

## **HB 566**

### **Gutting the Montana Environmental Policy Act (MEPA)**

HB 566 does two things: 1) it takes away the ability of state agencies to use MEPA in decisionmaking, and 2) it takes away almost all consequences for failure to comply with MEPA, ensuring that state agencies will no longer be required to identify, understand, or mitigate environmental impacts of projects before a “permit, license, lease, or other authorization” is issued. Examining the environmental impacts of a project AFTER a permit is issued, makes MEPA a meaningless exercise in paperwork.

#### **Background on MEPA**

The Montana Environmental Policy Act (MEPA) requires state agencies to identify and review the environmental consequences of their actions before they act. It also allows Montana citizens to participate in state agency decisions. MEPA does this by requiring us to examine “major actions of state government significantly affecting the quality of the human environment.” Such actions require the preparation of an environmental review—a process that allows alternatives to be examined and the public to have a voice when something “significant” is about to happen to their environment. This policy makes sense. It allows Montanans to stop and think and plan for the future. It is a good state policy to examine things closely when something “significant” is about to happen to our environment.

#### **Preventing Decisions Based on Environmental Impacts**

HB 566 would prevent agencies from using Environmental Impacts Statements (EISs) and Environmental Assessments (EAs) in making decisions. Currently, through the MEPA process, agencies consider options, assess risks and benefits, inform the public, and provide the public with an opportunity to influence the decisions made on projects. Under HB 566 (amendments on Page 2), agencies would be able to gather public comment, but they would be prohibited from using those comments in their decisions. What does it mean for the public to be able to comment on a project—if public comments can’t be used in agency decisionmaking? What does our constitutional right to participate mean (Article II, Section 8) if the public participation process can’t be used in government decisionmaking?

#### **Remanding Decisions Back to the Agency – What Does this Do?**

Current law says that if an agency fails to analyze the environmental consequences of a permit or license, a court can find that an agency has failed to comply with MEPA. The court can then direct the agency to go back and properly analyze the impacts of a project under MEPA. While this work is being done, courts have the ability to (*but are not required to*) stop a permit or license from going forward until the agency fully complies with MEPA and conducts the reanalysis.

HB 566 would make the only remedy for failure to comply with MEPA a “remand to the agency.” While the agency completes its environmental review, a permit, license or other authorization issued by the agency will remain valid and cannot be put on hold, modified, or suspended. Consequently, HB 566 will:

- ◆ Ensure that environmental impacts of projects do NOT have to be identified and reviewed prior to issuing a permit, lease, or license;
- ◆ Give state agencies and companies a disincentive to ensure that environmental impacts of a project are identified prior to a permit or license being issued;
- ◆ Increase state government budgets, because agencies will need to pay for significant portions of EISs that companies now cover;
- ◆ Make it difficult—if not impossible—to reduce environmental impacts through conditions to a permit if that permit was issued prior to an adequate environmental impact analysis; and
- ◆ Substantially weaken our constitutional right to “a clean and healthful environment.”

### **Companies Will No Longer Be Required to Cooperate**

People generally do things for two reasons: because they have to do them or because they want to do them. HB 566 removes the incentive for agencies—and the companies that they permit—to comply with MEPA because they will not be required to do so. Experience has shown that most companies—including large corporations like ASARCO, W.R. Grace, Pegasus Gold, Canyon Resources—only do things because there is a consequence that is serious enough to get their attention.

HB 566 takes away any incentive for companies to cooperate with agencies in the preparation of environmental reviews—because regardless of the quality of that review, agencies will be required to issue a permit or other authorization to act regardless of the adequacy of the MEPA review. ***If companies gets their permit regardless of the adequacy of an environmental review, there will be an incentive for companies to ensure that:***

- ◆ Environmental impacts of projects are not identified during the environmental review process;
- ◆ Environmental reviews are inadequate; and
- ◆ No cooperation exists between companies and the agencies who must prepare environmental reviews.

Additionally, if an agency must issue a permit or license before an environmental review is done adequately, the impacts of a project may not be identified until AFTER the permit or license is issued. If additional impacts are uncovered during the reanalysis, it could be difficult—if not impossible—to condition a permit or license in order to reduce identified environmental impacts.

### **Companies Will No Longer Need to Pay for Environmental Impact Statements**

In 1975, legislation passed that dictates who pays for Environmental Impact Statements (EIS) under MEPA. Under this law, companies are only required to pay for data and information gathering—not for compiling information, holding public hearings, and publication of EISs. However according to the Department of Environmental Quality (DEQ), companies have been paying for the entire cost of EISs since 1977 because if a review was not adequate, the company might not get its permit. Because HB 566 takes away all incentive for a company to want an adequate environmental review, there will be no incentive for companies to pay for the final product—so significant costs of EISs will now shift to state agencies.

### **Time Limits Established Must be Followed – What does this Mean?**

This sentence (page 5, lines 8 – 9) states that time frames already established under MEPA must be followed once a court orders an agency to reanalyze their environmental review. However, all reanalysis will be done according to specified time frames—but the analysis will be done AFTER the permit or license is issued.

***Without consequences for complying with MEPA, our constitutional right to “a clean and healthful environment” will be jeopardized – as well as our constitutional right to “right to participate mean.”***

***Vote “No” on HB 566!***