

SENATE BILL NO. 221

INTRODUCED BY W. GALT, M. VINTON, E. ALBUS, C. COCHRAN, S. GIST, C. SPRUNGER, D. LOGE, M. REGIER, S. VINTON, M. YAKAWICH, S. FITZPATRICK, B. LER, J. SCHILLINGER, G. OBLANDER, K. ZOLNIKOV, B. USHER, T. MCGILLVRAY, S. MANESS, K. BOGNER, B. BEARD

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A GREENHOUSE GAS ASSESSMENT UNDER THE MONTANA ENVIRONMENTAL POLICY ACT; REVISING DIRECTIONS FOR ENVIRONMENTAL ~~IMPACT STATEMENTS~~ REVIEWS RELATED TO GREENHOUSE GAS ASSESSMENTS; PROVIDING DEFINITIONS; AMENDING SECTIONS 75-1-201, 75-1-202, AND 75-1-220, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the Montana Supreme Court found that the Montana Environmental Policy Act (MEPA) "must be construed in harmony with the substantive limitations of an agency's applicable regulatory authority" (paragraph 30, Bitterrooters for Planning, Inc. v. Montana Department of Environmental Quality, 2017 MT 222, 388 Mont. 453, 401 P.3d 712), but also found that the Legislature granted broad authority to the Department of Environmental Quality (paragraph 53, Montana Environmental Information Center v. Department of Environmental Quality, DA 23-0225 (2023)); and

WHEREAS, the Legislature is troubled by the court's overreach and strongly disagrees with the court's Held decision but recognizes that without providing direction and clear statutory sideboard, there will be regulatory uncertainty and unnecessary, expensive, and continued litigation; and

WHEREAS, the earth's climate has never been in stasis, and there are different scientific views of the degree to which human activities are influencing current climatological trends and the degree to which the curtailment of human activities would affect current trends; and

WHEREAS, the court notes that section 75-1-201(4)(a), MCA, clarifies that an "agency may not withhold, deny, or impose conditions on any permit or other authority to act based on" MEPA alone. MEPA thus provides a review process for an agency's permitting consideration; it is not a regulatory enforcement law. MEPA expresses the Legislature's intent that state agencies fully consider all aspects of a proposal and ensure that "the public is informed of the anticipated impacts in Montana of potential state actions" (paragraph 57,

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Montana Environmental Information Center v. Department of Environmental Quality, DA 23-0225 (2023)); and

WHEREAS, the court stipulates that "we did not hold in Held, and do not hold here, that DEQ is required to analyze GHG [greenhouse gas] emissions for every potential state action...nor do we hold that DEQ must regulate GHG emissions in an air quality permit application"; and

WHEREAS, the court further stipulates the department's lack of substantive authority to regulate greenhouse gases and lack of authority to grant or deny a permit based on greenhouse gas emissions does not absolve the agency from conducting analysis of greenhouse gas emissions in a MEPA review (paragraph 58, Montana Environmental Information Center v. Department of Environmental Quality, DA 23-0225 (2023)); and

WHEREAS, with the court's recognitions of the regulatory limitations of MEPA to deny a permit based on greenhouse gas emissions analysis and the department's recognition of its "obligation to make an adequate compilation of relevant information, to analyze it reasonably, and to consider all pertinent data," (paragraph 61, Montana Environmental Information Center v. Department of Environmental Quality, DA 23-0225 (2023)), the Legislature directs the department to conduct an analysis of greenhouse gas emissions for state actions involving fossil fuel activities; and

WHEREAS, the Legislature stipulates that the greenhouse gas analysis is intended to satisfy the informational requirements under MEPA and that greenhouse gases will not be regulated.

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

NEW SECTION. Section 1. Greenhouse gas assessment. (1) Except as provided in 75-1-201(3), a state agency, when conducting an environmental review in accordance with parts 1 through 3 of this chapter:

(a) may conduct a greenhouse gas assessment in accordance with 75-1-201 for a proposed action if the agency determines the assessment is necessary to meet the requirements of parts 1 through 3 of this chapter; or

(b) shall conduct a greenhouse gas assessment in accordance with 75-1-201 for a proposed action that is defined as a fossil fuel activity as provided in 75-1-220.

(2) A greenhouse gas assessment is not required for a proposed action exempted from review under parts 1 through 3 of this chapter or for categorical exclusions as provided in agency rules, programmatic

review, or statute.

Section 2. 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 must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsections (2) and (3) subsection (3), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking for a state-sponsored project that may have an impact on ~~the Montana human~~ Montana's environment by projects in Montana; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(II) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(III);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking for state-sponsored projects, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact ~~the human environment in Montana~~ Montana's environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of ~~the human environment in Montana~~ Montana's environment a detailed statement on:

(A) the proximate environmental ~~impact~~ impacts of the proposed action;

(B) any proximate adverse effects on Montana's environment that cannot be avoided if the

1 ~~proposal~~proposed action is implemented;

2 (C) alternatives to the proposed action. An analysis of any alternative included in the environmental
3 review must comply with the following criteria:

4 (I) any alternative proposed must be reasonable, in that the alternative must be achievable under
5 current technology and the alternative must be economically feasible as determined solely by the economic
6 viability for similar projects having similar conditions and physical locations and determined without regard to
7 the economic strength of the specific project sponsor;

8 (II) the agency proposing the alternative shall consult with the project sponsor regarding any
9 proposed alternative, and the agency shall give due weight and consideration to the project sponsor's
10 comments regarding the proposed alternative;

11 (III) the agency shall complete a meaningful no-action alternative analysis. The no-action
12 alternative analysis must include the projected beneficial and adverse environmental, social, and economic
13 impact of the project's noncompletion.

14 (D) any regulatory impacts on private property rights, including whether alternatives that reduce,
15 minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this
16 subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private
17 property.

18 (E) the relationship between local short-term uses of the Montana human Montana's environment
19 and the maintenance and enhancement of long-term productivity;

20 (F) any irreversible and irretrievable commitments of resources that would be involved in the
21 proposed action if it is implemented;

22 (G) the customer fiscal impact analysis, if required by 69-2-216; and

23 (H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and
24 the economic advantages and disadvantages of the proposal;

25 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe
26 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts
27 concerning alternative uses of available resources. If the alternatives analysis is conducted for a project that is
28 not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to

1 implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project
2 sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection
3 (4)(b) to a specific course of action.

4 (vi) recognize the potential long-range character of environmental impacts in Montana and, when
5 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs
6 designed to maximize cooperation in anticipating and preventing a decline in the quality of Montana's
7 environment;

8 (vii) make available to counties, municipalities, institutions, and individuals advice and information
9 useful in restoring, maintaining, and enhancing the quality of Montana's environment;

10 (viii) initiate and use ecological information in the planning and development of resource-oriented
11 projects; and

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

13 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible
14 state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or
15 special expertise with respect to any environmental impact involved in Montana and with any Montana local
16 government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state
17 official shall also consult with and obtain comments from any state agency in Montana with respect to any
18 regulation of private property involved. Copies of the statement and the comments and views of the appropriate
19 state, federal, and local agencies that are authorized to develop and enforce environmental standards must be
20 made available to the governor, the environmental quality council, and the public and must accompany the
21 proposal through the existing agency review processes.

22 (d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for
23 use or permission to act by an agency, either singly or in combination with other state agencies, does not
24 trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the
25 entitlement or unless otherwise provided by law.

26 (2) (a) ~~Except as provided in subsection (2)(b), an~~ An environmental review conducted pursuant to
27 subsection (1) ~~may not include an evaluation of greenhouse gas emissions and corresponding impacts to the~~
28 ~~climate in the state or beyond the state's borders~~ a greenhouse gas assessment subject to [section 1]. The

department of environmental quality shall develop a guidance document for use by state agencies to determine when a greenhouse gas assessment may be necessary. The guidance must include direction on methodologies for completing a greenhouse gas assessment. Prior to finalizing this guidance, the department shall provide public notice of the draft guidance and allow for public comment.

(b) An environmental review conducted pursuant to subsection (1) may include ~~an evaluation~~ an evaluation of the reasonably foreseeable environmental impacts of a proposed action if:

(i) ~~conducted jointly by a state agency and a federal agency to the extent the review of the expanded assessment is required by the federal agency; or~~

(ii) ~~the United States congress amends the federal Clean Air Act to include carbon dioxide emissions as a regulated pollutant.~~

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

(4) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (4) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(5) (a) (i) A challenge to an agency's environmental review under this part may only be brought against a final agency action decision and may only be brought in district court or in federal court, whichever is appropriate. A challenge may only be brought by a person who submits formal comments on the agency's environmental review prior to the agency's final decision, and the challenge must be limited to those issues addressed in those comments.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources

1 and conservation under Title 77, "final agency action" means the date that the board of land commissioners or
2 the department of natural resources and conservation issues a final environmental review document under this
3 part or the date that the board approves the action that is subject to this part, whichever is later.

4 (b) Any action or proceeding under subsection (5)(a)(ii) must take precedence over other cases or
5 matters in the district court unless otherwise provided by law.

6 (c) Any judicial action or proceeding brought in district court under subsection (5)(a) involving an
7 equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

8 (6) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of
9 parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or
10 a claim that the environmental review is inadequate, the agency shall compile and submit to the court the
11 certified record of its decision at issue. The agency, prior to submitting the certified record to the court, shall
12 assess and collect from the person challenging the decision a fee to pay for actual costs to compile and submit
13 the certified record. Except as provided in subsection (6)(b), the person challenging the decision has the burden
14 of proving the claim by clear and convincing evidence contained in the record.

15 ~~(ii) An action alleging noncompliance or inadequate compliance with a requirement of parts 1~~
16 ~~through 3, including a challenge to an agency's decision that an environmental review is not required or a claim~~
17 ~~that the environmental review is inadequate based in whole or in part upon greenhouse gas emissions and~~
18 ~~impacts to the climate in Montana or beyond Montana's borders, cannot vacate, void, or delay a lease, permit,~~
19 ~~license, certificate, authorization, or other entitlement or authority unless the review is required by a federal~~
20 ~~agency or the United States congress amends the federal Clean Air Act to include carbon dioxide as a~~
21 ~~regulated pollutant.~~

22 ~~(iii)(ii)~~ Except as provided in subsection (6)(b), in a challenge to the agency's decision or the
23 adequacy of an environmental review, a court may not consider any information, including but not limited to an
24 issue, comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the
25 agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to
26 be submitted.

27 ~~(iv)(iii)~~ Except as provided in subsection (6)(b), the court shall confine its review to the record certified
28 by the agency. The court shall affirm the agency's decision or the environmental review unless the court

1 specifically finds that the agency's decision was arbitrary and capricious.

2 ~~(v)~~(iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal
3 impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the
4 agency's decision.

5 (b) (i) When a party challenging the decision or the adequacy of the environmental review or
6 decision presents information not in the record certified by the agency, the challenging party shall certify under
7 oath in an affidavit that the information is new, material, and significant evidence that was not publicly available
8 before the agency's decision and that is relevant to the decision or the adequacy of the agency's environmental
9 review.

10 (ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and
11 significant evidence that was not publicly available before the agency's decision and that is relevant to the
12 decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to
13 the agency for the agency's consideration and an opportunity to modify its decision or environmental review
14 before the court considers the evidence as a part of the administrative record under review.

15 (iii) If the court finds that the information in the affidavit does not meet the requirements of
16 subsection (6)(b)(i), the court may not remand the matter to the agency or consider the proffered information in
17 making its decision.

18 (c) (i) The remedies provided in this section for successful challenges to a decision of the agency
19 or the adequacy of the statement are exclusive.

20 (ii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the
21 pleadings of parties and intervenors opposing a request for a temporary restraining order, preliminary
22 injunction, permanent injunction, or other equitable relief may not enjoin the issuance or effectiveness of a
23 license or permit or a part of a license or permit issued pursuant to Title 75 or Title 82 unless the court
24 specifically finds that the party requesting the relief is more likely than not to prevail on the merits of its
25 complaint given the uncontroverted facts in the record and applicable law and, in the absence of a temporary
26 restraining order, a preliminary injunction, a permanent injunction, or other equitable relief, that the:

27 (A) party requesting the relief will suffer irreparable harm in the absence of the relief;

28 (B) issuance of the relief is in the public interest. In determining whether the grant of the relief is in

1 the public interest, a court:

2 (I) may not consider the legal nature or character of any party; and

3 (II) shall consider the implications of the relief on the local and state economy and make written
4 findings with respect to both.

5 (C) relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and
6 the irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the
7 extent possible, that the project or as much of the project as possible can go forward while also providing the
8 relief to which the applicant has been determined to be entitled.

9 (d) The court may issue a temporary restraining order, preliminary injunction, permanent
10 injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court
11 in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any
12 party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial
13 decision in the case, including but not limited to lost wages of employees and lost project revenues for 1 year. If
14 the party seeking an injunction or a temporary restraining order objects to the amount of the written undertaking
15 for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit with the
16 court that states the party's income, assets, and liabilities in order to facilitate the court's consideration of the
17 amount of the written undertaking that is required. The affidavit must be served on the party enjoined. If a
18 challenge for noncompliance or inadequate compliance with a requirement of parts 1 through 3 seeks to
19 vacate, void, or delay a lease, permit, license, certificate, or other entitlement or authority, the party shall, as an
20 initial matter, seek an injunction related to a lease, permit, license, certificate, or other entitlement or authority,
21 and an injunction may only be issued if the challenger:

22 (i) proves there is a likelihood of succeeding on the merits;

23 (ii) proves there is a violation of an established law or regulation on which the lease, permit,
24 license, certificate, or other entitlement or authority is based; and

25 (iii) subject to the demonstration of the inability to pay, posts the appropriate written undertaking.

26 (e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or
27 authority to act may intervene in a lawsuit in court challenging a decision or statement by a department or
28 agency of the state as a matter of right if the individual or entity has not been named as a defendant.

(f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3.

(7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental review or any severable portion of an environmental review within the state's jurisdiction that is being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National Environmental Policy Act.

(8) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(9) A project sponsor may request a review of the significance determination or recommendation made under subsection (8) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 3. Section 75-1-202, MCA, is amended to read:

"75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees that must be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201 and the agency has not made the finding under 75-1-205(1)(a). An agency shall determine whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this section within any statutory timeframe for issuance of the lease, permit, contract, license, or certificate or, if no statutory timeframe is provided, within 90 days. Except as provided in 85-2-124, the fee assessed under this section may be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. A fee may not be assessed if an agency intends only to file a negative declaration stating that the proposed project

1 will not have a significant impact on the human Montana's environment."

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3 **Section 4.** Section 75-1-220, MCA, is amended to read:

4 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

5 (1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or
6 control measures that would accomplish the same objectives as those included in the proposed action by the
7 applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an
8 alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter
9 20.

10 (2) "Appropriate board" means, for administrative actions taken under this part by the:

11 (a) department of environmental quality, the board of environmental review, as provided for in 2-
12 15-3502;

13 (b) department of fish, wildlife, and parks, the fish and wildlife commission, as provided for in 2-15-
14 3402, and the state parks and recreation board, as provided for in 2-15-3406;

15 (c) department of transportation, the transportation commission, as provided for in 2-15-2502;

16 (d) department of natural resources and conservation for state trust land issues, the board of land
17 commissioners, as provided for in Article X, section 4, of the Montana constitution;

18 (e) department of natural resources and conservation for oil and gas issues, the board of oil and
19 gas conservation, as provided for in 2-15-3303; and

20 (f) department of livestock, the board of livestock, as provided for in 2-15-3102.

21 (3) "Complete application" means, for the purpose of complying with this part, an application for a
22 permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and
23 signatures required to be included with the application sufficient for the agency to approve the application under
24 the applicable statutes and rules.

25 (4) "Cumulative impacts" means the collective impacts on the human environment within the
26 ~~borders of Montana~~ Montana's environment of the proposed action when considered in conjunction with other
27 past, present, and future actions related to the proposed action by location or generic type.

28 (5) "Economic impacts" or "socioeconomic impacts" means the financial impacts that may occur to

1 Montana's local economy if the proposed action occurs.

2 ~~(5)(6)~~ "Environmental review" means any environmental assessment, environmental impact
3 statement, or other written analysis required under this part by a state agency of a proposed action to
4 determine, examine, or document the effects and impacts of the proposed action on the quality of the human
5 ~~and physical environment within the borders of Montana~~ Montana's environment as required under this part.

6 (7) (a) "Fossil fuel activity" means a proposed action that authorizes the mining of coal, drilling for
7 oil or natural gas, production of oil or natural gas, compression of oil or natural gas, or burning of coal, oil, or
8 natural gas to generate energy for electricity.

9 (b) The term does not include:

10 (i) burning biomass for electricity or industrial purposes;

11 (ii) transportation or transportation-related activities, including rail activities; or

12 (iii) a water quality-related or a water quantity-related lease, permit, license, certificate, or other
13 entitlement for use or permission to act by a state agency for fossil fuel activities.

14 (8) "Greenhouse gas emissions" means carbon dioxide, methane, nitrous oxide,
15 hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

16 ~~(6)(9)~~ "Project sponsor" means any applicant, owner, operator, agency, or other entity that is
17 proposing an action that requires an environmental review. If the action involves state agency-initiated actions
18 on state trust lands, the term also includes each institutional beneficiary of any trust as described in The
19 Enabling Act of Congress, approved February 22, 1899, 25 Stat. 676, as amended, the Morrill Act of 1862, 7
20 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

21 (10) (a) "Proposed action" means a project, program, or activity:

22 (i) to be directly implemented by an agency;

23 (ii) to be supported through a contract, grant, subsidy, loan, or other form of financial assistance
24 from an agency either singly or in combination with other state agencies; or

25 (iii) requiring the issuance of a lease, permit, license, certificate, or other entitlement for use or
26 permission to act by the agency either singly or in combination with other state agencies, except as provided in
27 77-1-121.

28 (b) The term does not mean:

(i) an upstream, downstream, or other indirect action that occurs independently or is caused in part or exclusively by the proposed action; or

(ii) an action that occurs regardless of the proposed action.

~~(7)(11)~~ "Public scoping process" means any process to determine the scope of an environmental review.

~~(8)(12)~~ (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection ~~(8)(b)(i)~~ (12)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or

(iii) except as provided in subsection ~~(8)(b)(i)~~ (12)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

(b) The term does not include:

(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:

(A) department of environmental quality pursuant to Titles 75, 76, or 82;

(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or

(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies."

NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [section 1].

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are

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1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
2 the part remains in effect in all valid applications that are severable from the invalid applications.

3

4 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

5

- END -

AMENDED