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*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act repealing the water pollution control advisory council; providing for public participation; amending sections 75-5-103; 75-5-106; and 75-307, MCA; repealing sections 2-15-2107 and 75-5-221, MCA; and providing an immediate effective date."

WHEREAS, repeal of the Water Pollution Control Advisory Council will improve water quality governance while preserving public participation through existing statutory requirements for notice and comment under the Montana Administrative Procedure Act;

WHEREAS, the Legislature finds that consultation with technical experts and interested stakeholders can be effectively accomplished through existing rulemaking requirements and related public comment opportunities without the need to maintain the Water Pollution Control Advisory Council;

WHEREAS, the Water Pollution Control Advisory Council was created before the development of modern public

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participation tools, including electronic notice, websites, and email, which now facilitate broad and timely public engagement in department rulemaking and other water quality related decisions under the Montana Water Quality Act; and

WHEREAS, the Montana Administrative Procedure Act and the Montana Water Quality Act establish robust and transparent procedures for public notice, comment, and participation in rulemaking, ensuring that interested persons, including technical experts and stakeholders, have a meaningful opportunity to provide input on department proposals.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. (Temporary) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

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(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by department rule, that is necessary for an energy development project.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(4) ~~"Council" means the water pollution control advisory council provided for in 2-15-2107.~~

~~(5)~~ (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

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~~(6)~~ (5) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(7)~~ (6) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(8)~~ (7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(9)~~ (8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(10)~~ (9) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (a) generating electricity;
- (b) producing gas derived from coal;
- (c) producing liquid hydrocarbon products;
- (d) refining crude oil or natural gas;

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(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5; or

(f) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

~~(11)~~ (10) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(12)~~ (11) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the department's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(13)~~ (12) "Impaired water body" means a water body or stream segment for which sufficient credible data shows

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that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(14)~~ (13) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(15)~~ (14) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested a feasibility allowance.

~~(16)~~ (15) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(17)~~ (16) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition

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in a surface water without causing a violation of the surface water quality standards.

~~(18)~~ (17) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(19)~~(18) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(20)~~ (19) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the department.

~~(21)~~ (20) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(22)~~ (21) "Outstanding resource waters" means:

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(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the department under the provisions of 75-5-316 and approved by the legislature.

~~(23)~~ (22) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(24)~~ (23) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(25)~~ (24) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(26)~~ (25) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(27)~~ (26) (a) "Pollution" means:

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(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal

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gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection

~~(27) (b) (iii)~~ (26) (b) (iii) does not require a mixing zone.

~~(28)~~ (27) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(29)~~ (28) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(30)~~ (29) "Standard of performance" means a standard adopted by the department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(31)~~ (30) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

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(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(32)~~ (31) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(33)~~ (32) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

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~~(34)~~(33) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(35)~~ (34) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(36)~~ (35) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(37)~~(36) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

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~~(38)~~(37) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(39)~~ (38) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

75-5-103. *(Effective on occurrence of contingency)*

Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

- (1) "Associated supporting infrastructure" means:
 - (a) electric transmission and distribution facilities;
 - (b) pipeline facilities;
 - (c) aboveground ponds and reservoirs and underground storage reservoirs;
 - (d) rail transportation;
 - (e) aqueducts and diversion dams;

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(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by department rule, that is necessary for an energy development project.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(4) ~~"Council" means the water pollution control advisory council provided for in 2-15-2107.~~

~~(5)~~ (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(6)~~ (5) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water

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quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(7)~~ (6) "Department" means the department of environmental quality provided for in 2-15-3501.

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~~(9)~~ (8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(10)~~ (9) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (a) generating electricity;
- (b) producing gas derived from coal;
- (c) producing liquid hydrocarbon products;
- (d) refining crude oil or natural gas;
- (e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5; or

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(f) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

~~(11)~~ (10) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(12)~~ (11) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the department's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(13)~~ (12) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

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development of any natural resource, together with any sewage that may be present.

~~(15)~~ (14) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested a feasibility allowance.

~~(16)~~ (15) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(17)~~ (16) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(18)~~ (17) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

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~~(20)~~ (19) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the department.

~~(21)~~ (20) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(22)~~ (21) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the department under the provisions of 75-5-316 and approved by the legislature.

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~~(24)~~ (23) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(25)~~ (24) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(26)~~ (25) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(27)~~ (26) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

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(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

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(c) Contamination referred to in subsections

~~(27) (b) (iii) and (27) (b) (iv)~~ (26) (b) (iii) and (26) (b) (iv)

does not require a mixing zone.

~~(28)~~ (27) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(29)~~ (28) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(30)~~ (29) "Standard of performance" means a standard adopted by the department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(31)~~ (30) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

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(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(32)~~ (31) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(33)~~ (32) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(34)~~ (33) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point

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sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(35)~~ (34) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(36)~~ (35) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(37)~~ (36) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(38)~~ (37) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location,

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diversion, artificial recharge, or acquisition of ground water.

~~(39)~~ (38) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

{Internal References to 75-5-103:

75-5-106a	75-5-304x	75-5-605x	75-5-615x
76-4-102x	76-4-102x	80-15-102x	85-1-904x}

Section 2. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The ~~council,~~ the board and the department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of

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local departments of health, shall cooperate with the council, the board and the department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The department may adopt rules regarding the granting of enforcement authority to local water quality districts."

{Internal References to 75-5-106: None}

Section 3. *Section 75-5-307, MCA, is amended to read:*

"75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1) (a) Before

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streams are classified or standards established or modified or rules made, revoked, or modified, the department shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and any rules proposed to be made, revoked, or modified must be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice must be mailed directly to persons the department believes may be affected by the proposed action. ~~The council must be given not less than 30 days prior to first publication to comment on the proposed action.~~

(b) Rulemaking concerning the classification of state waters or related standards established under this chapter must also be conducted in accordance with the Montana Administrative Procedure Act in Title 2, chapter 4, including applicable requirements for public notice and comment.

(2) At a hearing held under this section, the department shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The department may make rules for the orderly conduct of the hearing but need not require compliance with

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the rules of evidence or procedure applicable to hearings

held under 75-5-611."

{*Internal References to 75-5-307:*

75-5-302x}

NEW SECTION. Section 4. {standard} Repealer. The following sections of the Montana Code Annotated are repealed: 2-15-2107 and 75-5-221.

{*Internal References to 2-15-2107:*

75-5-103a 75-5-103a 75-5-221r

Internal References to 75-5-221: None}

NEW SECTION. Section 5. {standard} Effective date. [This act] is effective on passage and approval.

-END-