

Sen. Fland *Sliter* *Fuchs*
SENATE BILL NO. 231

INTRODUCED BY

Mason Knox GRINDER

Rose

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PURPOSE AND POLICY OF THE MONTANA ENVIRONMENTAL POLICY ACT TO INCLUDE PRIVATE PROPERTY RIGHT CONSIDERATIONS AND IMPACTS OF STATE GOVERNMENT ACTIONS; AND AMENDING SECTIONS 75-1-102, 75-1-103, AND 75-1-201, MCA."

DENNY

STATEMENT OF INTENT

It is the intent of the legislature that this legislation serve as a directive to state agencies to implement government actions in a manner that reduces regulatory restrictions placed on private property.

Whenever Montana Environmental Policy Act analysis is required, it is the intent of the legislature that any actions be analyzed to ensure that undue government regulation of private property be evaluated and that alternatives that eliminate regulation of private property be implemented when practicable.

It is not the intent of the legislature to diminish or affect in any manner a property owner's rights under nuisance or takings law. Furthermore, it is not the intent of the legislature to affect the law of eminent domain in any manner.

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

Section 1. Section 75-1-102, MCA, is amended to read:

"75-1-102. Purpose. The purpose of parts 1 through 3 is to declare a state policy which that will encourage productive and enjoyable harmony between ~~man~~ humans and his their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts which that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of ~~man~~ humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council."

Section 2. Section 75-1-103, MCA, is amended to read:

"75-1-103. Policy. (1) The legislature, recognizing the profound impact of ~~man's~~ human activity

1 on the interrelations of all components of the natural environment, particularly the profound influences of
 2 population growth, high-density urbanization, industrial expansion, resource exploitation, and new and
 3 expanding technological advances, ~~and~~ recognizing ~~further~~ the critical importance of restoring and
 4 maintaining environmental quality to the overall welfare and human development, ~~of man~~ and further
 5 recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private
 6 property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal
 7 government, ~~and~~ local governments, and other concerned public and private organizations, to use all
 8 practicable means and measures, including financial and technical assistance, in a manner calculated to
 9 foster and promote the general welfare, to create and maintain conditions under which ~~man~~ humans and
 10 nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of
 11 undue government regulation, and to fulfill the social, economic, and other requirements of present and
 12 future generations of Montanans.

13 (2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility
 14 of the state of Montana to use all practicable means consistent with other essential considerations of state
 15 policy to improve and coordinate state plans, functions, programs, and resources ~~to the end~~ so that the
 16 state may:

17 (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding
 18 generations;

19 (b) ~~assure~~ ensure for all Montanans safe, healthful, productive, and aesthetically and culturally
 20 pleasing surroundings;

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

23 (d) protect the right to use and enjoy private property free of undue government regulation;

24 ~~(d)~~ (e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain,
 25 wherever possible, an environment ~~which~~ that supports diversity and variety of individual choice;

26 ~~(d)~~ (f) achieve a balance between population and resource use ~~which~~ that will permit high standards
 27 of living and a wide sharing of life's amenities; and

28 ~~(d)~~ (g) enhance the quality of renewable ~~resources~~ and approach the maximum attainable recycling
 29 of depletable resources.

30 (3) The legislature recognizes that each person ~~shall be~~ is entitled to a healthful environment, that

1 each person is entitled to use and enjoy that person's private property free of undue government regulation,
 2 and that each person has a responsibility to contribute to the preservation and enhancement of the
 3 environment."

4

5 **Section 3.** Section 75-1-201, MCA, is amended to read:

6 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes
 7 and directs that, to the fullest extent possible:

8 (a) the policies, regulations, and laws of the state ~~shall~~ must be interpreted and administered in
 9 accordance with the policies set forth in parts 1 through 3;

10 (b) all agencies of the state, except as provided in subsection (2), shall:

11 (i) ~~utilize~~ use a systematic, interdisciplinary approach ~~which that~~ will insure ensure the integrated
 12 use of the natural and social sciences and the environmental design arts in planning and in decisionmaking
 13 ~~which that~~ may have an impact on ~~man's~~ the environment;

14 (ii) identify and develop methods and procedures ~~which that~~ will insure ensure that presently
 15 unquantified environmental amenities and values may be given appropriate consideration in decisionmaking
 16 along with economic and technical considerations;

17 (iii) identify and develop methods and procedures that will ensure that state government actions
 18 that may impact the human environment are evaluated for regulatory restrictions on private property;

19 ~~(iii)~~ (iv) include in every recommendation or report on proposals for projects, programs, legislation,
 20 and other major actions of state government significantly affecting the quality of the human environment,
 21 a detailed statement on:

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

23 (B) any adverse environmental effects ~~which that~~ cannot be avoided should the proposal be
 24 implemented;

25 (C) alternatives to the proposed action;

26 (D) any regulatory impacts on private property rights, including:

27 (I) whether alternatives that reduce, minimize, or eliminate the regulation of private property rights
 28 have been implemented; and

29 (II) whether state government may be liable for compensation to a private property owner for
 30 regulatory takings of private property as required by the 5th and 14th amendments to the U.S. constitution

1 or Article II, section 29, of the Montana constitution;

2 ~~(D)~~(E) the relationship between local short-term uses of ~~man's~~ the environment and the
3 maintenance and enhancement of long-term productivity; and

4 ~~(E)~~(F) any irreversible and irretrievable commitments of resources ~~which~~ that would be involved
5 in the proposed action should it be implemented;

6 ~~(iv)~~(v) study, develop, and describe appropriate alternatives to recommend courses of action in any
7 proposal ~~which~~ that involves unresolved conflicts concerning alternative uses of available resources;

8 ~~(v)~~(vi) recognize the national and long-range character of environmental problems and, ~~where~~ when
9 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs
10 designed to maximize national cooperation in anticipating and preventing a decline in the quality of
11 ~~mankind's~~ the world environment;

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

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

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

17 (c) prior to making any detailed statement as provided in subsection (1)(b)~~(iii)~~(iv), the responsible
18 state official shall consult with and obtain the comments of any state agency ~~which~~ that has jurisdiction
19 by law or special expertise with respect to any environmental impact involved. The responsible state official
20 shall also consult with and obtain comments from any state agency with respect to any regulation of private
21 property involved. Copies of ~~such~~ the statement and the comments and views of the appropriate state,
22 federal, and local agencies ~~which~~ that are authorized to develop and enforce environmental standards ~~shall~~
23 must be made available to the governor, the environmental quality council, and the public and ~~shall~~ must
24 accompany the proposal through the existing agency review processes.

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

28 ~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement,~~
29 ~~but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major~~
30 ~~action of state government as that term is used in subsection (1)(b)(iii).~~

1 ~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31,~~
2 ~~1989, that must include but not be limited to:~~

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

5 ~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be~~
6 ~~necessary to avoid permanent impairment of the environment or to mitigate long term impacts so that the~~
7 ~~environment and renewable resources of the ecosystem may be returned to either conditions similar to~~
8 ~~those existing before drilling or production occurs or conditions that reflect a natural progression of~~
9 ~~environmental change;~~

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

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

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

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

19 ~~(c) The governor shall direct and have management responsibility for the preparation of the~~
20 ~~programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the~~
21 ~~disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel~~
22 ~~of appropriate state agencies must be used to the extent the governor deems necessary to complete the~~
23 ~~statement. The governor shall forward the completed draft programmatic statement to the board of oil and~~
24 ~~gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title~~
25 ~~2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the~~
26 ~~statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

27 ~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas~~
28 ~~conservation shall prepare a written progress report after each regular meeting of the board and after any~~
29 ~~special board meeting that addresses the adoption or implementation of the programmatic environmental~~
30 ~~statement. A copy of each report must be sent to the environmental quality council."~~

1

2 **NEW SECTION. Section 4. Private property protection -- ongoing programs of state government.**

3 Nothing in [sections 1 through 3] expands or diminishes private property protection afforded in the U.S.

4 or Montana constitutions. Nothing in [sections 1 through 3] may be construed to preclude ongoing

5 programs of state government pending the completion of any statements that may be required by [sections

6 1 through 3].

7

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0231, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the purpose and policy of the Montana Environmental Policy Act to include private property right considerations and impacts of state government actions.

ASSUMPTIONS:

Department of Natural Resources and Conservation (DNRC):

1. When a fee is collected from an applicant to compile an environmental impact statement, it will be necessary for DNRC to collect a higher fee to take under consideration the additional provisions in the proposed legislation. The fiscal impact is to the applicant in the fee collected to prepare the environmental impact statement and to monitor the project. There is no fiscal impact to DNRC.
2. If the applicant receives a permit from DNRC and the project creates a problem for a neighboring landowner, the state could be liable if the agency neglected to address the issue in the permitting process. There is no way to quantify this scenario.
3. When the applicant and DNRC share the cost of compiling an environmental impact statement, both will share in the increased cost to take under consideration the additional provisions in the proposed legislation.
4. DNRC collects a fee that is sufficient to cover the costs of compiling an environmental impact statement or assessment and to monitor the project. Therefore, there is no net fiscal impact to the department because of the proposed legislation

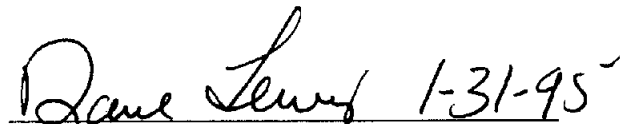
Environmental Quality Council (EQC):

5. EQC is the agency established in statute to ensure that the policies embodied in MEPA are carried out by the executive branch.
6. EQC has assigned 1.00 FTE as the agency MEPA coordinator and has prioritized the training of state agencies in proper implementation of MEPA. In the past two years, EQC has trained over 550 state employees, developed a handbook for agency personnel, and conducted two continuing legal education programs for agency and private attorneys.
7. If this legislation is approved, MEPA model rules would have to be revised.
8. EQC will continue to prioritize MEPA implementation and training, make necessary modifications to its training program and handbook, and spend additional time with state agencies assisting them with the interpretation of the legislation requirements.
9. EQC's budget as proposed for FY96 and FY97 is sufficient to absorb any additional associated with the implementation of this legislation.

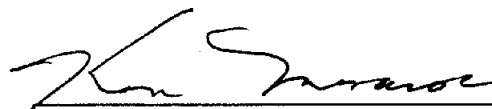
Department of Health and Environmental Sciences (DHES):

10. DHES would be required to identify and develop procedures to ensure that governmental actions are evaluated for regulatory restrictions on private property.
11. DHES will be proactive by revising and developing procedures and policies which consider the impact of department actions on private property rights.
12. Responsibilities under this bill will exceed the scope of an environmental impact statement and funds would be required to contract for professional services to interpret the law and analyze lawful and implementable alternatives to regulatory impacts

(continued on page 2)

 1-31-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



KEN MESAROS, PRIMARY SPONSOR DATE

Fiscal Note for SB0231, as introduced

SB 231-

Fiscal Note Request, SB0231, as introduced

Page 2

(continued)

FISCAL IMPACT:

Department of Health and Environmental Sciences:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	92,099	87,982
<u>Funding:</u>		
General Fund	92,099	87,982

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0231, as amended

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the purpose and policy of the Montana Environmental Policy Act to include private property right considerations and impacts of state government actions.

ASSUMPTIONS:

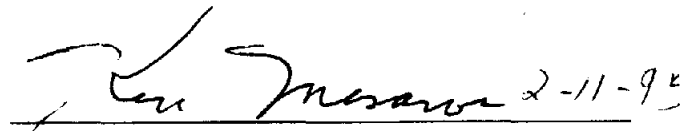
1. The legislation as amended will have minimal fiscal impact to affected state agencies.

FISCAL IMPACT:

None.

 2-11-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-11-95

KEN MESAROS, PRIMARY SPONSOR DATE

Fiscal Note for SB0231, as amended

SB 231-#2

1 SENATE BILL NO. 231

2 INTRODUCED BY MESAROS, KNOX, GRINDE, ROSE, BECK, MARSHALL, GREEN, FELAND, SLITER,
 3 FUCHS, STOVALL, DEVANEY, WISEMAN, HARGROVE, REHBEIN, MOHL, BAER, HOLLAND,
 4 MARTINEZ, TOEWS, BOHARSKI, KASTEN, MERCER, MASOLO, HAYNE, MILLS, L. SMITH, AHNER,
 5 HERRON, MILLER, M. HANSON, HERTEL, EMERSON, CRISMORE, BENEDICT, DEVLIN, SWYSGOOD,
 6 HARP, KEATING, GROSFIELD, BARNETT, TAYLOR, BERGMAN, SOMERVILLE, DEBRUYCKER, MCKEE,
 7 WELLS, DENNY, BRAINARD, FORBES, OHS, CLARK, ANDERSON, TASH, KITZENBERG, CURTISS,
 8 T. NELSON, WAGNER, STORY, ELLIS, BROWN, JABS, COLE, TVEIT, HOLDEN, HARDING, JENKINS,
 9 AKLESTAD, ESTRADA, S. SMITH, MURDOCK

10
 11 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PURPOSE AND POLICY OF THE MONTANA
 12 ENVIRONMENTAL POLICY ACT TO INCLUDE PRIVATE PROPERTY RIGHT CONSIDERATIONS AND
 13 IMPACTS OF STATE GOVERNMENT ACTIONS; AND AMENDING SECTIONS 75-1-102, 75-1-103, AND
 14 75-1-201, MCA."

15
16 STATEMENT OF INTENT

17 ~~It is the intent of the legislature that this legislation serve as a directive to state agencies to~~
 18 ~~implement government actions in a manner that reduces regulatory restrictions placed on private property.~~
 19 Whenever Montana Environmental Policy Act analysis is required, it is the intent of the legislature that any
 20 actions ~~be analyzed to ensure that undue government regulation of private property be evaluated and that~~
 21 ~~alternatives that eliminate regulation of private property be implemented when practicable.~~ THAT
 22 REGULATE THE USE OF PRIVATE PROPERTY ARE EVALUATED TO ENSURE THAT ALTERNATIVES THAT
 23 REDUCE, MINIMIZE OR ELIMINATE REGULATORY RESTRICTIONS ARE CONSIDERED. IT IS NOT THE
 24 INTENT OF THE LEGISLATURE TO AFFECT IN ANY MANNER OTHER ECONOMIC OR SOCIAL
 25 CONSIDERATIONS OR ANY OTHER ANALYSIS CONDUCTED UNDER THE MONTANA ENVIRONMENTAL
 26 POLICY ACT.

27 It is not the intent of the legislature to diminish or affect in any manner a property owner's rights
 28 under nuisance or takings law. Furthermore, it is not the intent of the legislature to affect the law of
 29 eminent domain in any manner.

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

2

3 **Section 1.** Section 75-1-102, MCA, is amended to read:

4 "75-1-102. **Purpose.** The purpose of parts 1 through 3 is to declare a state policy ~~which~~ that will
5 encourage productive and enjoyable harmony between ~~man~~ humans and ~~his~~ their environment, to protect
6 the right to use and enjoy private property free of undue government regulation, to promote efforts ~~which~~
7 that will prevent or eliminate damage to the environment and biosphere and stimulate the health and
8 welfare of ~~man~~ humans, to enrich the understanding of the ecological systems and natural resources
9 important to the state, and to establish an environmental quality council."

10

11 **Section 2.** Section 75-1-103, MCA, is amended to read:

12 "75-1-103. **Policy.** (1) The legislature, recognizing the profound impact of ~~man's~~ human activity
13 on the interrelations of all components of the natural environment, particularly the profound influences of
14 population growth, high-density urbanization, industrial expansion, resource exploitation, and new and
15 expanding technological advances, ~~and~~ recognizing ~~further~~ the critical importance of restoring and
16 maintaining environmental quality to the overall welfare and human development, ~~of man and further~~
17 recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private
18 property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal
19 government, ~~and~~ local governments, and other concerned public and private organizations, to use all
20 practicable means and measures, including financial and technical assistance, in a manner calculated to
21 foster and promote the general welfare, to create and maintain conditions under which ~~man~~ humans and
22 nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of
23 undue government regulation, and to fulfill the social, economic, and other requirements of present and
24 future generations of Montanans.

25 (2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility
26 of the state of Montana to use all practicable means consistent with other essential considerations of state
27 policy to improve and coordinate state plans, functions, programs, and resources ~~to the end~~ so that the
28 state may:

29 (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding
30 generations;

1 (b) ~~assure~~ ensure for all Montanans safe, healthful, productive, and aesthetically and culturally
2 pleasing surroundings;

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

5 (d) protect the right to use and enjoy private property free of undue government regulation;

6 ~~(d)(e)~~ preserve important historic, cultural, and natural aspects of our unique heritage and maintain,
7 wherever possible, an environment ~~which~~ that supports diversity and variety of individual choice;

8 ~~(e)(f)~~ achieve a balance between population and resource use ~~which~~ that will permit high standards
9 of living and a wide sharing of life's amenities; and

10 ~~(f)(g)~~ enhance the quality of renewable resources and approach the maximum attainable recycling
11 of depletable resources.

12 (3) The legislature recognizes that each person ~~shall be~~ is entitled to a healthful environment, that
13 each person is entitled to use and enjoy that person's private property free of undue government regulation,
14 and that each person has a responsibility to contribute to the preservation and enhancement of the
15 environment."

16
17 **Section 3.** Section 75-1-201, MCA, is amended to read:

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

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

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

23 (i) ~~utilize~~ use a systematic, interdisciplinary approach ~~which~~ that will ~~insure~~ ensure the integrated
24 use of the natural and social sciences and the environmental design arts in planning and in decisionmaking
25 ~~which~~ that may have an impact on ~~man's~~ the environment;

26 (ii) identify and develop methods and procedures ~~which~~ that will ~~insure~~ ensure that presently
27 unquantified environmental amenities and values may be given appropriate consideration in decisionmaking
28 along with economic and technical considerations;

29 (iii) identify and develop methods and procedures that will ensure that state government actions
30 that may impact the human environment are evaluated for regulatory restrictions on private property, AS

1 PROVIDED IN SUBSECTION (1)(B)(IV)(D);

2 ~~(iii)(iv)~~ include in every recommendation or report on proposals for projects, programs, legislation,
3 and other major actions of state government significantly affecting the quality of the human environment,
4 a detailed statement on:

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

6 (B) any adverse environmental effects ~~which~~ that cannot be avoided should the proposal be
7 implemented;

8 (C) alternatives to the proposed action;

9 (D) any regulatory impacts on private property rights, including:

10 (i) whether alternatives that reduce, minimize, or eliminate the regulation of private property rights
11 have been implemented; and ANALYZED. THE ANALYSIS IN THIS SUBSECTION (1)(B)(IV)(D) NEED NOT
12 BE PREPARED IF THE PROPOSED ACTION DOES NOT INVOLVE THE REGULATION OF PRIVATE
13 PROPERTY.

14 (ii) whether state government may be liable for compensation to a private property owner for
15 regulatory takings of private property as required by the 5th and 14th amendments to the U.S. constitution
16 or Article II, section 29, of the Montana constitution;

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

19 ~~(E)(F)~~ any irreversible and irretrievable commitments of resources ~~which~~ that would be involved
20 in the proposed action should it be implemented;

21 ~~(iv)(v)~~ study, develop, and describe appropriate alternatives to recommend courses of action in any
22 proposal ~~which~~ that involves unresolved conflicts concerning alternative uses of available resources;

23 ~~(v)(vi)~~ recognize the national and long-range character of environmental problems and, ~~where~~ when
24 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs
25 designed to maximize national cooperation in anticipating and preventing a decline in the quality of
26 ~~man's~~ the world environment;

27 ~~(vi)(vii)~~ make available to counties, municipalities, institutions, and individuals advice and
28 information useful in restoring, maintaining, and enhancing the quality of the environment;

29 ~~(vii)(viii)~~ initiate and ~~utilize~~ use ecological information in the planning and development of
30 resource-oriented projects; and

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

2 (c) prior to making any detailed statement as provided in subsection (1)(b)~~(iii)~~(iv), the responsible
3 state official shall consult with and obtain the comments of any state agency ~~which~~ that has jurisdiction
4 by law or special expertise with respect to any environmental impact involved. The responsible state official
5 shall also consult with and obtain comments from any state agency with respect to any regulation of private
6 property involved. Copies of ~~such~~ the statement and the comments and views of the appropriate state,
7 federal, and local agencies ~~which~~ that are authorized to develop and enforce environmental standards ~~shall~~
8 must be made available to the governor, the environmental quality council, and the public and ~~shall~~ must
9 accompany the proposal through the existing agency review processes.

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

13 ~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement,~~
14 ~~but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major~~
15 ~~action of state government as that term is used in subsection (1)(b)(iii).~~

16 ~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31,~~
17 ~~1989, that must include but not be limited to:~~

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

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

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26 ~~environmental impacts of individual drilling proposals as may be found to exist;~~

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

30 ~~(v) the maximum time periods that will be required to complete the drill permitting process;~~

1 including any environmental review; and

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

4 (c) The governor shall direct and have management responsibility for the preparation of the
5 programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the
6 disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel
7 of appropriate state agencies must be used to the extent the governor deems necessary to complete the
8 statement. The governor shall forward the completed draft programmatic statement to the board of oil and
9 gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title
10 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the
11 statement to the board for adoption and use in the issuance of permits to drill for oil and gas.

12 (d) Until the programmatic environmental statement is adopted, the board of oil and gas
13 conservation shall prepare a written progress report after each regular meeting of the board and after any
14 special board meeting that addresses the adoption or implementation of the programmatic environmental
15 statement. A copy of each report must be sent to the environmental quality council."

16

17

18 **NEW SECTION. Section 4. Private property protection -- ongoing programs of state government.**

19 Nothing in [sections 1 through 3] expands or diminishes private property protection afforded in the U.S.
20 or Montana constitutions. Nothing in [sections 1 through 3] may be construed to preclude ongoing
21 programs of state government pending the completion of any statements that may be required by [sections
22 1 through 3].

23

-END-

1 SENATE BILL NO. 231

2 INTRODUCED BY MESAROS, KNOX, GRINDE, ROSE, BECK, MARSHALL, GREEN, FELAND, SLITER,
3 FUCHS, STOVALL, DEVANEY, WISEMAN, HARGROVE, REHBEIN, MOHL, BAER, HOLLAND,
4 MARTINEZ, TOEWS, BOHARSKI, KASTEN, MERCER, MASOLO, HAYNE, MILLS, L. SMITH, AHNER,
5 HERRON, MILLER, M. HANSON, HERTEL, EMERSON, CRISMORE, BENEDICT, DEVLIN, SWYSGOOD,
6 HARP, KEATING, GROSFIELD, BARNETT, TAYLOR, BERGMAN, SOMERVILLE, DEBRUYCKER, MCKEE,
7 WELLS, DENNY, BRAINARD, FORBES, OHS, CLARK, ANDERSON, TASH, KITZENBERG, CURTISS,
8 T. NELSON, WAGNER, STORY, ELLIS, BROWN, JABS, COLE, TVEIT, HOLDEN, HARDING, JENKINS,
9 AKLESTAD, ESTRADA, S. SMITH, MURDOCK

10
11 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PURPOSE AND POLICY OF THE MONTANA
12 ENVIRONMENTAL POLICY ACT TO INCLUDE PRIVATE PROPERTY RIGHT CONSIDERATIONS AND
13 IMPACTS OF STATE GOVERNMENT ACTIONS; AND AMENDING SECTIONS 75-1-102, 75-1-103, AND
14 75-1-201, MCA."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

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SENATE BILL NO. 231

INTRODUCED BY MESAROS, KNOX, GRINDE, ROSE, BECK, MARSHALL, GREEN, FELAND, SLITER,
FUCHS, STOVALL, DEVANEY, WISEMAN, HARGROVE, REHBEIN, MOHL, BAER, HOLLAND,
MARTINEZ, TOEWS, BOHARSKI, KASTEN, MERCER, MASOLO, HAYNE, MILLS, L. SMITH, AHNER,
HERRON, MILLER, M. HANSON, HERTEL, EMERSON, CRISMORE, BENEDICT, DEVLIN, SWYSGOOD,
HARP, KEATING, GROSFIELD, BARNETT, TAYLOR, BERGMAN, SOMERVILLE, DEBRUYCKER, MCKEE,
WELLS, DENNY, BRAINARD, FORBES, OHS, CLARK, ANDERSON, TASH, KITZENBERG, CURTISS,
T. NELSON, WAGNER, STORY, ELLIS, BROWN, JABS, COLE, TVEIT, HOLDEN, HARDING, JENKINS,
AKLESTAD, ESTRADA, S. SMITH, MURDOCK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PURPOSE AND POLICY OF THE MONTANA ENVIRONMENTAL POLICY ACT TO INCLUDE PRIVATE PROPERTY RIGHT CONSIDERATIONS AND IMPACTS OF STATE GOVERNMENT ACTIONS; AND AMENDING SECTIONS 75-1-102, 75-1-103, AND 75-1-201, MCA."

STATEMENT OF INTENT

~~It is the intent of the legislature that this legislation serve as a directive to state agencies to implement government actions in a manner that reduces regulatory restrictions placed on private property. Whenever Montana Environmental Policy Act analysis is required, it is the intent of the legislature that any actions be analyzed to ensure that undue government regulation of private property be evaluated and that alternatives that eliminate regulation of private property be implemented when practicable. THAT~~
REGULATE THE USE OF PRIVATE PROPERTY ARE EVALUATED TO ENSURE THAT ALTERNATIVES THAT REDUCE, MINIMIZE OR ELIMINATE REGULATORY RESTRICTIONS ARE CONSIDERED. IT IS NOT THE INTENT OF THE LEGISLATURE TO AFFECT IN ANY MANNER OTHER ECONOMIC OR SOCIAL CONSIDERATIONS OR ANY OTHER ANALYSIS CONDUCTED UNDER THE MONTANA ENVIRONMENTAL POLICY ACT.

It is not the intent of the legislature to diminish or affect in any manner a property owner's rights under nuisance or takings law. Furthermore, it is not the intent of the legislature to affect the law of eminent domain in any manner.



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

2
3 **Section 1.** Section 75-1-102, MCA, is amended to read:

4 "75-1-102. **Purpose.** The purpose of parts 1 through 3 is to declare a state policy ~~which~~ that will
5 encourage productive and enjoyable harmony between ~~man~~ humans and ~~his~~ their environment, to protect
6 the right to use and enjoy private property free of undue government regulation, to promote efforts ~~which~~
7 that will prevent or eliminate damage to the environment and biosphere and stimulate the health and
8 welfare of ~~man~~ humans, to enrich the understanding of the ecological systems and natural resources
9 important to the state, and to establish an environmental quality council."

10
11 **Section 2.** Section 75-1-103, MCA, is amended to read:

12 "75-1-103. **Policy.** (1) The legislature, recognizing the profound impact of ~~man's~~ human activity
13 on the interrelations of all components of the natural environment, particularly the profound influences of
14 population growth, high-density urbanization, industrial expansion, resource exploitation, and new and
15 expanding technological advances, ~~and~~ recognizing ~~further~~ the critical importance of restoring and
16 maintaining environmental quality to the overall welfare and human development, ~~of man~~ and further
17 recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private
18 property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal
19 government, ~~and~~ local governments, and other concerned public and private organizations, to use all
20 practicable means and measures, including financial and technical assistance, in a manner calculated to
21 foster and promote the general welfare, to create and maintain conditions under which ~~man~~ humans and
22 nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of
23 undue government regulation, and to fulfill the social, economic, and other requirements of present and
24 future generations of Montanans.

25 (2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility
26 of the state of Montana to use all practicable means consistent with other essential considerations of state
27 policy to improve and coordinate state plans, functions, programs, and resources ~~to the end~~ so that the
28 state may:

29 (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding
30 generations;

1 (b) ~~assure~~ ensure for all Montanans safe, healthful, productive, and aesthetically and culturally
2 pleasing surroundings;

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

5 (d) protect the right to use and enjoy private property free of undue government regulation;

6 ~~(e)~~ (e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain,
7 wherever possible, an environment ~~which~~ that supports diversity and variety of individual choice;

8 ~~(f)~~ (f) achieve a balance between population and resource use ~~which~~ that will permit high standards
9 of living and a wide sharing of life's amenities; and

10 ~~(g)~~ (g) enhance the quality of renewable resources and approach the maximum attainable recycling
11 of depletable resources.

12 (3) The legislature recognizes that each person ~~shall be~~ is entitled to a healthful environment, that
13 each person is entitled to use and enjoy that person's private property free of undue government regulation,
14 and that each person has a responsibility to contribute to the preservation and enhancement of the
15 environment."

16

17 **Section 3.** Section 75-1-201, MCA, is amended to read:

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

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

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

23 (i) ~~utilize~~ use a systematic, interdisciplinary approach ~~which~~ that will ~~insure~~ ensure the integrated
24 use of the natural and social sciences and the environmental design arts in planning and in decisionmaking
25 ~~which~~ that may have an impact on ~~man's~~ the environment;

26 (ii) identify and develop methods and procedures ~~which~~ that will ~~insure~~ ensure that presently
27 unquantified environmental amenities and values may be given appropriate consideration in decisionmaking
28 along with economic and technical considerations;

29 (iii) identify and develop methods and procedures that will ensure that state government actions
30 that may impact the human environment are evaluated for regulatory restrictions on private property, AS

1 PROVIDED IN SUBSECTION (1)(B)(IV)(D):

2 ~~###(iv)~~ include in every recommendation or report on proposals for projects, programs, legislation,
3 and other major actions of state government significantly affecting the quality of the human environment,
4 a detailed statement on:

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

6 (B) any adverse environmental effects ~~which~~ that cannot be avoided should the proposal be
7 implemented;

8 (C) alternatives to the proposed action;

9 (D) any regulatory impacts on private property rights, including:

10 ~~(i) whether alternatives that reduce, minimize, or eliminate the regulation of private property rights~~
11 ~~have been implemented; and~~ ANALYZED. THE ANALYSIS IN THIS SUBSECTION (1)(B)(IV)(D) NEED NOT
12 BE PREPARED IF THE PROPOSED ACTION DOES NOT INVOLVE THE REGULATION OF PRIVATE
13 PROPERTY.

14 ~~(ii) whether state government may be liable for compensation to a private property owner for~~
15 ~~regulatory takings of private property as required by the 5th and 14th amendments to the U.S. constitution~~
16 ~~or Article II, section 29, of the Montana constitution;~~

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

19 ~~(E)(F)~~ any irreversible and irretrievable commitments of resources ~~which~~ that would be involved
20 in the proposed action should it be implemented;

21 ~~(iv)(v)~~ study, develop, and describe appropriate alternatives to recommend courses of action in any
22 proposal ~~which~~ that involves unresolved conflicts concerning alternative uses of available resources;

23 ~~(v)(vi)~~ recognize the national and long-range character of environmental problems and, ~~where~~ when
24 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs
25 designed to maximize national cooperation in anticipating and preventing a decline in the quality of
26 ~~man's~~ the world environment;

27 ~~(vi)(vii)~~ make available to counties, municipalities, institutions, and individuals advice and
28 information useful in restoring, maintaining, and enhancing the quality of the environment;

29 ~~(vii)(viii)~~ initiate and ~~utilize~~ use ecological information in the planning and development of
30 resource-oriented projects; and

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

2 (c) prior to making any detailed statement as provided in subsection (1)(b)~~(iii)~~(iv), the responsible
3 state official shall consult with and obtain the comments of any state agency ~~which~~ that has jurisdiction
4 by law or special expertise with respect to any environmental impact involved. The responsible state official
5 shall also consult with and obtain comments from any state agency with respect to any regulation of private
6 property involved. Copies of ~~such~~ the statement and the comments and views of the appropriate state,
7 federal, and local agencies ~~which~~ that are authorized to develop and enforce environmental standards ~~shall~~
8 must be made available to the governor, the environmental quality council, and the public and ~~shall~~ must
9 accompany the proposal through the existing agency review processes.

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

13 ~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement,~~
14 ~~but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major~~
15 ~~action of state government as that term is used in subsection (1)(b)(iii).~~

16 ~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31,~~
17 ~~1989, that must include but not be limited to:~~

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

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

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

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

30 ~~(v) the maximum time periods that will be required to complete the drill permitting process;~~

1 including any environmental review; and

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

4 ~~(c) The governor shall direct and have management responsibility for the preparation of the~~
5 ~~programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the~~
6 ~~disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel~~
7 ~~of appropriate state agencies must be used to the extent the governor deems necessary to complete the~~
8 ~~statement. The governor shall forward the completed draft programmatic statement to the board of oil and~~
9 ~~gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title~~
10 ~~2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the~~
11 ~~statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

12 ~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas~~
13 ~~conservation shall prepare a written progress report after each regular meeting of the board and after any~~
14 ~~special board meeting that addresses the adoption or implementation of the programmatic environmental~~
15 ~~statement. A copy of each report must be sent to the environmental quality council."~~

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18 **NEW SECTION. Section 4. Private property protection -- ongoing programs of state government.**
19 Nothing in [sections 1 through 3] expands or diminishes private property protection afforded in the U.S.
20 or Montana constitutions. Nothing in [sections 1 through 3] may be construed to preclude ongoing
21 programs of state government pending the completion of any statements that may be required by [sections
22 1 through 3].

23 -END-