

HOUSE BILL NO. HB0140

Environmental Quality Act permits-intervention.

Sponsored by: Representative(s) Lubnau and Senator(s)
Bebout and Perkins

A BILL

for

1 AN ACT relating to environmental quality; providing that
2 the state may intervene in any state action challenging the
3 issuance of a permit or an activity conducted or proposed
4 to be conducted pursuant to a permit issued under the
5 Environmental Quality Act as specified; providing that a
6 federal court may consider a Wyoming state statute when
7 determining whether to allow the state to enter an
8 appearance as a permissive intervenor as specified;
9 providing that the prevailing party shall be entitled to
10 costs of litigation as specified; specifying applicability;
11 and providing for an effective date.

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13 *Be It Enacted by the Legislature of the State of Wyoming:*

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15 **Section 1.** W.S. 35-11-1003 and 35-11-1004 are created
16 to read:

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2 **35-11-1003. Right of state to intervene; findings.**

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4 (a) The legislature finds the state has a compelling
5 interest in activities authorized pursuant to permits
6 issued under this act. It is the intent of the legislature
7 to protect the state's interests from unwarranted actions
8 seeking to impede or curtail activities lawfully proposed
9 or conducted pursuant to state issued permits.

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11 (b) The state of Wyoming, upon the discretion of the
12 attorney general, may intervene as a matter of right in any
13 state court action challenging the issuance of a permit or
14 an activity conducted or proposed to be conducted pursuant
15 to a permit issued under this chapter. Intervening under
16 this section, the state shall support the position of the
17 permittee if the attorney general determines that:

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19 (i) If the challenge is to the issuance of the
20 permit, the permit was issued pursuant to applicable law;
21 or

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1 (ii) If the challenge is to an activity
2 conducted or proposed to be conducted pursuant to a permit,
3 the challenged activity is authorized under the permit.

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5 (c) A federal court may consider this section when
6 determining whether to grant a motion to intervene filed by
7 the state of Wyoming pursuant to Federal Rules of Civil
8 Procedure, Rule 24(b)(2)(A) or similar rule in an action
9 challenging the issuance of a permit or an activity
10 conducted or proposed to be conducted pursuant to a permit
11 issued under this chapter.

12
13 (d) Nothing in this section shall in any way limit
14 any existing civil or criminal cause of action arising out
15 of a violation of any provision of this act or any rule,
16 regulation, standard, permit, license, variance or order
17 adopted hereunder.

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19 **35-11-1004. Litigation costs.**

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21 (a) The court, in issuing a final order in any action
22 brought pursuant to this act, may award costs of litigation
23 to any party whenever the court determines such an award is
24 appropriate. The state of Wyoming shall be considered a

1 prevailing party for purposes of recovering litigation
2 costs if the state intervened pursuant to W.S. 35-11-1003
3 on behalf of the permittee and the permittee is a
4 prevailing party in the action.

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6 (b) This section shall not apply to an action brought
7 under a section of this act which specifically provides for
8 an award of litigation costs.

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10 (c) In the event litigation costs are awarded
11 pursuant to subsection (a) of this section in an action in
12 which the state of Wyoming intervened pursuant to W.S.
13 35-11-1003, public funds of the state of Wyoming shall only
14 be expended to provide for litigation costs upon a finding
15 by the court that litigation costs cannot be reasonably
16 recovered from the permittee.

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18 (d) As used in this section:

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20 (i) "Litigation costs" shall include but not be
21 limited to reasonable attorneys' fees, expert witness fees
22 and court costs;

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1 (ii) "Reasonable attorneys' fees" shall be
2 determined by the court, but shall be limited to actual
3 time and expense worked and billed during the course of the
4 action by attorneys or legal staff.

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6 **Section 2.** This act shall apply to all actions filed
7 on or after July 1, 2013.

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9 **Section 3.** This act is effective July 1, 2013.

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(END)