

## Summary of Energy and Telecommunications Legislation 2009 Legislative Session

The 2009 Legislature acted on a number of bills involving energy policy, conservation, project permitting, and taxation. This summary provides an overview of major legislation, excluding the budget provisions of House Bill 2 and Senate Bill 645, in the following areas:

ETIC Bills and Duties, PSC  
Renewable Portfolio Standard  
Energy Conservation  
Telecommunications

MEPA and permitting  
Utilities and CO<sub>2</sub>  
Oil and Gas  
Energy Source Taxation

The summary focuses only on legislation approved by the Legislature that has become law.

### **ETIC Bills, PSC Bills, Revision of ETIC Responsibilities**

During the 2007-2008 interim, the Energy and Telecommunications Interim Committee approved the drafting of 3 pieces of legislation, all of which were subsequently approved by the 2009 Legislature. Two of the bills were drafts requested by the Public Service Commission, and one draft was a committee bill. Three bills also were approved that alter the ETIC's statutory responsibilities. The bills, and the topics they addressed, were:

#### **ETIC Committee Bill**

**HB 27** Removes the termination date for the universal system benefits charge rates, which were set to expire in December 2009. The revisions also clarify ETIC's oversight authority over the universal system benefits program, requiring the committee to review utility USB reports prior to each legislative session.

#### **Revision of ETIC duties**

**SB 290** Requires the ETIC to review and revise the state's energy policy. The revisions change the process used in the past for updating the state's energy policy, largely eliminating the role of the DEQ and instead requiring the ETIC to work with stakeholders, including state agencies and the public. Each interim, the ETIC must review the energy policy, and during the 2009-10 interim, the committee must address 9 specific topics.

**HB 333** Allows for geothermal research through the Montana Bureau of Mines and Geology. Utilities interested in developing geothermal sites must contribute to the research. Each interim the Bureau is required to provide the ETIC with an update on its research efforts and funding.

#### **Public Service Commission**

**HB 103** Requires commercial tow truck operators to file proof of insurance with the Department of Justice rather than the Public Service Commission.

**SB 72** Revises laws related to Public Service Commission personnel. The revisions are primarily a clean-up of existing law related to employment of personnel, record keeping, and a clarification of the role of PSC secretaries.

## **Renewable Portfolio Standard**

### **Community Renewable Energy Program requirements**

**HB 207** Increases community renewable energy projects to include eligible renewable resources that are less than or equal to 25 megawatts, rather than 5 megawatts.

**HB 208** Extends the deadline for public utilities to comply with the community renewable energy project requirements of the renewable energy portfolio standard from 2010 to 2012.

**HB 343** Allows eligible renewable resources owned by a public utility to be used to meet the community renewable energy project requirements of the renewable portfolio standard. The revisions also require a utility to consider dispatch ability and seasonality in meeting the overall standard. Compressed air energy storage is added to the definition of eligible renewable resource.

### **Renewable Energy Credits, Definitions**

**HB 179** Alters the definition of competitive electricity supplier to exclude government entities selling electricity produced by facilities generating less than 250 kilowatts that were in operation prior to 1990. This excludes the city of Phillipsburg from the definition.

## **Energy Conservation**

**SB 49** Requires the Department of Administration to establish high-performance building standards for state-owned buildings and new state-leased buildings. The standards must exceed the International Energy Conservation Code by 20% to the extent it is cost effective. (EQC bill)

**HB 98** Allows state agencies to enter into energy performance contracts. Previously, only units of local government could enter into such contracts. (DEQ bill)

**HB 420** Allows cities, counties, or towns with building code enforcement programs to adopt incentive-based energy conservation standards for new construction. The conservation standards may exceed state building code standards.

**HB 152** Establishes the "Quality Schools Facility Grant Program Act" which establishes a grant program that may be used to assist with energy conservation and reduction in public schools.

**HB 5** Outlines capital projects, including energy conservation projects in state-owned facilities. The conservation projects over the biennium will be used in meeting the goals of the 20x10 Initiative -- a 20% reduction in facility energy requirements by executive branch agencies by 2010.

## **Telecommunications**

### **Distribution of 911 funds**

**HB 82** Revises the allocation of funds for 911 purposes. The bill increases the distribution of 911 fee collections to the counties and reduces the amount deposited in the general fund from 3.74% of the fees collected to 2.74%. A special revenue fund is created for the administrative costs and unused administrative funds are distributed to the 911 jurisdictions at the end of each fiscal year. (DOA bill)

**HB 118** Revises the distribution of wireless 911 funds among counties to address an inequity in the revenue distribution criteria. It also requires local 911 jurisdictions to provide program information to the Department of Administration and provides for a penalty for noncompliance. (DOA bill)

## **Montana Environmental Policy Act, Permitting for energy projects**

**HB 529** Limits the scope of environmental review under the Montana Environmental Policy Act for certain energy projects on state lands. If more than 33% of the total land occupied by an energy development project is state land then the environmental review includes the total land area, including federal and private land.

**HB 483** Revises environmental laws related to energy development projects. The revisions modify the request procedures for a hearing before the Board of Environmental Review, require a written undertaking to be given by certain parties requesting a hearing or a stay before the BER or a court, and clarify remand procedures. The bill also modifies the expiration date requirements for a permit or license under Montana's air quality laws and require that the BER issue a final decision within 150 days under air quality laws and the Major Facility Siting Act. The use of Best Available Control Technologies (BACT) regulations is also clarified.

**SB 360** Alters the definition of "facility" in the Major Facility Siting Act to exclude certain upgrades to transmission lines in existing rights-of-way and easements and geothermal resources capable of producing up to 50 megawatts.

**SB 376** Exempts public utilities' "affiliates" from a customer fiscal impact analysis, as long as necessary tariffs, rate schedules, and other requisite information is filed with the Federal Energy Regulatory Commission.

**HB 278** Allows certain disturbances, like access roads and sediment ponds, disturbed by strip mining and associated activities be evaluated for revegetation and released from revegetation bond sooner than the current 10-year period.

## **Utilities and CO<sub>2</sub>**

**HB 294** Allows a natural gas utility that has restructured to acquire natural gas production and gathering resources and include them in rate base. The revisions also establish procedures for a utility to apply to the Public Service Commission for approval to rate-base prior to the acquisition. The PSC must adopt rules before March 31, 2010.

**HB 287** Authorizes a utility to remove or alter vegetation within a utility right-of-way if necessary for a utility to repair, use, operate, or maintain electricity or gas transmission or distribution facilities. Utilities are required to provide property owners with notice of such activity.

**HB 338** Grants common carrier status to pipelines that move carbon dioxide produced in the combustion or gasification of fossil fuels. The right of eminent domain, established in Title 70, chapter 30, may be exercised for public uses, including common carrier pipelines.

**SB 498** Establishes a potential regulatory framework for the permitting of carbon sequestration projects. The bill grants the Board of Oil and Gas Conservation regulatory oversight and requires the BOG to seek primacy over carbon dioxide injection wells regulated pursuant to the federal Underground Injection Control Program. The bill also establishes that the surface owner owns geologic storage reservoirs, unless documentation, such as deeds, shows otherwise.

### **Oil and Gas**

**SB 449** Allows the Board of Oil and Gas Conservation to promote and develop the state's oil and gas industry using grants, donations, contributions, and gifts from public or private sources.

**SB 136** Clarifies current well spacing unit requirements to clarify the intent of the statute is to allow the well spacing exception to well locations only, not to the spacing unit itself. (BOG bill)

**SB 76** Modifies the current well compulsory pooling requirements by lowering required approvals from 80% of working and royalty interests to 60% of royalty interests and 70% of working interest owners. (BOG bill)

**HB 416** Exempts a fuel user who produces less than 2,500 gallons annually of biodiesel using waste vegetable oil feedstock and reports their production to the Department of Transportation from the special fuel tax.

**SB 353** Eliminates the license tax rate reduction for ethanol, which previously was 85% of the 27 cent per gallon tax.

**SB 462** Creates a separate lien on oil or gas or the proceeds of oil or gas for interest owners. The bill also provides a process for clarifying the rights of a purchaser and claiming a security interest and lien.

**SB 97** Provides an incremental step toward making the petroleum tank release compensation fund solvent. It establishes incentives for the use of private insurance to help pay costs related to tank release, prohibits "double dipping" between an insurance policy and the compensation fund, offers monetary incentives to those reporting a release by October 2009, and expands circumstances under which a fuel tax may be collected.

**SB 427** Places sideboards on the awarding of restoration damages (via a common law claim) for a special use property contaminated by a release from certain petroleum storage tanks. The bill defines "special use property" and "restoration damages" and requires that, with the exception of attorney fees and costs, any restoration damages awarded are used for the remediation of contaminated property.

**SB 475** Requires notice of oil and gas lease sales. Timeframes and contents of such notice are also established.

### **Energy Source Taxation**

#### *Oil and Gas*

**HB 657** Requires the Revenue and Transportation Interim Committee to appoint a subcommittee and study the classification, valuation, and taxation of oil and natural gas properties. The study is largely in response to the Omimex Canada, Ltd. v. State, Department of Revenue Supreme Court decision

**SB 489** Clarifies taxation laws related to pipelines. The revisions require regulated natural gas and oil pipelines and common carrier pipelines be taxed as class nine property, and that oil and gas production property, which includes flow and gathering lines, be taxed as class eight property.

#### *Biomass*

**SB 198** Classifies certain biomass facilities up to 25 megawatts as Class 14 property. Certain transmission lines tied to a biomass facility are also excluded from the Major Facility Siting Act.

**HB 262** expands the definition of "low-emission wood or biomass combustion device" for the purposes of claiming the alternative energy system installation tax credit.

#### *Coal*

**SB 292** Reduces the severance tax rate on coal recovered from a strip mine using auger mining. The reduced rate applies to coal recovered from mining operations that would otherwise be uneconomical to recover by conventional strip-mining methods.

**SB 509** Provides that the cost of washing and cleaning coal mined from an underground mine

are not included in the contract sales price of coal. The bill revises when the Department of Revenue can impute the value of coal. The changes sunset in 2017.

**SB 510** Allows county commissioners to provide a 50% local abatement of coal gross proceeds taxes from a new or expanding underground coal mine. The abatement may last from 5 to 10 years. Allocation of the reduced collection is also addressed.

**HB 123** Extends the termination date for certain allocations and statutory appropriations of the interest income from \$140 million of the coal severance tax permanent fund. The change reduces statutory appropriations for the Growth through Agriculture Program and Research and Commercialization projects.