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|  | DRAFT ONLYNOT APPROVED FOR INTRODUCTION |  |

HOUSE BILL NO.

Environmental Quality Act Permits-Intervention.

Sponsored by: Representative(s) Lubnau

A BILL

for

AN ACT relating to environmental quality; providing that the state may intervene in any action challenging the issuance of a permit or an activity conducted or proposed to be conducted pursuant to a permit issued by the environmental quality council as specified; providing that the prevailing party shall be entitled to costs of litigation as specified; specifying applicability; and providing for an effective date.

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

 **Section 1**. W.S. 35-11-1002 and 35-11-1003 are created to read:

 **35-11-1002. Right of state to intervene; findings.**

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

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

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

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

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

 **35-11-1003. Litigation costs.**

(a) The court, in issuing a final order in any action brought pursuant to this act, may award costs of litigation to any party whenever the court determines such an award is appropriate. The state of Wyoming shall be considered a prevailing party for purposes of recovering litigation costs if the state intervened pursuant to W.S. 35-11-1002 on behalf of the permittee and the permittee is a prevailing party in the action.

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

(c) In the event litigation costs are awarded pursuant to subsection (a) of this section in an action in which the state of Wyoming intervened pursuant to W.S. 35-11-1002, public funds of the state of Wyoming shall only be expended to provide for litigation costs upon a finding by the court that litigation costs cannot be reasonably recovered from the permittee.

 (d) As used in this section:

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

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

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

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

(END)