

SENATE BILL NO. 72

INTRODUCED BY DEVLIN, TUNBY, REHBEIN, NATHE, L. NELSON,
J. JOHNSON, WEEDING, BRUSKI-MAUS, TVEIT

IN THE SENATE

JANUARY 2, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
JANUARY 4, 1993	FIRST READING.
JANUARY 5, 1993	SPONSORS ADDED.
JANUARY 6, 1993	SPONSORS ADDED.
FEBRUARY 6, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 8, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 9, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 29, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1993	SECOND READING, CONCURRED IN.
MARCH 31, 1993	ON MOTION, PREVIOUS ACTION RECONSIDERED.
	RULES SUSPENDED TO ALLOW THIRD READING SAME DAY.
APRIL 1, 1993	SECOND READING, CONCURRED IN AS

AMENDED.

THIRD READING, CONCURRED IN.
AYES, 89; NOES, 8.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1993

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 6, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 7, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 15, 1993

CONFERENCE COMMITTEE REPORTED.

IN THE HOUSE

APRIL 15, 1993

CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 16, 1993

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 17, 1993

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 22, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 72
INTRODUCED BY DEVLIN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE ATMOSPHERIC WATER WEATHER MODIFICATION LAW BY INCLUDING IN THE APPLICATION REVIEW PROCESS REQUIREMENTS FOR CERTAIN ENVIRONMENTAL INFORMATION AND A PUBLIC MEETING; REVISING THE PERMIT ISSUANCE PROCESS TO INCLUDE PAYMENT OF COSTS, CRITERIA FOR DETERMINING WHAT CONSTITUTES THE GENERAL WELFARE AND THE PUBLIC GOOD, PUBLIC HEARING PROCEDURES, AND A PUBLIC VOTE IN AFFECTED COUNTIES; AMENDING SECTIONS 85-3-202 AND 85-3-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 85-3-202, MCA, is amended to read:

"85-3-202. Department to review applications. (1) The department shall review all applications for weather modification activities; ~~and the~~. The department shall prepare a report and submit it to the board with an environmental impact statement prepared pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the

area affected by the proposed weather modification activity.
The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.

(2) The board may provide by rule for exempting from the license and permit requirements of this chapter:

(1)(a) research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

(2)(b) laboratory research and experiments;

(3)(c) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4)(d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 2. Section 85-3-206, MCA, is amended to read:

"85-3-206. Permits -- requirements and hearing -- public vote. (1) The permits ~~shall~~ must be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this chapter; ~~only if.~~

(2) Within 30 days after submission of the department's report required under 85-3-202, the board shall hold a hearing under Title 2, chapter 4, part 6, to determine

whether to grant, conditionally grant, or deny the application for a permit. The board may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;
 (b) sufficient notice of intention ~~is~~ has been published;

(c) an applicant ~~furnishes~~ has furnished proof of financial responsibility in an amount to be determined by the board as required in 85-3-211;

(d) the fee for the permit ~~is~~ has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted ~~are~~ have been determined by the board to be for the general welfare and the public good. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health,

safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

~~{2}(3) If the board determines that a hearing is necessary, the department shall hold a public hearing in the area to be affected by the issuance of the permit. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing. The board may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If no hearing is held, the board may grant or conditionally grant a permit based on the information contained in the application and the department's report, provided the conditions of subsection (4) are met.~~

(4) If the board decides to grant or conditionally grant a permit, the decision and all relevant information used by the board in making the decision must be submitted, in the form of a ballot measure, to the registered electors of each county over which weather modification activities will occur under the permit. A vote on whether to accept or reject the board's decision must be held in each affected county within 30 days after the board's decision. A permit may not be issued by the board unless the board's decision

1 is approved by a majority vote of all electors who vote on
2 the question.

3 (5) Costs incurred by the board in holding a hearing
4 under subsection (2), as well as costs associated with the
5 balloting required under subsection (4), must be paid by the
6 applicant."

7 NEW SECTION. Section 3. Effective date --
8 applicability. [This act] is effective on passage and
9 approval and applies to any application for a weather
10 modification permit submitted to the department of natural
11 resources and conservation or board of natural resources and
12 conservation after [the effective date of this act] for
13 weather modification activities to be conducted in 1993 and
14 to all applications submitted for weather modification
15 activities to be conducted in 1994 and thereafter.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0072, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill will amend the weather modification and control statutes in Montana to require an environmental impact statement for all permit applications, require payment of all costs associated with administrative processing of applications, require public meetings and hearings for all applications, and submit Board of Natural Resources and Conservation approvals of applications to a local vote within counties affected by the weather modification activities.

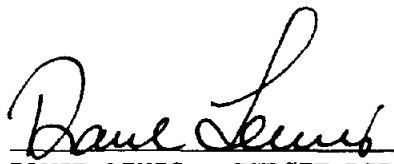
ASSUMPTIONS:

1. Administrative processing requirements for weather modification activities will increase.
2. No general fund for weather modification administration is currently provided.
3. Fees and expenses for administration are collected and deposited in a state special revenue account.
4. EIS fees are collected from applicant and are immediately allocated to reimburse agency for analyses costs.
5. Costs associated with application processing will be borne by the weather modification permit applicants.
6. Minimal or no local influx of weather modification money into local economies has recently occurred.
7. Local elections are a county responsibility which cost \$12,500 per county.
8. Election fees are collected from the applicant and deposited in a county earmarked account.
9. A minimum of two counties will vote on any application.

FISCAL IMPACT: The applicant's expense to pursue Board of Natural Resources and Conservation action is expected to increase since the cost of completing an environmental impact statement is mandated by the application process. Holding an election in the counties affected by the proposed weather modification activities is an additional application cost.

Expenditures: Expenditures are unknown, but any expenditures which may occur will be reimbursed to the agency by the applicant.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Local elections will be required which will necessitate the hiring of persons to conduct the elections. Some local consultants may be contracted to perform environmental analyses and to draft an environmental impact statement for the applications. These local costs would be reimbursed by the applicant.

 1-9-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 93
GERRY DEVLIN, PRIMARY SPONSOR DATE

Fiscal Note for SB0072, as introduced

SB 72

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 72
INTRODUCED BY DEVLIN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE ATMOSPHERIC WATER WEATHER MODIFICATION LAW BY INCLUDING IN THE APPLICATION REVIEW PROCESS REQUIREMENTS FOR CERTAIN ENVIRONMENTAL INFORMATION AND A PUBLIC MEETING; REVISING THE PERMIT ISSUANCE PROCESS TO INCLUDE PAYMENT OF COSTS, CRITERIA FOR DETERMINING WHAT CONSTITUTES THE GENERAL WELFARE AND THE PUBLIC GOOD, AND PUBLIC HEARING PROCEDURES, AND A PUBLIC VOTE IN AFFECTED COUNTIES; PROVIDING FOR LEGISLATIVE APPROVAL OF PERMITS FOR WEATHER MODIFICATION ACTIVITIES IN MONTANA IF THE PRIMARY BENEFIT OF THE ACTIVITY IS OUTSIDE MONTANA; AMENDING SECTIONS 85-3-202 AND 85-3-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 85-3-202, MCA, is amended to read:

"85-3-202. Department to review applications. (1) The department shall review all applications for weather modification activities, and the department shall prepare a report and submit it to the board with an environmental impact statement prepared pursuant to Title 75, chapter 1, part 2. The report must contain information

relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.

(2) The board may provide by rule for exempting from the license and permit requirements of this chapter:

(a) research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

(b) laboratory research and experiments;

(c) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 2. Section 85-3-206, MCA, is amended to read:

"85-3-206. Permits -- requirements and hearing -- public vote. (1) The permits shall must be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this chapter, only if:

(2) Within 30 days after submission of the department's report required under 85-3-202, the board shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or deny the application for a permit. The board may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention ~~is~~ has been published;

(c) an applicant ~~furnishes~~ has furnished proof of financial responsibility in an amount to be determined by the board as required in 85-3-211;

(d) the fee for the permit ~~is~~ has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted ~~are~~ have been determined by the board to be for the general welfare and the public good. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance

scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

~~(2)(3) if the board determines that a hearing is necessary, the department shall hold a public hearing in the area to be affected by the issuance of the permit. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing. The board may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If no hearing is held, the board may grant or conditionally grant a permit based on the information contained in the application and the department's report, provided the conditions of subsection (4) are met.~~

~~(4) if the board decides to grant or conditionally grant a permit, the decision and all relevant information used by the board in making the decision must be submitted in the form of a ballot measure to the registered electors of each county over which weather modification activities will occur under the permit. A vote on whether to accept or~~

~~reject the board's decision must be held in each affected county within 30 days after the board's decision. A permit may not be issued by the board unless the board's decision is approved by a majority vote of all electors who vote on the question.~~

~~(5)(4) Costs incurred by the board in holding a hearing under subsection (2), as well as costs associated with the balloting required under subsection (4), must be paid by the applicant.~~

~~NEW SECTION. Section 3. Effective ----- date ----- applicability. {This act} is effective on passage and approval and applies to any application for a weather modification permit submitted to the department of natural resources and conservation or board of natural resources and conservation after {the effective date of this act} for weather modification activities to be conducted in 1993 and to all applications submitted for weather modification activities to be conducted in 1994 and thereafter.~~

NEW SECTION. **SECTION 3. LEGISLATIVE APPROVAL.** THE BOARD MAY NOT ISSUE A PERMIT FOR A PROPOSED WEATHER MODIFICATION ACTIVITY IN MONTANA IF THE PRIMARY BENEFIT OF THE WEATHER MODIFICATION ACTIVITY IS OUTSIDE MONTANA UNTIL THE DEPARTMENT PETITIONS THE NEXT REGULAR SESSION OF THE LEGISLATURE AND THE LEGISLATURE AFFIRMS THE DECISION OF THE BOARD TO GRANT THE PERMIT.

NEW SECTION. **SECTION 4. CODIFICATION** INSTRUCTION. [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 85, CHAPTER 2, PART 3, AND THE PROVISIONS OF TITLE 85, CHAPTER 2, PART 3, APPLY TO [SECTION 3].

NEW SECTION. **SECTION 5. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **SECTION 6. RETROACTIVE APPLICABILITY.** [THIS ACT] APPLIES RETROACTIVELY WITHIN THE MEANING OF 1-2-109, TO APPLICATIONS CURRENTLY PENDING WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT] AND TO APPLICATIONS CURRENTLY PENDING WITH THE DEPARTMENT FOR WHICH A COMMITMENT TO A FUNDING AGREEMENT EXISTS FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT.

NEW SECTION. **SECTION 7. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

SENATE BILL NO. 72
INTRODUCED BY DEVLIN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE ATMOSPHERIC WATER WEATHER MODIFICATION LAW BY INCLUDING IN THE APPLICATION REVIEW PROCESS REQUIREMENTS FOR CERTAIN ENVIRONMENTAL INFORMATION AND A PUBLIC MEETING; REVISING THE PERMIT ISSUANCE PROCESS TO INCLUDE PAYMENT OF COSTS, CRITERIA FOR DETERMINING WHAT CONSTITUTES THE GENERAL WELFARE AND THE PUBLIC GOOD, AND PUBLIC HEARING PROCEDURES, AND A PUBLIC VOTE IN AFFECTED COUNTIES; PROVIDING FOR LEGISLATIVE APPROVAL OF PERMITS FOR WEATHER MODIFICATION ACTIVITIES IN MONTANA IF THE PRIMARY BENEFIT OF THE ACTIVITY IS OUTSIDE MONTANA; AMENDING SECTIONS 85-3-202 AND 85-3-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 85-3-202, MCA, is amended to read:

"85-3-202. Department to review applications. (1) The department shall review all applications for weather modification activities, and the department shall prepare a report and submit it to the board with an environmental impact statement prepared pursuant to Title 75, chapter 1, part 2. The report must contain information

relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.

(2) The board may provide by rule for exempting from the license and permit requirements of this chapter:

(a) research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

(b) laboratory research and experiments;

(c) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 2. Section 85-3-206, MCA, is amended to read:

"85-3-206. Permits -- requirements and hearing -- public vote. (1) The permits shall must be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this chapter, only if:

(2) Within 30 days after submission of the department's report required under 85-3-202, the board shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or deny the application for a permit. The board may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention is has been published;

(c) an applicant furnishes has furnished proof of financial responsibility in an amount to be determined by the board as required in 85-3-211;

(d) the fee for the permit is has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted are have been determined by the board to be for the general welfare and the public good. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance

scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

~~{2}{3} If the board determines that a hearing is necessary, the department shall hold a public hearing in the area to be affected by the issuance of the permit. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing. The board may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If no hearing is held, the board may grant or conditionally grant a permit based on the information contained in the application and the department's report, provided the conditions of subsection {4} are met.~~

~~{4} If the board decides to grant or conditionally grant a permit, the decision and all relevant information used by the board in making the decision must be submitted, in the form of a ballot measure, to the registered electors of each county over which weather modification activities will occur under the permit. A vote on whether to accept or~~

1 reject-the-board's-decision-must-be-held--in--each--affected
 2 county--within--30-days-after-the-board's-decision. A permit
 3 may-not-be-issued-by-the-board-unless-the--board's--decision
 4 is--approved--by-a-majority-vote-of-all-electors-who-vote-on
 5 the-question.

6 {5}(4) Costs incurred by the board in holding a hearing
 7 under subsection (2), as well as costs associated with the
 8 balloting required under subsection {4} must be paid by the
 9 applicant."

10 NEW SECTION. Section 3. Effective-----date-----
 11 applicability. {This act} is effective on passage and
 12 approval and applies to any application for a weather
 13 modification permit submitted to the department of natural
 14 resources and conservation or board of natural resources and
 15 conservation after {the effective date of this act} for
 16 weather modification activities to be conducted in 1993 and
 17 to all applications submitted for weather modification
 18 activities to be conducted in 1994 and thereafter.

19 NEW SECTION. SECTION 3. LEGISLATIVE APPROVAL. THE
 20 BOARD MAY NOT ISSUE A PERMIT FOR A PROPOSED WEATHER
 21 MODIFICATION ACTIVITY IN MONTANA IF THE PRIMARY BENEFIT OF
 22 THE WEATHER MODIFICATION ACTIVITY IS OUTSIDE MONTANA UNTIL
 23 THE DEPARTMENT PETITIONS THE NEXT REGULAR SESSION OF THE
 24 LEGISLATURE AND THE LEGISLATURE AFFIRMS THE DECISION OF THE
 25 BOARD TO GRANT THE PERMIT.

1 NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION.
 2 {SECTION 3} IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
 3 OF TITLE 85, CHAPTER 2, PART 3, AND THE PROVISIONS OF TITLE
 4 85, CHAPTER 2, PART 3, APPLY TO {SECTION 3}.

5 NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF
 6 {THIS ACT} IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
 7 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF {THIS
 8 ACT} IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
 9 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
 10 SEVERABLE FROM THE INVALID APPLICATIONS.

11 NEW SECTION. SECTION 6. RETROACTIVE APPLICABILITY.
 12 {THIS ACT} APPLIES RETROACTIVELY WITHIN THE MEANING OF
 13 1-2-109, TO APPLICATIONS CURRENTLY PENDING WITH THE
 14 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON OR AFTER
 15 {THE EFFECTIVE DATE OF THIS ACT} AND TO APPLICATIONS
 16 CURRENTLY PENDING WITH THE DEPARTMENT FOR WHICH A COMMITMENT
 17 TO A FUNDING AGREEMENT EXISTS FOR THE PREPARATION OF AN
 18 ENVIRONMENTAL IMPACT STATEMENT.

19 NEW SECTION. SECTION 7. EFFECTIVE DATE. {THIS ACT} IS
 20 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 72 (third reading copy -- blue) be concurred in as amended .

Signed: 
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Gilbert

1. Title, lines 11 through 14.

Following: " ; " on line 11

Strike: "PROVIDING" on line 11 through "MONTANA" on line 14

Insert: "REQUIRING A PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT
FOR THE WEATHER MODIFICATION PROGRAM"

2. Page 5, lines 19 through 25.

Strike: section 3 in its entirety

Insert: "NEW SECTION. Section 3. Programmatic environmental impact statement. The board may not issue a permit under 85-3-206 until the department has prepared a programmatic environmental impact statement on activities under Title 85, chapter 3, as provided for under 75-1-201 and rules adopted pursuant to 75-1-201. The programmatic environmental impact statement must be completed by November 1, 1994."

Committee Vote:
Yes 16, No ____.

HOUSE
SB 72

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 72
Representative Gilbert

1

March 31, 1993 2:58 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 72 (third reading copy
-- blue).

Signed: Bob Gilbert
Representative Gilbert

And, that such amendments to Senate Bill 72 read as follows:

1. Page 6, line 3.

Strike: "2"

Insert: "3"

Strike: "PART 3,"

2. Page 6, line 4.

Strike: "2"

Insert: "3"

Strike: "PART 3,"

-END-

ADOPT

REJECT

HOUSE

sb 72.1

721458CW.Hpf

SENATE BILL NO. 72

INTRODUCED BY DEVLIN, TUNBY, REHBEIN, NATHE, L. NELSON,
J. JOHNSON, WEEDING, BRUSKI-MAUS, TVEIT

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE
ATMOSPHERIC WATER WEATHER MODIFICATION LAW BY INCLUDING IN
THE APPLICATION REVIEW PROCESS REQUIREMENTS FOR CERTAIN
ENVIRONMENTAL INFORMATION AND A PUBLIC MEETING; REVISING THE
PERMIT ISSUANCE PROCESS TO INCLUDE PAYMENT OF COSTS,
CRITERIA FOR DETERMINING WHAT CONSTITUTES THE GENERAL
WELFARE AND THE PUBLIC GOOD, AND PUBLIC HEARING PROCEDURES;
~~AND A--PUBLIC--VOTE--IN--AFFECTED--COUNTIES; PROVIDING--FOR~~
~~LEGISLATIVE--APPROVAL--OF--PERMITS--FOR--WEATHER--MODIFICATION~~
~~ACTIVITIES--IN--MONTANA--IF--THE--PRIMARY--BENEFIT--OF--THE--ACTIVITY~~
~~IS--OUTSIDE--MONTANA~~ REQUIRING A PROGRAMMATIC ENVIRONMENTAL
IMPACT STATEMENT FOR THE WEATHER MODIFICATION PROGRAM;
AMENDING SECTIONS 85-3-202 AND 85-3-206, MCA; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE AND AN A RETROACTIVE
APPLICABILITY DATE."

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

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department shall review all applications for weather
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prepare a report and submit it to the board with an
environmental impact statement prepared pursuant to Title
75, chapter 1, part 2. The report must contain information
relative to all of the criteria applicable to issuance of a
permit in 85-3-206. Prior to preparing the report, the
department shall conduct at least one public meeting in the
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The department's actual costs of conducting the public
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(2) The board may provide by rule for exempting from
the license and permit requirements of this chapter:

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and federal agencies, institutions of higher learning, and
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~~(2)~~(b) laboratory research and experiments;

~~(3)~~(c) activities of an emergency character for
protection against fire, frost, sleet, or fog; and

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(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

~~{2}(3) If the board determines that a hearing is necessary, the department shall hold a public hearing in the area to be affected by the issuance of the permit. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing. The board may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If no hearing is held, the board may grant or conditionally grant a permit based on the information contained in the application and the department's report, provided the conditions of subsection {4} are met.~~

~~{4} If the board decides to grant or conditionally grant a permit, the decision and all relevant information used by the board in making the decision must be submitted,~~

in the form of a ballot measure to the registered electors of each county over which weather modification activities will occur under the permit. A vote on whether to accept or reject the board's decision must be held in each affected county within 30 days after the board's decision. A permit may not be issued by the board unless the board's decision is approved by a majority vote of all electors who vote on the question.

{5}(4) Costs incurred by the board in holding a hearing under subsection (2), as well as costs associated with the balloting required under subsection {4}, must be paid by the applicant."

NEW SECTION. Section 3. Effective date and applicability. {This act} is effective on passage and approval and applies to any application for a weather modification permit submitted to the department of natural resources and conservation or board of natural resources and conservation after {the effective date of this act} for weather modification activities to be conducted in 1993 and to all applications submitted for weather modification activities to be conducted in 1994 and thereafter.

NEW SECTION. SECTION 3. LEGISLATIVE APPROVAL. THE BOARD MAY NOT ISSUE A PERMIT FOR A PROPOSED WEATHER MODIFICATION ACTIVITY IN MONTANA IF THE PRIMARY BENEFIT OF THE WEATHER MODIFICATION ACTIVITY IS OUTSIDE MONTANA UNTIL

THE DEPARTMENT PETITIONS THE NEXT REGULAR SESSION OF THE LEGISLATURE AND THE LEGISLATURE AFFIRMS THE DECISION OF THE BOARD TO GRANT THE PERMIT.

NEW SECTION. SECTION 3. PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT. THE BOARD MAY NOT ISSUE A PERMIT UNDER 85-3-206 UNTIL THE DEPARTMENT HAS PREPARED A PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT ON ACTIVITIES UNDER TITLE 85, CHAPTER 3, AS PROVIDED FOR UNDER 75-1-201 AND RULES ADOPTED PURSUANT TO 75-1-201. THE PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT MUST BE COMPLETED BY NOVEMBER 1, 1994.

NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 85, CHAPTER 2, PART 3, AND THE PROVISIONS OF TITLE 85, CHAPTER 2, PART 3, APPLY TO [SECTION 3].

NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. SECTION 6. RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY WITHIN THE MEANING OF 1-2-109, TO APPLICATIONS CURRENTLY PENDING WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT] AND TO APPLICATIONS

SB 0072/03

1 CURRENTLY PENDING WITH THE DEPARTMENT FOR WHICH A COMMITMENT
2 TO A FUNDING AGREEMENT EXISTS FOR THE PREPARATION OF AN
3 ENVIRONMENTAL IMPACT STATEMENT.

4 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS
5 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

SENATE BILL NO. 72

INTRODUCED BY DEVLIN, TUNBY, REHBEIN, NATHE, L. NELSON,
J. JOHNSON, WEEDING, BRUSKI-MAUS, TVEIT

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE
ATMOSPHERIC WATER WEATHER MODIFICATION LAW BY INCLUDING IN
THE APPLICATION REVIEW PROCESS REQUIREMENTS FOR CERTAIN
ENVIRONMENTAL INFORMATION AND A PUBLIC MEETING; REVISING THE
PERMIT ISSUANCE PROCESS TO INCLUDE PAYMENT OF COSTS,
CRITERIA FOR DETERMINING WHAT CONSTITUTES THE GENERAL
WELFARE AND THE PUBLIC GOOD, AND PUBLIC HEARING PROCEDURES;
~~AND A PUBLIC VOTE IN AFFECTED COUNTIES; PROVIDING FOR~~
~~LEGISLATIVE APPROVAL OF PERMITS FOR WEATHER MODIFICATION~~
~~ACTIVITIES IN MONTANA IF THE PRIMARY BENEFIT OF THE ACTIVITY~~
~~IS OUTSIDE MONTANA~~ REQUIRING A PROGRAMMATIC ENVIRONMENTAL
IMPACT STATEMENT FOR THE WEATHER MODIFICATION PROGRAM;
AMENDING SECTIONS 85-3-202 AND 85-3-206, MCA; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE AND AN A RETROACTIVE
APPLICABILITY DATE."

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

Section 1. Section 85-3-202, MCA, is amended to read:

"85-3-202. Department to review applications. (1) The
department shall review all applications for weather
modification activities, ~~and the~~. The department shall

prepare a report and submit it to the board with an
environmental impact statement prepared pursuant to Title
75, chapter 1, part 2. The report must contain information
relative to all of the criteria applicable to issuance of a
permit in 85-3-206. Prior to preparing the report, the
department shall conduct at least one public meeting in the
area affected by the proposed weather modification activity.
The department's actual costs of conducting the public
meeting, preparing the report, and preparing the
environmental impact statement must be paid by the
applicant.

(2) The board may provide by rule for exempting from
the license and permit requirements of this chapter:

~~††~~(a) research, development, and experiments by state
and federal agencies, institutions of higher learning, and
bona fide nonprofit research organizations and their agents;

~~†2~~(b) laboratory research and experiments;

~~†3~~(c) activities of an emergency character for
protection against fire, frost, sleet, or fog; and

~~†4~~(d) activities normally engaged in for purposes
other than those of inducing, increasing, decreasing, or
preventing precipitation or hail."

Section 2. Section 85-3-206, MCA, is amended to read:

"85-3-206. Permits -- requirements and hearing --
~~public vote.~~ (1) The permits shall must be issued in

1 accordance with procedures and subject to conditions the
2 board may by rule establish to effectuate this chapter, ~~only~~
3 ~~if:~~.

4 (2) Within 30 days after submission of the department's
5 report required under 85-3-202, the board shall hold a
6 hearing under Title 2, chapter 4, part 6, to determine
7 whether to grant, conditionally grant, or deny the
8 application for a permit. The board may not grant or
9 conditionally grant an application unless all requirements
10 of this section are satisfied and the applicant establishes
11 by a preponderance of the evidence that the following
12 criteria have been met:

13 (a) the applicant is licensed pursuant to this chapter;

14 (b) sufficient notice of intention ~~is~~ has been
15 published;

16 (c) an applicant ~~furnishes~~ has furnished proof of
17 financial responsibility in an amount to be determined by
18 the board as required in 85-3-211;

19 (d) the fee for the permit ~~is~~ has been paid as required
20 in 85-3-212 and the department's costs incurred under
21 85-3-202 have been paid;

22 (e) the weather modification and control activities to
23 be conducted are have been determined by the board to be for
24 the general welfare and the public good. That determination
25 must be based on a finding of whether the operation:

1 (i) is reasonably conceived to improve water quantity
2 or quality, reduce loss from weather hazards, provide
3 economic benefits for the people of Montana, or advance
4 scientific knowledge;

5 (ii) is designed to include adequate safeguards to
6 minimize or avoid possible damage to the public health,
7 safety, and welfare and to the environment; and

8 (iii) will adversely affect another operation for which
9 a permit has been issued.

10 ~~(2)(3) If the board determines that a hearing is~~
11 ~~necessary, the department shall hold a public hearing in the~~
12 ~~area to be affected by the issuance of the permit. The~~
13 ~~department may in its discretion assess the permit applicant~~
14 ~~for the costs incurred by the department in holding the~~
15 ~~hearing. The board may determine not to hold a public~~
16 ~~hearing only if after giving notice of a hearing, no person~~
17 ~~files a notice of intent to appear at the hearing to contest~~
18 ~~the issuance of a permit. If no hearing is held, the board~~
19 ~~may grant or conditionally grant a permit based on the~~
20 ~~information contained in the application and the~~
21 ~~department's report, provided the conditions of subsection~~
22 ~~(4) are met.~~

23 ~~(4) If the board decides to grant or conditionally~~
24 ~~grant a permit, the decision and all relevant information~~
25 ~~used by the board in making the decision must be submitted,~~

1 ~~in-the-form-of-a-ballot-measure-to-the-registered-electors~~
 2 ~~of-each-county-over-which-weather-modification-activities~~
 3 ~~will-occur-under-the-permit-A-vote-on-whether-to-accept-or~~
 4 ~~reject-the-board's-decision-must-be-held-in-each-affected~~
 5 ~~county-within-30-days-after-the-board's-decision-A-permit~~
 6 ~~may-not-be-issued-by-the-board-unless-the-board's-decision~~
 7 ~~is-approved-by-a-majority-vote-of-all-electors-who-vote-on~~
 8 ~~the-question-~~

9 ~~{5}(4) Costs incurred by the board in holding a hearing~~
 10 ~~under subsection (2)-as-well-as-costs-associated-with-the~~
 11 ~~balloting-required-under-subsection-(4)-must be paid by the~~
 12 ~~applicant."~~

13 ~~NEW-SECTION--Section-3--Effective-----date-----~~
 14 ~~applicability--{This-act}-is-effective-on-passage-and~~
 15 ~~approval-and-applies-to-any-application-for-a-weather~~
 16 ~~modification-permit-submitted-to-the-department-of-natural~~
 17 ~~resources-and-conservation-or-board-of-natural-resources-and~~
 18 ~~conservation-after-{the-effective-date-of-this-act}-for~~
 19 ~~weather-modification-activities-to-be-conducted-in-1993-and~~
 20 ~~to-all-applications-submitted-for-weather-modification~~
 21 ~~activities-to-be-conducted-in-1994-and-thereafter-~~

22 ~~NEW-SECTION--SECTION-3--LEGISLATIVE---APPROVAL---THE-~~
 23 ~~BOARD-MAY-NOT-ISSUE-A-PERMIT-FOR-A-PROPOSED-WEATHER~~
 24 ~~MODIFICATION-ACTIVITY-IN-MONTANA-IF-THE-PRIMARY-BENEFIT-OF~~
 25 ~~THE-WEATHER-MODIFICATION-ACTIVITY-IS-OUTSIDE-MONTANA-UNTIL~~

1 ~~THE-DEPARTMENT-PETITIONS-THE-NEXT-REGULAR-SESSION-OF-THE~~
 2 ~~LEGISLATURE-AND-THE-LEGISLATURE-APPROVES-THE-DECISION-OF-THE~~
 3 ~~BOARD-TO-GRANT-THE-PERMIT-~~

4 NEW SECTION. SECTION 3. PROGRAMMATIC ENVIRONMENTAL
 5 IMPACT STATEMENT. THE BOARD MAY NOT ISSUE A PERMIT UNDER
 6 85-3-206 UNTIL THE DEPARTMENT HAS PREPARED A PROGRAMMATIC
 7 ENVIRONMENTAL IMPACT STATEMENT ON ACTIVITIES UNDER TITLE 85,
 8 CHAPTER 3, AS PROVIDED FOR UNDER 75-1-201 AND RULES ADOPTED
 9 PURSUANT TO 75-1-201. THE PROGRAMMATIC ENVIRONMENTAL IMPACT
 10 STATEMENT MUST BE COMPLETED BY NOVEMBER 1, 1994.

11 NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION.
 12 [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
 13 OF TITLE 85, CHAPTER 2 3, PART-3, AND THE PROVISIONS OF
 14 TITLE 85, CHAPTER 2 3, PART-3, APPLY TO [SECTION 3].

15 NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF
 16 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
 17 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
 18 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
 19 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
 20 SEVERABLE FROM THE INVALID APPLICATIONS.

21 NEW SECTION. SECTION 6. RETROACTIVE APPLICABILITY.
 22 [THIS ACT] APPLIES RETROACTIVELY WITHIN THE MEANING OF
 23 1-2-109, TO APPLICATIONS CURRENTLY PENDING WITH THE
 24 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON OR AFTER
 25 [THE EFFECTIVE DATE OF THIS ACT] AND TO APPLICATIONS

SB 0072/04

1 CURRENTLY PENDING WITH THE DEPARTMENT FOR WHICH A COMMITMENT
2 TO A FUNDING AGREEMENT EXISTS FOR THE PREPARATION OF AN
3 ENVIRONMENTAL IMPACT STATEMENT.

4 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS
5 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 72, met and considered:

Amendments to Senate Bill No. 72

We recommend that Senate Bill No. 72 (reference copy - salmon) be amended as follows:

1. Title, lines 15 and 16.

Strike: "REQUIRING" on line 15 through "PROGRAM" on line 16
Insert: "PROVIDING A STATEMENT OF POLICY; SUSPENDING ACTION BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION ON APPLICATIONS FOR WEATHER MODIFICATION ACTIVITY IF THE PRIMARY BENEFIT OF THE WEATHER MODIFICATION ACTIVITY IS OUTSIDE MONTANA; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO SUBMIT TO THE LEGISLATIVE WATER POLICY COMMITTEE A REPORT ON ANY SUSPENDED APPLICATIONS"

2. Page 6, lines 4 through 14.

Strike: Sections 3 and 4 in their entirety

Insert: "NEW SECTION. Section 3. Statement of policy. The legislature, pursuant to its mandate and authority under Article IX of the Montana constitution, declares that it is the policy of the state that before further development of certain atmospheric water resources within Montana may occur, the 1995 session of the legislature must be provided with information concerning the expected environmental impacts of any anticipated weather modification activities.
NEW SECTION. Section 4. Suspension of action -- report to legislature. (1) Prior to April 30, 1995, the board may not grant an application for a proposed weather modification activity if the primary benefit of the weather modification activity is outside Montana.

(2) For any pending application or for any application filed after [the effective date of this act] for a permit to conduct weather modification activities suspended under subsection (1), the department of natural resources and conservation and the applicant shall, in consultation with the water policy committee,

ADOPT

REJECT

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comply with the requirements of 85-3-202(1). The department shall submit the report and environmental impact statement to the water policy committee. The water policy committee shall consider the report and environmental impact statement and submit a final report to the legislature. The water policy committee need not file a weather modification report to the legislature if the department does not file a report and environmental impact statement with the water policy committee prior to October 1, 1994."

Renumber: subsequent sections



And that this Conference Committee report be adopted.

For the Senate:


Sen. Weeding, Chair


Sen. Bruski-Maus


Sen. Devlin

 Amd. Coord.
 Sec. of Senate

For the House:


Rep. Gilbert, Chair


Rep. Rehbein


Rep. Nelson

SENATE BILL NO. 72

INTRODUCED BY DEVLIN, TUNBY, REHBEIN, NATHE, L. NELSON,
J. JOHNSON, WEEDING, BRUSKI-MAUS, TVEIT

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE
ATMOSPHERIC WATER WEATHER MODIFICATION LAW BY INCLUDING IN
THE APPLICATION REVIEW PROCESS REQUIREMENTS FOR CERTAIN
ENVIRONMENTAL INFORMATION AND A PUBLIC MEETING; REVISING THE
PERMIT ISSUANCE PROCESS TO INCLUDE PAYMENT OF COSTS,
CRITERIA FOR DETERMINING WHAT CONSTITUTES THE GENERAL
WELFARE AND THE PUBLIC GOOD, AND PUBLIC HEARING PROCEDURES;
AND A--PUBLIC--VOTE--IN--AFFECTED--COUNTRIES; PROVIDING--FOR
LEGISLATIVE--APPROVAL--OF--PERMITS--FOR--WEATHER-MODIFICATION
ACTIVITIES--IN--MONTANA--IF--THE--PRIMARY--BENEFIT--OF--THE--ACTIVITY
IS--OUTSIDE--MONTANA REQUIRING--A--PROGRAMMATIC--ENVIRONMENTAL
IMPACT--STATEMENT--FOR--THE--WEATHER--MODIFICATION--PROGRAM
PROVIDING A STATEMENT OF POLICY; SUSPENDING ACTION BY THE
BOARD OF NATURAL RESOURCES AND CONSERVATION ON APPLICATIONS
FOR WEATHER MODIFICATION ACTIVITY IF THE PRIMARY BENEFIT OF
THE WEATHER MODIFICATION ACTIVITY IS OUTSIDE MONTANA;
REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION TO SUBMIT TO THE LEGISLATIVE WATER POLICY
COMMITTEE A REPORT ON ANY SUSPENDED APPLICATIONS; AMENDING
SECTIONS 85-3-202 AND 85-3-206, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND AN A RETROACTIVE APPLICABILITY

DATE."

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

Section 1. Section 85-3-202, MCA, is amended to read:

"85-3-202. Department to review applications. (1) The
department shall review all applications for weather
modification activities--and--the. The department shall
prepare a report and submit it to the board with an
environmental impact statement prepared pursuant to Title
75, chapter 1, part 2. The report must contain information
relative to all of the criteria applicable to issuance of a
permit in 85-3-206. Prior to preparing the report, the
department shall conduct at least one public meeting in the
area affected by the proposed weather modification activity.
The department's actual costs of conducting the public
meeting, preparing the report, and preparing the
environmental impact statement must be paid by the
applicant.

(2) The board may provide by rule for exempting from
the license and permit requirements of this chapter:

- {1}(a) research, development, and experiments by state
and federal agencies, institutions of higher learning, and
bona fide nonprofit research organizations and their agents;
- {2}(b) laboratory research and experiments;
- {3}(c) activities of an emergency character for



protection against fire, frost, sleet, or fog; and

(4)(d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 2. Section 85-3-206, MCA, is amended to read:

"85-3-206. Permits -- requirements and hearing -- ~~public-vote~~. (1) The permits shall ~~must~~ be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this chapter; ~~only if~~."

(2) Within 30 days after submission of the department's report required under 85-3-202, the board shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or deny the application for a permit. The board may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention ~~is~~ has been published;

(c) an applicant ~~furnishes~~ has furnished proof of financial responsibility in an amount to be determined by the board as required in 85-3-211;

(d) the fee for the permit ~~is~~ has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted ~~are~~ have been determined by the board to be for the general welfare and the public good. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

(2)(3) ~~if the board determines that a hearing is necessary, the department shall hold a public hearing in the area to be affected by the issuance of the permit. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing. The board may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If no hearing is held, the board~~

may grant or conditionally grant a permit based on the information contained in the application and the department's report, provided the conditions of subsection (4) are met.

(4) If the board decides to grant or conditionally grant a permit, the decision and all relevant information used by the board in making the decision must be submitted in the form of a ballot measure to the registered electors of each county over which weather modification activities will occur under the permit. A vote on whether to accept or reject the board's decision must be held in each affected county within 30 days after the board's decision. A permit may not be issued by the board unless the board's decision is approved by a majority vote of all electors who vote on the question.

(5)(4) Costs incurred by the board in holding a hearing under subsection (2), as well as costs associated with the balloting required under subsection (4), must be paid by the applicant."

NEW SECTION. Section 3. Effective date and applicability. (This act) is effective on passage and approval and applies to any application for a weather modification permit submitted to the department of natural resources and conservation or board of natural resources and conservation after (the effective date of this act) for

weather modification activities to be conducted in 1993 and to all applications submitted for weather modification activities to be conducted in 1994 and thereafter.

NEW SECTION. SECTION 3. LEGISLATIVE APPROVAL. THE BOARD MAY NOT ISSUE A PERMIT FOR A PROPOSED WEATHER MODIFICATION ACTIVITY IN MONTANA IF THE PRIMARY BENEFIT OF THE WEATHER MODIFICATION ACTIVITY IS OUTSIDE MONTANA UNTIL THE DEPARTMENT PETITIONS THE NEXT REGULAR SESSION OF THE LEGISLATURE AND THE LEGISLATURE AFFIRMS THE DECISION OF THE BOARD TO GRANT THE PERMIT.

NEW SECTION. SECTION 3. PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT. THE BOARD MAY NOT ISSUE A PERMIT UNDER 85-3-206 UNTIL THE DEPARTMENT HAS PREPARED A PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT ON ACTIVITIES UNDER TITLE 85, CHAPTER 3, AS PROVIDED FOR UNDER 75-1-201 AND RULES ADOPTED PURSUANT TO 75-1-201. THE PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT MUST BE COMPLETED BY NOVEMBER 1, 1994.

NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. (SECTION 3) IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 85, CHAPTER 2-3, PART 3, AND THE PROVISIONS OF TITLE 85, CHAPTER 2-3, PART 3, APPLY TO (SECTION 3).

NEW SECTION. SECTION 3. STATEMENT OF POLICY. THE LEGISLATURE, PURSUANT TO ITS MANDATE AND AUTHORITY UNDER ARTICLE IX OF THE MONTANA CONSTITUTION, DECLARES THAT IT IS THE POLICY OF THE STATE THAT BEFORE FURTHER DEVELOPMENT OF

CERTAIN ATMOSPHERIC WATER RESOURCES WITHIN MONTANA MAY OCCUR, THE 1995 SESSION OF THE LEGISLATURE MUST BE PROVIDED WITH INFORMATION CONCERNING THE EXPECTED ENVIRONMENTAL IMPACTS OF ANY ANTICIPATED WEATHER MODIFICATION ACTIVITIES.

NEW SECTION. SECTION 4. SUSPENSION OF ACTION -- REPORT TO LEGISLATURE. (1) PRIOR TO APRIL 30, 1995, THE BOARD MAY NOT GRANT AN APPLICATION FOR A PROPOSED WEATHER MODIFICATION ACTIVITY IF THE PRIMARY BENEFIT OF THE WEATHER MODIFICATION ACTIVITY IS OUTSIDE MONTANA.

(2) FOR ANY PENDING APPLICATION OR FOR ANY APPLICATION FILED AFTER [THE EFFECTIVE DATE OF THIS ACT] FOR A PERMIT TO CONDUCT WEATHER MODIFICATION ACTIVITIES SUSPENDED UNDER SUBSECTION (1), THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE APPLICANT SHALL, IN CONSULTATION WITH THE WATER POLICY COMMITTEE, COMPLY WITH THE REQUIREMENTS OF 85-3-202(1). THE DEPARTMENT SHALL SUBMIT THE REPORT AND ENVIRONMENTAL IMPACT STATEMENT TO THE WATER POLICY COMMITTEE. THE WATER POLICY COMMITTEE SHALL CONSIDER THE REPORT AND ENVIRONMENTAL IMPACT STATEMENT AND SUBMIT A FINAL REPORT TO THE LEGISLATURE. THE WATER POLICY COMMITTEE NEED NOT FILE A WEATHER MODIFICATION REPORT TO THE LEGISLATURE IF THE DEPARTMENT DOES NOT FILE A REPORT AND ENVIRONMENTAL IMPACT STATEMENT WITH THE WATER POLICY COMMITTEE PRIOR TO OCTOBER 1, 1994.

NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF

[THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. SECTION 6. RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO APPLICATIONS CURRENTLY PENDING WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT] AND TO APPLICATIONS CURRENTLY PENDING WITH THE DEPARTMENT FOR WHICH A COMMITMENT TO A FUNDING AGREEMENT EXISTS FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT.

NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-