

1 *Senate* BILL NO. *388*
 2 INTRODUCED BY *Ray Warden*
 3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
 6 ENVIRONMENTAL POLICY ACT, CLARIFYING STATE AGENCY DUTIES IN
 7 ENVIRONMENTAL DECISIONMAKING; PROVIDING FOR JUDICIAL REVIEW;
 8 AND AMENDING SECTIONS 69-6503, 69-6504, 69-6505, AND
 9 69-6507, R.C.M. 1947."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 69-6503, R.C.M. 1947, is amended to
 13 read as follows:

14 "69-6503. Declaration of state policy for the
 15 environment. (1) The ~~legislative assembly~~ legislature,
 16 recognizing the profound impact of man's activity on the
 17 interrelations of all components of the natural environment,
 18 particularly the profound influences of population growth,
 19 high-density urbanization, industrial expansion, resource
 20 exploitation, and new and expanding technological advances
 21 and recognizing further the critical importance of restoring
 22 and maintaining environmental quality to the overall welfare
 23 and development of man, declares that it is the continuing
 24 policy of the state of Montana, in co-operation with the
 25 federal government and local governments, and other

1 concerned public and private organizations, to use all
 2 practicable means and measures, including financial and
 3 technical assistance, in a manner calculated to foster and
 4 promote the general welfare, to create and maintain
 5 conditions under which man and nature can coexist in
 6 productive harmony, and fulfill the social, economic, and
 7 other requirements of present and future generations of
 8 Montanans.

9 ~~(1)~~ (2) In order to carry out the policy set forth in
 10 this act, it is the continuing responsibility of the state
 11 of Montana to use all practicable means, consistent with
 12 other essential considerations of state policy, to improve
 13 and co-ordinate state plans, functions, programs, and
 14 resources to the end that the state may—;

15 ~~(1)~~ (a) fulfill the responsibilities of each generation
 16 as trustee of the environment for succeeding generations;

17 ~~(2)~~ (b) assure for all Montanans safe, healthful,
 18 productive, and esthetically and culturally pleasing
 19 surroundings;

20 ~~(3)~~ (c) attain the widest range of beneficial uses of
 21 the environment without degradation, risk to health or
 22 safety, or other undesirable and unintended consequences;

23 ~~(4)~~ (d) preserve important historic, cultural, and
 24 natural aspects of our unique heritage, and maintain,
 25 wherever possible, an environment which supports diversity

1 and variety of individual choice;

2 ~~(5)(e)~~ achieve a balance between population and

3 resource use which will permit high standards of living and

4 a wide sharing of life's amenities; and

5 ~~(6)(f)~~ enhance the quality of renewable resources and

6 approach the maximum attainable recycling of depletable

7 resources.

8 ~~(b)(3)~~ The ~~legislative assembly~~ legislature recognizes

9 that each person shall be entitled to a healthful

10 environment and that each person has a responsibility to

11 contribute to the preservation and enhancement of the

12 environment.

13 (4) No board, commission, or agency of the state may

14 implement any policy, adopt any rule, or approve any action

15 inconsistent with the policies and goals expressed in this

16 chapter unless the board, commission, or agency can

17 demonstrate that:

18 (a) there is no feasible alternative consistent with

19 the public health, safety, or welfare;

20 (b) the benefits of the policy, rule, or action, as

21 defined by some other essential consideration of state

22 policy, outweigh the harm to the environment; and

23 (c) the formulation of the proposed policy or the

24 planning and implementation of the proposed action include

25 all feasible efforts to comply with the policies, goals, and

1 procedures of this chapter and to mitigate adverse

2 environmental impacts to the fullest extent possible."

3 Section 2. Section 69-6504, R.C.M. 1947, is amended to

4 read as follows:

5 "69-6504. General directions to state agencies. (1)

6 The ~~legislative assembly~~ legislature authorizes and directs

7 that, to the fullest extent possible, ~~(a) The the~~ policies,

8 regulations, and laws of the state shall be interpreted and

9 administered in accordance with the policies set forth in

10 this act, and ~~(b)~~ all agencies of the state shall:

11 ~~(4)(a)~~ utilize a systematic, interdisciplinary

12 approach which will insure the integrated use of the natural

13 and social sciences and the environmental design arts in

14 planning and in decision making which may have an impact on

15 man's environment;

16 ~~(2)(b)~~ identify and develop methods and procedures, by

17 rule where appropriate, which will insure that presently

18 unquantified environmental amenities and values may be given

19 appropriate consideration in decision making along with

20 economic and technical considerations;

21 ~~(3)(c)~~ (i) include in every recommendation or report

22 on proposals for projects, programs, legislation and other

23 major actions of state government significantly affecting

24 the quality of the human environment, a detailed

25 environmental impact statement ~~on~~ discussing:

1 (A) the goals and objectives of the proposed action;
 2 ~~(i)~~ (B) the environmental impact of the proposed
 3 action;
 4 (C) feasible alternatives to the proposed action
 5 available to state government or to the applicant in the
 6 case of a permit, license, or other entitlement, which will
 7 accomplish some or all of the goals of the proposed action
 8 while reducing adverse environmental impacts;
 9 (D) feasible mitigative measures available to state
 10 government or to the applicant which may be included in the
 11 implementation of the proposed action or alternatives and
 12 which will reduce adverse environmental impacts;
 13 ~~(ii)~~ (E) any adverse environmental effects which cannot
 14 be avoided should the proposal proposed action or
 15 alternatives be implemented after application of all
 16 feasible mitigative measures;
 17 ~~(iii) alternatives to the proposed action;~~
 18 ~~(iv)~~ (F) the relationship between local short-term uses
 19 of man's environment and the maintenance and enhancement of
 20 long-term productivity involved in the proposed action or
 21 alternatives should they be implemented; and
 22 ~~(v)~~ (G) any irreversible and irretrievable commitments
 23 of resources which would be involved in the proposed action
 24 or alternatives should it they be implemented;
 25 (H) the economic costs and benefits to the public;

1 (I) the basis of the need for the project;
 2 (J) the effects on local and state services;
 3 (K) the effects on taxation on the state and local
 4 level;
 5 (L) the effects on wildlife and wildlife habitat;
 6 (M) the effects on agriculture;
 7 (N) the effects on public health and safety;
 8 (O) the opinions expressed by members of the public in
 9 support of or opposition to the project; and
 10 (P) the degree and manner in which the proposed action
 11 and each alternative complies with or departs from the goals
 12 and policies of this chapter as set forth in 69-6503.
 13 (ii) Prior to making any detailed environmental impact
 14 statement, the responsible state official shall consult with
 15 and obtain the comments of any state agency which has
 16 jurisdiction by law or special expertise with respect to any
 17 environmental impact involved. Copies of such statement and
 18 the comments and views of the appropriate state, federal,
 19 and local agencies, which are authorized to develop and
 20 enforce environmental standards, and of interested members
 21 of the public shall be made available to the governor, the
 22 environmental quality council and to the public, and shall
 23 accompany the proposal through the existing agency review
 24 processes.
 25 (d) adopt rules concerning the requirements of this

1 section and establishing procedures for the circulation,
 2 review, and receipt of comments on environmental impact
 3 statements prepared under this chapter. After complying with
 4 all of the requirements specified in this chapter and the
 5 rules adopted by an agency, the agency shall make a final
 6 decision based on a consideration and balancing of all
 7 criteria described in this section and 69-6503 and
 8 consistent with other statutory authority.

9 (e) (i) conduct systematic, programmatic analyses of
 10 major programs administered by state agencies or for which
 11 state agencies establish minimum standards and procedures
 12 and for each such program prepare a programmatic
 13 environmental impact statement discussing:

14 (A) the relevant environmental factors affected by the
 15 program and threshold levels of environmental impacts beyond
 16 which an individual action within the program will require
 17 an impact statement according to subsection (1) (c) (i) of
 18 this section;

19 (B) the range of feasible types of alternative actions
 20 and mitigative measures available to state government and
 21 consistent with other statutory authority which might be
 22 applied to the evaluation of individual actions and
 23 proposals within the program; and

24 (C) guidelines for performing the balance of costs and
 25 benefits required by 69-6503(4) (b).

1 (ii) A programmatic analysis and impact statement
 2 shall be, to the fullest extent possible, a joint effort of
 3 all state agencies with jurisdiction by law or special
 4 expertise over the environmental factors affected by the
 5 program. The governor shall designate a lead agency to
 6 coordinate the statement for each program. The comment
 7 procedures contained in subsection (1) (c) (ii) of this
 8 section shall be followed. Once such a programmatic analysis
 9 is completed, the agencies shall conduct rulemaking
 10 proceedings under the Montana Administrative Procedure Act
 11 to incorporate the findings of the programmatic analysis
 12 into existing agency rules and procedures. All agency
 13 actions within that program shall be consistent, to the
 14 fullest extent possible, with the standards and procedures
 15 set forth in the programmatic impact statement and rules.

16 ~~(4) (f)~~ study, develop, and describe appropriate
 17 alternatives to recommend courses of action in any proposal
 18 which involves unresolved conflicts concerning alternative
 19 uses of available resources;

20 ~~(5) (g)~~ recognize the national and long-range character
 21 of environmental problems and, where consistent with the
 22 policies of the state, lend appropriate support to
 23 initiatives, resolutions, and programs designed to maximize
 24 national co-operation in anticipating and preventing a
 25 decline in the quality of mankind's world environment;

1 ~~(6)~~(b) make available to counties, municipalities,
2 institutions, and individuals, advice and information useful
3 in restoring, maintaining, and enhancing the quality of the
4 environment;

5 ~~(7)~~(i) initiate and utilize ecological information in
6 the planning and development of resource-oriented projects;
7 and

8 ~~(8)~~(j) assist the environmental quality council
9 established by section 8 [69-65(8)] of this act.

10 (2) Accompanying every final decision for which an
11 environmental impact statement has been prepared according
12 to subsection (1)(c)(i) of this section, there shall be a
13 written report giving reasons for the decision and
14 explaining the agency's finding:

15 (a) that the decision will involve no significant
16 adverse environmental impacts after application of feasible
17 mitigative measures; or

18 (b) that the conditions contained in 69-6503(4) are
19 satisfied. Copies of the report shall be made available to
20 the governor, the environmental quality council, and the
21 public.

22 (3) No final agency decision which may result in
23 significant adverse environmental impacts may become
24 effective, nor may any action be taken committing resources
25 or affecting legal rights, sooner than 30 days after

1 transmittal of the report to the environmental quality
2 council. During this period, any person who has been a party
3 to administrative proceedings relating to the proposed
4 action or who has submitted oral or written testimony at
5 public hearings or during the impact statement commenting
6 process or who can demonstrate an injury not common to the
7 general public which will be caused by the proposed action
8 or any organization whose members so qualify may seek
9 judicial review of the agency's final decision on the
10 following grounds:

11 (a) the agency's action will cause significant adverse
12 environmental impacts; and

13 (b) the agency's action was improperly arrived at
14 because:

15 (i) the agency failed to give proper consideration to
16 significant adverse environmental impacts which would be
17 caused by the action; or

18 (ii) the agency's finding that the conditions of
19 69-6503(4) were satisfied was arbitrary, capricious, or not
20 supported by a preponderance of evidence in the record.

21 (4) Nothing in this section limits any person's right
22 to seek judicial relief under other statutes or at common
23 law, except that the failure to prepare an adequate
24 environmental impact statement is not grounds for injunctive
25 relief except as provided in this section.

1 (5) Following approval of any action for which an
 2 environmental impact statement was prepared, that statement
 3 shall be revised as necessary to reflect all mitigative
 4 measures taken and all significant environmental impacts
 5 actually resulting from the action."

6 Section 3. Section 69-6505, R.C.M. 1947, is amended to
 7 read as follows:

8 "69-6505. Review of statutory authority and
 9 administrative policies to determine deficiencies or
 10 inconsistencies. All agencies of the state shall
 11 periodically review their ~~present~~ current statutory
 12 authority, administrative regulations, and ~~current~~ policies
 13 and procedures for the purpose of determining whether there
 14 are any deficiencies or inconsistencies therein which
 15 prohibit full compliance with the purposes and provisions of
 16 this act and shall propose to the governor and the
 17 environmental quality council not later than ~~July 1, 1972,~~
 18 90 days before each legislative session such measures as may
 19 be necessary to bring their authority and policies into
 20 conformity with the intent, purposes, and procedures set
 21 forth in this act."

22 Section 4. Section 69-6507, R.C.M. 1947, is amended to
 23 read as follows:

24 "69-6507. Policies and goals supplementary. (1) The
 25 policies and goals set forth in this act are supplementary

1 to those set forth in existing authorizations of all boards,
 2 commissions, and agencies of the state, and all such boards,
 3 commissions, and agencies are authorized and directed to
 4 amend existing administrative regulations, consistent with
 5 other statutory authorizations, so as to bring such
 6 regulations into compliance with the policies and goals of
 7 this chapter.

8 (2) All rules proposed to be amended or adopted
 9 pursuant to this section shall be submitted to the
 10 environmental quality council. The council shall review all
 11 rules submitted to it and may:

12 (a) prepare written recommendations for the adoption,
 13 amendment, or rejection of a rule and submit these
 14 recommendations to the department proposing the rule when a
 15 rulemaking hearing will not be held;

16 (b) prepare recommendations for the adoption,
 17 amendment, or rejection of a rule and submit oral testimony
 18 at a rulemaking hearing; or

19 (c) request that a rulemaking hearing be held in
 20 accordance with 82-4204.

21 (3) The council shall prepare a report to the
 22 legislature at least once each biennium and may recommend
 23 amendment, adoption, or repeal of rules necessary to bring
 24 agency policies and procedures into compliance with the
 25 policies and goals of this act."

-End-

-12-

STATE OF MONTANA

REQUEST NO. 373-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 388 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

An act to amend the Montana Environmental Policy Act.

ASSUMPTION:

One report would be prepared the second year of the biennium.

FISCAL IMPACT

	FY 78	FY 79	Total
Additional cost of proposed legislation *	<u>\$ 0</u>	<u>\$500</u>	<u>\$500</u>

* Indications are that various other state agencies may realize increased costs as a result of the proposed legislation ; however, no dollar estimate can be provided at this time.

Richard L. Dwyer for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-77