

WATER POLICY INTERIM COMMITTEE – 2013-2014

Water-Related Agency Oversight, Program Review, & Draft Legislation

History and Considerations

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History of EQC and WPIC

In September, the WPIC asked staff to draft a bill transferring water-related statutory authority from the Environmental Quality Council to the WPIC. The bill draft is attached, but to add some context a brief historical overview of the EQC and the WPIC also is attached.

Environmental Quality Council

The EQC was created in 1971 to develop environmental and natural resource policy, generate environmental and natural resource information, and oversee the state's environmental and natural resource programs.

“The EQC has an important role in maintaining a policy overview of state programs with environmental consequences to assure that state environmental policy is consistently observed,” wrote Rep. George Darrow, the first chairman of the EQC in a 1971 report. “It also fulfills the urgent need for a mechanism within state government to better coordinate and integrate the various environmental programs of state agencies already in existence.

“In the past, environmental problems have often been dealt with in a piecemeal manner because of the lack of such a mechanism.”

The EQC has broad authority to study and investigate any issue related to the environment and natural resources. The EQC may consult with representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups. It is also charged with utilizing to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals in order that duplication of effort and expense may be avoided. Such efforts are meant to ensure that the council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.¹

The topics of water, energy, and fire have all been major parts of the EQC realm over the last four decades. And each topic has been removed from the EQC jurisdiction by the Legislature. The creation of new committees is often sparked by headline-grabbing events.

Water Policy

Interim jurisdiction over water policy has gone back and forth through the years. From the creation of the EQC, water policy was the domain of the council. In the early 1980s, a major debate surrounded marketing of Montana water, including out-of-state use in coal slurry operations. Out of a contentious 1983 session was born the Select Committee on Water Marketing. The EQC provided staff. Among other recommendations the committee made to the 1985 Legislature was a request to establish a permanent water policy committee.

¹ Section 75-1-313, MCA

Ten years later, in a massive restructuring and organization of the legislative branch, the Legislature eliminated the water committee and its duties were assigned to the EQC. Concurrently, the membership of the EQC was increased from 13 members to 17. Over the next 12 years, the EQC regularly established a water policy subcommittee.

But between 2005 and 2007, several events led to the creation of a temporary Water Policy Interim Committee. In 2005, the Legislature approved a measure to rejuvenate water rights adjudication. In 2006, the state Supreme Court issued a major ruling on regarding the connection of groundwater and surface water. The 2007 Legislature passed new ground water laws and created the one-time only Water Policy Interim Committee (WPIC). The Legislature appropriated \$50,000 for the committee to complete a water quantity and water quality policy analysis.

At the end of the interim, a joint subcommittee of the EQC and the WPIC met four times to explore various options for continuing the study of water policy. Choices debated included the creation of a permanent water policy subcommittee of the EQC or the establishment of a permanent water policy committee that would take over water-related duties of the EQC, including agency oversight. The third option, which became Senate Bill No. 22, is the current WPIC structure which allows WPIC to study water policy issues, but provides that the EQC retains many statutory duties related to water, including agency oversight and rulemaking review.

The EQC endorsed the permanent subcommittee option, which became Senate Bill No. 4 as well as SB 22. The WPIC endorsed only SB 22. The Senate Natural Resources Committee tabled SB 4. Senate Bill 22 passed the Senate 43-7 and the House 75-24.

A complete record of what the 2008 joint subcommittee reviewed can be found online.²

The committees and staff coordinate to avoid duplication of efforts. However, this interim both committees have reviewed the state water plan update, proposed exempt well water rules, and nutrient standards. The EQC and the WPIC also heard testimony over proposed federal Clean Water Act rules. Each also heard water-related agency legislative proposals.

Considerations

When developing and adopting legislative administrative options for any policy subject area, there are key criteria that should be taken into consideration to ensure that the administrative outcome is successful. Those criteria include:

- Resource Efficiency, Allocation, and Cost
 - Committee costs in terms of legislator (time, travel, salary)
 - Legislative staff workload (research and legal staff, secretarial support, and IT support).

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http://leg.mt.gov/css/Committees/interim/2007_2008/environmental_quality_council/subcommittees/eqc_wpic/eqcwpic.asp

- Efficient use of legislator, legislative staff, executive branch, and federal resources
- Committee Jurisdictional Boundaries:
 - Clearly defining administrative jurisdiction boundaries eliminates duplication of effort issues with legislators, legislative staff, executive branch staff, and the public.
- Legislator Workload (senators are often assigned to more than one interim committee)
- Development of Legislator Subject Matter Expertise
- Public Involvement

In the case of the current proposal before the WPIC, the committee jurisdictional boundaries are the criteria most under consideration.

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