

SENATE BILL 327

Introduced by Keating, et al.

2/02	Introduced
2/02	Referred to Natural Resources
2/10	Hearing
2/16	Committee Report--Bill Passed
2/18	2nd Reading Passed
2/21	3rd Reading Passed

Transmitted to House

2/22	Referred to Natural Resources
3/15	Hearing
3/15	Tabled in Committee

1 *Senate* BILL NO. *327*
 2 INTRODUCED BY *Boateng* *Touret* *Super* *Cold*
 3 *James R. Sullivan* *Keller* *Hofma*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN
 5 ACTIONS BY AGENCIES OF STATE GOVERNMENT FROM REQUIREMENTS OF
 6 THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING AGENCIES TO
 7 FIND ON A CASE-BY-CASE BASIS THAT AN EXEMPTED ACTION OR
 8 COMBINATION OF ACTIONS IS A MAJOR ACTION SIGNIFICANTLY
 9 AFFECTING THE QUALITY OF THE HUMAN ENVIRONMENT; REQUIRING
 10 AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING
 11 PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND
 12 AMENDING SECTIONS 2-4-501 AND 75-1-201, MCA."
 13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 **Section 1.** Section 75-1-201, MCA, is amended to read:
 16 "75-1-201. General directions -- environmental impact
 17 statements. (1) The legislature authorizes and directs that,
 18 to the fullest extent possible:
 19 (a) the policies, regulations, and laws of the state
 20 shall be interpreted and administered in accordance with the
 21 policies set forth in parts 1 through 3;
 22 (b) all agencies of the state, except as provided in
 23 subsection subsections (2) and (4), shall:
 24 (i) utilize a systematic, interdisciplinary approach
 25 which will insure the integrated use of the natural and

1 social sciences and the environmental design arts in
 2 planning and in decisionmaking which may have an impact on
 3 man's environment;
 4 (ii) identify and develop methods and procedures which
 5 will insure that presently unquantified environmental
 6 amenities and values may be given appropriate consideration
 7 in decisionmaking along with economic and technical
 8 considerations;
 9 (iii) include in every recommendation or report on
 10 proposals for projects, programs, legislation, and other
 11 major actions of state government significantly affecting
 12 the quality of the human environment, a detailed statement
 13 on:
 14 (A) the environmental impact of the proposed action;
 15 (B) any adverse environmental effects which cannot be
 16 avoided should the proposal be implemented;
 17 (C) alternatives to the proposed action;
 18 (D) the relationship between local short-term uses of
 19 man's environment and the maintenance and enhancement of
 20 long-term productivity; and
 21 (E) any irreversible and irretrievable commitments of
 22 resources which would be involved in the proposed action
 23 should it be implemented;
 24 (iv) study, develop, and describe appropriate
 25 alternatives to recommend courses of action in any proposal

1 which involves unresolved conflicts concerning alternative
2 uses of available resources;

3 (v) recognize the national and long-range character of
4 environmental problems and, where consistent with the
5 policies of the state, lend appropriate support to
6 initiatives, resolutions, and programs designed to maximize
7 national cooperation in anticipating and preventing a
8 decline in the quality of mankind's world environment;

9 (vi) make available to counties, municipalities,
10 institutions, and individuals advice and information useful
11 in restoring, maintaining, and enhancing the quality of the
12 environment;

13 (vii) initiate and utilize ecological information in
14 the planning and development of resource-oriented projects;
15 and

16 (viii) assist the environmental quality council
17 established by 5-16-101; and

18 (c) prior to making any detailed statement as provided
19 in subsection (1)(b)(iii), the responsible state official
20 shall consult with and obtain the comments of any state
21 agency which has jurisdiction by law or special expertise
22 with respect to any environmental impact involved. Copies of
23 such statement and the comments and views of the appropriate
24 state, federal, and local agencies which are authorized to
25 develop and enforce environmental standards shall be made

1 available to the governor, the environmental quality
2 council, and the public and shall accompany the proposal
3 through the existing agency review processes.

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

8 (3) (a) Until the board of oil and gas conservation
9 adopts a programmatic environmental statement, but no later
10 than June 30, 1989, the issuance of a permit to drill a well
11 for oil or gas is not a major action of state government as
12 that term is used in subsection (1)(b)(iii).

13 (b) The board of oil and gas conservation shall adopt
14 a programmatic statement by June 30, 1989, that must include
15 but not be limited to:

16 (i) such environmental impacts as may be found to be
17 associated with the drilling for and production of oil and
18 gas in the major producing basins and ecosystems in Montana;

19 (ii) such methods of accomplishing drilling and
20 production of oil and gas as may be found to be necessary to
21 avoid permanent impairment of the environment or to mitigate
22 long-term impacts so that the environment and renewable
23 resources of the ecosystem may be returned to either
24 conditions similar to those existing before drilling or
25 production occurs or conditions that reflect a natural

1 progression of environmental change;

2 (iii) the process that will be employed by the board of
3 oil and gas conservation to evaluate such environmental
4 impacts of individual drilling proposals as may be found to
5 exist;

6 (iv) an appropriate method for incorporating such
7 environmental review as may be found to be necessary into
8 the board's rules and drill permitting process and for
9 accomplishing the review in an expedient manner;

10 (v) the maximum time periods that will be required to
11 complete the drill permitting process, including any
12 environmental review; and

13 (vi) a record of information and analysis for the board
14 of oil and gas conservation to rely upon in responding to
15 public and private concerns about drilling and production.

16 (c) The governor shall direct and have management
17 responsibility for the preparation of the programmatic
18 statement, including responsibility on behalf of the board
19 of oil and gas conservation for the disbursement and
20 expenditure of funds necessary to complete the statement.
21 The facilities and personnel of appropriate state agencies
22 must be used to the extent the governor deems necessary to
23 complete the statement. The governor shall forward the
24 completed draft programmatic statement to the board of oil
25 and gas conservation for hearing pursuant to the provisions

1 of the Montana Administrative Procedure Act, Title 2,
2 chapter 4. Following completion of a final programmatic
3 statement, the governor shall forward the statement to the
4 board for adoption and use in the issuance of permits to
5 drill for oil and gas.

6 (4) Agencies of the state are exempt from the
7 provisions of parts 1 through 3 of this chapter when
8 undertaking actions that involve the issuance of a lease,
9 permit, license, easement, certificate, or other approval,
10 entitlement for use, or permission to act, except that an
11 agency may, in its discretion, on a case-by-case basis, find
12 that an action or a combination of actions constitutes a
13 major action significantly affecting the quality of the
14 human environment as specified in subsection (1)(b)(iii).
15 In order to make this finding, the agency shall issue a
16 declaratory ruling under Title 2, chapter 4, part 5, of the
17 Montana Administrative Procedure Act. If an agency makes
18 this finding, parts 1 through 3 of this chapter are
19 applicable to the action or combination of actions."

20 **Section 2.** Section 2-4-501, MCA, is amended to read:

21 "2-4-501. Declaratory rulings by agencies. (1) Each
22 agency shall provide by rule for the filing and prompt
23 disposition of petitions for declaratory rulings as to the
24 applicability of any statutory provision or of any rule or
25 order of the agency.

LC 1167/01

1 (2) To make a finding under 75-1-201(4), an agency
2 shall issue a declaratory ruling.

3 (3) A copy of a declaratory ruling must be filed with
4 the secretary of state for publication in the register. A
5 declaratory ruling or, in the case of subsection (1), the
6 refusal to issue such a ruling shall--be is subject to
7 judicial review in the same manner as decisions or orders in
8 contested cases."

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

1 *Sen. Smith* BILL NO. *327*
 2 INTRODUCED BY *Rep. Kistner* *Tweat* *Superior* *Cobb*
 3 *Johns* *Buttline* *Keller* *Hoffman*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN
 5 ACTIONS BY AGENCIES OF STATE GOVERNMENT FROM REQUIREMENTS OF
 6 THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING AGENCIES TO
 7 FIND ON A CASE-BY-CASE BASIS THAT AN EXEMPTED ACTION OR
 8 COMBINATION OF ACTIONS IS A MAJOR ACTION SIGNIFICANTLY
 9 AFFECTING THE QUALITY OF THE HUMAN ENVIRONMENT; REQUIRING
 10 AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING
 11 PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND
 12 AMENDING SECTIONS 2-4-501 AND 75-1-201, MCA."
 13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 **Section 1.** Section 75-1-201, MCA, is amended to read:
 16 "75-1-201. General directions -- environmental impact
 17 statements. (1) The legislature authorizes and directs that,
 18 to the fullest extent possible:
 19 (a) the policies, regulations, and laws of the state
 20 shall be interpreted and administered in accordance with the
 21 policies set forth in parts 1 through 3;
 22 (b) all agencies of the state, except as provided in
 23 subsection subsections (2) and (4), shall:
 24 (i) utilize a systematic, interdisciplinary approach
 25 which will insure the integrated use of the natural and

1 social sciences and the environmental design arts in
 2 planning and in decisionmaking which may have an impact on
 3 man's environment;
 4 (ii) identify and develop methods and procedures which
 5 will insure that presently unquantified environmental
 6 amenities and values may be given appropriate consideration
 7 in decisionmaking along with economic and technical
 8 considerations;
 9 (iii) include in every recommendation or report on
 10 proposals for projects, programs, legislation, and other
 11 major actions of state government significantly affecting
 12 the quality of the human environment, a detailed statement
 13 on:
 14 (A) the environmental impact of the proposed action;
 15 (B) any adverse environmental effects which cannot be
 16 avoided should the proposal be implemented;
 17 (C) alternatives to the proposed action;
 18 (D) the relationship between local short-term uses of
 19 man's environment and the maintenance and enhancement of
 20 long-term productivity; and
 21 (E) any irreversible and irretrievable commitments of
 22 resources which would be involved in the proposed action
 23 should it be implemented;
 24 (iv) study, develop, and describe appropriate
 25 alternatives to recommend courses of action in any proposal

1 which involves unresolved conflicts concerning alternative
2 uses of available resources;

3 (v) recognize the national and long-range character of
4 environmental problems and, where consistent with the
5 policies of the state, lend appropriate support to
6 initiatives, resolutions, and programs designed to maximize
7 national cooperation in anticipating and preventing a
8 decline in the quality of mankind's world environment;

9 (vi) make available to counties, municipalities,
10 institutions, and individuals advice and information useful
11 in restoring, maintaining, and enhancing the quality of the
12 environment;

13 (vii) initiate and utilize ecological information in
14 the planning and development of resource-oriented projects;
15 and

16 (viii) assist the environmental quality council
17 established by 5-16-101; and

18 (c) prior to making any detailed statement as provided
19 in subsection (1)(b)(iii), the responsible state official
20 shall consult with and obtain the comments of any state
21 agency which has jurisdiction by law or special expertise
22 with respect to any environmental impact involved. Copies of
23 such statement and the comments and views of the appropriate
24 state, federal, and local agencies which are authorized to
25 develop and enforce environmental standards shall be made

1 available to the governor, the environmental quality
2 council, and the public and shall accompany the proposal
3 through the existing agency review processes.

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

8 (3) (a) Until the board of oil and gas conservation
9 adopts a programmatic environmental statement, but no later
10 than June 30, 1989, the issuance of a permit to drill a well
11 for oil or gas is not a major action of state government as
12 that term is used in subsection (1)(b)(iii).

13 (b) The board of oil and gas conservation shall adopt
14 a programmatic statement by June 30, 1989, that must include
15 but not be limited to:

16 (i) such environmental impacts as may be found to be
17 associated with the drilling for and production of oil and
18 gas in the major producing basins and ecosystems in Montana;

19 (ii) such methods of accomplishing drilling and
20 production of oil and gas as may be found to be necessary to
21 avoid permanent impairment of the environment or to mitigate
22 long-term impacts so that the environment and renewable
23 resources of the ecosystem may be returned to either
24 conditions similar to those existing before drilling or
25 production occurs or conditions that reflect a natural

1 progression of environmental change;

2 (iii) the process that will be employed by the board of
3 oil and gas conservation to evaluate such environmental
4 impacts of individual drilling proposals as may be found to
5 exist;

6 (iv) an appropriate method for incorporating such
7 environmental review as may be found to be necessary into
8 the board's rules and drill permitting process and for
9 accomplishing the review in an expedient manner;

10 (v) the maximum time periods that will be required to
11 complete the drill permitting process, including any
12 environmental review; and

13 (vi) a record of information and analysis for the board
14 of oil and gas conservation to rely upon in responding to
15 public and private concerns about drilling and production.

16 (c) The governor shall direct and have management
17 responsibility for the preparation of the programmatic
18 statement, including responsibility on behalf of the board
19 of oil and gas conservation for the disbursement and
20 expenditure of funds necessary to complete the statement.
21 The facilities and personnel of appropriate state agencies
22 must be used to the extent the governor deems necessary to
23 complete the statement. The governor shall forward the
24 completed draft programmatic statement to the board of oil
25 and gas conservation for hearing pursuant to the provisions

1 of the Montana Administrative Procedure Act, Title 2,
2 chapter 4. Following completion of a final programmatic
3 statement, the governor shall forward the statement to the
4 board for adoption and use in the issuance of permits to
5 drill for oil and gas.

6 (4) Agencies of the state are exempt from the
7 provisions of parts 1 through 3 of this chapter when
8 undertaking actions that involve the issuance of a lease,
9 permit, license, easement, certificate, or other approval,
10 entitlement for use, or permission to act, except that an
11 agency may, in its discretion, on a case-by-case basis, find
12 that an action or a combination of actions constitutes a
13 major action significantly affecting the quality of the
14 human environment as specified in subsection (1)(b)(iii).
15 In order to make this finding, the agency shall issue a
16 declaratory ruling under Title 2, chapter 4, part 5, of the
17 Montana Administrative Procedure Act. If an agency makes
18 this finding, parts 1 through 3 of this chapter are
19 applicable to the action or combination of actions."

20 **Section 2.** Section 2-4-501, MCA, is amended to read:

21 "2-4-501. Declaratory rulings by agencies. (1) Each
22 agency shall provide by rule for the filing and prompt
23 disposition of petitions for declaratory rulings as to the
24 applicability of any statutory provision or of any rule or
25 order of the agency.

LC 1167/01

1 (2) To make a finding under 75-1-201(4), an agency
2 shall issue a declaratory ruling.

3 (3) A copy of a declaratory ruling must be filed with
4 the secretary of state for publication in the register. A
5 declaratory ruling or, in the case of subsection (1), the
6 refusal to issue such a ruling ~~shall--be~~ is subject to
7 judicial review in the same manner as decisions or orders in
8 contested cases."

-End-

1 *Senate* BILL NO. *327*
 2 INTRODUCED BY *Heston* *Truett* *Super* *Colb*
 3 *Charles R. Heston* *Hofman*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN
 5 ACTIONS BY AGENCIES OF STATE GOVERNMENT FROM REQUIREMENTS OF
 6 THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING AGENCIES TO
 7 FIND ON A CASE-BY-CASE BASIS THAT AN EXEMPTED ACTION OR
 8 COMBINATION OF ACTIONS IS A MAJOR ACTION SIGNIFICANTLY
 9 AFFECTING THE QUALITY OF THE HUMAN ENVIRONMENT; REQUIRING
 10 AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING
 11 PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND
 12 AMENDING SECTIONS 2-4-501 AND 75-1-201, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

22 (b) all agencies of the state, except as provided in
 23 subsection subsections (2) and (4), shall:

24 (i) utilize a systematic, interdisciplinary approach
 25 which will insure the integrated use of the natural and

1 social sciences and the environmental design arts in
 2 planning and in decisionmaking which may have an impact on
 3 man's environment;

4 (ii) identify and develop methods and procedures which
 5 will insure that presently unquantified environmental
 6 amenities and values may be given appropriate consideration
 7 in decisionmaking along with economic and technical
 8 considerations;

9 (iii) include in every recommendation or report on
 10 proposals for projects, programs, legislation, and other
 11 major actions of state government significantly affecting
 12 the quality of the human environment, a detailed statement
 13 on:

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

15 (B) any adverse environmental effects which cannot be
 16 avoided should the proposal be implemented;

17 (C) alternatives to the proposed action;

18 (D) the relationship between local short-term uses of
 19 man's environment and the maintenance and enhancement of
 20 long-term productivity; and

21 (E) any irreversible and irretrievable commitments of
 22 resources which would be involved in the proposed action
 23 should it be implemented;

24 (iv) study, develop, and describe appropriate
 25 alternatives to recommend courses of action in any proposal

1 which involves unresolved conflicts concerning alternative
2 uses of available resources;

3 (v) recognize the national and long-range character of
4 environmental problems and, where consistent with the
5 policies of the state, lend appropriate support to
6 initiatives, resolutions, and programs designed to maximize
7 national cooperation in anticipating and preventing a
8 decline in the quality of mankind's world environment;

9 (vi) make available to counties, municipalities,
10 institutions, and individuals advice and information useful
11 in restoring, maintaining, and enhancing the quality of the
12 environment;

13 (vii) initiate and utilize ecological information in
14 the planning and development of resource-oriented projects;
15 and

16 (viii) assist the environmental quality council
17 established by 5-16-101; and

18 (c) prior to making any detailed statement as provided
19 in subsection (1)(b)(iii), the responsible state official
20 shall consult with and obtain the comments of any state
21 agency which has jurisdiction by law or special expertise
22 with respect to any environmental impact involved. Copies of
23 such statement and the comments and views of the appropriate
24 state, federal, and local agencies which are authorized to
25 develop and enforce environmental standards shall be made

1 available to the governor, the environmental quality
2 council, and the public and shall accompany the proposal
3 through the existing agency review processes.

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

8 (3) (a) Until the board of oil and gas conservation
9 adopts a programmatic environmental statement, but no later
10 than June 30, 1989, the issuance of a permit to drill a well
11 for oil or gas is not a major action of state government as
12 that term is used in subsection (1)(b)(iii).

13 (b) The board of oil and gas conservation shall adopt
14 a programmatic statement by June 30, 1989, that must include
15 but not be limited to:

16 (i) such environmental impacts as may be found to be
17 associated with the drilling for and production of oil and
18 gas in the major producing basins and ecosystems in Montana;

19 (ii) such methods of accomplishing drilling and
20 production of oil and gas as may be found to be necessary to
21 avoid permanent impairment of the environment or to mitigate
22 long-term impacts so that the environment and renewable
23 resources of the ecosystem may be returned to either
24 conditions similar to those existing before drilling or
25 production occurs or conditions that reflect a natural

progression of environmental change;

(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;

(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;

(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and

(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.

(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions

of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.

(4) Agencies of the state are exempt from the provisions of parts 1 through 3 of this chapter when undertaking actions that involve the issuance of a lease, permit, license, easement, certificate, or other approval, entitlement for use, or permission to act, except that an agency may, in its discretion, on a case-by-case basis, find that an action or a combination of actions constitutes a major action significantly affecting the quality of the human environment as specified in subsection (1)(b)(iii). In order to make this finding, the agency shall issue a declaratory ruling under Title 2, chapter 4, part 5, of the Montana Administrative Procedure Act. If an agency makes this finding, parts 1 through 3 of this chapter are applicable to the action or combination of actions."

Section 2. Section 2-4-501, MCA, is amended to read:

"2-4-501. Declaratory rulings by agencies. (1) Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency.

LC 1167/01

1 (2) To make a finding under 75-1-201(4), an agency
2 shall issue a declaratory ruling.

3 (3) A copy of a declaratory ruling must be filed with
4 the secretary of state for publication in the register. A
5 declaratory ruling or, in the case of subsection (1), the
6 refusal to issue such a ruling shall--be is subject to
7 judicial review in the same manner as decisions or orders in
8 contested cases."

-End-