

1 Feland SENATE BILL NO. 288  
 2 INTRODUCED BY Keating Curlyss Mills Beneff  
 3 Maize Storall Isk Brainard Haigher Cunning HARP  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN ACTIONS BY AGENCIES OF STATE  
 5 DM Cusumari AKKESTAD Swygood Calvin  
 GOVERNMENT FROM REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING

6 AGENCIES TO FIND ON A CASE-BY-CASE BASIS THAT AN EXEMPTED ACTION OR COMBINATION OF  
 7 ACTIONS IS A MAJOR ACTION SIGNIFICANTLY AFFECTING THE QUALITY OF THE HUMAN  
 8 ENVIRONMENT; REQUIRING AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING  
 9 PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTIONS 2-4-501  
 10 AND 75-1-201, MCA."

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

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

15 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes  
 16 and directs that, to the fullest extent possible:

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

19 (b) all agencies of the state, except as provided in ~~subsection~~ subsections (2) and (3), shall:

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

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

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

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

30 (B) any adverse environmental effects ~~which that~~ cannot be avoided ~~should~~ if the proposal ~~be~~ is

1 implemented;

2 (C) alternatives to the proposed action;

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

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

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

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

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

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

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

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



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0288 as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting certain actions by agencies from the Montana Environmental Policy Act (MEPA), except that an agency has discretion to issue a declaratory ruling under the Montana Administrative Procedure Act that an action constitutes a major action having a significant effect on the quality of the human environment and then must comply with MEPA.

ASSUMPTIONS:

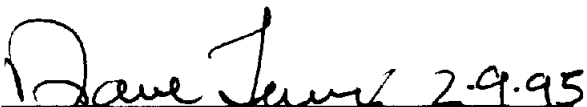
**Environmental Quality Council (EQC)**

1. This legislation will affect a number of state government agencies that currently prepare environmental review documents under MEPA, including: Department of State Lands (DSL), Department of Fish, Wildlife and Parks (FWP), Department of Health and Environmental Sciences (DHES), Department of Natural Resources and Conservation (DNRC), Department of Agriculture, Department of Livestock, and the Department of Commerce.
2. EQC as established in statute is the agency to ensure that the policies embodied in MEPA are carried out by the executive branch agencies.
3. EQC has 1.00 FTE designated 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.
4. If SB288 is adopted, MEPA model rules would have to be revised. EQC has coordinated rule revisions in the past.
5. EQC will continue to prioritize MEPA implementation and training, will make the necessary modifications to the training program and handbook information, and will assist agencies with requirements of this legislation.
6. EQC will continue to exist and will receive the budget as proposed by the agency and contained in the Executive Budget recommendation. Any costs associated with this legislation will be absorbed within the 1997 biennium budget.
7. A new fiscal note may need to be prepared if certain legislative branch reorganization proposals are adopted.
8. Fewer environmental impact statements will be prepared, although agencies must still conduct environmental reviews on land acquisition, fishing access site modifications, etc.
9. EQC will receive fewer environmental review documents.

**Department of State Lands (DSL)**

10. As a result of this legislation, DSL will not be required to complete any environmental assessments pursuant to the MEPA.
11. The decision not to prepare an Environmental Impact Statement (EIS) is in the complete discretion of DSL and not reviewable in a court of law.
12. The additional cost of preparing and publishing the declaratory judgment will be offset by cost savings resulting from not preparing and publishing environmental assessments (EA) on permitted activities.

(continued on page 2)

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

  
TOM KEATING, PRIMARY SPONSOR      DATE  
2-10-95

Fiscal Note for SB0288, as introduced

SB 288

(continued)

13. The Board of Land Commissioners is required to administer the school trust lands to secure the largest measure of legitimate and reasonable advantage to the trust (77-1-202, MCA).
14. Under the direction of the land board, DSL is authorized to sell timber and other forest products from trust lands (77-5-201, MCA).
15. The current annual harvest rate is 32 million board feet (MMBF).
16. DSL will sell an additional 6 MMBF of timber annually as a result of this act, beginning with 4 MMBF in FY96 and 6 MMBF in FY97.
17. DSL will sell the additional volume at an average rate of \$290 per thousand board feet (MBF).
18. 50% of the timber volume sold in FY96 will be logged in FY97, and the other 50% will be logged in FY98. Similarly, 50% of the timber volume sold in FY97 will be logged in FY98, and the other 50% will be harvested in FY99.
19. Stumpage prices will not increase.
20. Individual timber sales will not be subject to MEPA.
21. Revenue estimates are based on additional timber volume contracted for sale as a result of the act.
22. The additional volume will be harvested from Common School tracts.
23. The provisions of 2-3-101-114, MCA, and 26.2.701-707 ARM concerning public participation in agency decisions apply to actions taken by DSL.
24. DSL activities will continue to be affected by constraints associated with the Threatened and Endangered Species Act, the Antiquities Act, Streamside Management Zone requirements, water quality requirements, and other constraints as required by law or stipulated in department operating standards.

**Department of Health and Environmental Sciences (DHES)**

25. No additional duties are required of DHES as a result of this legislation.

**Department of Natural Resources and Conservation (DNRC)**

26. To protect the state from a series of abuse of discretion suits, most state actions that currently require review under subsection (1) will require a declaratory ruling proceeding. The cost of the declaratory ruling proceedings will be sustained by the DNRC.
27. Declaratory proceedings in civil court concerning the issue of what constitutes a "major state action" are time intensive and costly. An administrative process to make such a determination should be less time intensive and less costly.
28. DNRC currently processes an average of six MEPA compliance actions per year. Each would require a declaratory ruling hearing. Three of the six annual MEPA compliance actions will fall under the Major Facility Siting Act (MFSA) and, therefore, the MFSA applicant will pay the costs of those declaratory ruling proceedings.
29. Minimal operating expenses will be absorbed within the present law base budgets.
30. Declaratory ruling hearings would be conducted with either a staff attorney or contracted out to agency legal services at the Department of Justice. A portion of the estimated costs of \$20,400 each year would be offset by \$11,000 of MFSA fees per year with the balance being supported with general fund.

**Department of Fish, Wildlife and Parks (FWP)**

31. FWP will continue to do environmental reviews under MEPA for actions that are not covered by this act.
32. FWP will continue to conduct environmental reviews for most actions involving the issuance of a lease, permit, license, easement, certificate, or other approval, entitlement for use, or permission to act.
33. The cost and length of time necessary to conduct an EIS will increase by an amount that corresponds to the cost and time of preparing and publishing a declaratory ruling. All additional costs will be absorbed within current department budgets.

FISCAL IMPACT:**Environmental Quality Council**

There will be no fiscal impact to the Environmental Quality Council.

**Department of State Lands**

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Revenues:</u>		
School Equalization	0	551,000
Permanent Trust	<u>0</u>	<u>29,000</u>
Total	0	580,000

**Department of Health and Environmental Sciences**

There will be no fiscal impact to the Department of Health and Environmental Sciences.

**Department of Natural Resources and Conservation**

The net impact to the Department of Natural Resources and Conservation would be \$9,400 of general fund each year.

**Department of Fish, Wildlife and Parks**

There will be no fiscal impact to the Department of Fish, Wildlife and Parks.

**Department of Transportation**

There will be no fiscal impact to the Department of Transportation.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:**Department of State Lands**

Forestry annual revenue in FY98 would increase by \$1.45 million, and in FY99 and subsequent years increase by \$1.74 million. An unquantifiable increase in revenue from other trust land administration programs can also be expected.

TECHNICAL NOTES:

1. It appears that a declaratory ruling must be made before the part (3) exemption is applicable. The use of the term "part" may be inappropriate; the correct term may be "subsection". Only subsection (1) is substantive, the other two subsections are exemptions and the issuance of a declaratory ruling should not impact on their applicability.
2. Before an agency conducts an EIS, this act requires the agency to make a finding that an action constitutes a major action significantly affecting the quality of the human environment. It will be necessary to conduct an environmental assessment in order to make that finding.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0288, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

This bill clarifies the burden of proof for actions in which an agency determines not to conduct an environmental impact statement; it exempts the legislature from the provisions of the Montana Environmental Policy Act.

ASSUMPTIONS:

1. This legislation as amended will not affect the total number of environmental review documents completed by state agencies under MEPA. It may increase the number of environmental assessments (EA) and mitigated environmental assessments (MEA), if agencies decide not to prepare environmental impact statements (EIS) because they will not be so easily challenged in their decision not to prepare an EIS.
2. Under MEPA, agencies may charge an applicant for a permit or license fee to prepare an EIS, but not an EA, except under limited circumstances for hard rock mining permits. This may increase agency costs if few EISs are prepared, but this potential effect is difficult to estimate.
3. Although MEPA requires under current law that legislation is subject to environmental reviews, the legislature has never complied with this provision.

FISCAL IMPACT:

There is no fiscal impact to the Departments of Lands, Natural Resources and Conservation, Transportation, and Health and Environmental Sciences; Environmental Quality Council; and the Legislature.

Dave Lewis 2-18-95

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

Keating 2-18-95

TOM KEATING, PRIMARY SPONSOR      DATE

Fiscal Note for SB0288, third reading

**SB 288-#2**



## SENATE BILL NO. 288

INTRODUCED BY KEATING, CURTISS, MILLS, BENEDICT, FELAND, MOHL, MCGEE, STOVALL, TASH,  
BRAINARD, TAYLOR, BURNETT, HARP, GAGE, CRISMORE, AKLESTAD, SWYSGOOD, DEVLIN

A BILL FOR AN ACT ENTITLED: "~~AN ACT EXEMPTING CERTAIN ACTIONS BY AGENCIES OF STATE GOVERNMENT FROM REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING AGENCIES TO FIND ON A CASE BY CASE BASIS THAT AN EXEMPTED ACTION OR COMBINATION OF ACTIONS IS A MAJOR ACTION SIGNIFICANTLY AFFECTING THE QUALITY OF THE HUMAN ENVIRONMENT; REQUIRING AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT~~ CLARIFYING THE BURDEN OF PROOF FOR ACTIONS IN WHICH AN AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT STATEMENT; EXEMPTING THE LEGISLATURE FROM THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTIONS 2-4-601 AND SECTION 75-1-201, MCA."

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

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

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

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

(b) all agencies of the state, except THE LEGISLATURE AND EXCEPT as provided in ~~subsection~~ SUBSECTION (2) and (3), shall:

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

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

(iii) include in ~~every~~ each recommendation or report on proposals for projects, programs, ~~legislation,~~

1 and other major actions of state government significantly affecting the quality of the human environment;  
2 a detailed statement on:

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

4 (B) any adverse environmental effects ~~which that~~ cannot be avoided ~~should if~~ the proposal ~~be is~~  
5 implemented;

6 (C) alternatives to the proposed action;

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

9 (E) any irreversible and irretrievable commitments of resources ~~which that~~ would be involved in the  
10 proposed action ~~should if~~ it ~~be is~~ implemented;

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

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

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

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

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

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

29 (2) The department of public service regulation, in the exercise of its regulatory authority over rates  
30 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1

1 through 3.

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

5 ~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31,~~  
6 ~~1989, that must include but not be limited to:~~

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

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

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

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

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

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

23 ~~(c) The governor shall direct and have management responsibility for the preparation of the~~  
24 ~~programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the~~  
25 ~~disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel~~  
26 ~~of appropriate state agencies must be used to the extent the governor deems necessary to complete the~~  
27 ~~statement. The governor shall forward the completed draft programmatic statement to the board of oil and~~  
28 ~~gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title~~  
29 ~~2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the~~  
30 ~~statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~



## 1 SENATE BILL NO. 288

2 INTRODUCED BY KEATING, CURTISS, MILLS, BENEDICT, FELAND, MOHL, MCGEE, STOVALL, TASH,  
3 BRAINARD, TAYLOR, BURNETT, HARP, GAGE, CRISMORE, AKLESTAD, SWYSGOOD, DEVLIN

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~EXEMPTING CERTAIN ACTIONS BY AGENCIES OF STATE~~  
6 ~~GOVERNMENT FROM REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING~~  
7 ~~AGENCIES TO FIND ON A CASE BY CASE BASIS THAT AN EXEMPTED ACTION OR COMBINATION OF~~  
8 ~~ACTIONS IS A MAJOR ACTION SIGNIFICANTLY AFFECTING THE QUALITY OF THE HUMAN~~  
9 ~~ENVIRONMENT; REQUIRING AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING~~  
10 ~~PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT~~ CLARIFYING THE BURDEN OF PROOF  
11 FOR ACTIONS IN WHICH AN AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT  
12 STATEMENT; EXEMPTING THE LEGISLATURE FROM THE PROVISIONS OF THE MONTANA  
13 ENVIRONMENTAL POLICY ACT; AND AMENDING SECTIONS 2-4-601 AND SECTION 75-1-201, MCA."

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

16  
17 Section 1. 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 THE LEGISLATURE AND EXCEPT as provided in ~~subsection~~  
23 ~~subsections~~ SUBSECTION (2) and (3), shall:

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

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

30 (iii) include in ~~every~~ each recommendation or report on proposals for projects, programs, ~~legislation,~~

- 1 and other major actions of state government significantly affecting the quality of the human environment,  
 2 a detailed statement on:
- 3 (A) the environmental impact of the proposed action;
- 4 (B) any adverse environmental effects ~~which~~ that cannot be avoided ~~should~~ if the proposal ~~be~~ is  
 5 implemented;
- 6 (C) alternatives to the proposed action;
- 7 (D) the relationship between local short-term uses of ~~man's~~ the environment and the maintenance  
 8 and enhancement of long-term productivity; and
- 9 (E) any irreversible and irretrievable commitments of resources ~~which~~ that would be involved in the  
 10 proposed action ~~should~~ if it ~~be~~ is implemented;
- 11 (iv) study, develop, and describe appropriate alternatives to recommend courses of action in any  
 12 proposal ~~which~~ that involves unresolved conflicts concerning alternative uses of available resources;
- 13 (v) recognize the national and long-range character of environmental problems and, ~~where~~ when  
 14 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs  
 15 designed to maximize national cooperation in anticipating and preventing a decline in the quality of  
 16 ~~man's~~ the world environment;
- 17 (vi) make available to counties, municipalities, institutions, and individuals advice and information  
 18 useful in restoring, maintaining, and enhancing the quality of the environment;
- 19 (vii) initiate and ~~utilize~~ use ecological information in the planning and development of  
 20 resource-oriented projects; and
- 21 (viii) assist the environmental quality council established by 5-16-101; and
- 22 (c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state  
 23 official shall consult with and obtain the comments of any state agency ~~which~~ that has jurisdiction by law  
 24 or special expertise with respect to any environmental impact involved. Copies of ~~such~~ the statement and  
 25 the comments and views of the appropriate state, federal, and local agencies ~~which~~ that are authorized to  
 26 develop and enforce environmental standards ~~shall~~ must be made available to the governor, the  
 27 environmental quality council, and the public and ~~shall~~ must accompany the proposal through the existing  
 28 agency review processes.
- 29 (2) The department of public service regulation, in the exercise of its regulatory authority over rates  
 30 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1

1 through 3.

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

5 ~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31,~~  
 6 ~~1989, that must include but not be limited to:~~

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

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

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

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

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

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

23 ~~(c) The governor shall direct and have management responsibility for the preparation of the~~  
 24 ~~programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the~~  
 25 ~~disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel~~  
 26 ~~of appropriate state agencies must be used to the extent the governor deems necessary to complete the~~  
 27 ~~statement. The governor shall forward the completed draft programmatic statement to the board of oil and~~  
 28 ~~gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title~~  
 29 ~~2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the~~  
 30 ~~statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~





## 1 SENATE BILL NO. 288

2 INTRODUCED BY KEATING, CURTISS, MILLS, BENEDICT, FELAND, MOHL, MCGEE, STOVALL, TASH,  
3 BRAINARD, TAYLOR, BURNETT, HARP, GAGE, CRISMORE, AKLESTAD, SWYSGOOD, DEVLIN

4  
5 A BILL FOR AN ACT ENTITLED: "~~AN ACT EXEMPTING CERTAIN ACTIONS BY AGENCIES OF STATE~~  
6 ~~GOVERNMENT FROM REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING~~  
7 ~~AGENCIES TO FIND ON A CASE-BY-CASE BASIS THAT AN EXEMPTED ACTION OR COMBINATION OF~~  
8 ~~ACTIONS IS A MAJOR ACTION SIGNIFICANTLY AFFECTING THE QUALITY OF THE HUMAN~~  
9 ~~ENVIRONMENT; REQUIRING AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING~~  
10 ~~PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT CLARIFYING THE BURDEN OF PROOF~~  
11 ~~FOR ACTIONS IN WHICH AN AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT~~  
12 ~~STATEMENT; EXEMPTING THE LEGISLATURE FROM THE PROVISIONS OF THE MONTANA~~  
13 ~~ENVIRONMENTAL POLICY ACT; AND AMENDING SECTIONS 2-4-501 AND SECTION 75-1-201, MCA."~~

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

16  
17 Section 1. 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 THE LEGISLATURE AND EXCEPT as provided in ~~subsection~~  
23 ~~subsections~~ SUBSECTION (2) and (3), shall:

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

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

30 (iii) include in ~~every~~ each recommendation or report on proposals for projects, programs, ~~legislation,~~

1 and other major actions of state government significantly affecting the quality of the human environment,  
2 a detailed statement on:

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

4 (B) any adverse environmental effects ~~which~~ that cannot be avoided ~~should~~ if the proposal ~~be~~ is  
5 implemented;

6 (C) alternatives to the proposed action;

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

9 (E) any irreversible and irretrievable commitments of resources ~~which~~ that would be involved in the  
10 proposed action ~~should~~ if it ~~be~~ is implemented;

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

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

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

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

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

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

29 (2) The department of public service regulation, in the exercise of its regulatory authority over rates  
30 and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1

1 through 3.

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

5 ~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31,~~  
6 ~~1989, that must include but not be limited to:~~

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

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

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

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

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

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

23 ~~(e) The governor shall direct and have management responsibility for the preparation of the~~  
24 ~~programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the~~  
25 ~~disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel~~  
26 ~~of appropriate state agencies must be used to the extent the governor deems necessary to complete the~~  
27 ~~statement. The governor shall forward the completed draft programmatic statement to the board of oil and~~  
28 ~~gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title~~  
29 ~~2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the~~  
30 ~~statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

