# 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.

DO PASS AS AMENDED. REPORT ADOPTED.

FIRST READING.

FEBRUARY 16, 1991

FEBRUARY 18, 1991

FEBRUARY 19, 1991

.

SECOND READING, DO PASS.

COMMITTEE RECOMMEND BILL

ENGROSSING REPORT.

PRINTING REPORT.

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

TRANSMITTED TO HOUSE.

ON LOCAL GOVERNMENT.

FIRST READING.

## IN THE HOUSE

MARCH 4, 1991

MARCH 12, 1991

COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

POSTED ON CONSENT CALENDAR.

MARCH 13, 1991

MARCH 14, 1991

CONSENT CALENDAR, QUESTIONS AND ANSWERS.

INTRODUCED AND REFERRED TO COMMITTEE

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.

LC 1194/01

SENTE BILL NO. 224 1 INTRODUCED BY Thuch Alarko Konstan 2 BY REQUEST OF THE DEPARTMENT OF PEters 3 HEALTH AND ENVIRONMENTAL SCIENCES 4 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

PROGRAMS; CLARIFYING THE RELATIONSHIP BETWEEN THE DEPARTMENT
OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL AIR POLLUTION
CONTROL PROGRAMS; AMENDING SECTIONS 75-2-301 AND 75-2-302,
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-75-2-1117-may-thereafter-administer--in--its 24 jurisdiction-the-air-pollution-control-program-which: (a)--provides-by-ordinance-or-local-law-for-requirements 25



| 1  | compatiblewithmorestringentormore-extensive-than             |  |  |
|----|--|--|--|
| 2  | those-imposed-by-75-2-2037-75-2-2127-and-75-2-402-andrules   |  |  |
| 3  | issued-under-these-sections;                                 |  |  |
| 4  | tb;providesfor-the-enforcement-of-these-requirements         |  |  |
| 5  | by-appropriate-administrative-and-judicial-process;-and      |  |  |
| 6  | <pre>(c)provides-foradministrativeorganization;staff;</pre>  |  |  |
| 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   |  |  |
|    | -2- INTRODUCED BILL<br>-2- 5B 224                            |  |  |

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of meeting these requirements, a local air pollution control program may administer the permit fee provisions of 75-2-211. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of program activities conducted 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 <u>either</u> 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

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

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. The cost of the program-shall-be department's action is a 13 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.

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1 (77)(9) A jurisdiction in which the department 2 administers <u>all or part of</u> 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."

Section 2. Section 75-2-302, MCA, is amended to read: "75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant thereto shall be eligible for state aid in an amount equal up to 30% of the locally 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 approved--by--the--board--The--board-shall-approve-any-such
 application-if-it-is-consistent-with-this--chapter--and--any

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- 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-

SB 0224/02 APPROVED BY COMM. ON LOCAL GOVERNMENT

| 1 | SENATE BILL NO. 224                                   |
|---|---|
| 2 | INTRODUCED BY VAUGHN, DARKO, BENGTSON, HARP, PETERSON |
| 3 | BY REQUEST OF THE DEPARTMENT OF                       |
| 4 | HEALTH AND ENVIRONMENTAL SCIENCES                     |

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 CONTROL PROGRAMS; RESTRICTING THE TYPES OF AIR POLLUTION 12 SOURCES THAT MAY BE REGULATED BY A LOCAL AIR POLLUTION 13 14 CONTROL PROGRAM; AMENDING SECTIONS 75-2-301 AND 75-2-302, 15 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16

5

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 75-2-301, MCA, is amended to read: 18 19 "75-2-301. Local air pollution control programs. (1) A 20 After public hearing, a municipality or county may establish 21 and administer a local air pollution control program on 22 being-petitioned-by-15%-of-the--qualified--electors--in--its 23 jurisdiction--and, if the program is consistent with this 24 chapter and is approved by the board. after-a-public-hearing 25 conducted-under-75-2-1117-may-thereafter-administer--in--its

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| 1  | jurisdiction-the-air-pollution-control-program-which-           |
|----|---|
| 2  | ta)provides-by-ordinance-or-local-law-for-requirements          |
| 3  | compatiblewithymorestringentyormore-extensive-than              |
| 4  | those-imposed-by-75-2-2037-75-2-2127-and-75-2-402-andrules      |
| 5  | issued-under-these-sections;                                    |
| 6  | <pre>(b)providesfor-the-enforcement-of-these-requirements</pre> |
| 7  | by-appropriate-administrative-and-judicial-process;-and         |
| 8  | <pre>(c)provides-foradministrativeorganizationstaff-</pre>      |
| 9  | financial;and-other-resources-necessary-to-effectively-and      |
| 10 | efficiently-carry-out-its-program.                              |
| 11 | (2) If a local air pollution control program                    |
| 12 | established by a county encompasses all or part of a            |
| 13 | municipality, the county and each municipality shall approve    |
| 14 | the program in accordance with subsection (1).                  |
| 15 | (3) The EXCEPT AS PROVIDED IN SUBSECTION (4), THE board         |
| 16 | BY ORDER may approve a local air pollution control program      |
| 17 | that:   |
| 18 | (a) provides by ordinance or local law for requirements         |
| 19 | compatible with, more stringent than, or more extensive than    |
| 20 | those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212,        |
| 21 | 75-2-215, and 75-2-402 and rules adopted under these            |
| 22 | sections;   |
| 23 | (b) provides for the enforcement of requirements                |
| 24 | established under subsection (3)(a) by appropriate              |
| 25 | administrative and judicial processes; and                      |
|    | SECOND READING  |

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| <ul> <li>financial resources, and other resources necessary to</li> <li>effectively and efficiently carry out the program. As part</li> <li>of meeting these requirements, a local air pollution control</li> <li>program may administer the permit fee provisions of</li> <li>75-2-211. The permit fees collected by a local air pollution</li> <li>control program must be deposited in a county special</li> <li>revenue fund to be used by the local air pollution control</li> <li>program for administration of program PERMITTING activities</li> <li>conducted-pursuant-to-75-2-211-end-75-2-215.</li> <li>(4) EXCEPT FOR THOSE EMERGENCY POWERS PROVIDED FOR IN</li> <li>75-2-402, THE BOARD MAY NOT DELEGATE TO A LOCAL AIR</li> <li>POLLUTION CONTROL PROGRAM THE AUTHORITY TO CONTROL ANY AIR</li> <li>CONTAMINANT SOURCE THAT:</li> <li>(A) REQUIRES THE PREPARATION OF AN ENVIRONMENTAL IMPACT</li> <li>STATEMENT IN ACCORDANCE WITH TITLE 75, CHAPTER 1, PART 2;</li> <li>(B) IS SUBJECT TO REGULATION UNDER THE MONTANA MAJOR</li> <li>FACILITY SITING ACT, AS PROVIDED IN TITLE 75, CHAPTER 20; OR</li> <li>(C) HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR OR MORE</li> <li>OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,</li> <li>INCLUDING FUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO</li> <li>CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION</li> <li>CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION</li> </ul> | 1  | (c) provides for administrative organization, staff,         |
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| 4of meeting these requirements, a local air pollution control5program may administer the permit fee provisions of675-2-211. The permit fees collected by a local air pollution7control program must be deposited in a county special8revenue fund to be used by the local air pollution control9program for administration of program PERMITTING activities10conducted-pursuant-to-75-2-211-and-75-2-215.11(4)EXCEPT FOR THOSE EMERGENCY POWERS PROVIDED FOR IN1275-2-402. THE BOARD MAY NOT DELEGATE TO A LOCAL AIR13POLLUTION CONTROL PROGRAM THE AUTHORITY TO CONTROL ANY AIR14CONTAMINANT SOURCE THAT:15(A)REQUIRES THE PREPARATION OF AN ENVIRONMENTAL IMPACT16STATEMENT IN ACCORDANCE WITH TITLE 75. CHAPTER 1. PART 2;17(B)IS18FACILITY SITING ACT, AS PROVIDED IN TITLE 75. CHAPTER 20; OR19(C)HAS THE POTENTIAL TO REGULATION UNDER THE MONTANA MAJOR20OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,21INCLUDINGFUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO22CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION  | 2  | financial resources, and other resources necessary to        |
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| <ul> <li>75-2-211. The permit fees collected by a local air pollution</li> <li>control program must be deposited in a county special</li> <li>revenue fund to be used by the local air pollution control</li> <li>program for administration of program PERMITTING activities</li> <li>conducted-pursuant-to-75-2-211-and-75-2-215.</li> <li>(4) EXCEPT FOR THOSE EMERGENCY POWERS PROVIDED FOR IN</li> <li>75-2-402, THE BOARD MAY NOT DELEGATE TO A LOCAL AIR</li> <li>POLLUTION CONTROL PROGRAM THE AUTHORITY TO CONTROL ANY AIR</li> <li>CONTAMINANT SOURCE THAT:</li> <li>(A) REQUIRES THE PREPARATION OF AN ENVIRONMENTAL IMPACT</li> <li>STATEMENT IN ACCORDANCE WITH TITLE 75, CHAPTER 1, PART 2;</li> <li>(B) IS SUBJECT TO REGULATION UNDER THE MONTANA MAJOR</li> <li>FACILITY SITING ACT, AS PROVIDED IN TITLE 75, CHAPTER 20; OR</li> <li>(C) HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR OR MORE</li> <li>OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,</li> <li>INCLUDING FUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO</li> </ul>   | 4  | of meeting these requirements, a local air pollution control |
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| <ul> <li>FACILITY SITING ACT, AS PROVIDED IN TITLE 75, CHAPTER 20; OR</li> <li>(C) HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR OR MORE</li> <li>OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,</li> <li>INCLUDING FUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO</li> <li>CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION</li> </ul>  | 16 | STATEMENT IN ACCORDANCE WITH TITLE 75, CHAPTER 1, PART 2;    |
| 19 (C) HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR OR MORE<br>20 OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,<br>21 INCLUDING FUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO<br>22 CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION  | 17 | (B) IS SUBJECT TO REGULATION UNDER THE MONTANA MAJOR         |
| 20 OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,<br>21 INCLUDING FUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO<br>22 CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION  | 18 | FACILITY SITING ACT, AS PROVIDED IN TITLE 75, CHAPTER 20; OR |
| 21         INCLUDING         FUGITIVE         EMISSIONS,         UNLESS         THE         AUTHORITY         TO           22         CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION  | 19 | (C) HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR OR MORE      |
| 22 CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION   | 20 | OF ANY POLLUTANT SUBJECT TO REGULATION UNDER THIS CHAPTER,   |
|  | 21 | INCLUDING FUGITIVE EMISSIONS, UNLESS THE AUTHORITY TO        |
| 23 CONTROL PROGRAM PRIOR TO JANUARY 1, 1991.   | 22 | CONTROL THE SOURCE WAS DELEGATED TO A LOCAL AIR POLLUTION    |
|  | 23 | CONTROL PROGRAM PRIOR TO JANUARY 1, 1991.                    |
| 24 +2++++++++++++++++++++++++++++++++++  | 24 | <pre>(2)(4)(5) If the board finds that the location,</pre>   |
| 25 character, or extent of particular concentrations of  | 25 | character, or extent of particular concentrations of         |

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

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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.

4

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

19 (77)(9)(10) A jurisdiction in which the department 20 administers <u>all or part of</u> its air pollution control program 21 under subsection (57 (77) (8) of-this-section may, with the 22 approval of the board, establish or resume an air pollution 23 control program which <u>that</u> meets the requirements of 24 subsection (17) (3) of-this-section.

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

-5-

or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or 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.

(2) Federal aid granted to the state for developing or
 maintaining a local air pollution control program that is
 subsequently granted to a local program is not considered
 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 administration of programs related to air pollution control, 17 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 currently approved by the board under 75-2-301." 22

23 NEW SECTION. Section 3. Effective date. [This act] is

24 effective on passage and approval.

-End-

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SB 0224/02

| 1  | SENATE BILL NO. 224  | 1  |
|----|--|----|
| 2  | INTRODUCED BY VAUGHN, DARKO, BENGTSON, HARP, PETERSON              | 2  |
| 3  | BY REQUEST OF THE DEPARTMENT OF                                    | 3  |
| 4  | HEALTH AND ENVIRONMENTAL SCIENCES                                  | 4  |
| 5  |  | 5  |
| 6  | A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS              | 6  |
| 7  | RELATING TO ESTABLISHING AND FUNDING LOCAL AIR POLLUTION           | 7  |
| 8  | CONTROL PROGRAMS; CLARIFYING EXISTING AUTHORITY RELATING TO        | 8  |
| 9  | THE COLLECTION OF PERMIT FEES BY LOCAL AIR POLLUTION CONTROL       | 9  |
| 10 | PROGRAMS; CLARIFYING THE RELATIONSHIP BETWEEN THE DEPARTMENT       | 10 |
| 11 | OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL AIR POLLUTION       | 11 |
| 12 | CONTROL PROGRAMS; RESTRICTING THE TYPES OF AIR POLLUTION           | 12 |
| 13 | SOURCES THAT MAY BE REGULATED BY A LOCAL AIR POLLUTION             | 13 |
| 14 | CONTROL PROGRAM; AMENDING SECTIONS 75-2-301 AND 75-2-302,          | 14 |
| 15 | MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."                   | 15 |
| 16 |  | 16 |
| 17 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:          | 17 |
| 18 | Section 1. Section 75-2-301, MCA, is amended to read:              | 18 |
| 19 | *75-2-301. Local air pollution control programs. (1) A             | 19 |
| 20 | After public hearing, a municipality or county may establish       | 20 |
| 21 | and administer a local air pollution control program <del>on</del> | 21 |
| 22 | being-petitioned-by-15%-of-thequalifiedelectorsinits               | 22 |
| 23 | jurisdictionand, if the program is consistent with this            | 23 |
| 24 | chapter and is approved by the board. after-a-public-hearing       | 24 |

conducted-under-75-2-1117-may-thereafter-administer--in--its

| 1  | jurisdiction-the-air-pollution-control-program-which;             |
|----|---|
| 2  | <pre>ta)provides-by-ordinance-or-local-law-for-requirements</pre> |
| 3  | compatiblewith;morestringent;ormore-extensive-than                |
| 4  | those-imposed-by-75-2-203,-75-2-212,-and-75-2-402-andrules        |
| 5  | issued-under-these-sections;                                      |
| 6  | <pre>(b)providesfor-the-enforcement-of-these-requirements</pre>   |
| 7  | by-appropriate-administrative-and-judicial-process;-and           |
| 8  | <pre>{C}provides-foradministrativeorganization;staff;</pre>       |
| 9  | financial,and-other-resources-necessary-to-effectively-and        |
| 10 | efficiently-carry-out-its-program.                                |
| 11 | (2) If a local air pollution control program                      |
| 12 | established by a county encompasses all or part of a              |
| 13 | municipality, the county and each municipality shall approve      |
| 14 | the program in accordance with subsection (1).                    |
| 15 | (3) The EXCEPT AS PROVIDED IN SUBSECTION (4), THE board           |
| 16 | BY ORDER may approve a local air pollution control program        |
| 17 | that:   |
| 18 | (a) provides by ordinance or local law for requirements           |
| 19 | compatible with, more stringent than, or more extensive than      |
| 20 | those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212,          |
| 21 | 75-2-215, and 75-2-402 and rules adopted under these              |
| 22 | sections;   |
| 23 | (b) provides for the enforcement of requirements                  |
| 24 | established under subsection (3)(a) by appropriate                |
| 25 | administrative and judicial processes; and                        |

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| 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  | <del>f2;<u>{4</u>}{5}</del> If the board finds that the location, |
| 25  | character, or extent of particular concentrations of              |

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1 population, air contaminant sources, or geographic, 2 topographic, or meteorological considerations or any combination of these are such as to make impracticable the 3 4 maintenance of appropriate levels of air guality 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 inconsistent with this chapter, the board shall, on notice, 14 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 relates or that it is not accomplishing the purposes of this 19 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 measures within the time required, the department shall 23 24 administer within such that jurisdiction all of the 25 provisions of this chapter, INCLUDING THE TERMS CONTAINED IN

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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.

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

-5-

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

Section 2. Section 75-2-302, MCA, is amended to read: 4 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." NEW SECTION. Section 3. Effective date. [This act] is 23

24 effective on passage and approval.

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<sup>-</sup>End-

# 52nd Legislature

SB 0224/02

| SB | 0224/02 |  |
|----|---------|--|
|    |         |  |

Consent Calendar

| 1  | SENATE BILL NO. 224  | 1  | jurisdiction-the-air-pollution-control-program-which:        |
|----|--|----|--|
| 2  | INTRODUCED BY VAUGHN, DARKO, BENGTSON, HARP, PETERSON              | 2  | (a)provides-by-ordinance-or-local-law-for-requirements       |
| 3  | BY REQUEST OF THE DEPARTMENT OF                                    | 3  | compatiblewith;morestringent;ormore-extensive-than           |
| 4  | HEALTH AND ENVIRONMENTAL SCIENCES                                  | 4  | those-imposed-by-75-2-203,-75-2-212,-and-75-2-402-andrules   |
| 5  |  | 5  | issued-under-these-sections;                                 |
| 6  | A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS              | 6  | tb)providesfor-the-enforcement-of-these-requirements         |
| 7  | RELATING TO ESTABLISHING AND FUNDING LOCAL AIR POLLUTION           | 7  | by-appropriate-administrative-and-judicial-process;-and      |
| 8  | CONTROL PROGRAMS; CLARIFYING EXISTING AUTHORITY RELATING TO        | 8  | {c}provides-foradministrativeorganization;staff;             |
| 9  | THE COLLECTION OF PERMIT FEES BY LOCAL AIR POLLUTION CONTROL       | 9  | financial;and-other-resources-necessary-to-effectively-and   |
| 10 | PROGRAMS; CLARIFYING THE RELATIONSHIP BETWEEN THE DEPARTMENT       | 10 | efficiently-carry-out-its-program.                           |
| 11 | OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL AIR POLLUTION       | 11 | (2) If a local air pollution control program                 |
| 12 | CONTROL PROGRAMS; RESTRICTING THE TYPES OF AIR POLLUTION           | 12 | established by a county encompasses all or part of a         |
| 13 | SOURCES THAT MAY BE REGULATED BY A LOCAL AIR POLLUTION             | 13 | municipality, the county and each municipality shall approve |
| 14 | CONTROL PROGRAM; AMENDING SECTIONS 75-2-301 AND 75-2-302,          | 14 | the program in accordance with subsection (1).               |
| 15 | MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."                   | 15 | (3) The EXCEPT AS PROVIDED IN SUBSECTION (4), THE board      |
| 16 |  | 16 | BY ORDER may approve a local air pollution control program   |
| 17 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:          | 17 | that:  |
| 18 | Section 1. Section 75-2-301, MCA, is amended to read:              | 18 | (a) provides by ordinance or local law for requirements      |
| 19 | "75-2-301. Local air pollution control programs. (1) A             | 19 | compatible with, more stringent than, or more extensive than |
| 20 | After public hearing, a municipality or county may establish       | 20 | those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212,     |
| 21 | and administer a local air pollution control program <del>on</del> | 21 | 75-2-215, and 75-2-402 and rules adopted under these         |
| 22 | being-petitioned-by-15%-of-thequalifiedelectorsinits               | 22 | sections;  |
| 23 | <del>jurisdictionand,</del> if the program is consistent with this | 23 | (b) provides for the enforcement of requirements             |
| 24 | chapter and is approved by the board. after-a-public-hearing       | 24 | established under subsection (3)(a) by appropriate           |
| 25 | conducted-under-75-2-1117-may-thereafter-administerinits           | 25 | administrative and judicial processes; and                   |
|    |  |    | REFERENCE BILL   |
|    | ٨  |    | -2- SB 224   |

a Legislative Council

| 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 | <pre>{2&gt;<u>{4+}(5)</u> If the board finds that the location,</pre> |
| 25 | character, or extent of particular concentrations of                  |

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

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

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

t5;t?;(8) If the jurisdiction fails to take these 22 measures within the time required, the department shall 23 administer within such that jurisdiction all of the 24 provisions of this chapter, INCLUDING THE TERMS CONTAINED IN 25

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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.

(6)(9) If the board finds that the control of a 8 9 particular air contaminant source because of its complexity 10 or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and 11 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.

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25 (0+++0+(11) A municipality or county may administer all

-5-

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

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

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11 <u>maintaining a local air pollution control program that is</u> 12 subsequently granted to a local program is not considered

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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-

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#### SB 0224/02