, administer, and expend any federal aid for the
 16 control of air pollution or the development and
 17 administration of programs related to air pollution control,
 18 ~~provided that any such application is first submitted to and~~
 19 ~~approved by the board. The board shall approve any such~~
 20 ~~application if it is consistent with this chapter and any~~
 21 ~~other applicable requirements of law~~ the program is
 22 currently approved by the board under 75-2-301."

23 **NEW SECTION. Section 3.** Effective date. [This act] is
 24 effective on passage and approval.

-End-

SENATE BILL NO. 224

INTRODUCED BY VAUGHN, DARKO, BENGTSON, HARP, PETERSON

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS RELATING TO ESTABLISHING AND FUNDING LOCAL AIR POLLUTION CONTROL PROGRAMS; CLARIFYING EXISTING AUTHORITY RELATING TO THE COLLECTION OF PERMIT FEES BY LOCAL AIR POLLUTION CONTROL PROGRAMS; CLARIFYING THE RELATIONSHIP BETWEEN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL AIR POLLUTION CONTROL PROGRAMS; RESTRICTING THE TYPES OF AIR POLLUTION SOURCES THAT MAY BE REGULATED BY A LOCAL AIR POLLUTION CONTROL PROGRAM; AMENDING SECTIONS 75-2-301 AND 75-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs. (1) A After public hearing, a municipality or county may establish and administer a local air pollution control program on being petitioned by 15% of the qualified electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board, after a public hearing conducted under 75-2-111, may thereafter administer in its

jurisdiction the air pollution control program which: (a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules issued under these sections;

(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and

(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program;

(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) The EXCEPT AS PROVIDED IN SUBSECTION (4), THE board BY ORDER may approve a local air pollution control program that:

(a) provides by 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, and 75-2-402 and rules adopted under these sections;

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



1 (c) provides for administrative organization, staff,
 2 financial resources, and other resources necessary to
 3 effectively and efficiently carry out the program. As part
 4 of meeting these requirements, a local air pollution control
 5 program may administer the permit fee provisions of
 6 75-2-211. The permit fees collected by a local air pollution
 7 control program must be deposited in a county special
 8 revenue fund to be used by the local air pollution control
 9 program for administration of program PERMITTING activities
 10 conducted pursuant to 75-2-211 and 75-2-215.

11 (4) EXCEPT FOR THOSE EMERGENCY POWERS PROVIDED FOR IN
 12 75-2-402, THE BOARD MAY NOT DELEGATE TO A LOCAL AIR
 13 POLLUTION CONTROL PROGRAM THE AUTHORITY TO CONTROL ANY AIR
 14 CONTAMINANT SOURCE THAT:

15 (A) REQUIRES THE PREPARATION OF AN ENVIRONMENTAL IMPACT
 16 STATEMENT IN ACCORDANCE WITH TITLE 75, CHAPTER 1, PART 2;

17 (B) IS SUBJECT TO REGULATION UNDER THE MONTANA MAJOR
 18 FACILITY SITING ACT, AS PROVIDED IN TITLE 75, CHAPTER 20; OR

19 (C) HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR OR MORE
 20 OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,
 21 INCLUDING FUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO
 22 CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION
 23 CONTROL PROGRAM PRIOR TO JANUARY 1, 1991.

24 (2)(4)(5) If the board finds that the location,
 25 character, or extent of particular concentrations of

1 population, air contaminant sources, or geographic,
 2 topographic, or meteorological considerations or any
 3 combination of these are such as to make impracticable the
 4 maintenance of appropriate levels of air quality without an
 5 areawide air pollution control program, the board may
 6 determine the boundaries within which the program is
 7 necessary and require it as the only acceptable alternative
 8 to direct state administration.

9 (3)(5)(6) If the board has reason to believe that any
 10 part of an air pollution control program in force under this
 11 section is either inadequate to prevent and control air
 12 pollution in the jurisdiction to which the program relates
 13 or that the program is being administered in a manner
 14 inconsistent with this chapter, the board shall, on notice,
 15 conduct a hearing on the matter.

16 (4)(6)(7) If, after the hearing, the board determines
 17 that any part of the program is inadequate to prevent and
 18 control air pollution in the jurisdiction to which it
 19 relates or that it is not accomplishing the purposes of this
 20 chapter, it shall require that necessary corrective measures
 21 be taken within a reasonable time, not to exceed 60 days.

22 (5)(7)(8) If the jurisdiction fails to take these
 23 measures within the time required, the department shall
 24 administer within such that jurisdiction all of the
 25 provisions of this chapter, INCLUDING THE TERMS CONTAINED IN

1 ANY APPLICABLE BOARD ORDER, that are necessary to correct
 2 the deficiencies found by the board. The department's
 3 control program supersedes all municipal or county air
 4 pollution laws, rules, ordinances, and requirements in the
 5 affected jurisdiction. The cost of the program--~~shall--be~~
 6 department's action is a charge on the municipality or
 7 county jurisdiction.

8 ~~(6)(9)~~ If the board finds that the control of a
 9 particular air contaminant source because of its complexity
 10 or magnitude is beyond the reasonable capability of the
 11 local jurisdiction or may be more efficiently and
 12 economically performed at the state level, it may direct the
 13 department to assume and retain control over that air
 14 contaminant source. No charge may be assessed against the
 15 jurisdiction therefor. Findings made under this subsection
 16 may be either on the basis of the nature of the sources
 17 involved or on the basis of their relationship to the size
 18 of the communities in which they are located.

19 ~~(7)(10)~~ A jurisdiction in which the department
 20 administers all or part of its air pollution control program
 21 under subsection ~~(5) (7) (8)~~ of this section may, with the
 22 approval of the board, establish or resume an air pollution
 23 control program which that meets the requirements of
 24 subsection ~~(1) (3)~~ of this section.

25 ~~(8)(11)~~ A municipality or county may administer all

1 or part of its air pollution control program in cooperation
 2 with one or more municipalities or counties of this state or
 3 of other states."

4 **Section 2.** Section 75-2-302, MCA, is amended to read:

5 "75-2-302. State and federal aid. (1) Any local air
 6 pollution control program meeting the requirements of this
 7 chapter and rules made pursuant thereto shall be eligible
 8 for state aid in an amount equal up to 30% of the locally
 9 funded annual operating cost thereof.

10 (2) Federal aid granted to the state for developing or
 11 maintaining a local air pollution control program that is
 12 subsequently granted to a local program is not considered
 13 state aid.

14 ~~(2)(3)~~ Subdivisions of the state may make application
 15 for, receive, administer, and expend any federal aid for the
 16 control of air pollution or the development and
 17 administration of programs related to air pollution control,
 18 ~~provided that any such application is first submitted to and~~
 19 ~~approved by the board. The board shall approve any such~~
 20 ~~application if it is consistent with this chapter and any~~
 21 ~~other applicable requirements of law~~ the program is
 22 currently approved by the board under 75-2-301."

23 **NEW SECTION. Section 3.** Effective date. [This act] is
 24 effective on passage and approval.

-End-