MONTANA ENVIRONMENTAL INDEX

Montana State Legislature
Environmental Quality Council
Helena, Montana

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MONTANA ENVIRONMENTAL QUALITY COUNCIL

Helena, Montana

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INTRODUCTION

The Montana Environmental Index presents a compilation and summary of all environmentally-related states laws and regulations. The purpose of the Index is to assist all interested persons in acquainting themselves with the state's legal and institutional approach to environmental matters. Except for the Montana Environmental Policy Act, statutes are summarized and paraphrased rather than reproduced verbatim. Users of the Index should always consult the Revised Codes (statutes) and Administrative Code (regulations) for complete texts when accuracy is required.

The Index also includes descriptions of state agency activities and programs. These agency program sections expand on the statutory material, and give a more pragmatic feel for the environmental activities of state government. Each agency program section immediately follows the corresponding statutory section of the Index, and program section numbers are identified by the letter "A". For example, Chapter 18 deals with water pollution; statutory sections are numbered 18.0000 *et seq.*; program sections follow these and are numbered 18A.0000 *et seq.*

The Index is divided into seven major tab sections:

00.0000 ENVIRONMENTAL POLICY
10.0000 POLLUTION CONTROL
20.0000 NATURAL HERITAGE
30.0000 LAND USE
40.0000 FACILITIES AND SERVICES
50.0000 NATURAL RESOURCES
60.0000 SUMMARIES AND COMMENTS
70.0000 INDEXES

Each tab section begins with an introductory overview. The "Summaries and Comments" section will be available for articles and commentaries from interested contributors. The "Indexes" section contains an alphabetical subject-matter index and a citator to Montana statutes to aid in locating desired information.

The Environmental Index has been printed in a loose-leaf format to allow for periodic additions and updating of statutes, regulations, and program descriptions, and to receive articles and comments.

TABLE OF CONTENTS

This supplement incorporates many of the changes made by the 1979 Legislature in Montana's environmental laws. Unless noted otherwise, each of the sections in this supplement replaces the corresponding section in the existing index. Significant additions to Montana's environmental laws are underlined; deletions must be determined by reference to the replaced sections.

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00.0200. - 69.6504. *General directions to state agencies.* (The Department of Public Service Regulation, in the exercise of its regulatory authority over rates and charges, is exempt from the provisions of the Montana Environmental Policy Act.) The legislative assembly authorizes and directs that, to the fullest extent possible—

(a) The policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this act, and

(b) All agencies of the state (except Public Service Regulation) shall

(1) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(2) Identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;

(3) Include in every recommendation or report on proposals for projects, programs, legislation and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies which are authorized to develop and enforce environmental standards shall be made available to the Governor, the Environmental Quality Council and to the public, and shall accompany the proposal through the existing agency review processes.

(4) Study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(5) Recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(6) Make available to counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(7) Initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(8) Assist the Environmental Quality Council established by Section 8 (69-6508) of this act.

10.0000. POLLUTION CONTROL

12.0100. AIR POLLUTION

12.0102. *Board of Health and Environmental Sciences.* The conduct of the air pollution program is presided over by the State Board of Health, a seven-member quasi-judicial citizen board appointed by the Governor. The Board has the authority to adopt rules (including rules for the enforcement of federal and state air quality laws), and to hold hearings pursuant to the procedures of the Montana Administrative Procedures Act. The Board also issues orders, sets air pollution standards and emission limits, and classifies pollutants. All decisions of the Board setting standards or determining legal rights are made after opportunity for a hearing, and are subject to judicial review. Confidentiality provisions are in effect to protect the trade secrets of applicants.

12.0106. *Permits.* The Board is responsible for prescribing the conditions under which air pollutant discharge permits may be granted and establishing a schedule of fees required for such permits. Permit applications must be filed with the department at least 180 days prior to construction, or 120 days prior to installation of the facility. The applicant must pay to the department the costs of reviewing and acting upon an application for a permit. The department must grant or deny the permit within 60 days of receipt of the completed application, or within 180 days if an environmental impact statement is required. The Department of Health may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of an area. Any person adversely affected by a department decision may, within 15 days, request a hearing before the board.

12.0107. *Enforcement and Penalties.* Whenever the Department becomes aware of a violation, it may serve a notice and compliance order on the violator, or may require the violator to appear before the Board. Within 45 days of service of the order, the violator may, on his

own, request a Board hearing. The Board will affirm, modify, or revoke the Department's order. The Board's decision is judicially reviewable. Civil penalties of up to $10,000 per day may be levied. In addition, facilities that are operating in violation of federal air quality standards and do not meet compliance schedules must pay a non-compliance penalty equivalent to the economic value of installing and operating the equipment necessary to comply with federal standards. Nothing in this statute limits the rights of other persons to seek judicial remedies under other proceedings.

20.0000. NATURAL HERITAGE

21.0000. AESTHETICS

21.0202. *Outdoor Advertising.* Purpose:

—to promote safety, convenience and enjoyment of highway travel;

—to protect public investment in highways;

—to preserve and enhance natural and scenic beauty and aesthetic features of highways and adjacent areas.

These policies are to be consistent with those declared by Congress in Title 23, U. S. Code.

Outdoor advertising signs are prohibited within 660 feet of the right-of-way of the interstate or primary highway systems if such signs are visible from the roadway. Signs beyond 660 feet are also prohibited if they are visible from the roadway and industrial areas, or for ads relating to businesses conducted on the property where the sign is located. Signs in commercial and industrial areas, except signs related to businesses on the property where the sign is located, must comply with size, location and illumination standards set out in the law and regulations, and must bear a permit from the Highway Department. In case of a violation of the law or regulations, the landowner or signowner will be notified and remedial action will be requested. The owner may request a hearing before the Highway Commission, but if all appeals are lost, the Highway Department will remove the sign. Non-conforming signs are considered a public nuisance.

The Highway Department is authorized to acquire by purchase, gift, or condemnation the rights to nonconforming signs which existed when this law was passed, and remove such signs. This act is not meant to abrogate more stringent local laws or ordinances. If federal rules are relaxed, the Highway Commission is required to revise its regulations accordingly.

23.0000. RECREATION AND PARKS

23.0201. *State Parks.* The purpose of the state park system is to conserve the scenic, historic, archeologic, scientific and recreational resources of the state and to provide for their use and enjoyment by the people of the state. The Fish, Wildlife and Parks Department is authorized to inventory such resources, and may acquire by purchase, gift or condemnation areas or objects suitable for state parks, recreation areas, monuments or historical sites. The Department may levy and collect fees for the use of privileges and conveniences in state parks, and may adopt and enforce regulations for the use of state recreation areas. The Department is required to submit an annual report on the state park system to the Governor for transmission to the Legislature. Areas or sites proposed for purchase with coal severance tax revenues must be approved by the Legislature.

The Department of Highways is authorized to construct connecting roads from the state highway system to state parks, using state highway funds. The Board of Land Commissioners is authorized to accept donations of land for park, recreation and public camping purposes, and may set aside tracts of state-owned lands for such purposes.

23.0300. PRESERVATION OF ANTIQUITIES

23.0301. *Preservation Review Board.* The Preservation Review Board, a nine-member board appointed by the Governor, is responsible for reviewing those districts, sites and structures that might be significant in American History, architecture, archaeology or culture and are nominated for the National Register of Historic Places. The Historic Preservation Office of the Montana Historical Society conducts an ongoing statewide survey to identify and nominate to the preservation review board properties suitable for registry, maintains a state inventory file of heritage property and paleontological remains, and enters into cooperative agreements with governmental entities or private landowners to ensure the preservation of registered properties.

The sale and development of all state lands that are on the National Register must be compatible with their cultural values. Such use of state lands is declared to be a worthy object of the State Land Trust. (See 51.0000). State agencies must adopt policies for the preservation of heritage properties on lands owned by the state. Agencies may deny or approve with conditions any permit applications for the use of state-owned land if an environmental review reveals that impacts on heritage property cannot be properly mitigated.

23.0302. *Permits.* A permit must be obtained from the Historic Preservation Officer in order to excavate, remove or restore a registered site or object. Such permits are issued only to universities, museums, scientific institutions and other organizations with a view to the dissemination of knowledge. A summary report and all objects excavated must remain in or revert

to Montana and are the property of the state. The Montana Historical Society supervises the distribution of collections of historical objects. Persons conducting excavation or construction on lands owned or controlled by the state must report all discoveries of historic objects, and must take steps to protect them. Violations of the law constitute a misdemeanor with penalties up to $1000 or 6 months in jail.

23.0303. *Deleted.*

24.0000. WILDLIFE

24.0208. *Predator Control.* On the request of a landowner or occupier, the Fish, Wildlife and Parks Department may investigate reports of wild animals destroying property. The Department may open a special season, or destroy the animals itself. Predatory hawks or owls destroying poultry or livestock may be killed by the owner. Eagles may be killed only in compliance with federal law. Bounty claims are paid by the Fish, Wildlife and Parks Department if approved by the Department and the Board of Livestock. The use of 1080 baits is not allowed on Fish, Wildlife and Parks lands without written permission from the Department.

The Department of Livestock issues permits for the aerial hunting of predatory animals. Resident landowners may hunt over their own lands without permits providing the Department is notified of the general area to be hunted.

24.0402. *Fish Propagation.* The Fish, Wildlife and Parks Department may control waters lying wholly within state-owned lands for the purpose of fish propagation. The Department notifies the Department of State Lands, which notifies any lessees of the state land. If the state land is to be sold, the Department of State Lands notifies the Fish, Wildlife and Parks Department to terminate the protective status of the waters.

It is unlawful for private parties to raise fish in public water without Fish, Wildlife and Parks approval. A fish pond license may be obtained from the Fish, Wildlife and Parks Department to stock a private artificial fish pond. Fish may be taken from such a pond in any manner, but the Department regulates the sale of fish, eggs, or fry from the pond. Sale of game fish or spawn, with the exception of whitefish caught by the holder of a valid fishing license who is fishing with hook and line in specified waters, is unlawful except from private ponds.

The federal government is authorized to conduct fish-hatching operations in the state.

It is unlawful to bring live or dead salminid fish or eggs into the state without certification that they are free from infection. There are no restrictions on importations if the fish or eggs are first processed so as to kill any infections. Infected cargos are subject to quarantine.

30.0000. LAND USE

34.0000. SUBDIVISIONS

34.0103. *Adoption of Regulations.* Local governing bodies are required to adopt subdivision regulations following publication of notice and public hearings. The Department of Community Affairs has adopted minimum requirements for such regulations, including content of environmental assessments, procedures for planned unit developments, flood hazard requirements, and regulations for mobile home parks and condominiums. Regulations must provide for dedication of a fraction of the tract for public park use. Cash payments may be accepted in lieu of park dedication in appropriate cases. The park dedication requirements may be waived by the local governing body if other arrangements are made which assure permanent open space will be provided: e.g., all parcels are five acres or more and covenants prohibit future resubdivision; or a property owner's association is formed and is given parkland by the developer. Parkland dedication is not required for a land division that creates only one additional lot. If local regulations have not been adopted by July, 1974, the Department's regulations will apply.

40.0000. FACILITIES AND SERVICES

41.0000. ENERGY

41.0102. *Applicability.* The act applies to:

—facilities which can generate 50 megawatts of electricity (or additions thereto which cost more than $250,000);

—facilities which can produce 25 million cubic feet of gas or more per day (or major additions thereto) derived from coal;

—facilities which can utilize, refine or convert 500,000 tons of coal or more per year;

—electric transmission lines with capacity of more than sixty-nine kilovolts, excepting lines ten miles or less in length and 230 kilovolts or less in design capacity;

—facilities for the development and use of geothermal resources capable of producing the equivalent of 25 million BTU per hour and having an estimated cost in excess of $250,000.

—facilities for underground in situ coal gasification;

—pipelines capable of transporting gas, water or liquid hydrocarbon products from or to a facility as defined above, within or without this state;

—nuclear facilities generating 50 megawatts or more of electricity, converting or enriching uranium minerals or nuclear fuels, and storing or disposing of radioactive wastes from a nuclear facility. Small scale facilities used for educational research or medical purposes are exempt.

Oil and gas refineries and facilities for producing, gathering, processing, transmitting, transporting or distributing crude oil or natural gas are exempt.

41.0103. *Application Procedures.* No one may commence to construct a facility without making application to the Board of Natural Resources and Conservation for a certificate of environmental compatibility and public need. If the Board decides to issue a certificate for a nuclear facility, it may not issue the certificate until such recommendation is approved by a majority of the voters in a statewide election. Applications are submitted jointly to the Department of Natural Resource and Conservation and the Department of Health and Environmental Sciences, and must include: a description of the facility and its proposed location with a discussion of reasonable alternative sites; a statement of the need for the facility with projections of future demands, efforts to promote energy conservation, and discussion of reasonable alternative energy sources; summaries of existing environmental studies; the applicant's efforts to mitigate adverse impacts; and baseline data for the primary and reasonable alternate locations. The applicant has the option of providing an environmental study plan.

The Department of Natural Resources and Conservation and the Department of Health and Environmental Sciences have 90 days to notify the applicant whether the application is complete. Notice of the application is published in the areas potentially affected by the proposed primary and alternative sites.

The applicant must pay the Department a fee based on the department's estimated cost of processing the application. The Department may allow credit for information developed by the applicant and required under the siting act against this fee. The Department may contract with the applicant to develop information required under the siting act. The contract payments may be credited against the filing fee.

On receipt of the completed application, the Department of Natural Resources and Conservation conducts a thorough study of the application and reports to the Board with recommendations. This report must be made within 22 months of receipt of the application (one year for transmission lines and pipelines less than 30 miles in length). During this period the Departments of Highways, Fish, Wildlife and Parks, Community Affairs, State Lands, Revenue, and Public Service Regulation also conduct studies in their areas of expertise, using funds allocated by the Department from the filing fee.

The Department of Health, within one year of receiving a complete application, and the Board of Health, if applicable, within an additional six months, issues any decision, opinion, order, certification or permit required by state or federal air and water quality laws for the primary and alternate sites. The Department of Health must provide an opportunity for public review and comment prior to issuing a preliminary decision. Although the Department and/or Board of Health's decision is conclusive on air and water quality related matters, the Board of Natural Resources retains authority to determine that the facility represents minimum adverse environmental impact. At the request of the applicant, a conjunctive hearing may be held before the air and water quality agencies and the Board of Natural Resources. If a conjunctive hearing is held, the time frames of the Department's review and hearing process supersede those specified in the air and water quality laws.

The Board of Natural Resources sets a hearing date within 120 days of receiving the Department's report. Hearing proceedings are governed by procedures established in the siting act, rules adopted by the Board of Natural Resources, and the Montana Rules of Evidence, and must not exceed nine months in length. The burden is on the applicant to justify granting of the certificate. Active parties to the process include the applicant, political entities and individuals in the affected areas, state government agencies, non-profit organizations and any other interested person who establishes an interest in the proceedings. The Department is an active party in any certification proceeding in which it recommend denial of all or a portion of a facility.

The Board must make its decision within 60 days after submission of the recommended decision by the hearing examiner. The certificate may not be granted unless the Board finds and determines:

—the basis of the need for the facility;

—the nature of the probable environmental impact;

—that the facility represents the minimum adverse environmental impacts with respect to land use patterns, water resources and quality, air quality, solid waste disposal problems, radiation, and noise, considering the state of available technology and nature and economics of the various alternatives;

—electric, gas or liquid in the case of transmission lines, that the facility is consistent with regional plans for expansion of utility grids;

—that the facility complies with applicable state and local laws and regulations;

—that the Department or Board of Health have issued any decision or permit required by state and federal air and water quality laws;

—that the Department of Health or Board of Health have issued a decision, opinion, order, certification or

permit for the facility; and

—that the facility will serve the public interest, convenience and necessity (this finding refers only to utility facilities). In making this determination, the Board must consider need, environmental impacts, benefits to the applicant and to the state, the effects of resulting economic activity, effects on public health, safety and welfare, and any other factors it considers relevant.

In rendering a decision, the Board must issue an opinion stating its reasons for the action taken. The certificate, if granted, must include an environmental evaluation statement discussing unavoidable adverse impacts, objections raised by other agencies and interested groups, alternatives to the facility, a time limit within which construction of the facility must be completed, a monitoring plan, and a statement of agreement by the applicant to abide by any conditions imposed. The Board may waive provisions if an emergency showing is made. Any active party may appeal the Board's decision in a state district court.

Notwithstanding other laws, no other state, regional or local agency may require any permits or other authorizations for construction or operation of a facility if certification has been granted under this act. However, the state air and water quality agencies retain their authority to determine compliance with and to enforce state and federal standards and implementation plans.

41.0104. *Long-range Plans.* Each utility or person contemplating the construction of a facility within the next ten years must file an annual long-range plan with the Department showing:

—general location, size and type of facility contemplated;

—in the case of utility facilities a description of efforts to coordinate the plan with the efforts of other utilities to meet regional energy needs;

—description of efforts to involve environmental protection and land-use planning agencies in the planning of the facility and other efforts to minimize environmental problems at an early stage in the planning process;

—projections of the demands for the services to be provided by the proposed facility and explanation of the basis for those projections.

Rural electric cooperatives may file a long-range plan and two year work plan required under federal rural electrification requirements in lieu of the long-range plan described above. No person may file an application for a facility unless the facility has been adequately identified in a long range plan at least two years previously.

Long-range plans must also be filed with the Environmental Quality Council, the Departments of Health, Highways, Public Service Regulation, State Lands and Community Affairs, and interested persons and citizen groups. The Department shall evaluate the proposed site of any facility which is proposed for construction within the five-year period following submission of the plan.

41.0105. *Enforcement and Monitoring.* A certificate may be revoked for false statements in the application, for failure to maintain safety standards or to comply with the conditions imposed by the certificate, or for other violations of the law. The Board and Department of Natural Resources and Board and Department of Health are responsible for monitoring the operation of facilities. Expenses related to monitoring, to the extent federal funds are not available, are provided by the applicant.

Any resident of the state may submit a written and sworn affidavit to a state employee charged with enforcing this law, notifying such employee of violations. If this does not result in enforcement by the state, the petitioner may seek a writ of mandamus in court to compel enforcement. Violations of the law carry penalties up to $10,000 for each day of violation. Knowing and willful violations may result in imprisonment.

41.0107. *(New Section) Nuclear Facilities.* Initiative 80, passed in 1978, gave Montana voters the authority to approve or reject any proposed nuclear power facility certified under the Major Facility Siting Act. The law states that substantial public concern exists regarding major nuclear facilities, including the generation of waste, the spending of capital on such facilities to the detriment of investment in renewable energy sources, the liability of nuclear facilities to catastrophic accidents, the refusal of utilities, industry and government to assume financial responsibility for compensating victims of nuclear accidents, the impact of nuclear facilities on the proliferation of nuclear bombs and terrorism, the abandonment of nuclear facilities by their owners, resulting in dangers to present and future societies, and the effect of importing uranium on American energy independence and economic well being.

In addition to the requirement of a statewide election (See 41.0103), the Board of Natural Resources may not issue a certificate for the siting of a nuclear facility unless it finds no legal limits exist regarding the right to sue the operators of a nuclear facility for full and just compensation for damages resulting from the existence or operation of that operation, finds that the effectiveness of all safety systems has been satisfactorily demonstrated, that the radioactive materials from the facility can be reasonably contained, and that the owner of the facility has posted a bond of not less than 30% of the capital cost of the project to pay for decommission-

ing and decontaminating the facility in the event the owner fails to pay such costs.

The governor shall annually publish and publicize in a manner designed to inform residents of affected communities the evacuation plan specified in the licensing of each certified nuclear facility within the state.

41.0200. ENERGY CONSERVATION AND ALTERNATIVE ENERGY SOURCES

41.0201. *Conservation.* Deductions are allowed from gross income for expenditures for energy conservation improvements in buildings:

Principal Residence	Other Buildings
100% of 1st $1000	100% of 1st $2000
50% of 2nd $1000	50% of 2nd $2000
20% of 3rd $1000	20% of 3rd $2000
10% of 4th $1000	10% of 4th $2000

Applications for such tax treatment are made to the Department of Revenue, which may consult with the Departments of Natural Resources and Administration. Deductions may not be claimed for portions of expenses paid by state, federal or private grants. Tax savings may not be claimed by persons in the business of supplying gas or electric service.

A public utility may install or make loans for energy conservation materials in a customer's home or business, and the customer may pay back the utility in installments added to the monthly utility bill. A utility may charge interest at a rate of 7% or less on such loans. A financial institution making such a loan may charge interest at a rate no less than 2% less than the discount rate in effect at the federal reserve bank in the Ninth Federal Reserve District. The utility or financial institution may claim the difference between the interest received and the discount rate as a credit against its electric energy producers tax or its corporation license tax. Any reduction in a utility's taxes under this law must be reflected in the tax figures submitted for rate purposes to the Public Service Commission.

41.0202. *Renewable Energy Resources.* An Alternative Energy Research & Development Account has been established and is funded by 1.9% of the coal severance tax until December 31, 1979, and 2.5% of the coal tax thereafter. The Department of Natural Resources administers grants from this fund, and appoints an Alternative Energy District. A financial institution may credit the difference as a credit against its corporation license tax.

A solar easement may be created for the purpose of exposure of a solar energy device. It must specify the vertical and horizontal angle at which the solar easement extends over the real property subject to the solar easement, and the conditions under which the easement will be terminated.

The Department of Agriculture is authorized to contract with private and governmental organizations for research developments and marketing of fuels derived from wheat and barley. This included obtaining grants from the Department of Natural Resources' Alternative Energy Research and Development Account.

Gasahol produced for use in operating internal combustion engines and containing at least 10% anyhydrous ethanol produced in Montana from Montana agricultural products is taxed on a long-term sliding scale that at no time will exceed the gasoline license tax. In addition, property used in the production of gasahol is taxed at 3% of its market value.

41.0205. *Weatherization.* The Department of Community Affairs is authorized to transfer federal funds available for home weatherization assistance to low income people among the governor's substate planning districts. No more than 5% of the total state and federal money may be used for administration. The remaining funds shall be distributed to the planning districts on the basis of the number of eligible households and climactic conditions in the district.

44.0000. RAIL TRANSPORTATION

44.0200. *(New Section) Rail Transportation Loans.* The Highway Department is authorized to sell revenue bonds to strengthen railroad transportation in Montana. The bonds are used to fund a loan program for the rehabilitation of rail facilities and the manufacture, purchase or lease of rolling stock primarily used for transporting grain produced in Montana.

The Department of Administration assists the Department of Highways in the issuance and sale of the bonds. The bonds are payable solely from the revenues acquired through the rehabilitation and rolling stock loan programs. The interest rates on the bonds may not exceed 9%, and total amount of outstanding bonds financing the rehabilitation loan program may not exceed $25 million. The limit for those financing the rolling stock program is $75 million.

Preference in making the loans is given to persons who intend to use the proceeds for projects that create new jobs in Montana. The revenue from the projects must be used to repay the loans. A rolling stock loan agreement may provide a reduction in interest proportional to the amount of time the rolling stock is located in Montana.

46.0000. REGULATION OF UTILITIES

46.0103. *Business Activities.* The PSC may investigate all aspects of the management of a public utility's business, and may regulate the issuance of securities by a utility. Only public utilities furnishing electric or gas service in the state that have revenue from sources in Montana which exceed $5 million or 5% of their gross revenue must apply to the PSC for permission to issue or acquire securities. Such permission will be granted unless (1) it would be inconsistent with the public interest, (2) it would be for a purpose not permitted by the law, or (3) the aggregate amount of securities outstanding and proposed would exceed the fair market value of the utility's property. Notes of obligation for a term of no more than one year and for a principal amount of no more than 5% of the utility's outstanding securities may be issued without PSC approval.

50.0000. NATURAL RESOURCES

51.0000. STATE LAND AND RESOURCE POLICY

51.0102. *The Board of Land Commissioners.* The Board, made up of the Governor, the Superintendent of Public Instruction, the State Auditor, the Secretary of State and the Attorney General (Art. X Sect. 4, Montana Constitution), exercises general authority over the administration of laws relating to state land. It is responsible for the care, management and disposition of lands, as well as administration of funds arising from the leasing, use and sale of those lands. The Board of Land Commissioners maintains a central index of all real property held, acquired, administered, leased by or disposed of by the state.

The Board may lease state lands for purposes other than agricultural, grazing, timber harvest and mineral production; however, except for leases for power and school sites, such leases are limited to 25 years. (See also, Leasing of Agricultural Land, 52.0100)

52A.1200. *(New Section) Soil Survey.* The Department of Natural Resources and Conservation is directed to develop a plan for completing a statewide soil survey and mapping program. The plan will determine those areas without modern soil survey information and will establish priorities for completing soil surveys based on the needs of the geographic areas. A soil survey advisory council, appointed by the Director of the Department of Natural Resources and Conservation and consisting of members of agencies and organizations having needs for or who contribute expertise to a soil survey and mapping program.

54.0400. *Strip and Underground Mining Act.* This law applies to coal and uranium mining operations which remove more than 10,000 cubis yards of mineral and overburden or coal operators who remove or intend to remove more than 250 tons of coal within one year from one location, and is administered by the Board of Land Commissioners and the Department of State Lands.

54.0000. COAL URANIUM AND GEOTHERMAL RESOURCES

54.0401. *Policy and Findings.* The law, passed in 1973, recognized the following state policies:

—to protect Montana's environmental life-support system from degradation;

—to prevent unreasonable degradation of the state's natural resources;

—to restore, enhance, and preserve scenic, historic, archaeologic, scientific, cultural and recreational sites;

—to demand effective reclamation of all lands disturbed by the taking of natural resources, and maintain state administration of the reclamation program, and

—to provide for the orderly development of coal resources through strip or underground mining to assure the wise use of these resources and prevent the failure to conserve coal.

—to require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives.

The legislature found that in order to implement these policies and the Constitution and to protect the health and welfare of the people, it is reasonably necessary to require five-year permits for mining operations, to require an adequate performance bond, to prohibit mining on certain land, and that the Department of State Lands be given authority to administer a reclamation program that complies with the federal Surface Mining Control and Reclamation Act.

54.0402. *Permit Requirements.* A one-year prospecting permit must be secured from the Department of State Lands (DSL) before any exploratory work which results in surface disturbance may be done. The application for a permit must include a prospecting map, a prospecting reclamation plan, and a description of the prospecting techniques to be used. Before final approval, an applicant must file a reclamation and revegetation bond.

Before actual mining begins, a five-year permit must be secured from the Department of State Lands. The application must contain extensive information about the applicant and the area reasonably anticipated to be mined during the life of operation, as well as a detailed plan for the mining reclamation, revegetation and

rehabilitation of the land and water to be affected, and extensive hydrologic data regarding the area. A reclamation bond of at least $200 per acre and $10,000 per operation or whatever amount is necessary for the Department to reclaim the site should the operator default, must be filed before final approval is given.

54.0403. *Grounds for Permit Denial.* A permit application will be denied if the Department of State Lands finds any part of the proposed prospecting or mining operation would be contrary to the purpose of the act, if the land to be explored or mined has exceptional characteristics, or if neighboring land with exceptional characteristics would be adversely affected by exploration or mining activities.

Exceptional characteristics include the following:

—biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

—ecological fragility, in the sense that the land, once adversely affected, could return to its former ecological role in the reasonably foreseeable future;

—ecological importance, in the sense that the particular land has such strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimension;

—scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. Particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

If the Department finds that the overburden on any part of the area of land described in the application for a prospecting, strip mining or underground mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the Department shall delete that part of the land described in the application upon which the overburden exists;

If the Department finds that the operation will constitute a hazard to a dwelling house, public building, school, church cemetery, commercial or institutional building, public road, stream, lake, or other public property, the Department shall delete those areas from the prospecting, strip mining or underground mining permit application before it can be approved.

The Department may not approve an application for a coal mining permit unless an assessment of the cumulative impact of anticipated mining in the area has been made and the proposed mining operation is designed to prevent damage to the hydrological balance.

The Department may not approve a proposed mining plan that would interrupt or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, or if the area proposed to be mined contain: prime agricultural farmland unless the prime farmland can be restored to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area.

No permit may be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that no failure to conserve coal will occur. "Failure to conserve coal" means the nonremoval or nonutilization of mineable and marketable coal by an operation. Failure to remove or utilize mineable coal in order to meet reclamation standards established by the Department shall not be considered failure to conserve coal.

54.0404. *Lands Unsuitable for Mining (New Section).* Any person having an interest that is or may be adversely affected may petition the Department of State Lands to have an area designated as unsuitable for coal mining operations. The petition must contain supporting evidence and the Department of State Lands must hold a public hearing on the petition. The Department must issue a decision within 60 days of the hearing.

—An area must be designated as unsuitable for mining if it is determined that reclamation is not technologically or economically feasible.

—An area may be designated as unsuitable for coal mining if proposed mining operations would be incompatible with land use plans for the area, affect fragile or historic lands, result in operations that could result in substantially endangered life and property.

Before designating an area as unsuitable for coal mining, the department shall prepare a statement regarding the potential coal resources of the area, the demand for coal resources, and the impact of designating the area as unsuitable for mining on the environment, economy and supply of coal.

54.0405. *Protection of the Surface Owner.* As defined by the act, a surface owner means a person who holds legal or equitable title to the land surface and 1) whose principal place of residence is on the land or 2) who personally conducts farming or ranching on land to be directly affected by strip mining operations or 3) who directly receives a significant portion of his or her income from farming or ranching operations. (The State of Montana is considered the surface owner of state land.)

54.0406. *Reclamation Requirements.* A mining operation must begin reclaiming disturbed land "as rapidly, completely and effectively as the most modern technology and the most advanced state of the art will allow." Every effort must be made to eliminate damage to landowners, the public, roads, streams and other public property from soil erosion, subsidence, landslides, water pollution and other hazards. The law requires specific actions which must be completed in the mining and reclamation process, and contains technical require-

ments for backfilling, grading and topsoil replacement.

The law provides some flexibility in the reclamation plan. An operator may propose alternatives to backfilling, grading, highwall reclamation, topsoiling or revegetation if the plans are "consistent with the purposes of the act." The operator must submit annual reports to the Department describing progress in mining and reclamation activities. The Department may order such changes in the mining or reclamation plan as are appropriate.

54.0407. *Mining and Reclamation Fund.* All fees, forfeit funds and other money received under the Strip and Underground Mining Reclamation Act are credited to the mining and reclamation fund, and are used for administration and enforcement of the act and for reclamation and rehabilitation of land and water affected by mining operations.

54.0408. *Legal Remedies.* The following remedies are available to the state, residents and owners of water rights for violations by mining operators:

—the state may sue the operator for civil penalties of between $100 and $5,000 for a violation and between $100 and $5,000 for each day during which the violation continues.

—the state may prosecute a mining operator for willfully violating the act, which constitutes a misdemeanor. If convicted, the mining operator may be required to pay between $500 and $10,000 and between $500 and $10,000 for each day during which the violation continues.

—Any person who has an interest which is or may be adversely affected or any resident of the state may, after a request that the reclamation law be enforced, sue a public official to compel him or her to enforce any provision which is being violated.

—an owner of an interest in real property whose use of groundwater is impaired, may sue the mining operator for damages. The Department of State Lands may order replacement of the water supply.

The following existing sections outlined the Coal Conservation Act, which was repealed by the 1979 Legislature. Coal conservation is now addressed in the strip and underground mining law. See Section 54.0403.

54.0501. *Repealed.*

54.0502. *Repealed.*

54.0503. *Repealed.*

54.0504. *Repealed.*

54.0703. *Disposition of Severance Tax Revenue.* In 1976, Montana voters approved an amendment to the Constitution to create a permanent trust fund with part of the coal severance tax revenues. Until 1980, 25% of all tax revenues will be placed in the trust fund; thereafter, 50% of all revenue will be placed in trust. The remaining revenue is allocated as follows:

	Before 1980	After 1980
Coal producing counties	2% of tax paid for coal mined in the county	—
Alternative energy research development and demonstration account	2-1/2%	5%
Local impact and education trust fund	26-1/2%	37%
Coal area highway improvement account	13%	—
State equalization aid to public schools	10%	10%
County land planning account	1%	1%
Renewable resource development bond account	2-1/2%	2-1/2%
Cultural and aesthetic projects	1-2/3%	1-2/3%
Park acquisition	3-1/3%	3-1/3%
Local libraries	1%	1%

54.0800. *Coal Board—Impact from Coal Development.* The purposes of this act are to assist local governments to meet increased demands for local services created by large-scale coal developments, to assist highway construction and reconstruction in impacted areas, to aid local planning, and to establish a permanent fund for the support of public schools.

A Coal Board is established, with members appointed by the Governor, and allocated to the Department of Community Affairs, to consider applications for grants from the local impact and education trust fund account (54.0703), and to award such grants. In awarding such grants, the Coal Board will take into account the need for community planning in areas which are expected to feel impacts from coal development, and may review the millage rates before and after coal development to determine the degree of local effort to meet those needs. The Department of Community Affairs will designate counties, towns, school districts and other governmental units which have experienced population increases of at least 10% as a result of coal development to guide the Coal Board's considerations.

A coal tax oversight subcommittee composed of four legislators reviews the programs financed by the

coal tax severance tax funds and any other matters relating to coal taxation. The subcommittee reports and makes recommendations to the revenue oversight committee.

55.0000. OTHER MINERALS

55.0300. *Reclamation of Mining Lands (Hardrock Mining Act).* The Hardrock Mining Act, which became law in 1971, regulates reclamation of land which has been disturbed by open pit mining or mining by the auger method of any ore rock or substance other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock or uranium. ("Small miners," or miners who remove less than 36,500 tons in the aggregate, conduct a mining operation that disturbs less than 5 acres per year, or two such operations which are 5 acres or less in size, at least one mile apart, and not operated simultaneously, are exempted from the requirements of the act if they agree not to pollute any stream and to take adequate safety precautions.)

55.0302. *Exploration Licenses.* An exploration license must be secured from the Board of Land Commissioners prior to any exploratory activity. Licenses are for a term of one year and may be renewed; the applicant must agree to reclaim any land disturbed by exploration activity and must not be in default of other reclamation obligations under the act. A reclamation bond of between $200 and $2,500 per acre must be filed with the Department of State Lands before an exploration license will be issued. If an applicant has met all the requirements for an operating permit, reclamation may be postponed until mining operations are complete; otherwise, reclamation of land disturbed by exploration activity must be complete within 2 years after completion of exploration activity or abandonment of the site.

55.0303. *Operating Permit.* Actual extraction may begin only after an operating permit has been granted by the Board of Land Commissioners. Reclamation requirements are more detailed and stringent than are those for an exploration license. Reclamation bond requirements are the same as those for an exploration license.

The Department of State Lands must, within 30 days of receipt of an application, either accept an application as complete or return an incomplete or inadequate application with a request for more information. The department must review a complete application for the adequacy of its proposed reclamation plan and plan of mining within 60 days of receiving the application, or within 30 days after determining the application to be complete. This 60-day period may be extended up to 180 days if adverse weather conditions prevent the Department from inspecting the site. If a major operation requires extended review, the Department and applicant may negotiate an extension of the 60-day review period up to a total of 425 days.

The operating permit is valid for the period required to complete mining operations unless it is suspended or revoked for noncompliance with the act or the reclamation plan.

After completion or abandonment of mining operations the operator has two years to reclaim the disturbed land, unless the approved reclamation plan specifies otherwise. If necessary, the Department will reclaim the land and require the operator and reclamation bondholder to pay the costs.

Operating permit applications may be denied if the proposed mining conflicts with state air or water pollution standards or if the reclamation plan does not provide an acceptable method for reclamation under this act.

55.0304. *Public Participation.* "Any person whose interests may be adversely affected" by state actions taken under the provisions of the act may become a party to all hearings and appeal procedures upon a showing that he or she can adequately represent the interests claimed.

Information contained in exploration license applications and information obtained from small operators is confidential; information collected by the Department for operating permits is considered public.

56.0000. OIL AND GAS

56.0100. *Oil and Gas Leases on State Land.* The Board of Land Commissioners is authorized to lease state lands to which the state holds the oil and gas rights. Leases, generally limited to 640 acres each, are granted for a primary term of 10 years and continue as long as oil or gas is produced in paying quantities or drilling is continued. A lease is subject to termination by the Board of Land Commissioners if: 1) drilling has not begun within 5 years; 2) after drilling a dry hole, a new well is not begun before the anniversary of the lease following completion of the first well; 3) delay drilling penalties are not paid.

Rental fees and royalties are set by the Board, with minimum amounts set up by statute.

The Board of Land Commissioners may also grant leases for up to 20 years (with preferential rights of renewal) for underground storage facilities for natural gas. Those leasing land for storage sites must take precautions to avoid waste, injury or destruction of gas and oil deposits; failure to do so is grounds for termination of the lease.

56.0301. *The Board of Oil and Gas Conservation.* The Board, consisting of seven members, three of whom

are from the oil and gas industry, and two of whom reside in oil and gas producing counties but are not actively associated with the oil and gas industry, is charged with the responsibility of enforcing the law's provisions. It is given broad powers to investigate and prevent the loss and pollution of oil and gas and pollution of water. The Board is responsible for insuring that required reports are submitted; supervises drilling operations to assure that water pollution, fires and other dangerous accidents do not occur; supervises plugging of dry or abandoned wells and restoration of surface land. It may require full production of some types of wells if it is considered necessary in the interest of conservation to do so.

56.0307. *Natural Gas Policy Act (New Section).* The Natural Gas Policy Act, passed by the U. S. Congress in 1978, establishes maximum wellhead prices for natural gas from various categories of natural gas production wells. Well operators may apply for the maximum price allowable under one of those categories to the Board of Oil and Gas Conservation. The Board has rulemaking authority regarding application procedures. The Board designates an examiner to determine whether a well falls within the category claimed and natural gas produced by the well is eligible for that category's maximum price. An examiner's determination may be reviewed by the Board upon request of two board members. If no request is made within 20 days, the examiner's determination is considered to be the determination of the Board. The Board recommends its determination to the Federal Energy Regulatory Commission (FERC). FERC must make a final determination within 45 days.

58.0000. WATER RESOURCES

58.0401. *Water Use Act.* The Water Use Act was passed in response to the new constitution's requirements for administration of and centralized records for water use and appropriation. The legislative policy established by the Act is "to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystem." The Act specifically states that use of water for slurry to transport coal is not a beneficial one.

The Act, which is administered by the Department of Natural Resources and Conservation, provides a system by which existing and future rights for both surface and groundwater are to be determined. Existing rights are determined by judicial proceedings and new appropriations are granted by permits secured from the Department.

58.0402. *Adjudicating Claims of Water Rights.* Claimants of existing water rights must file a statement of claim of an existing water right in one of the state's four water divisions by June 1, 1982. The four water divisions are based on natural divides between the Yellowstone, the Lower Missouri, the Upper Missouri and the Clark Fork River basins. A district judge is designated as a water judge for each of these divisions. Claims are filed through the Department of Natural Resources and Conservation.

Claims for existing rights for livestock and individual uses based upon instream flow or groundwater sources, and claims for rights in the Powder River Basin, where adjudication has been completed, are exempt from the filing requirements. However, they may be voluntarily filed. A statement of claims must include the name of the water course, the quantities of water and times of use, point of diversion, and purposes of use. Failing to file a claim presumes a right has been abandoned. Properly filed claims are presumed valid unless conflicting evidence is offered. A filing fee of $40 is charged for each statement of claim, although the total filing fee in any water division may not exceed $480 per claimant, notwithstanding the number of claims filed. The Department of Natural Resources and Conservation provides information and assistance programs to aid a claimant filing a claim for an existing right.

A water judge is established within each of the four water divisions for the purpose of adjudicating and issuing final decrees on water rights claims. Each judge appoints a water master experienced in water use, law and rights. The water masters' duties include investigating claims and issuing reports with recommendations to the water judge. The judge may appoint and supervise a water commissioner to enforce the provisions of a final decree.

The Department of Natural Resources and Conservation provides any assistance required by the water judge in adjudicating claims of existing rights and investigates claims that the water judge, on consultation with the department, determines warrant investigation.

Within a reasonable time after the close of the filing period (June 1, 1982), the water judge shall issue a preliminary decree. The preliminary decree shall be based on the statements of claim before the water judge, the data submitted by the department and any additional data obtained by the water judge. If satisfied with the water master's report, the judge may adopt it as the preliminary decree. If unsatisfied, the judge may either recommit the report to the water master with instructions or modify the report and issue the preliminary decree.

A party objecting to the preliminary decree, such as the Department of Natural Resources and Conservation, a person named in the preliminary decree or any other person who can show good cause, is entitled to a hearing before the water judge. A request for a hearing must contain a precise statement of findings and conclusions in the preliminary decree with which the department or other person requesting a hearing disagrees.

On the basis of the preliminary decree and any hearing that may have been held, the judge enters a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed, the preliminary decree automatically becomes the final decree. The final decree establishes:

—the owner of the water right;

—the date of priority;

—water right use or uses;

—place of use and land description to which the land is appurtenant;

—source of water supply;

—place and means of diversion;

—inclusive dates during which the water is used each year;

—any other information necessary to fully define the nature and extent of the right.

A person whose existing rights and priorities are determined in the final decree may appeal that determination only if that person had requested a hearing and entered objections to the preliminary decree, or that person's rights, as determined in a preliminary decree, were altered as the result of a hearing requested by another person.

The Department of Fish, Wildlife and Parks represents the public's interest in establishing any prior and existing recreational use in the adjudication process. Federal entities may also represent the public for the purpose of establishing any prior or existing public recreational use.

Those required to file a claim of an existing right include all claimants of reserved Indian water rights. However, the law makes further provisions for the state to proceed in efforts to conclude compacts for the equitable division of waters between the state and the several Indian tribes claiming reserved water rights within the state. A nine-member reserved water rights compact commission, composed of two members from each house of the legislature, an appointee of the Attorney General and four members designated by the Governor, is authorized to negotiate such compacts.

Until July 1, 1982, or while negotiations for a compact are being pursued, all actions to generally adjudicate reserved Indian water rights are suspended, unless such an action is commenced or pending by or on behalf of an Indian tribe.

A compact made between the compact commission and the Indian tribes or their authorized representatives becomes effective upon ratification by the legislature, the affected tribal governing body and Congress.

The Compact Commission may also enter into separate negotiations with the federal government for the conclusion of compacts concerning the equitable division of water between the state and its people and the federal government claiming non-Indian reserved waters within the state. The terms and conditions of such negotiations will be the same as those provided for with Indian tribes.

58.0406. *Water Reservations.* Any federal, state or local agency may apply to the Board of Natural Resources and Conservation to reserve water for existing or future beneficial uses, to maintain a minimum flow level, or to maintain a certain quality of water. The applicant must establish the purpose of the reservation, the need for it, the amount of water necessary, and that the reservation is in the public interest. The reservation may not adversely affect any existing water rights, and reservations for minimum flows on gauged streams may not exceed 50% of the average annual flow of record. Water reserved to maintain minimum flows may be reallocated following a hearing wherein the Board finds that all or part of the reservation is not required and the need for the reallocation has been shown to outweigh the original allocation. The Board must review existing water reservations at least once every ten years to insure their purposes are being met.

58.0410. *Appropriation and Regulation of Groundwater.* Appropriations of groundwater are generally governed by the Water Use Act. However, disputes over priorities and quantities of groundwater rights may be determined under the Groundwater Appropriation and Regulation law, through administrative hearings of the Board of Natural Resources and Conservation.

The Department and Board of Natural Resources and Conservation have the responsibility for insuring that water from aquifers is not depleted through excessive withdrawals. The Board may designate "an area of controlled groundwater use" for any area where 1) withdrawals exceed recharge rates; 2) excessive groundwater withdrawals are likely in the near future; 3) there are significant disputes over water rights or amounts of water being used by appropriators; or, 4) groundwater levels or pressures in the area in question are declining or have declined excessively. Following a hearing, the Board may limit withdrawals from a controlled groundwater area. Permits to withdraw water from such an area will be granted by the Department only if it decides the requested withdrawal will not exceed the aquifer's capacity. If sufficient facts to designate an area as a controlled groundwater area are not found, the Board may designate an area as a temporary controlled groundwater area. Temporary designations run two years, with a two-year extension possible. During the two-year period the department makes the necessary studies to assist in the designation of a permanent controlled groundwater area.

In order to prevent waste and contamination of groundwater, the Department regulates construction and maintenance of water wells. Wells which are polluting groundwater or are producing water which is not being put to beneficial use must be plugged or capped.

Water well drillers must file well logs with the Department. The 1979 Legislature amended the Water Rights Act to establish as state policy the view that any attempt to gain control or speculate on Montana groundwater is not in the interest of the people of Montana and is to be restricted. The legislature placed an upper limit of 3,000 acre feet per year on any application to appropriate groundwater except pursuant to legislative approval of a specific proposal. The 3,000 acre feet limit does not apply to appropriations for municipal use or cropland owned and operated by the applicant.

58.1200. *Water Resource and Adjudication Oversight Committee (New Section).* The 1979 Legislature established a legislative water resources and adjudication oversight committee to oversee the efforts of state agencies charged with developing and managing the state's water resources, and to oversee the implementation of the water rights adjudication system. The committee may make recommendations to agencies and the legislature relating to water development and conservation programs as it considers necessary. The act creating the council expires June 30, 1981.

00.0000. ENVIRONMENTAL POLICY

It is difficult to define an "environmental policy" for the state of Montana. As a brief perusal of this Index will indicate, there are numerous laws, regulations and Constitutional provisions addressing specific aspects of the environment. There are over thirty departments, divisions and bureaus of state government involved in environmentally related regulation, enforcement and planning. The Montana Environmental Policy Act (MEPA) is unique in that it addresses the environment as a whole, and directs state agencies to improve and coordinate existing programs and functions in order to protect and enhance the quality of the human environment. MEPA recognizes that the environment cannot be fragmented into sections and dealt with one section at a time. Sound environmental planning and regulation requires the development of "interdisciplinary approaches" to environmentally significant activities.

MEPA provides a broad statement of policy, but does not provide specific directions to state agencies for carrying out that policy. One specific direction which has received considerable attention, however, is the requirement that every major action of state government having a significant impact on the quality of the human environment be preceded by a "detailed statement" discussing the environmental impacts of the proposed action. The statement is to be circulated for comment before any action is taken. Most agencies with environmental responsibilities have adopted procedural regulations for the preparation and distribution of these environmental impact statements.

00.0001. Contents: **Section**

00.0100. Environment and Natural Resources. (Article IX, Montana Constitution).

Section 1. *Protection and Improvement.*

(1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. *Reclamation.*

(1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars ($100,000,000), guaranteed by the state against loss or diversion.

Section 3. *Water rights.*

(1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. *Cultural resources.*

The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

Section 5. *Severance tax on coal—trust fund.*

The legislature shall dedicate not less than one-fourth (¼) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (¾) of the members of each house of the legislature. After December, 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

00.0200 Montana Environmental Policy Act. (Title 69, Chapter 65, R.C.M. 1947)

69-6501. *Short title.* This act may be cited as the "Montana Environmental Policy Act."

69-6502. *Purpose of act.* The purpose of this act is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the state; and to establish an environmental quality council.

69-6503. *Declaration of state policy for the environment.* The legislative assembly, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profund influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Montana, in co-operation with the federal government and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmoney, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(a) In order to carry out the policy set forth in this act, it is the continuing responsibility of the state of Montana to use all practicable means, consistent with other essential considerations of state policy, to improve and co-ordinate state plans, functions, programs, and resources to the end that the state may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Montanans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our unique heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) The legislative assembly recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

69-6504. *General directions to state agencies.* The legislative assembly authorizes and directs that, to the fullest extent possible—

(a) The policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this act, and

(b) all agencies of the state shall

(1) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(2) identify and develop methods and procedures, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;

(3) include in every recommendation or report on proposals for projects, programs, legislation and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the environmental quality council and to the public, and shall accompany the proposal through the existing agency review processes.

(4) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(5) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national co-operation in anticipating and prevent-

00.0200.

ing a decline in the quality of mankind's world environment;

(6) make available to counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(7) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(8) assist the environmental quality council established by section 8 [69-6508] of this act.

69-6505. *Review of statutory authority and administrative policies to determine deficiencies or inconsistencies.* All agencies of the state shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this act and shall propose to the governor and the environmental quality council not later than July 1, 1972, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this act.

69-6506. *Specific statutory obligations unimpaired.* Nothing in section 3 [69-6503] or 4 [69-6504] shall in any way affect the specific statutory obligations of any agency of the state

(a) to comply with criteria or standards of environmental quality,

(b) to co-ordinate or consult with any other state or federal agency, or

(c) to act, or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

69-6507. *Policies and goals supplementary.* The policies and goals set forth in this act are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

69-6508. *Environmental quality council.* The environmental quality council shall consist of thirteen (13) members to be as follows:

(a) The governor or his designated representative shall be an ex officio member of the council and shall participate in council meetings as a nonvoting member.

(b) Four (4) members of the senate and four (4) members of the house of representatives appointed before the fiftieth legislative day in the same manner as standing committees of the respective houses are appointed. A vacancy on the council occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the council. No more than two (2) of the appointees of each house shall be members of the same political party.

(c) Four (4) members of the general public; two (2) public members shall be appointed by the speaker of the house with the consent of the house minority leader, and two (2) shall be appointed by the president of the senate with the consent of the senate minority leader.

In considering the appointments of (b) and (c) above, consideration shall be given to their qualifications to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 69-6503 of this act; to be conscious and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

69-6509. *Term of office.* (1) The terms of office of all council members shall be two (2) years and shall terminate upon appointment of a new council before the fiftieth legislative day. Council members may be reappointed; however, in no case shall a member serve more than six (6) years.

(2) The council shall elect one of its members as chairman and such other officers as it deems necessary. Such officer shall be elected for a term of two (2) years.

69-6510. *Meetings.* The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council shall, unless he is a full-time salaried officer or employee of this state, be paid twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of council duties, and shall also be reimbursed for actual and necessary expenses incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members, but shall be reimbursed for their expenses.

69-6511. *Appointment and qualifications of an executive director.* The council shall appoint the executive director and set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have at least three (3) years of responsible experience in the field of environmental management.

He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 3 [69-6503] of this act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the

state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

69-6512. *Appointment of employees.* The executive director, subject to the approval of the council may appoint whatever employees are necessary to carry out the provisions of this act, within the limitations of legislative appropriations.

69-6513. *Term and removal of the executive director.* The executive director is solely responsible to the environmental quality council. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The council may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

69-6514. *Duties of executive director and staff.* It shall be the duty and function of the executive director and his staff

(a) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in section 3 [69-6503] of this act, and to compile and submit to the governor and the legislative assembly studies relating to such conditions and trends;

(b) to review and appraise the various programs and activities of the state agencies in the light of the policy set forth in section 3 [69-6503] of this act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the governor and the legislative assembly with respect thereto;

(c) to develop and recommend to the governor and the legislative assembly, state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state

(d) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(e) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(f) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislative assembly requests;

(g) to analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences, and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(h) to consult with, and assist legislators who are preparing environmental legislation, to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(i) to review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such activities, and with a general ecologic perspective, and to suggest legislation to remedy such situations;

(j) to transmit to the governor and the legislative assembly annually, and make available to the general public annually, beginning July 1, 1972, an environmental quality report concerning the state of the environment which shall contain

(1) the status and condition of the major natural, man-made, or altered environmental classes of the state, including, but not limited to, the air, the aquatic, including surface and ground water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment;

(2) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(3) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;

(4) a review of the programs and activities (including regulatory activities) of the state and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and

(5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

69-6515. *Examination of records of government agencies.* The environmental quality council shall have the authority to investigate, examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

69-6516. *Hearings by council—enforcement of subpoenas.* In the discharge of its duties the environmental quality council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the

manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council, or any committee thereof, or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the environmental quality council to compel obedience by proceedings for contempt as the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

69-6517. *Consultation with other groips—utilization of services.* In exercising its powers, functions, and duties under this act, the council shall

(a) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments and other groups, as it deems advisable; and

(b) utilize, 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, thus assuring that the commission's activities will not necessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

69-6518. *Fee may be imposed.* (1) Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by section 69-6504, R. C. M. 1947. of the Montana Environmental Policy Act. An agency must determine within thirty (30) days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed in this section. The fee assessed under this section shall only be used to gather data and information necessary to compile an environmental impact statement as defined in the Montana Environmental Policy Act. No fee may be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.

(2) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate, as specified in subsection (1), an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. No fee may be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of two thousand five hundred dollars ($2,500) to compile an environmental impact statement. The maximum fee that may be imposed by an agency shall not exceed two per cent (2%) of any estimated cost up to one million dollars ($1,000,000); plus one per cent (1%) of any estimated cost over one million dollars ($1,000,000) and up to twenty million dollars ($20,000,000); plus one-half of one per cent (½ of 1%) of any estimated cost over twenty million dollars ($20,000,000) and up to one hundred million dollars ($100,000,000); plus one-quarter of one per cent (¼ of 1%) of any estimated cost over one hundred million dollars ($100,000,000) and up to three hundred million dollars ($300,00,000); plus one-eighth of one per cent (⅛ of 1%) of any estimated cost in excess of three hundred million dollars ($300,000,000). If an application consists of two (2) or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities. The estimated cost shall be determined by the agency and the applicant at the time the application is filed.

(3) No fee as prescribed by this section may be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Utility Siting Act, Title 70, chapter 8, R. C. M. 1947.

(4) In adopting rules prescribing fees as authorized by this section, an agency shall comply with the provisions of the Montana Administrative Procedure Act, Title 82, chapter 42, R. C. M. 1947.

(5) All fees collected under this section shall be deposited in the state earmarked revenue fund as provided in section 79-410, R. C. M. 1947. All fees paid pursuant to this section shall be used as herein provided and each agency upon completion of the necessary work will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

(6) In cases where a combined facility proposed by an applicant requires action by more than one (1) agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one (1) fee pursuant to this section, to co-ordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the funds necessary to the other agencies which require funds for the completion of the necessary work.

(7) Each agency shall review and revise its rules imposing fees as authorized by this section at least every two (2) years. Furthermore, each agency shall provide the legislature with a complete report on the fees collected prior to the time that a request for an appropriation is made to the legislature.

00.0201. Uniform Rules Implementing the Montana Environmental Policy Act. Final version, adopted by Montana Commission on Environmental Quality, January 15, 1976.

(Rule I) *Policy Statement Concerning MEPA Rules.*

(1) The purpose of these rules is to implement Chapter 65, Title 69, the Montana Environmental Policy Act, through the establishment of administrative procedures. In order to fulfill the stated policy and purpose of that act, the Board and Department will conform to the procedures established in the following rules prior to finalization of the Board's and Department's decisions. It must be noted that the act requires that state agencies comply with its terms "to the fullest extent possible."

(Rule II) *Definition of MEPA Terms.*

(1) "Emergency actions" are:

(a) projects undertaken, carried out, or approved by the Board or Department to repair or restore property or facilities damaged or destroyed as a result of a disaster when a disaster has been declared by the governor or other appropriate government official;

(b) emergency repairs to public service facilities necessary to maintain service; or

(c) projects, whether public or private, undertaken to prevent or mitigate immediate threats to public health, safety, or welfare.

(2) "Human environment" includes but is not limited to biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment in which Montanans live.

(3) "Lead agency" is the agency of the state that has primary authority for committing the government to a course of action having significant environmental impact, or is the agency chosen to supervise the preparation of a joint environmental impact statement where more than one agency is involved in the action.

(4) "Environmental impact statement" (EIS) is the detailed statement required by Section 69-6504(b)(3), R.C.M. 1947, and can take several different forms:

(a) *Draft environmental impact statement* is the initial environmental impact statement prepared in accordance with Rule V (1), and distributed to the appropriate agencies and the public for comment prior to compiling the final environmental impact statements.

(b) *Final environmental impact statement* is a document summarizing or, if necessary, including the major conclusions and supporting information of a draft environmental impact statement and specifically including the Board's or Department's response to all substantive comments or objections raised by the public or other agencies since issuance of the draft environmental impact statement.

(c) *Joint environmental impact statement* is an environmental impact statement prepared jointly by more than one agency, state and/or federal, when such agencies are involved in the same or closely related proposed actions.

(5) "Preliminary environmental review" (PER) is a written analysis of a proposed action to determine whether the action might significantly affect the quality of the human environment and therefore require a draft environmental impact statement.

(6) "Programmatic review" is a general analysis of related agency-initiated actions, programs or policies, or the continuance of a board policy or program which may involve a series of future actions.

(7) "Montana Commission on Environmental Quality" (MCEQ) means the Commission established by Executive Order 4-75.

(8) "Environmental Quality Council" (EQC) means the Council established as provided in Title 69, Chapter 65, R.C.M. 1947.

(Rule III) *Determination of Necessity for Environmental impact statement.*

Section 69-6504, R.C.M. 1947, requires that environmental impact statements be prepared on "proposals for projects, programs, legislation and other major actions of state government significantly affecting the quality of the human environment." The following criteria and procedures will be used in determining whether an EIS will be prepared.

(1) An environmental impact statement will not be required for actions in which the Board or Department exercises no discretion, but rather acts upon a given state of facts in a prescribed manner pursuant to statutory or regulatory mandate. Such actions include:

(a) *Administrative actions:* Routine, clerical or similar functions of the Board or Department, including but not limited to administrative procurements, contracts for consulting services and personnel actions.

(b) *Existing facilities:* Minor repairs, operations or maintenance of existing equipment or facilities.

(c) *Investigation and enforcement:* Data collection, inspection of facilities, or enforcement of environmental standards.

(2) A PER shall be prepared by the Department on all proposed actions of the Department or Board, other than those described in subsection (1) of this rule or where the action is clearly a major state action having a significant impact on the human environment, thereby requiring the preparation of an EIS, on which a determination must be made as to the significance of its effect on the environment. If the PER shows a potential significant effect on the human environment, an EIS shall be prepared on that action.

(3) The following are actions which normally require the preparation of an EIS:

(a) the action may significantly affect environmental attributes recognized as being endangered, fragile, or in severely short supply;

(b) the action may be either significantly growth inducing or inhibiting; or

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(c) the action may substantially alter environmental conditions in terms of quality or availability.

(4) The Department shall maintain a list of those activities or functions that fall within the categories described in the preceding subsections of this rule. The list shall be maintained as a public document and copies of the list and any subsequent revisions sent to the MCEO, the EQC, and any member of the public who has requested a copy of the list. The MCEQ, the EQC, or any member of the public may recommend additions to or deletions from the list. The Department shall review the recommendations for additions to or deletions from the list and advise the person or group making the recommendation in writing of the reasons why the recommended additions or deletions were or were not made.

(Rule IV) *Preparation of Preliminary Environmental Review*

(1) If the Department conducts a preliminary environmental review to make a determination as to whether the action may have a significant effect on the human environment, such review shall, based on information contained in the completed application or project proposal and other available information, include at a minimum:

(a) an adequate description of the proposed action, including maps and graphs, if appropriate;

(b) an evaluation of the immediate and cumulative impact on the physical environment, including where appropriate: terrestrial and aquatic life and habitats; water quality, quantity and distribution; soil quality, stability and moisture; vegetation cover, quantity and quality; aesthetics; air quality; unique, endangered, fragile, or limited environmental resources; historical and archaeological sites; and demands on environmental resources of land, water, air and energy;

(c) an evaluation of the immediate and cumulative impact on the human population in the area to be affected by the proposed action, including where appropriate: social structures and mores; cultural uniqueness and diversity; access to and quality of recreational and wilderness activities; local and state tax base and tax revenues; agricultural or industrial production; human health; quantity and distribution of community and personal income; transportation networks and traffic flows; quantity and distribution of employment; distribution and density of population and housing; demands for government services; industrial and commercial activity; demands for energy; and locally adopted environmental plans and goals;

(d) a listing of other agencies or groups that have been contacted, or which may have overlapping jurisdiction;

(e) the names of those individuals or groups contributing to and responsible for compiling the PER.

(2) If the PER indicates that the proposed action will have a significant effect on the human environment, an EIS will be prepared in accordance with Rule V.

(3) A PER is a public document and may be inspected upon request by any member of the public or representative of a governmental agency. A member of the public or a governmental entity may obtain a copy of a PER by making a specific request to the Department.

(4) Information which is entitled to confidential treatment under a provision of state law, Board or Department rule, or by order of a court, will be excluded from a PER. The determination of what information is to be so treated will be determined by the Department in consultation with the applicant. If confidential information is deleted from a PER, the Department shall indicate in the PER the general nature of the information deleted.

(Rule V) *Preparation, Content, and Distribution of Environmental Impact Statements*

(1) If required by Rule III or Rule IV, the Department shall prepare a draft environmental impact statement, which shall include:

(a) a description of the nature and objectives of the proposed action;

(b) a description of current environmental conditions in the area affected by the action, including maps and charts where appropriate;

(c) a description of the impacts on the human environment of the proposed action. The description shall include:

(i) the factors listed in Rule IV where appropriate;

(ii) primary, secondary and cumulative impacts;

(iii) potential growth inducing or inhibiting impacts;

(iv) irreversible and irretrievable commitments of environmental resources, including land, air, water and energy;

(v) economic and environmental benefits and costs from the proposed action and such information as is reasonably available to assess the economic and environmental cost and benefit of each alternative;

(vi) a comparison of short-term costs and benefits with the effects on maintenance and enhancement of the long-term productivity of the environment.

(d) a description of alternative actions that could be taken by the Board or Department

(e) source material used in the preparation of the draft EIS, Department personnel contributing to the impact statement, including a listing of qualifications, and the names of Department officials responsible for the environmental impact statement contents and distribution.

(2) Following preparation of the draft EIS in accordance with subsection (1) of this rule, the Department shall distribute copies to the Governor, the EQC, the appropriate local, state and federal agencies,

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the applicant whose project is being evaluated by the EIS, and the public for the purpose of consultation and receipt of comments. For the purposes of distribution of the EIS to the public, the Department shall maintain a mailing list of interested or concerned individuals; any person or group may request to be placed on the mailing list for part or all EIS's.

(a) Depending upon the nature and number of substantive comments received in response to the draft statement, the draft statement may satisfy the requirement for a final environmental impact statement. In this case, the Department shall submit one copy of all comments or a summary of a representative sample of comments received in response to the draft statement to the Governor, the EQC, the applicant whose project is being evaluated by the EIS, and to all commenting or consulting parties.

(b) If the Department determines that it will not be necessary to compile a final environmental impact statement, the Department may remove all further time restrictions described in subsections (4) (c) and (d) of this rule not less than fifteen (15) days after sending copies of all comments received on the draft EIS to the parties listed in subsection (2) of this rule. The Department shall also include with the comments notice of the Department's decision not to prepare a final EIS and a statement describing the Department's or Board's proposed course of action. The applicant whose project is being evaluated by the EIS may request an extension of this fifteen (15) day period in order to respond to the written comments that have been received.

(3) A final environmental impact statement shall include, as a minimum:;

(a) A summary of major conclusions and supporting information based on the draft environmental impact statement and the responses to substantive comments or objections received on the draft environmental impact statement, stating specifically where such conclusions and information were changed from those which appeared in the draft.

(b) A list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and unless impractical, the text of comments received by the Department. In all cases, the text of a representative sample of comments or a summary of a representative sample of comments shall be included.

(c) The Department's responses to these comments. These responses shall include a good faith evaluation of the comments received, and a substantive disposition of the issues involved.

(d) New data, information, and explanations derived or obtained subsequent to circulation of the draft.

(e) Following preparation of a final EIS, the Department shall distribute copies to the Governor, the EQC, appropriate state and federal agencies, the applicant, persons who submitted comments on or received a copy of the draft EIS, and be made available to other members of the public upon request for the purpose of consultation and receipt of comments.

(4) The timing and distribution of environmental impact statements shall be as follows:

(a) The listed transmittal date to the Governor and the EQC shall not be earlier than the date of the draft environmental impact statement mailing to the other agencies, organizations, and individuals. Time limits of not less than thirty (30) days nor more than forty-five (45) days shall be established for reply, after which it shall be presumed, unless the commenter requests and receives one extension of time not to exceed fifteen (15) days, that the person or governmental agency consulted has no comment to make.

(b) After the time period for comment on the draft EIS has expired, a copy of all written comments received shall be sent to the applicant whose project is being evaluated by the EIS. The applicant shall be advised that he has a reasonable time to respond in writing to the written or oral comments on the draft EIS and that the applicant's written response must be received before a final EIS can be prepared and circulated. The applicant may, however, waive his right to respond to the comments submitted on the draft EIS.

(c) Except as provided in subsection (2) (b) of this rule, no action which requires the preparation of an environmental impact statement shall be taken sooner than sixty (60) days after the transmittal date to the Governor and the EQC of the draft environmental impact statement.

(d) Except as provided in subsection (2) (b) of this rule, no Board or Department action shall be taken towards approval of the proposed project sooner than thirty (30) days after the final environmental impact statement has been transmitted to the Governor and the EQC. The listed transmittal date to the Governor and the EQC shall not be earlier than the date of the final environmental impact statement mailing to other appropriate agencies, organizations, and individuals.

(e) After the time period for comment on the final EIS has expired, a copy of all written comments received shall be sent to the applicant whose project is being evaluated by the EIS. The applicant shall be advised that he has a reasonable time to respond in writing to the written comments on the final EIS and that the applicant's written response must be received before any action can be taken toward approval of the project. The applicant may, however, waive his right to respond to the written comments submitted on the final EIS.

(5) All written comments received on an EIS, including written responses received from the applicant, are public documents and shall be made available to the public upon request.

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(Rule VI) *Special Ryles Applicable to Certain MEPA* **Situations.** An EIS may be prepared jointly by two or more state and/or federal agencies when each have similar or overlapping jurisdictions and lead agency status is not appropriate for any. Where a joint statement is prepared, each participating agency shall take full responsibility for the contents of the published statement.

(1) The Department shall, to the fullest extent possible, adopt and incorporate by reference as part of a draft EIS all or any part of the information, conclusions, comments, and responses to comments contained in an existing EIS which has been previously or is being contemporaneously prepared pursuant to the Montana Environmental Policy Act or the National Environmental Policy Act if:

(a) the Department determines that the existing EIS covers an action paralleling or closely related to the action proposed by the Department or Board;

(b) the Department determines, on the basis of its own independent evaluation, that the information, conclusions and responses to comments contained in the existing EIS, which are to be adopted and incorporated by the Department as a part of its draft EIS, have been accurately, fully and fairly gathered and presented; and

(c) the Deparatment determines that the information, conclusions, and responses to comments which will be incorporated in the draft EIS are applicable to the action currently being considered. The existing EIS, or portions adopted or incorporated by reference, shall be circulated as a part of the draft EIS and treated as part of the draft EIS for all purposes, including, if required, preparation of a final EIS. However, where reproduction of the adopted or incorporated portions of a previously prepared EIS would be prohibitively expensive because of the volume of the material involved, the Department may summarize the content of the adopted or incorporated information if the previous EIS has been widely circulated and the Department lists the places where the full text of the previous EIS is available for inspection. Furthermore, the Department shall not be required to send copies of the existing EIS to persons who have previously received the existing EIS from the Department or from any other state or federal agency which prepared the existing EIS. If all or any part of an existing EIS is adopted and incorporated by reference, then an addendum shall be prepared by the Department as a part of the draft EIS. The addendum shall include as a minimum:

(i) a description of the specific action to be taken;

(ii) any impacts, alternatives, or other items that would be different from those in the original statement; or

(iii) any impacts, alternatives, or other items that were not covered in the original statement.

(iv) The Department shall take full responsibility for the contents of the previous EIS. If the Department disagrees with certain portions of the previous EIS, the points of disagreement shall be specifically discussed in the addendum.

(2) The same time periods specified in Rule V shall apply to the circulation and review of an addendum as described in the preceding subsection.

(3) Where two or more agencies are involved in similar actions and lead agency status is not clear, the agencies involved shall request assistance from the Montana Commission on Environmental Quality, which shall recommend to the Governor within thirty (30) days after a request for assistance has been made the appropriate agency to be designated as the lead agency. After review of the MCEQ's recommendation, the Governor will designate the lead agency. The lead agency designated by the Governor shall then be responsible for coordinating the implementation of the requirements of these rules.

(4) If an EIS is prepared as required by the National Environmental Policy Act (NEPA), and appropriate regulations adopted as required by that act, a copy of that EIS may be substituted in lieu of the EIS requirements of MEPA. However, if the NEPA EIS does not adequately assess all of the impacts of a proposed action as required by these rules, an addendum shall be prepared in compliance with subsections (1) and (2) of this rule.

(5) The Board or Department may take or permit action having a significant impact on the human environment in an emergency situation without preparing an EIS. Following initiation of the action, the Department shall notify the Governor and the EQC within thirty (30) days as to the need for such an action and the impacts and results of it. If the emergency action will be ongoing over a relatively long period of time, and the possibility exists for partial modification of the action at some point in the process, a PER or an EIS will be prepared at the earliest possible date in the ongoing process. The Board or Department may not delay taking action if the purpose of the delay is to create an emergency situation that will enable the Board or Department to invoke the provisions of this subsection.

(6) If conflicting provisions of other state laws prevent the Board or Department from fully complying with the provisions of these rules, the Department shall notify the Governor, the MCEQ and EQC and describe the nature of the conflict and a proposed course of action that will enable the Board or Department to comply to the fullest extent possible with the provisions of MEPA. In addition, the Department shall recommend proposals for legislation that will remove the statutory conflict. The report provided for in this subsection shall be prepared at least ninety (90) days before the date upon which each regular session of the Montana Legislature is scheduled to begin.

(7) When a public hearing is held on an EIS, the

Department shall advise the applicant whose project is being evaluated by the EIS, every person who has submitted comments on the draft EIS and every person who received a copy of the draft EIS of the date and location of the hearing and that the applicant shall have an opportunity to respond to all oral comments received at the hearing. The applicant may respond orally at the conclusion of the hearing and in writing at a later date. The hearing held pursuant to this subsection shall be held after the draft EIS has been circulated and prior to the preparation of the final EIS.

(Rule VII) *Fees—Environmental Impact Statements.*

(1) When an application for a lease, permit, contract, license or certificate is expected to result in the Department incurring expenses in excess of two thousand five hundred dollars ($2,500) to compile an environmental impact statement, the applicant shall be required to pay a fee in an amount which the Department reasonably estimates, as set forth in this rule, will be expended to gather information and data necessary to compile an EIS.

(2) The Department will determine within thirty (30) days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this rule. If it is determined that an environmental impact statement is necessary, the Department shall make a preliminary estimate of the costs to compile the statement. This estimate will include a summary of the data and information needs and the itemized cost of acquiring the data and information, including salaries, equipment costs and any other expense associated with the collection of data and information for the EIS.

(3) If the preliminary estimated costs of acquiring the data and information to prepare an EIS total more than two-thousand five-hundred dollars ($2,500), the Department shall notify the applicant that a fee must be paid and submit an itemized preliminary estimate of the cost of acqiring the data and information necesary to compile an EIS. The applicant shall also be advised that a notarized and detailed estimate of the cost of the project being reviewed in the EIS must be submitted within fifteen (15) days after receipt of the request. In addition, the applicant shall be asked to describe the data and information available or being prepared by the applicant which can possibly be used in the EIS. The applicant may indicate which of the Department's estimated costs of acquiring data and information for the EIS would be duplicative or excessive. The applicant shall be granted upon request an extension of the fifteen (15) day time period for submission of an estimate of the project's cost and a critique of the Department's preliminary EIS data and information accumulation cost assessment.

(4) After receipt of the applicant's estimated cost of the project and analysis of the Department's preliminary estimate of the cost of acquiring information and data for the EIS, the Department shall notify the applicant within fifteen (15) days of the final amount of the fee to be assessed. The fee assessed shall be based on the projected cost of acquiring all of the information and data needed for the EIS. If the applicant has gathered or is in the process of gathering information and data that can be used in the EIS, the Department shall only use that portion of the fee that is needed to verify the information and data. Any unused portion of the fee assessed may be returned to the applicant within a reasonable time after the information and data has been collected or the information and data submitted by the applicant has been verified, but in no event later than the deadline specified in subsection (7) of this rule. The Department may extend the fifteen (15) day time period provided for review of the applicant's submittal for not to exceed forty-five (45) days if it believes that the project cost estimate submitted is inaccurate or additional information must be obtained to verify the accuracy of the project cost estimate. The fee assessed shall not exceed the following limitations:

(a) two per cent (2%) of any estimated cost up to one million dollars ($1,000,000), plus

(b) one per cent (1%) of any estimated cost over one million dollars ($1,000,000) and up to twenty million dollars ($20,000,000), plus

(c) one-half of one per cent (½ of 1%) of any estimated cost over twenty million dollars ($20,000,000) and up to one hundred million dollars ($100,000,000), plus

(d) one-quarter of one per cent (¼ of 1%) of any estimated cost over one hundred million dollars ($100,000,000) and up to three hundred million dollars ($300,000,000), plus

(e) one-eighth of one per cent (⅛ of 1%) of any estimated cost in excess of three hundred million dollars ($300,000,000).

(5) If an applicant for a lease, permit, contract, license or certificate believes that the fee assessed is excessive or does not conform to the requirements of this rule or Section 69-6518, R.C.M. 1947, the applicant may request a hearing before the Board pursuant to the contested case provisions of the Montana Administrative Procedure Act. If a hearing is held on the fee assessed as authorized by this subsection, the Department shall proceed with its analysis of the project wherever possible. The fact that a hearing has been requested shall not be grounds for delaying consideration of an application except to the extent that the portion of the fee in question affects the ability of the Department to collect the data and information necessary for the EIS.

(6) The fee assessed hereunder shall only be used to gather data and information necessary to compile an environmental impact statement. No fee may be assessed

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if the Department intends only to compile a preliminary environmental review or a programmatic review. If the Department collects a fee and later determines that additional data and information must be collected or that data and information supplied by the applicant and relied upon by the Department is inaccurate or invalid, an additional fee may be assessed under the procedures outlined in subsections (2), (3) and (4) of this rule if the maximum fee has not been collected as provided by subsection (4).

(7) When the Department has completed work on the EIS, a complete accounting of how the Department expended the fee collected shall be submitted to the applicant. If the cost of compiling an environmental impact statement is less than the fee collected, the remainder of the fee shall be refunded to the applicant without interest within forty-five (45) days after work has been completed on the final EIS.

(Rule VIII) *Preparation, Content and Distribution of a Programmatic Review.*

(1) If the Department is contemplating a series of agency-initiated actions, programs or policies which in part or in total will constitute a major action significantly affecting the human environment, the Department may prepare a programmatic review discussing the impacts of the total series of actions. In deciding whether a programmatic review is necessary, the Department may consult with the Governor, the MCEQ and EQC.

(2) The programmatic review shall include, as a minimum, a concise, analytical discussion of viable alternative policies and the cumulative environmental effects of these alternatives.

(3) The time requirements specified in Rule V apply to the distribution of programmatic reviews for public comment.

(Rule IX) *Retroactive Application of the MEPA Rules—Where Prohibited* Except for the provisions of Rule VII involving the assessment of a fee, the rules adopted to implement MEPA shall be applied to all applications pending at the time the rules are adopted by the Board or Department, provided that none of the procedures outlined shall be used to delay the preparation of an EIS which is being prepared at the time the rules are adopted. The provisions of Rule VII are not applicable to any application for a contract, license, permit, lease or certificate which has been filed prior to the adoption of these rules by the Department.

10.0000 POLLUTION CONTROL

This section presents the mechanisms by which the law deals with the control of pollution in all its forms: i.e., the control of the residue of human activity which is expelled into the physical environment.

The agencies with primary responsibility are the Board and Department of Health and Environmental Sciences. The Department of Health has license, permit, and enforcement authority in the areas of air and water pollution control, pollution of the work-place environment, and control of solid wastes and hazardous substances. The Board of Health, a seven member quasi-judicial body appointed by the Governor with the consent of the Senate, sets standards and pollutant limitations, and hears appeals from Department decisions.

The Department of Agriculture has primary regulatory and enforcement authority over use of pesticides and fertilizers.

Local health officials often act in conjunction with the Department of Health in regulation of solid waste management and control of air and water pollution, particularly with respect to subdivision approval.

Federal laws and programs have considerable impact on the state's pollution control efforts. Comprehensive federal air, water, and pesticides laws have established national standards and limitations and have set up a regulatory structure whereby individual states can assume enforcement responsibility if the state's programs are approved by the federal Environment Protection Agency. Montana has received such approval. In addition, federal grants, loans and technical assistance are available for conducting a variety of pollution control programs.

10.0001. Contents **Section**

10.0002. See also:

Major Facility Siting Act 41.0101
Sewage and Water Treatment Facilities 48.0000
Saline Seep Control 52.0800
Pest and Weed Control ..... 52.1100 *et seq.*
Mining and Reclamation Laws ..... 54.0400 *et seq.*

11.0000.

11.0000 NUISANCE (57-101 through 115; 93-6101; 94-8-107, R.C.M. 1947)

Before the advent of specific anti-pollution laws, the primary legal approach to pollution control was through the law of nuisance. This approach may still be available in some situations. Nuisance is defined in Montana law as

> anything which is injurious to health ... or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (57-101, 93-6101, 94-8-107 R.C.M. 1947)

A public nuisance is one which affects an entire community or any large number of people simultaneously. A public nuisance does not become legal because of its existence for a long period of time. Nothing which is done or maintained under express statutory authority (e.g. under a permit) may be deemed a nuisance.

An action for a private nuisance may be brought by any person whose property is injuriously affected, or whose personal enjoyment of his property is lessened. Public nuisance actions are generally brought by a county attorney or other public officer, but a private person may sue for abatement of a public nuisance if it is specifically injurious to him; i.e. he suffers an injury distinct from that suffered by the public at large.

Remedies include injunction and abatement, monetary damages to the plaintiff in the case of a private nuisance, and fines and imprisonment in the case of a public nuisance.

12.0000 AIR POLLUTION

The Air Quality Bureau of the Department of Health and Environmental Sciences is responsible for administration of the state's air pollution control program. Local health officials may act in conjunction with the Department and may be delegated review authority in some instances. The primary authority is the Clean Air Act of Montana, which authorizes the Department to assume enforcement responsibilities imposed on the state by the Federal Clean Air Act. In addition to setting air quality standards and pollutant emission limitations (which must be at least as strict as federal standards), and issuing construction and operation permits for air pollution sources, the Department and Board of Health must develop and implement a comprehensive State Implementation Plan which includes area-wide air quality maintenance programs for areas with particular air quality problems, control strategies, for attainment and maintenance of national air quality standards, and strategies for prevention of deterioration of air quality in areas whose air is already much cleaner than the national standards.

12.0001. Contents: **Section**

12.0002. See Also:

12.0003. Agency Programs

12.0100. Clean Air Act of Montana. (69-3904 through 3923, R.C.M. 1947; Regulations: MAC 16-2.14 (1)-S1400 *et seq.*) Montana's air pollution control program is established in the Clean Air Act of Montana, enacted in 1967 and amended in 1973, 1974, and 1975. The amendments were designed, in part, to conform Montana's law to the requirements of the Federal Clean Air Act.

12.0101. *Policy.* The Clean Air Act expresses several policy goals:

—to achieve and maintain such air quality as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant, animals, and property;

—to foster comfort and convenience, promote

economic and social development, and facilitate enjoyment of natural attractions;

—to provide a coordinated state-wide program of air pollution prevention, abatement and control;

—to facilitate inter-agency and inter-jurisdictional cooperation;

—to provide a framework within which all values may be balanced in the public interest.

12.0102. *Board of Health and Environmental Sciences.* The conduct of the air pollution program is presided over by the State Board of Health, a seven-member quasi-judicial citizen board appointed by the Governor. (82A-605 R.C.M. 1947) The Board has the authority to adopt rules and hold hearings pursuant to the procedures of the Montana Administrative Procedures Act (82-4201 through 82-4229 R.C.M. 1947) The Board also issues orders, sets air pollution standards and emission limits, and classifies pollutants. All decisions of the Board setting standards or determining legal rights are made after opportunity for a hearing, and are subject to judicial review. Confidentiality provisions are in effect to protect the trade secrets of applicants.

12.0103. *Standards and Limits.* Emission limits may be more stringent than fedeal requirements, and may be stricter in some localities because of concentrations of emission sources or of population, or because of the nature of the economy or land use patterns in an area.

Air pollution standards and emission limits are found in the Montana Administrative Code:

Ambient Air Quality Standards MAC 16-2.14(1)-S14040

Emission limits:

Particulates	-S1430, 1440, 1450
Incinerators	-S1420
Visible contaminants	-S1460
Sulfur oxides	-S1470
Odors	-S1480
Open burning	-S1490
Wood waste burners	-S14030
Fluorides	-S14060, 14080
Stored petroleum products	S14070
Hazardous pollutants	S14084

New Source Performance Standards S14082

12.0104 *Variances.* The Board may, after public hearing, grant variances from emission limits or other standards. Such variances are reviewed annually for renewal. A fee is assessed for a variance application, based on the cost of the equipment which would be required to bring the facility into compliance with the rule from which the variance is sought. The fee is applied to the cost of hearings, environmental impact statements, and other expenses occasioned by the application.

12.0105. *The Department of Health and Environmental Sciences.* The actual administration of the Clean Air Act is the responsibility of the Air Quality Bureau in the Department of Health. The Department enforces Board of Health orders, conducts studies, collects and disseminates information, advises and consults with other agencies and persons, accepts and administers grants, conducts on-site inspections of emission sources, initiates enforcement proceedings against violators, administers the permit program, and is responsible for developing and implementing the comprehensive state-wide air pollution program.

12.0106 *Permits.* (MAC 16-2.14 (1)-S1400) The Board is responsible for prescribing the conditions under which air pollutant discharge permits may be granted. Permit applications must be filed with the Department at least 180 days prior to construction, or 120 days prior to installation, of the facility. The Department must grant or deny the permit within 60 days of receipt of the completed application, or within 180 days if an environmental impact statement will be required. Any person adversely affected by a Department decision may, within 15 days, request a hearing before the board.

12.0107. *Enforcement and penalties.* Whenever the Department becomes aware of a violation, it may serve a notice and compliance order on the violator, or may require the violator to appear before the Board. Within 30 days of service of the order, the violator may, on his own, request a Board hearing. The Board will affirm, modify, or revoke the Department's order. The Board's decision is judicially reviewable. Civil and criminal penalties up to $1,000 per day may be levied. Nothing in this statute limits the rights of other persons to seek judicial remedies under other proceedings.

12.0108. *Emergency.* In case of an emergency air pollution episode, the Department has the authority to order the reduction or cessation of emissions until the emergency situation passes. Notwithstanding the review procedures described above (12.0107), such emergency orders are effective immediately, but a hearing before the Board must be scheduled within 24 hours.

12.0109. *Local Programs.* A municipality or county may establish its own air pollution program on petition of 15% of the voters in the locality. The locality may then administer the provisions of this act if the Board finds the local program to be adequate. If, after public hearings, the Board finds the local program inadequate, the Department will resume jurisdiction. The Board may find that an area, rather than a local, program is appropriate, or that state jurisdiction should be retained over certain pollutants. The locality may receive state and federal aid to run its program.

12.0200. Abatement of Smoke Nuisances. (11-2501 through 2511, R.C.M. 1947) An older statute, first enacted in 1893, authorizes municipalities or counties to make contracts for the abatement of "injurious and unhealthy smoke and fumes." The law sets out procedures for contracting and issuance of bonds for abatement purposes. The contract and bond must be submitted to the electors for approval.

Agency Programs

12A.0001 Air Quality Bureau. Specialized activities of the Air Quality Bureau include: dust control, review of new sources, development of Air Quality Maintenance Plans, pollution source testing and monitoring, air quality monitoring, emergency episode planning, hazardous waste response, meteorological studies and diffusion modeling, significant deterioration review, and stagnation advisories. The Bureau issues a monthly activity report which contains information on current status of ambient air quality violations, air stagnation advisories, construction permits, tax credits for installation of control equipment, variances from emission standards, open burning permits, enforcement actions, pollution source testing, meteorological studies, and schools and training programs.

12A.0100. State Implementation Plan The Federal Clean Air Act (42 USC 1857-1871) required the states to develop state implementation plans (SIP's) designed to assure that national air quality standards would be met by 1975. While development of many of the aspects of such a plan was left to the state, the federal regulations (Code of Federal Regulations, Title 40, part 51) set out minimum requirements and a broad programmatic outline which the SIP must satisfy. The following discussion summarizes the most important requirements of the state plan, and indicates the present status of Montana's SIP.

12A.0101. Air Quality Control Regions The first step in the development of the SIP was the designation of Air Quality Control Regions (AQCR's), which are the basic planning units for the SIP. The regions were given priority classifications according to the severity of the air quality problems in the area. The nature of the required air pollution control strategy for a given region would then depend on the priority classification for that region.

12A.0102. Control Strategies The original goal of the SIP was to attain primary national standards by 1975, and secondary standards "within a reasonable time." The control strategy for each region will depend on the severity of the pollution problem there. In regions where existing ambient pollutant levels exceed the standards, a program of emission limitations is required. Where levels are currently below secondary standards, a control strategy must be adequate to maintain that condition. The SIP must also identify regions which have the potential to exceed ambient air quality standards within the next ten years, and control strategies for such regions must be developed. (See 12A.0103)

The control strategies developed for the various AQCR's include the following:

(1) emission limitations adequate to insure that air quality standards are met on schedule;

(2) regulation and permit authority over new and expanded or modified sources of pollution, including the means to prevent construction of such sources if necessary to avoid violation of a control strategy;

(3) contingency plans for the prevention of air pollution emergency episodes;

(4) an air quality surveillance system, which was to be in operation by July, 1974;

(5) a source surveillance program to monitor the performance of pollution sources and to require the owners and operators of such sources to maintain and submit records;

(6) legally enforceable compliance schedules indicating dates by which various categories of sources must be in compliance with the SIP;

(7) guarantees that the legal authority exists to implement and enforce the components of the plan described above.

12A.0103. Air Quality Maintenance Areas (AQMA's). Section 51.12(e) of Title 40 of the Code of Federal Regulations requires the SIP to identify

> those areas. . .which, due to current air quality and/or projected growth rate, may have the potential for exceeding any national standard within the subsequent 10-year period.

Six such areas have been designated in Montana: regions surrounding the cities of Billings, Butte-Anaconda, Helena, Kalispell, and Missoula; and a "Coal Area" AQMA which includes Bighorn, Powder River and Rosebud counties. The areas surrounding Libby and Great Falls are being studied as possible AQMA's.

The primary purpose of designation of an AQMA is to provide a mechanism for the management of overall urban growth and industrial or natural resource development as related to air quality, with due consideration to other aspects of community growth. The state is required to conduct a comprehensive growth

analysis of such areas based on land use, transportation, and other community growth plans. Provisions for the prevention of significant deterioration of air quality (See 12A.0201) must also be integrated into the plan.

The federal regulations envision a great deal of local flexibility in development of AQMP's, as the problems to be addressed will vary considerably from place to place. However, a comprehensive 10-year plan for the maintenance of national standards in each AQMA must be submitted to the EPA by June 18, 1975.

12A.0104 Procedural Requirements In addition to substantive requirements for the content of the SIP, certain procedural provisions must be satisfied:

(1) Public hearings. The adoption or revision of the SIP must be preceded by notice to the public and public hearings.

(2) Availability of information. The SIP must guarantee public access to emission data reported by source operators or otherwise gathered by the state.

(3) Reports. The state must make a quarterly report to the EPA containing the air quality data gathered through the state's surveillance system. A semi-annual report must be made which includes emission levels, a pollution source inventory, a progress report on the implementation of the SIP, a list of enforcement actions instituted by the state, and any substantive revisions which have been made in the plan.

(4) Revisions. The SIP must be revised from time to time to take account of revisions in national air quality standards, availability of improved methods of achieving such standards, or a finding by EPA that the state plan is inadequate in any regard.

12A.0105. Current Status Montana's SIP was approved by the EPA in July, 1974, with some exceptions. The EPA originally found that confidentiality provisions in Montana's Clean Air Act interfered with public access to emission data. This problem was corrected by the Montana Legislature in 1975.

As of June, 1976, the EPA determined that Montana's SIP was inadequate to provide for attainment and maintenance of national standards in several areas of the state. The following is a summary of the problems which were found in the various Air Quality Maintenance Areas.

Missoula AQMA: Inadequate monitoring data for carbon monoxide; Inadequate control of particulates—SIP revision required.

Helena AQMA: Control of SO_2 minimally adequate—Report on East Helena smelter required in 1978.

Anaconda-Butte AQMA: Control of SO_2 and particulates substantially inadquate—SIP revision required.

Billings AQMA: Control of SO_2, CO and particulates is inadequate—SIP revision required.

Coal Area AQMA: Control of particulates inadequate—SIP revision required.

Kalispell AQMA: Due to inadequate data, EPA decision on SIP revision has been deferred.

Libby/Great Falls: These areas have not been designated AQMA's, but are being studied to determine if AQMA status is required for control of particulates.

12A.0200. 1977 Clean Air Act Amendments Major amendments to the Clean Air Act were enacted by Congress in August, 1977 (PL 95-95; 42 USC 7401 *et seq.*) In addition to revisions in the auto emissions control program, significant changes were made in the law addressing problems which have arisen in implementation and enforcement.

12A.0201. Significant Deterioration. As a result of federal litigation, *(Fri. v. Sierra Club, 412 U.S. 541)* it was determined in 1973 that all state SIPs were deficient in failing to provide adequately for the maintenance of high quality air in those regions where air quality is presently better than the national standards. The EPA promulgated regulations (39 Fed. Reg. 42501, December 5, 1974) which provided for the classification of all areas of the state: Class I, small increments in pollutant levels allowed; Class II, moderate increments allowed; Class III, pollutant levels may increase up to national ambient air quality standards.

The 1977 amendments generally follow the EPA regulatory scheme. All areas, with the exception of certain federal lands (e.g. national parks, wilderness areas, etc.) are initially designated class II. The states, after consultation with federal land managers, have the power to redesignate Class II lands as either Class I or Class III. Each state must revise its SIP to include procedures for such redesignations. SIPs must also be revised to include a permit system for review of new sources of pollution. Modification of existing sources or construction of new sources falling within one of 28 industrial classes and emitting more than 100 tons of pollutant annually may not be commenced without a permit certifying that the facility will not contribute to air pollution in excess of applicable deterioration increments.

12A.0202. Non-Attainment Areas Many areas of the country have not achieved compliance with the national ambient air quality standards. Subsequent to the statutory 1975 deadline for such compliance, the EPA developed an "emissions offset" policy under which construction permits for new industrial sources in non-compliance areas could be issued only if increases in air pollution from the new source are more than offset by emission reductions from existing sources in the area,

beyond those reductions required by the applicable implementation plan. The 1977 amendments accept this offset policy and extend the deadlines by which states must attain the primary ambient air quality standards. States are required to revise their SIP's by January 1, 1979 to provide for the attainment of primary standards by December 31, 1982. In areas where automobile emissions present a special problem, the deadline may be extended to 1987, and states are authorized to adopt transportation control plans to deal with the problem.

12A.0203 Compliance Extensions and Coal Conversions. The 1977 amendments allow the EPA or a state to extend compliance dates for individual sources; further extensions are allowed for plants using innovative control technology, and for facilities converting from oil or natural gas to coal.

12A.0204 Non-Compliance Penalty. The amendments strengthen available enforcement tools by providing an innovative noncompliance penalty mechanism designed to eliminate any economic advantage which might accrue to a source operator by delay in compliance with air quality standards. The penalty may be set at a level equal to the net economic benefit which might be gained by delay in compliance.

12A.0205. Continuous Emissions Control and Tall Stacks. The amendments adopt the position taken by the EPA and numerous judicial decisions that air quality standards must be achieved by continuous controls such as stack gas scrubbers, rather than dispersion controls such as tall stacks, or intermittent controls such as production cuts during atmospheric inversions.

12A.0206. Federal Facilities. The amendments clear up a question which has been the subject of litigation by specifying that federal facilities are subject to procedural as well as substantive requirements of state implementation plans. Federal facilities can therefore be required to obtain construction and operation permits from state air pollution control agencies, and can be sued in state court for non-compliance.

12A.0300. Montana Air Pollution Study. The 1977 Montana State Legislature appropriated $1,070,000 to the Air Quality Bureau, Montana Department of Health and Environmental Sciences, to study air pollution and its effects on the people of Montana. The Bureau is currently implementing the Montana Air Pollution Study (MAPS), which will examine the relationship between air pollution emissions, meteorological conditions, and their effects on human health. In addition the Bureau will develop a data system and a modeling system to predict the future effects of air pollution in Montana. The cities under study are Missoula, Butte, Anaconda, Billings, Columbia Falls, East Helena, as well as the southeast coal development region. These specific areas were selected not only because they suffer from frequent inversion problems, but also because they contain numerous industrial sources.

13.0000 HAZARDOUS SUBSTANCES - RADIATION

Responsibility for the regulation of hazardous and radioactive substances is shared by three bureaus in the Department of Health and Environmental Sciences. The Food & Consumer Safety Bureau regulates the labeling of hazardous substances which are transported and sold in commerce in the state. The Occupational Health Bureau regulates the handling of radioactive materials and licenses persons who handle such materials. The Solid Waste Bureau regulates the disposal of hazardous and radioactive wastes as part of the state's solid waste management plan. Disposal sites must be licensed, and permits are issued for disposal of large volumes of hazardous wastes.

13.0001. Contents: **Section**

13.0002. See Also:

Pesticide Regulation 16.0000
Solid Waste Management 17.0000

13.0003. Agency Programs:

Hazardous Waste 13A.0000

13.0100. Hazardous Substances: Montana Consumer Product Safety Act (69-7101 through 69-7113, R.C.M. 1947; Regulations: MAC 16-2.14(2)-S14100) The Department of Health and Environmental Sciences (Food and Consumer Safety Bureau) is responsible for the regulation of toxic, corrosive, radioactive and other hazardous substances. The Department may adopt rules declaring a substance to be hazardous and therefore subject to the provisions of this act. Labeling and grading requirements may be imposed, and if it is determined that the nature of the substance makes adequate labeling impossible, or poses an imminent danger to public health or safety, the Department may declare it to be a banned hazardous substance and order it removed from commerce. All such determinations by the Department must be made by rule under the Administrative Procedures Act (82-4201 through 84-4229 R.C.M. 1947) and are subject to judicial review. The Department may adopt by reference rules adopted under the Federal Hazardous Substances Act.

It is prohibited to introduce into commerce any misbranded, mislabeled, or banned hazardous substances. Penalties may be assessed of up to $500 or 90 days imprisonment, and for violations with intent to defraud, or second violations, penalties may be as high as $3,000 or one year imprisonment. The Department may also seek injunctions against the use of or commerce in hazardous substances. Agents of the Department may tag and detain misbranded or banned substances and apply to the court for a condemnation order. The Department must allow a defendant the opportunity to appear before it for an oral hearing before institution of criminal proceedings.

Agents of the Department may enter and inspect facilities, inspect records, obtain samples for testing, and investigate accidents. The Department may also conduct accident prevention and education programs, and disseminate reports and information regarding hazardous substances.

13.0200. Hazardous Substances: Solid Waste Management (69-4001 through 4020) Under the 1977 Solid Waste Management Law (17.0100), the Department of Health and Environmental Sciences is given the authority to regulate private disposal of hazardous waste and to create and maintain state hazardous waste management facilities. (Hazardous waste means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue.)

Even an individual disposing of his own hazardous wastes on land he controls must secure a license and must comply with all hazardous waste regulations. However, a license is not required for the transportation of marketable hazardous wastes to a manufacturing or processing center.

If an application under the Major Facility Siting Act (81.0101) contemplates generation, transportation,

storage or disposal of hazardous wastes, the Department is to conduct the review required by this law in conjunction with the air and water quality reviews required by the Facility Siting law.

Penalties for violating the hazardous waste provisions are much stiffer than those for violations of other solid waste laws. Illegal disposal of non-hazardous wastes may result in a $500 per day fine; illegal disposal of hazardous wastes may result in a $25,000 per day fine.

13.0201. *Permit.* (MAC 16-2.14(2)-S14100) A permit from the Department is required to dispose of hazardous wastes in excess of 100 pounds or 30 gallons.

13.0300. Control of Ionizing Radiation. (69-5801 through 69-5820, R.C.M. 1947; Regulations: MAC 16.2.14(6)-S14270) It is the policy of the state:

—to maintain a regulatory program for radiation sources so as to conform to federal requirements;

—to maintain a program to permit development and utilization of radiation sources for peaceful purposes consistent with public health and safety;

—to facilitate intergovernmental cooperation.

13.0301. *Department of Health and Environmental Sciences.* The Department of Health, through the Occupational Health Bureau, is the state radiation control agency. It is the Department's responsibility to develop programs for evaluation and control of radiation hazards, to advise and consult with other agencies and persons, to accept and administer loans and grants, to conduct studies, collect and disseminate information, conduct inspections, and institute training programs.

The Department is also responsible for adopting rules for the licensing and regulation of by-product, source, waste, and other radioactive materials. The rules cover equipment and facilities, transporting, handling, storage, exposure levels, personnel qualifications, accident reports, disposal of wastes, and posting of areas and equipment. If the state's program is deemed adequate, the state may assume some federal responsibilities for regulation of radioactive materials.

13.0302. *Licensing.* The Department's rules provide for the licensing of persons who handle radioactive materials. The rules cover technical, insurance, and financial qualifications, and include inspection provisions. Confidentiality provisions are in effect to protect trade secrets. Licensed handlers must maintain records relating to receipt, storage, transfer, disposal of materials, and radiation exposure levels. All Departmental decisions regarding licensing, determination of compliance with license requirements, and granting of exemptions, are made after opportunity for a hearing and are subject to review.

It is unlawful to manufacture, transport, possess or use any radioactive material unless licensed by or registered with the Department. Penalties for violation of this act may be from $100 to $1,000, or 30 to 90 days imprisonment.

13.0303. *Emergencies.* In the case of an emergency radiation hazard situation, the Department may order immediate cessation of operations or impound hazardous materials. Such an order becomes effective immediately, but a hearing before the Board of Health may be requested.

13.0301. *Radioactive Waste.* The 1977 Legislature passed a law prohibiting the disposal within Montana of large quantities of radioactive materials produced in other states. The prohibition does not preclude construction of nuclear facilities in Montana, nor does it apply to by-product materials used or transported for educational, scientific, medical, geophysical and other purposes licensed by the U.S. Nuclear Regulatory Commission.

Agency Programs

13A.0000. Hazardous Waste. The Solid Waste Management Bureau in the Department of Health and Environmental Sciences coordinates hazardous waste management activities and responses to hazardous waste materials episodes. An emergency response team makes cleanup and disposal recommendations and coordinates inter-agency responses to emergency episodes.

The Bureau also operates a waste pesticide storage facility and oversees hazardous waste disposal activities of local landfills. The Bureau investigates waste pesticide disposal techniques, including soil injection, chemical treatment, and landfilling.

The Bureau conducts a statewide hazardous waste survey and surveillance system, in cooperation with hospitals and industries.

13A.0001. State Hazardous Waste Management Plan. In response to Senate Bill 175 enacted by the 1977 Legislature, the Solid Waste Bureau has prepared a Hazardous Waste Management Plan as part of the State Solid Waste Management Plan (17A.0001). The major elements of the plan follow:

1. *Public Disposal Facilities.* Under the old law (pre-1977), landfills were classified by the Solid Waste Bureau. Only Class I sites could handle hazardous wastes, although approval was given to Class II sites for

13A.0001.

disposal of non-persistent or low-toxicity wastes when no other sites were available. With over 60% of the landfills in the state having been evaluated, only one has been given Class One designation.

Under the new law, all landfills will be licensed by the Bureau, and uniform criteria and standards are being developed for treatment, storage or disposal of hazardous wastes.

2. *Private Hazardous Waste Management.* The state, through the Solid Waste Bureau, will license all hazardous waste treatment, storage and disposal facilities, inspect them for compliance with the law, and require adequate record keeping.

3. *Generation of Hazardous Waste.* Those responsible for generation of hazardous wastes will have to meet state requirements concerning use of appropriate containers for storage and transportation, maintenance of records and submission of reports to the Bureau, and initiation of manifests for each batch shipped.

4. *Transport of Hazardous Wastes.* Persons engaged in the business of transport of hazardous waste must be licensed by the Bureau, must comply with the manifest system mentioned above, must properly label all shipments, and may ship hazardous wastes only to licensed storage, treatment or disposal facilities.

5. *Siting of Disposal Facilities.* Criteria are being developed for siting of hazardous waste disposal facilities. A statewide mapping is being conducted to identify those areas best or least suited for sites.

6. *Pesticide Disposal Program.* Since 1969, the Department of Health has accepted highly toxic or persistent waste pesticides from state residents and has stored them in munitions bunkers at Glasgow Air Force Base. The Solid Waste Management Bureau is presently pursuing arrangements for disposal of waste pesticides at facilities outside of the state.

7. *Emergency Response.* The Department of Health coordinates state agency response to hazardous waste emergencies. The response plan was developed in cooperation with the State Civil Defense, and makes use of Civil Defense and Highway Patrol 24-hour reporting and communications capabilities. In addition to the storage bunkers mentioned above, several other sites have been identified for emergency waste storage.

8. *Alternatives to Landfills.* The state actively supports efforts to develop systems which may reduce waste production, encourage waste exchange, or allow for recovery of materials from hazardous wastes.

9. *State Role.* At present, the state does not plan to provide financial incentives or assistance to private industry in developing hazardous waste management systems. If assessment of the waste management situation during the next two years indicates inadequate efforts by private industry, legislation providing such assistance may be considered.

10. *Technical Assistance.* Technical assistance will be provided by the Solid Waste Bureau in handling hazardous wastes and responding to emergencies. Operator training courses will be developed and made available.

11.0000. NOISE

There are no comprehensive state noise pollution laws. The Department of Health and Environmental Sciences, under the Occupational Health Act (69-4201 through 69-4221) regulates occupational noise. Threshold limits are established in MAC Rule 16-2.14(6)-S14310. If such limits are exceeded, sound levels must be reduced or personal protective equipment provided.

All motor vehicles must have mufflers or other noise suppression devices (32-21-146 R.C.M. 1947) and noise limits for motorcycles are set out in 32-21-105.1, R.C.M. 1947. Penalties are provided for violation.

The Fish and Game Department regulates snowmobile noise levels. Limits are established in 53-1020, R.C.M. 1947, and procedures for field measurements are in MAC Rule 12-2.10(10)-S10100.

Local authorities may establish noise control regulations as part of their airport zoning ordinances (35.0101).

Agency Programs

14A.0000. Noise. The Occupational Health Bureau of the Department of Health conducts community noise surveys and control programs.

15.0000. OCCUPATIONAL HEALTH

The occupational health law, administered by the Occupational Health Bureau of the Department of Health and Environmental Sciences, provides for the control of pollution at work places within enclosed spaces, as distinguished from open-air pollution which is dealt with by the Montana Clean Air Act. (12.0100)

15.0001. Contents.

15.0002. See Also:

Control of Ionizing Radiation 13.0300

15.0003. Agency Programs:

Occupational Health 15A.0000

15.0100 Occupational Health Act of Montana. (69-4206 through 4221, R.C.M. 1947; Regulations: MAC 16-2.14 (6)-S14290, 14310) It is the policy of the state:

—to achieve and maintain such conditions at the workplace as will protect human health and safety, and to the greatest degree practicable, foster the comfort and convenience of the workers and enhance their productivity and well-being;

—to provide for a coordinated state-wide program of abatement and control of occupational diseases;

—to provide a framework within which all values may be balanced in the public interest.

15.0101. *Board of Health and Environmental Sciences.* The conduct of the occupational health program is presided over by the State Board of Health, a seven-member, quasi-judicial citizen board appointed by the Governor, (82A-605, R.C.M. 1947) The Board has the authority to adopt rules and hold hearings, pursuant to the procedures of the Montana Administrative Procedures Act (82-4201 through 4229, R.C.M. 1947) The Board also issues orders, and sets emission limits of various pollutants from any source necessary to control occupational disease. Emission limits may be found in the Montana Administrative Code, MAC 16-2.14 (6)-S14290, S14310.

The Board may, after public hearing, grant variances from emission standards. Such variances are reviewed annually for renewal.

All decisions of the Board setting standards or determining legal rights are made after opportunity for a hearing, and are subject to judicial review. Confidentiality provisions are in effect to protect the trade secrets of applicants.

15.0102. *Department of Health and Environmental Sciences.* The actual administration of the occupational health program is the responsibility of the Occupational Health Bureau in the Department of Health. The Department enforces Board of Health orders, conducts studies, monitors occupational conditions, conducts on-site inspections, advises and consults with other agencies and persons, accepts and administers grants, and is responsible for the development of a comprehensive state-wide plan for the prevention, abatement, and control of occupational disease.

15.0103. *Permits.* The Board establishes conditions for permits for the installation, alteration, or operation of machines and equipment which may contribute to occupational disease. The Board must make its decision on a permit within 90 days of receipt of the completed application.

15.0104. *Enforcement and penalties.* Whenever the Department becomes aware of a violation, it may serve a notice and order on the violator. The Board may require the violator to appear before it. Within 30 days of the order, the violator may, on his own, request a Board hearing. The Board will affirm, modify, or revoke the Department's order. The Board's decision is judicially reviewable. Penalties up to $1,000 per day may be levied. Nothing in this statute limits the rights of other persons to seek judicial remedies under other proceedings.

15.0105. *Emergencies.* In case of an emergency situation at the workplace the Department may order the reduction or cessation of operation of machines or equipment until the emergency situation passes. Notwithstanding the review procedures described above (15.0104), such emergency orders are effective immediately, but a hearing before the Board must be scheduled within 72 hours.

Agency Programs

15A.0000. Occupational Health. The Occupational Health Bureau of the Department of Health conducts surveys of all workplaces for excesses of dust, gases, mists, noise, lighting, and heat; biological sampling; dust and gas control systems; and ventilation.

The radiation section inspects all sources of ionizing radiation: X-ray equipment, fluoroscopes, reactors, isotopes, and uranium mines. They review plans and compute minimum shielding requirements for radiation-producing equipment. The Section conducts surveillance of food, water, soil, and air to detect radiation levels. Non-ionizing radiation sources such as lasers and micro-wave equipment are also inspected.

16.0000 PESTICIDES AND FERTILIZERS

The Department of Agriculture has primary responsibility for regulation of pesticides and fertilizers—substances which, though introduced into the environment for their beneficial effects, may cause severe environmental problems if not carefully regulated.

The Department is responsible for the registration and labelling of all pesticides and fertilizers distributed and used in the state. The services of the Montana Agricultural Experiment Station are available for sampling and analysis of fertilizers. Pesticide dealers and applicators must be licensed by the Department. The Department is authorized to inspect and confiscate mislabelled products.

The Department also oversees pest management programs and gives technical and administrative assistance to local governments in conducting cropland spraying programs.

Federal requirements for the control of pesticides are established in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Montana Department of Agriculture is authorized to exercise enforcement and licensing authority under that act.

16.0001. Contents: **Section**

16.0002. See also:

16.0003. Agency Programs:

16.0100. Montana Pesticides Act (27-213 through 27-245, R.C.M. 1947; Regulations: MAC 4-2.22(1)-S2200 *et seq)* The Montana Pesticides Act, administered by the Environmental Management Division of the Department of Agriculture, is designed to satisfy the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The Department is authorized to adopt, without public hearings, any rules adopted under FIFRA.

16.0101. *Purpose.* The purpose of the statute is the control of pesticides for the protection of man and his environment, including water, air, food, animals, vegetation, pollinating insects, and shelter.

16.0102. *Department of Agriculture.* In addition to its rule making responsibilities, and the administration of the licensing and registration programs described below, the Department may publish information relating to the proper use of pesticides, conduct educational programs, and cooperate with other agencies and persons in the regulation and control of pesticides. Any person adversely affected by a decision of the Department may appeal to the director, and may seek judicial review of a rule or order.

16.0103. *Registration of Pesticides.* Every pesticide distributed or sold in the state must be registered with the Department. The registration application must include a copy of the label and a description of tests made on the product. The Department's rules establish standards for registration and labeling, and for classification of a pesticide as being for general or restricted use. (MAC Rule 4-2.22(18)-S22200 through 22270) Generally, a pesticide may be designated for general use if, when used as directed or in accordance with standard practices, it "will not generally cause unreasonable adverse effects on the

environment." The Department may also designate those pesticides which may be sold at retail for domestic use.

The Departments of Health and Environmental Sciences and Fish and Game review all applications for special use permits, and in case of disagreement among the three departments, an interagency conference will be held. Two out of the three departments must agree on the registration. The applicant may request a joint hearing before the three agencies. If there is still no agreement, the decision may be referred to the Pesticide Advisory Council, a citizen committee appointed by the director of the Department of Agriculture.

Registrations must be renewed annually. Pesticides registered under FIFRA are automatically registered by the state.

16.0104. *Licensing of Applicators.* All commercial pesticide applicators and dealers must be licensed annually and must pass a written exam given by the Department. Farmers must obtain a restricted use permit to use restricted pesticides, and must also pass a written or oral exam for that purpose. Licenses and permits may be revoked or renewal denied if it is found that the applicant is not qualified, or if he made false statements in his application, used unapproved materials, operated unsafely, failed to maintain records, etc. All state and local agencies engaged in the use of pesticides are subject to the conditions of this act. Department of Agriculture rules set forth procedures for issuance, denial and revocation of licenses and permits (MAC Rule 4-2.22(14)-S22160 through 22190), and establish qualifications, licensing requirements, competency standards, classifications, and examination procedures for commercial and farm applicators and dealers. (MAC Rule 4-2.22(1)-S2200 through 4-2.22(10)-S21150). The Board of Aeronautics in the Department of Community Affairs licenses agricultural pilots. (MAC Rule 22-3.6(10)-S650)

16.0105. *Enforcement.* The sale within the state of any pesticide not registered, not meeting its guaranteed claims, improperly labeled, or adulterated is prohibited. It is also forbidden to discard pesticides or containers so as to pollute water or harm people or animals. The Department inspects and samples pesticides and application devices for compliance with the law, and may enforce the law by injunction, embargo, and condemnation. The Department may issue emergency orders where imminent threat to public health and safety require. Such orders are effectively immediately without review for 60 days. Violations of the law are misdemeanors.

16.0200 Insecticide Vaporizers. (MAC Rule 16-2.12(12)-S12260) This rule, administered by the Department of Health, prohibits the use of any continuous-emission insecticide device in enclosed food preparation areas.

16.0300. Fertilizer Registration. (3-1714.2 through 1734, R.C.M. 1947) Each brand and grade of fertilizer sold or distributed in the state must be registered yearly with the Plant Industry Division of the Department of Agriculture by the manufacturer. The registration application must contain information on the brand and grade, guaranteed analysis, source of the elements contained, and verification of any claims of effectiveness. Fertilizers also must be labelled to show weight, brand, grade, guaranteed analysis, and manufacturer. Dealers and distributors must be licensed. Rules covering guaranteed analysis, labeling, exemptions, inspections and sampling are at MAC 4-2.10(2)-S1020 through 1080. The primary goals of the registration requirements are accurate labelling and fulfillment of guaranteed claims of effectiveness, rather than assessment of environmental effects of fertilizer use.

The Department and the Agricultural Experiment Station at Montana State University conduct fertilizer inspections and sampling annually, and publish reports on results of sales and inspections. The Department may seize or impose a sales embargo on any fertilizer not in compliance with the law. Penalties may be assessed and paid to purchasers if the fertilizer falls short of its guaranteed analysis.

Inspection fees and an assessment of 35 cents per ton of fertilizer sold are charged by the Department to pay administrative costs and to fund educational and experimental programs. The money is split evenly between the Agricultural Experiment Station and the Cooperative Extension Service for programs recommended by a Fertilizer Advisory Committee appointed by the director of the Department. These programs have as their goals the optimum use of fertilizers for food and feed production, and the improvement of Montana's economy through wise use of fertilizer and proper management of soil, consistent with environmental protection.

16.0100. Pest Control: Cropland Spraying Programs. (3-3501 through 3507, R.C.M. 1947) The Department of Agriculture conducts a cropland spraying program to deal with major infestations of insect pests. The Department surveys pest infestation conditions during the appropriate growing seasons, and where the need exists, publishes a notice of intent to conduct cropland spraying in the infested area. After this notice is published, a committee of farmers and ranchers in the area is convened to determine if the need for spraying exists. If the committee determines there is a need, a meeting is called of all producers, landowners, and other potentially affected taxpayers in the area and a vote is taken. If a majority approve, the spraying is undertaken.

The spraying is conducted by either the Department

or the county. The Department reviews and approves county programs, and coordinates simultaneous spraying programs in two or more contiguous counties. The spraying is to be financed one-third by the state, one-third by the county, and one-third by the farm and ranch owners, who pay according to acreage. An individual owner may request not to have his land sprayed, but he is still subject to the assessment.

The Department of Agriculture is directed to publish a list of approved substances for spraying which will be least harmful to the environment. It is also directed to develop technical guidelines for county-operated programs. In the development of pest control projects, the Department and the counties are required to consider alternative methods of control (biological or other techniques not involving toxic chemicals). If such alternative means are more effective and feasible, they may be used. The Department may adopt regulations to carry out the intent of this act.

16.0500. Noxious Pest Management (16-1724 through 1727, R.C.M. 1947) This law authorizes the Department of Agriculture to provide technical assistance on the control of noxious plants to local governments and to the general public. The assistance may include studies on the economic and environmental effects of noxious plants, information on the proper use of pesticides, and recommendations on when pesticides should not be used because of their economic or environmental effects.

The Department is directed to make every effort to obtain federal funds to implement management programs on federal lands. All but 3% of the money received is to be distributed to local governments authorized to carry out theprogram.

Agency Programs

16A.0000. Pesticides. The Pesticide registration and applicator certification programs administered by the Environmental Management Division of the Department of Agriculture have been approved by the U.S. Environmental Protection Agency, and the Department may exercise licensing authority under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). A brief description of some of the Division's recent activities (1976-1977) follows.

The Environmental Management Division registers pesticides, licenses applicators, gives examinations for applicators and dealers, conducts courses for distributors and producers, inspects facilities, investigates "pesticide episodes", checks cropland damaged by pesticide accidents, and investigates violations of the pesticide law.

In cooperation with the Montana Cooperative Extension Service, the Division presents applicator certification training courses throughout the state.

Part-time summer employees were hired to conduct a state-wide insect detection and surveillance program to monitor insect populations and warn farmers and ranchers of potential insect problems. The Division recommends management procedures and notifies farmers and ranchers of pesticides available for control of pests.

The Division, in cooperation with the Department of Livestock, conducts training and examination sessions for predator, rodent, and rabid skunk control applicators.

In cooperation with the Departments of Health, Livestock, and Fish & Game, the Environmental Management Division participated in a study team which prepared a proposal for submission to the U.S. Environmental Protection Agency for an experimental use permit for use of the toxicant 1080 as a predacide.

16A.0001. Pesticide Waste Disposal. The Solid Waste Management Bureau of the Department of Health conducts pesticides studies which include investigation of waste disposal problems and appropriate methods for managing waste pesticides and emptied pesticide containers.

17.0000 SOLID WASTE

Solid waste management is regulated by the Solid Waste Bureau of the Department of Health and Environmental Sciences. The goals are efficient disposal of solid waste and maximum possible recycling and recovery of resources. The Department is responsible for developing a state-wide solid waste management plan which will enable it to channel federal money to local governments for design and construction of solid waste management facilities. New solid waste facilities and sites must receive dual approval by the Department and local health officials. City and county officials may establish refuse disposal districts for the collection of solid wastes. Motor vehicle wrecking facilities and county auto graveyards are approved by the Department, and the Department provides for the recycling of junk autos. Roadside junkyards must also be licensed. Subdivision developments must provide for adequate solid waste disposal facilities.

17.0001. Contents:

17.0002. See Also:

17.0003. Agency Programs:

17.0100. Solid Waste Management Act (69-4001 through 4020, R.C.M. 1947) The 1977 amendments to the law significantly expand Montana's regulation of solid waste management. The amendments substantially rewrite former law, adding to the types of waste which are to be regulated, and expanding the Department of Health and Environmental Science's regulatory and enforcement authority. The new law also adds a provision stating that control of solid waste management systems is intended "to conserve natural resources whenever possible" as well as to protect the public health and safety. The 1977 law reflects a change in state policy from that of simply disposing of refuse in a safe manner, to a comprehensive policy of managing wastes to recover reusable materials and energy.

17.0101. *Regulation and Enforcement* No person, except for an individual disposing of his own solid wastes on land controlled by him, may dispose of solid waste without a license from the Department of Health and Environmental Sciences.

The Department is required to adopt detailed rules relating to licensing and regulatory programs which include:

—requirements for the plan of operation and maintenance that must be submitted with license application;

—the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

—the procedures to be followed in the disposal, treatment or transport of solid wastes;

—the suitability of the site from a public health standpoint when hydrology, geology and climatology are considered;

—procedures and requirements for the submission of reports on the operation and maintenance of a hazardous waste disposal site, the transport of hazardous waste, and the generation of hazardous wastes.

The Department must inspect solid waste management facilities throughout the state; it is given the authority to bring enforcement actions to collect civil and criminal penalties and to enjoin facilities which are in violation of the law or the Department's regulations.

17.0102. *Licensing Procedures* A license from the Department is required to dispose of hazardous or solid waste, to transport hazardous waste, or to operate a solid waste management facility. The application must include the location of the proposed facility and the plan of operation and maintenance.

Within 15 days after receipt of an application, the Department must notify the local health officer who has jurisdiction in the area where a proposed solid waste facility is to be located. The Department also notifies the local health officer in writing if it decides to issue a license. The license is not valid until signed by the local health officer who must decide whether or not to validate it within 15 days. Issuance or validation of a license may be refused or revoked by the Department or the local health officer only on a finding that the facility will not comply or is not complying with the requirements of this law or any rules adopted by the Department under this law. Such decisions are appealable to the Board of Health.

17.0103. State Solid Waste Management Plan (69-4011 through 4020, R.C.M. 1947) It is the policy of the state to encourage the good management of solid waste and the conservation of natural resources through the encouragement of solid waste recycling systems. In the preparation of a state solid waste management plan, emphasis is to be placed on

—maximum possible recycling of solid waste resources;

—maximum possible utilization of the private sector in constructing and operating solid waste facilities;

—primary management and decision responsibilities allocated to local authorities.

The state's role is primarily to provide financial and technical advisory assistance to local governments and other persons in the planning, design, construction and operation of facilities and systems.

17.0104. *Local Government Powers and Duties.* It is the responsibility of local authorities to plan and implement solid waste management systems. Local governments may adopt an ordinance exempting their jurisdiction from the state solid waste management plan if alternative facilities are available. Local governments may receive grants and loans and levy taxes to help finance their systems, and may market their recovered material and energy products. Alternatively, they may sell or lease their systems to private operators.

17.0105. *State Loans.* Solid waste management loans are available to local governments to help finance the planning, construction and operation of solid waste systems. Applications for loans are made to the Department of Health. Revenues from operation of the completed system must be pledged to repayment of the loans. Systems funded by state loans must comply with the state solid waste management plan. In allocating loan funds among applicants, the Department will base its priorities on:

—the degree of utilization of private enterprise;

—the size of the population to be served;

—the financial viability of the project;

—the severity of environmental and health problems being addressed.

State loans are available only if adequate financing is not available from other sources.

17.0200. Refuse Disposal Districts. (69-6001 through 6013, R.C.M. 1947) This law authorizes counties to organize districts to manage the storage, collection, and disposal of solid wastes in order to reduce hazards to public health and to reduce the spread of disease, air pollution, and water pollution.

A board of county commissioners may adopt a resolution of intent to establish a refuse disposal district, publish notice of the resolution, and receive written protests for 30 days. The council of any city or town in the county has the opportunity to concur in the resolution and participate in the district. If owners of more than 50% of the residential, commercial, and industrial units in the district file written protests, no further action may be taken. Otherwise, the county commission may establish the district and appoint a board of directors, which must include one county commissioner, one resident of each city or town included in the district, and one member of the county or city-county board of health. Joint districts may be formed to serve two or more counties.

The board of directors of the district may, with approval of the county commission, develop and administer a program for collection or disposal of refuse, employ personnel, acquire equipment, receive state and federal funds and cooperate in state and federal programs, and enforce state and local board of health rules relating to refuse disposal. The board of directors may also assess a service fee on all units served by the district, which fee is added to the unit's tax roll.

17.0301. Motor Vehicles: Wrecking Facilities. (69-6801 through 6812, R.C.M. 1947) An annual license must be obtained from the Department of Health to operate a motor vehicle wrecking facility. Operators must maintain records of every vehicle acquired and disposed of. The Department may revoke or deny renewal of licenses if it finds that an operator has dealt in stolen vehicles, forgery, fraud, or failure to comply with the law or Department regulations. Department decisions may be appealed to the Board of Health within 30 days. The Department, through the attorney general or county attorney, may sue to enjoin the operation of an unlicensed facility. Violation is a misdemeanor, with fines up to $250 and/or 30 days.

Department of Health rules covering licensing, inspection and operation of facilities are at MAC 16-2.14(2)-S14261. Rules require compliance with local zoning, and require facilities to be shielded from public view.

17.0302. Motor Vehicles: County Graveyards. (69-6801 through 6812, R.C.M. 1947) Every county must maintain a motor vehicle graveyard or contract with a licensed motor vehicle wrecking facility to do so. Two or more counties may form a joint district. Counties submit operating plans and annual budgets to the Department of Health for approval.

When 200 vehicles have accumulated in the county graveyard, the Department of Health is notified. The Department provides for the final disposal of the vehicles, conducting or contracting for crushing and recycling operations. The Department will also dispose of junk vehicles from private vehicle wrecking facilities if 200 have accumulated, for a fee of $2/vehicle.

The disposal and recycling program is funded by motor vehicle facility license fees, by sale of materials recovered from the recycling operations, and by a special fee assessed on every new application for motor vehicle title and each transfer of title. This special fee is collected by the county treasurer and is used to pay for the graveyard program. Moneys received are also used to fund a feasibility study of solid waste recycling and resource recovery technologies. A report will be made to the 1977 legislature.

17.0100. Roadside Junkyards and Debris. Roadside junkyards must be licensed by the Department of Health, and littering along public roads is prohibited. (21.0203)

Agency Programs

17A.0000. Solid Waste. The Solid Waste Management Bureau in the Department of Health coordinates the state's solid waste programs. Under the old law (pre-1977), the Bureau approves disposal areas and operation plans, conducts inspections and enforcement actions, classifies disposal sites, licenses motor vehicle wrecking facilities, conducts crushing and recycling of junk vehicles, and conducts training and public information programs. The Bureau also conducts the hazardous waste management program (See 13A.0000). The Department of Health administers grants to counties to fund local junk vehicle programs and assisted eleven counties which are being impacted by coal development to initiate comprehensive solid waste management planning.

17A.0001. State Solid Waste Management Plan. In response to Senate Bill 175 enacted by the 1977 Legislature, the Solid Waste Bureau has developed a comprehensive statewide solid waste management plan. The major elements follow.

1. The intent of the state plan is to assist local governments in developing areawide landfills, resource recovery facilities, or other waste management programs, and to eliminate the many existing small open dumps and upgrade to landfill status the few that will remain. It is up to local governments to determine the type of system which best suits their needs.

2. The Solid Waste Bureau has developed a schedule of remedial measures to upgrade all disposal sites to the status of sanitary landfills, as required by federal law (PL 94-580). The closing of small dumps and upgrading of others will be accomplished by 1983.

3. The Solid Waste Bureau has developed model procedures for implementation of areawide landfill and resource recovery projects. The procedures cover composition of selection and technical committees by the local government to select a proposal for formation of an areawide or inter-local government body to review and approve plans and final evaluations, design approvals, and contract negotiations. The model procedures describe the state's role as being primarily advisory, lending technical assistance and organizational financial assistance. The state will also act in a regulatory and enforcement role once the plan is in operation.

4. The State Solid Waste Management Strategy has identified 46 potential projects: 43 areawide sanitary landfills and 3 resource recovery projects. Front-end planning and organizational funding will be available from the state. It is estimated that 2 of the resource recovery projects and 25% of the landfills will be initiated during the 1977-1978 biennium.

17A.0002. Renewable Resource Development Grant. The 1977 Legislature has approved a grant from the Renewable Resource Development Fund (51.0801) to the Department of Health to assist local governments in planning solid waste management systems.

State financial aid to local governments will be for planning and organization. A $300,000 grant to the Solid Waste Bureau will be for feasibility and design studies at the planning level. A loan fund of $2,000,000 will fund the design and site-specific work.

18.0000 WATER POLLUTION

Responsibility for the state's water pollution control program lies with the Board of Health and Environmental Sciences and the Water Quality Bureau of the Department of Health. The Board and Department must develop and implement a comprehensive state water quality management program which satisfies the requirements of the Fedral Water Pollution Control Act. The federal law includes requirements for pollutant discharge permits, establishes guidelines for pollution control technology, requires states to establish state-wide and basin planning programs and area-wide waste treatment plans, and makes money available to state and local governments for planning and construction of pollution control facilities and water treatment plants.

The Montana Board of Health establishes water quality standards for the state's waters and supervises funds appropriated by the Legislature to match federal funds for construction and planning. The Department administers the pollutant discharge permit system and monitors water quality. Discharge permits are reviewed by the federal Environmental Protection Agency district office in Denver.

The Department is also responsible for inspection and approval of public water supply systems, protection of public watersheds, and provision of safe drinking water. Water treatment plant operators are licensed by the Department. The Department approves animal confinement facilities and construction of dairy plants, making sure that provisions are made for prevention of water pollution. The Department conducts water quality review as part of the review of major industrial facilities under the Major Facility Siting Act, and also reviews water quality impacts associated with mining activities. The Department of Fish & Game is responsible for prevention of discharge of waste into state recreational waters from boats and other recreational vehicles.

Joint state and local approval authority is exercised over residential subdivisions, campgrounds, and trailer courts. Local authorities are also responsible for constructing and managing water treatment, water supply, and sewer facilities. A variety of funding mechanisms are available for these purposes.

Soil and Water Conservation District supervisors are authorized to adopt land use regulations within their districts which may, among other things, regulate sedimentation and non-point source pollution from agricultural activities.

18.0001. Contents **Section**

18.0002. See Also:

18.0003. Agency Programs:

18.0100. Water Pollution Act of Montana. (69-4801 through 69-4827, R.C.M. 1947) The heart of Montana's water pollution control program is set forth in this act, enacted in 1967 and amended in 1971, 1973, 1974, and 1975. The amendments were designed, in part, to conform Montana's law to the requirements of the Federal Water Pollution Control Act, amendments of 1972.

18.0101. *Policy.* The water pollution act expresses as its goals:

—the conservation of water by protecting, maintaining and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation and other beneficial uses;

—the establishment of a comprehensive program for prevention, abatement and control of water pollution;

—non-degradation: Water need not be treated to better than its natural condition, but water which is cleaner than the applicable water quality standards is to be maintained at that level unless it is affirmatively demonstrated that a change is justifiable as a result of necessary economic or social development, and will not preclude present and anticipated use of the waters;

—pollution unlawful: it is unlawful to cause pollution or to place wastes in a place where they are likely to cause pollution. This act applies to point sources as well as to seepage and drainage from all sources.

18.0102. *Board of Health & Environmental Sciences.* The conduct of the water pollution control program is presided over by the Board. It is the Board's responsibility to classify all state waters and to formulate water purity standards for the most beneficial use of the water, giving consideration to the economics of waste treatment. Classifications and standards are reviewed every three years. The Board also sets water and waste treatment standards, holds hearings, adopts rules for the permit program, and adopts pre-treatment standards, effluent standards, toxic effluent standards and prohibitions, and standards of performance for new sources. Public hearings are held before streams are classified, standards established, or rules adopted. The Board also controls funds appropriated by the state for local water pollution control facilities.

18.0103. *Water Quality Standards.* (MAC 16-2.14 (10)-S14480) The water quality standards adopted by the Board require the best practicable treatment and control of waste, activity, and flow in order to maintain water quality at the highest possible levels. The degree of waste treatment required is based on the state's non-degradation policy, present and anticipated beneficial uses of the water, the quality and nature of flow of water, the quantity and quality of the discharge, and the presence or absence of other pollution sources.

18.0104. *Department of Health & Environmental Sciences.* The Water Quality Bureau of the Depart-

ment is charged with administering the water pollution control program. The Department administers the permit program, recommends design changes in proposed pollution sources, collects and disseminates information on water pollution, conducts research and demonstrations, issues clean-up orders, inspects and monitors pollution sources, and enforces the standards and limits set by the Board. The Department is responsible for formulation of a comprehensive water pollution control program.

18.0105. *Water Pollution Control Advisory Council*, consisting of directors of the Fish & Game Department, the Water Resources Division of the Department of Natural Resources & Conservation, and the Department of Agriculture, and eight members appointed by the Governor, advises the Department of Health on water quality control issues.

18.0106. *Permits.* (MAC16-2.14(10)-S14460) The Montana Pollutant Discharge Elimination System satisfies the requirements of the Federal Water Pollution Control Act. It is unlawful, without a current permit, to construct or operate a disposal system or any sewage or waste discharge outlet which discharges into the waters of the state. The permit system applies only to point-sources of pollution. Application must be made at least 180 days in advance of the proposed operation. The application must contain facility plans, soil conditions, operating procedures, and any other information which the Department deems necessary.

After the completed application is received, the Department makes a tentative determination based on effluent standards, performance standards, water quality standards, toxic and hazardous substance standards, and existing area-wide water treatment plans. If tentatively approved, a draft permit is issued which contains effluent limits, compliance schedules, operating conditions, monitoring requirements, etc.

Public notice of the draft permit is issued, and a 30-day comment period is provided during which time requests for a public hearing are received. After the comment period and hearing (if any), the final determination is made. Permit approval requires the concurrence of the EPA regional administrator in Denver. Permits are for up to five years, and applications for reissuance follow similar procedures. If the Department decides to modify, deny, suspend or revoke a permit, opportunity for a hearing before the Board must be provided. All decisions of the Board may be appealed to district court. An applicant's trade secrets may be designated confidential by declaratory judgement of the court.

18.0107. *Water Treatment Facilities—Grants.* The Board of Health controls funds which are appropriated by the Legislature to match federal funds for local water pollution control facilities. The Department administers these funds. No more than 25% of the total costs of a project may be supplied by the state, and the local governing body must supply at least 20%. Local officials make application for funds to the Department which prioritizes them and makes its allocation decisions. The applications are sent to the Environmental Protection Agency for final processing. Regulations for the grant program are at MAC 16-2.14 (10)-S14470, 14471. The local agency may assess user fees to help pay for construction and maintenance of treatment works. The Department may audit the local agency, and the Board may impose user fees if the local agency fails to do so.

18.0108. *Enforcement.* The Department is authorized to prevent, abate and control pollution, and to prevent violations of the regulations and standards established under this law. It may issue compliance orders and initiate civil actions seeking monetary or injunctive remedies. Any person may lodge a complaint with the Department protesting a violation of the pollution laws. The Department must investigate such complaints and if a violation is found, take the appropriate action.

When it becomes aware of a violation, the Department may issue a notice requesting abatement, or requesting the violator to appear before the Board for a hearing. The violator may also request a hearing. After the hearing, the Board will issue an order affirming, reversing, or modifying the Department's notice. Board orders may be appealed in court, and any interested persons may intervene. Penalties may be as high as $10,000 per day; $25,000 for willful violations.

18.0109. *Emergencies.* Where emergency situations endanger public health, the Department may issue orders which take effect immediately. Opportunity for a hearing to protest the order must be provided within five days.

18.0200. Public Water Supplies. (69-4901 through 69-4908, R.C.M. 1947, Regulations: MAC 16-2.14 (10)-S14350 through 14380) It is the policy of the state to protect, maintain and improve the quality and potability of water for public water supplies and domestic uses. A public water supply is defined as one which serves ten or more families or 25 or more people for at least 60 days a year. It is unlawful to discharge any pollutants into waters used as a public water supply; to operate a railroad, logging camp, or other industrial plant on a public water supply watershed unless the proper precautions are taken to prevent pollution and a permit issued by the Department of Health; or to construct or alter any water supply, sewage, drainage or waste disposal system without prior approval of the Department.

18.0201. *Implementation.* The Board of Health has general supervision over state waters used for public water supplies, and it may adopt rules and issue orders for prevention of pollution, collection of fees, monitoring water supplies, construction of water supply systems, etc. Persons aggrieved by rules and standards set by the Board may appeal them to court.

The Department of Health has general responsibility for implementation of the law. It issues permits for water supply, sewage, drainage and waste disposal systems; investigates complaints and issues abatement orders; examines waters for purity; consults with local officials on the construction of water systems; conducts experiments to devise better water treatment and supply methods; and is responsible for establishing a plan for provision of safe drinking water. Perons who drill wells for public water supplies must register with the Department and keep records of all wells drilled. Establishments subject to Department licensing (e.g. hotels, restaurants) which do not use a public water supply must also have their water supply approved. The Department is authorized to grant variances under rules established by the Board. The Department conducts annual field investigations of ground and surface water supplies and performs laboratory analysis on samples. The Department may license laboratories to do sampling and analysis. Fees are assessed for this service based on the population served by the supply. The Department may seek injunctions to prevent violations of this law.

18.0300. Water Treatment Plant — Operators (69-5901 through 69-5912, R.C.M. 1947; Regulations: MAC 16-3.34(6)-S3420, 3450) Persons who operate water supply systems and waste water treatment plants must be certified by the Department of Health, with the advice of the Board of Water and Waste Water Operators. The Department classifies all plants and systems with respect to size, type, physical conditions affecting operation, the character of the waste which will be introduced into the system, and according to the skill and experience needed to operate the facility. A yearly examination is held by the Department to certify candidates. The certification will indicate the classification of plant which the person is qualified to operate.

18.0400. Cesspools, Septic Tanks, Privies (69-5401 through 69-5408; 11-926, R.C.M. 1947; Regulations: MAC 16-2.14(10)-S14490, 14500, 14520) A license is required to engage in the business of cleaning cesspools, septic tanks and privies. The license is issued by the Department of Health and validated by local health officials after demonstration of adequate knowledge of sanitary principles, laws, and abilities. Government agencies do not require a license, but they must comply with the rules established by the Department of Health. Enforcement is provided jointly by state and local health officials. Department regulations deal with the proper operation and installation of these waste disposal facilities.

Cities and towns have the power to regulate construction, use and repair of privy vaults, cisterns, hydrants, pumps, sewers and gutters. All sewage from both incorporated and unincorporated towns and cities must be disposed of in sewers, cesspools or privy vaults. Sewage disposal facilities, unless water tight, must be located at least 100 feet from any domestic water supply. Other regulations to protect streams and drinking water apply to privy location and construction, household refuse, operations of cesspools and septic tanks, confined livestock feeding facilities, barnyards and stockpens.

18.0500. Sanitation in Subdivisions (69-5001 through 69-5010, R.C.M. 1947; Regulations: MAC 16-2.14(10)-S14340) It is the policy of the state to extend laws controlling water supply, sewage disposal, and solid waste disposal to residential developments; to protect the quality and potability of water for public supplies and domestic uses; and to protect the quality of water for other beneficial uses including agriculture, industry, recreation, and wildlife.

18.0501. *Plat Approval.* For the purpose of this law, a subdivision is defined as any partition of land of fewer than 20 acres. Final subdivision plats may not be filed with the county, nor construction begun until the Department of Health has lifted sanitary restrictions. Plats are subject to Health Department approval even if they are exempt from the requirements of the Subdivision and Platting Act. The developer must submit his preliminary plans and supporting data to the Department. The Department has 60 days to request more information. Once all the required information is received, the Department must make its decision within 60 days, or 120 days if an environmental impact statement will be required. A denial by the Department may be appealed to the Board of Health.

18.0502. *Local Review.* The Department may delegate review of subdivisions containing five or fewer parcels to local authorities if the Department has determined that there are qualified personnel on the local level to check the adequacy of sanitary facilities. In such a case, the local officials would notify the Department of the results of their review, and the Department would then have 10 days to make a final decision. Subdivisions which are located within master planning areas where the local governing body has certified that municipal water, sewer and solid waste facilities will be provided, are not subject to sanitary restrictions and Health Department approval is not required. However, local officials must notify the Department of all such subdivision applications, and send the Department a copy of the plat and descriptions of the subdivision configura-

tion, sanitary facilities, relationship to the master plan, and certification that muncipal sanitary facilities will be provided.

18.0503. *Standards and Enforcement.* The Department's rules set standards and procedures relating to size of lots, topology, geology, hydrology, type of facilities proposed, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation and wildlife. There must be evidence of adequate water supply, drainage, sewage, and solid waste disposal systems. The Department will issue a certificate of approval when it is satisfied that water pollution will not occur, the water supply is of adequate quantity and acceptable quality, solid waste disposal is in accordance with state laws and regulations, and the requirements of the Montana Environmental Policy Act have been met. If the Department learns of violations of the law or receives a complaint, it may hold a hearing or initiate a civil action in court. Penalties may be as high as $1000, and injunctions against development may be awarded. The Department is authorized to inspect and monitor sanitary facilities after construction and installation.

The Departments of Health and Community Affairs have been directed to develop a joint application form for use by the Department of Health and by local officials.

18.0600. Campgrounds and Trailor Courts (69-5601 through 69-5607, R.C.M. 1947 Regulations: MAC 16-2.14(12)-S14160 through 14190) A license is required from the Department of Health and/or local health officials to operate tourist campgrounds, trailer courts, industrial and logging camps, and other campgrounds. License application fees must be paid annually to the Department, and the Department reimburses local health officials for their inspection costs. A license may be cancelled for violation of the Department's regulations and standards. Denial or cancellation of a license must be accompanied by a written statement of the reasons, and an opportunity for a hearing before the Board of Health must be provided.

Department regulations cover such things as water supply, sewage systems, wells, soil conditions, groundwater level, dust control, road construction and drainage, traffic flow, refuse disposal, and operation of incinerators.

18.0700. Animal Confinement Facilities (MAC 16-2.14(10)-S14530, 14540) An operator of a confined livestock feeding facility must receive a livestock waste control facility permit from the Department of Health. Permits are for 5-year terms. If the Department recommends denial of a permit, the applicant may request the appointment of an advisory committee to review the case. If the permit is denied, the applicant may request a hearing before the Board of Health. Barnyards and livestock must be located so as to minimize the danger of pollution of streams.

18.0800. Cleaning Watercourses (11-917, R.C.M. 1947) A city or town has the power to provide for the cleaning of waters, water courses, streams, etc., within the boundaries of the municipality. They may alter, straighten, fill in or drain wells, ponds, streams, etc.

18.0900. Boats (69-3503, R.C.M. 1947; Regulations: MAC 12-2.10(14)-S10110 through 10200) These provisions establish sanitary regulations for boating, dealing with refuse and waste disposal, toilets, waste holding systems, etc. It is unlawful to discharge waste or refuse from vessels into or near state waters. These provisions are enforced by the Department of Fish & Game.

18.1000. Dairies (3-24-110, R.C.M. 1947) Plans for the construction or alteration of a dairy products plant must be submitted to the Department of Health for approval of water supply, sewage, air and water pollution control systems, etc.

Agency Programs

18A.0001. Department of Health Responsibilities. The Water Quality Bureau is responsible for supervision and regulation of public water supplies, sewage disposal facilities and construction grants, industrial and municipal discharge permits, water quality management, planning and surveillance, water and waste water operator certification, and agricultural waste water discharge permits. These responsibilities involve review of plans for treatment facilities or effluent sources, inspection of sources, water quality surveillance, operator instruction, permit application review, compliance monitoring, waste water and stream water sampling, water pollution studies, erosion control, and enforcement activities. The Subdivision Bureau approves water supply and sanitary facilities for subdivision developments.

18A.0100. The Federal Water Pollution Control Act (FWPCA) (33 USC 1251 *et seq.*) creates a wide range of responsibilities on both the federal and state levels with the ultimate objective of achieving clean water throughout the nation. The Act is based on water quality standards which were developed primarily by the

states, and effluent limitation requirements which have as an objective the elimination of all pollution by 1983. In order to achieve these goals, the states are required to develop long-range planning processes which will coordinate discharge permit systems, waste treatment programs, maximum pollution load limits, etc.

18A.0101. Water Quality Standards. Montana has established water quality standards for all river basins throughout the state. (Montana Administrative Code 16-2.14 (10)-S14480). These standards have been approved by the Environmental Protection Agency (EPA) and provide the fundamental rationale for all other aspects of the pollution control program. Effluent limitations, maximum load requirements, waste treatment planning, must all be designed to meet water quality standards.

18A.0102. Effluent Limitations Section 301 of the FWPCA establishes target dates for the achievement of effluent discharge controls. By July, 1977, point sources other than publicly owned treatment works are to apply "best practicable control technology currently available," and public treatment works are to utilize secondary treatment techniques. By July, 1983, point sources other than public treatment works are to apply "best available technology economically achievable," and should achieve elimination of pollution discharges if technologically and economically possible, and publicly owned sewage treatment works are to apply "best practicable waste treatment technology." Section 302 provides that, where necessary to maintain water quality standards and to protect public water supplies, fish and wildlife, and agricultural needs, more stringent effluent limitations must be applied. Areas in which the effluent limitations described above are not sufficient to implement water quality standards are to be given priority rankings, and maximum daily pollutant loads are to be established at levels necessary to achieve those standards. (§303[d]) New sources of pollution in various industrial categories are required to apply "best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable. . .no discharge of pollutants." (§306[a] [1]) Control of discharge of toxic substances is also established (§307).

18A.0103. Continuing Planning Process In order to achieve these objectives, Section 303(e) of the FWPCA requires the state to develop a "continuing planning process which shall:

> provide a mechanism for developing an annual state strategy for directing resources; establishing priorities; scheduling actions; and reporting progress toward the achievement of program objectives. (40 CFR 130.1 [c])"

To carry out this planning function, the Governor is to designate a state agency to be responsible for the planning. Local or interstate agencies may be designated to conduct planning within each basin.

The continuing planning process is the process by which the state is to develop:

(1) the annual state strategy which sets the state's major objectives and priorities for preventing and controlling pollution over a one to three year period;

(2) individual basin plans, which establish specific programs and targets for controlling pollution in individual basins, and establish policies for decision-making over a five to ten year period;

(3) the annual program plan submitted under Section 106 of the FWPCA, which establishes the results expected and identifies the resources committed for the state program each year.

The objective of the planning process is to develop comprehensive and coordinated plans for all navigable waters within the state, including:

(1) effluent limitations and schedules of compliance at least as stringent as those required by Sections 301, 306 and 307 of the FWPCA;

(2) incorporation of all elements of any area-wide and statewide waste treatment program under Section 208 of the FWPCA;

(3) establishment of daily pollutant load limitations where necessary to achieve water quality standards;

(4) a monitoring and surveillance system (40 CFR 130.27);

(5) provisions for areawide and local planning input, utilization of existing local and area pollution control agencies and institutions, and local intergovernmental cooperation (40 CFR 130.25);

(6) inventories of significant municipal and industrial pollution discharge sources (40 CFR 130.43, 130.44);

(7) integration of the Pollution Discharge Elimination System (See 18A.0109)

As a preliminary to developing basin plans and annual state strategies, the state must classify basin segments as either "water quality limited" segments in which water quality is below standards and will not meet standards even after application of effluent limitation required by § 301 of the FWPCA, or "effluent limited" segments in which water quality presently meets standards, or will do so after application of §301 effluent limitations. The purpose of this classification is to assist in allocating resources and assigning priorities among the various basin plans.

Section 106 of the FWPCA provides for federal grants to the states to assist in the administration and enforcement of water pollution control programs. In order to receive the yearly grant, the state is required to submit an annual report on the status of the state's water pollution control programs. As part of this § 106

submittal, the state is to review and revise its continuing planning process and submit these revisions to the EPA. The state's annual strategy, which is developed as part of the planning process, is also to be submitted at this time.

18A.0104. Basin Plans The heart of the continuing planning process is the development of basin plans. The basin boundaries are those identified as minor basins in the EPA water quality information system, unless the state planning process provides for the establishment of different boundaries. (40 CFR 131.203) Within each basin, segments have been classified as "water quality limited" or "effluent limited" segments as described in 18A.0103.

As described in the federal regulations:

> A basin plan is a management document which identifies the water quality problems of a particular basin and sets forth an effective remedial program to alleviate those problems. The basin plan is neither a broad water related land resources plan, nor a basin-wide facilities plan. The value of a basin plan lies in its utility in making water quality management decisions on a basinwide scale. (40 CFR 131.100 (b))

The elements of a given basin plan will depend on the particular water quality problems of the area, and on the segment classifications within the basin. Basin plans must include the following:

(1) *Inventory of sources.* Municipal and industrial dischargers of pollutants within the basin shall be listed, analyzed, and given a priority ranking depending on the significance of the pollution discharge produced. The basin plan shall include a ranking of basin segments in order of abatement priority;

(2) *Schedules of compliance.* The plan shall include target dates for abatement of the significant dischargers;

(3) *Assessment of municipal needs.* Criteria to be considered include load reduction needed to achieve applicable standards, population to be served, types of facilities needed, cost estimates;

(4) *Load Allocations.* In "water quality limited" segments, total maximum daily pollutant loads for the segment must be determined, and individual point source load allocations must be made. These load allocations must be coordinated with the pollutant discharge permit system. (See 18A.0109) In addition, non-point sources must be analyzed and procedures developed to control non-point sources.

(5) *Residual waste control.* Necessary controls must be established over the disposition of residual wastes from municipal, industrial, or other waste water treatment processing.

(6) *Review and revision,* where necessary, of water quality standards within the basin.

(7) *Coordination with other programs.* The basin plan should identify the relationship and effect of area-wide waste treatment programs, land-use programs, other federally assisted planning and management programs (such as air pollution control programs), etc.

(8) *Monitoring and Surveillance.* The plan must be based on the best available data. The plan must establish a water quality surveillance system and effluent monitoring.

The plan must be reviewed and modified, if necessary, at least once every five years. There must be provision for public participation and hearings before any substantive revisions are made.

According to the Department of Health and Environmental Sciences:

> The completed plan will be utilized as the basis of establishing priorities for surveillance, construction grants, and permit issuance. The plan will also be used to more fully assess the water pollution control needs and the need for additional monitoring and other work within the basin. It will review the existing water quality standards and recommend changes where changes are needed. It will outline the protection needed for areas of potential development. It will further identify water quality limited and effluent limited segments.

Basin plans must be submitted to the EPA by July 1, 1975. The Water Quality Bureau of the Department of Health has indicated that, in order to meet the deadline, it will be necessary to limit the detail of "effluent limited" segments, and to update those plans at a later time.

18A.0105. Annual State Strategy The Continuing Planning Process shall provide for the preparation of an Annual State Strategy (40 CFR 130.40) which shall present a statewide assessment of water quality problems and rank each basin segment in priority order, based on the severity of the water quality problems in each segment. This segment priority ranking shall govern the development of basin plans, construction of public treatment works, issuance of permits and other activities. The level of detail and timing of basin plan preparation will reflect the priority ranking, and the annual strategy will provide a schedule for sequenced phasing of planning to assure an orderly allocation of the state's resources.

The annual strategy will be submitted along with the annual revision of the continuing planning process as part of the yearly "Section 106 report" to the EPA.

18A.0106. Current Status. Basin Planning. A water quality monitoring program initiated to compile

data for Section 303(e) basin water quality management plans was completed during fiscal year 1975. Approximately 450 samples were collected and analyzed for this program. Many of the water quality problem areas determined by the 303(e) basin management plans will be monitored by a permanent water quality network. This network will include 18 permanent Water Quality Bureau stations and 21 U.S. Geological Survey stations.

Based on data gathered for the water quality management plans, a number of intensive surveys will be conducted, the number to be determined by available funds. These surveys will concentrate on problem areas and will be used to determine the effects of pollution sources on water quality and to study and recommend methods of control.

18A.0107. Areawide Waste Treatment Management Section 208 of the FWPCA provides for grants to the state to assist in the development of regional waste treatment facilities and programs. To initiate such a program, the Governor must identify: "each area within the state which, as a result of urban-industrial concentrations or other factors, has substantial water quality problems." These will be areas:

> where the complexity and nature of the water quality control problem requires an areawide waste treatment management plan, and where water quality has been degraded to the extent that desired uses are impaired or excluded. (40 CFR 126.10)

There will be a correlation between such problem areas and the classification of basin segments under the basin planning process discussed in 18A.0104.

After designation of the problem areas, the Governor, consulting with local officials, will designate a representative organization, consisting in part of local officials, which will be responsible for developing an areawide waste treatment plan for the area. The state, through its statewide water planning agencies, will act as the planning agency for regions not designated under this section of the Act. Should the Governor fail to designate an area, the officials of local governments in an undesignated region may designate the boundaries of a problem area, establish a planning agency, and apply to the EPA Regional Administrator for approval of these designations.

The planning agency designated by the Governor will have waste treatment planning jurisdiction within the entire designated area, and a single such agency may be given jurisdiction over more than one planning area. The Governor may designate already existing agencies. In designating a planning agency, the Governor should consider the requisite legal authority and capability necessary for carrying out the planning process, the relationship of the agency to water treatment planning agencies on different levels of state and federal government, and the relationship of the agency to other regulatory agencies such as zoning boards and land use planning agencies.

Each designated agency shall develop an areawide waste treatment plan to be certified by the Governor and submitted to the EPA for approval. The plan shall include:

(1) the identification of treatment works necessary to meet the anticipated waste treatment needs of the area over a twenty-year period;

(2) the establishment of construction priorities and time schedules for completion of such works;

(3) the establishment of a regulatory program to regulate the location, modification and construction of any facilities which may result in discharges in the area, and to assure compliance with pretreatment requirements for discharge into public treatment systems;

(4) the identification of agencies necessary to construct, operate and maintain all necessary facilities; facilities;

(5) a process to identify non-point sources of pollution related to agriculture, siliviculture, mining, construction, salt water intrusion, and hydrologic modification, and to develop control techniques for the area;

(6) a process to control disposition of residual wastes and other pollutants on land or in subsurface excavations to protect ground and surface water quality. Wherever appropriate, the Governor may determine that, for the purposes of statewide uniformity, certain aspects of the area plan (relating primarily to non-point sources) shall be administered under a statewide program established pursuant to Sec. 303 of the FWPCA under the continuing planning process and related basin plans. Area plans should be integrated into the basin plan for the basin in which the area is located. Permits issued under the Pollant Discharge Elimination System (see 18A.0109) must comply with the requirements of the area plan.

After the development and approval of an areawide plan, the Governor, in consultation with the area planning agency, shall designate an area management agency which shall administer the area plan. The EPA Administrator shall accept any such designation upon a finding that the designated agency has the necessary legal capability to carry out the plan.

18A.0108. Current Status - 208 Planning. As of October, 1977, four areawide planning organizations have been designated: Yellowstone-Tongue APO (Custer, Fallon, Carter, Powder River, Rosebud and Treasure counties); Mid-Yellowstone APO (Sweet Grass, Stillwater, Yellowstone, Big Horn and Carbon counties); Blue Ribbon APO (Gallatin and part of Madison counties); and Flathead APO (Flathead, Lake and part of Sanders counties). These 208 planning

organizations are currently in the process of identifying non-point sources of pollution and analyzing land management practices which will mitigate the problems.

In addition, a statewide 208 program is being conducted by the Department of Health Water Quality Bureau which covers all areas of the state not included in one of the planning areas mentioned above. In the first annual progress report, issued in July, 1977, the Water Quality Bureau reports that progress has been slow due to personnel shortages in the participating agencies. Nevertheless, most major program tasks have been initiated to some degree. Tasks include: water quality monitoring by the Water Quality Bureau; fisheries inventories by the Fish and Game Department (See 24A.0400); water quantity assessments by the Water Quality Bureau; stormwater run-off inventories (questionnaires submitted to all communities of over 100 people and major industrial complexes); agricultural non-point source pollution inventory and assessment by the Montana Association of Conservation Districts; silvicultural non-point source pollution inventory and assessment by the U.S. Forest Service and Westech Corporation (See 57A.0003); groundwater pollution inventory and assessment by Westech; mining inventory and assessment by Westech (See 54A.0000, 55A.0000); land use mapping, coordinated by the Department of Community Affairs; identification and assessment of solid waste disposal sites by the Solid Waste Management Bureau, and subsurface disposal assessment by the Subdivision Bureau of the Department of Health.

18A.0109. Montana Pollutant Discharge Elimination System. Department of Health regulations 16-2.14(10)-S14460 implement Montana's permit system which was approved by the EPA in 1974. This system enforces point source effluent limitations, new-source performance standards, and other requirements necessary to achieve and maintain water quality standards. The MPDES is to be integrated into all basin and area plans and must reflect the objectives of those plans. Permits are granted after public notice and review, and all permit decisions are reported to the EPA. When considerable public interest is present, a public hearing is held. The program also provides for monitoring of discharges and inspection of sources to guarantee that permit conditions are complied with.

Examples of operations often requiring a discharge permit are:

—sewage treatment plants;

—construction projects with dewatering activities;

—wastewater discharge from water treatment works;

—industrial waste discharges;

—industrial waste treatment facilities;

—small and large mining operations discharging process water;

—municipal storm sewers (regulations not yet promulgated;)

—feedlots, auction yards, dairies, swine operations, and other animal confinement operations discharging into a watercourse at any time;

—fish rearing ponds and hatcheries.

18A.0110 Current Status - Permit Program. The Department of Health will have all major and minor discharges, with the exception of the irrigation districts, under permit prior to fiscal year 1976. All major industrial discharges will be sampled or inspected at least two times a year. All major agricultural discharges will be compliance-inspected once a year. Each of the 26 major municipal discharges will be compliance-inspected at least once a year.

The Department anticipates that regulation of irrigation districts will be deleted from the point-source discharge requirements in a future amendment to the federal act. For this reason, no action has been taken to bring irrigation districts into compliance with existing law.

18A.0111. Non-Point Source Pollution. The discharge permit system described in 18A.0109 regulates pollution from point sources. Montana's major water pollution problem is from non-point source pollution; i.e. run-off and infiltration aggravated by agricultural activities, mining, construction, urban storm drainage, forestry activities, residential subdivision, etc. The Water Quality Bureau recognizes non-point source pollution as the major challenge for water quality planning in the state. Among the activities underway to meet this challenge are:

—Section 208 areawide and statewide planning (See 18A.0107); coordinated by the Water Quality Bureau;

—Saline seep control (See 52A.0800); coordinated by the Department of State Lands;

—Sediment control regulations (See 52A.0300); adopted by the Lewis and Clark County Soil and Water Conservation District.

20.0000. NATURAL HERITAGE

This section deals with the enjoyment of the amenities of the physical environment in its natural state: the preservation and enhancement of scenic, recreational, and wildlife resources.

The Montana Environmental Policy Act requires the consideration of aesthetic resources and impacts in the administration of all state laws. The only other statutes dealing explicitly with aesthetic values are anti-littering laws, enforced by all law enforcement authorities, and laws designed to maintain the scenic value of highway corridors.

The open spaces and natural areas laws, administered by local authorities and the Department of State Lands respectively, provide mechanisms for the preservation of currently undeveloped and open lands in their present state.

Montana's park and outdoor recreation system is administered on four levels: federal, state, county and municipal. The Fish & Game Department is responsible for the state park and recreation system and coordinates its activities with federal and local authorities. The Montana Historical Society is responsible for preserving important archeological sites.

The Fish & Game Department is also responsible for all aspects of wildlife management, hunting and fishing regulation, and habitat maintenance.

20.0001. Contents: **Section**

21.0000. AESTHETICS

The Montana Environmental Policy Act requires the consideration of aesthetic factors in the administration of all state laws. Local governments may consider aesthetic values in planning and zoning, subdivision review, and regulations for the protection of lake shores. Aesthetic considerations also motivate, at least in part, requirements for the reclamation of mining lands, administered by the Department of State Lands, and for the reclamation of geophysical exploration activities, administered by the Oil & Gas Conservation Board.

More specifically directed at preservation of aesthetic values are dumping and littering laws enforced by all law enforcement authorities. The Department of Highways also has responsibility for maintaining the scenic value of highway corridors through seeding and revegetation, licensing outdoor advertising, and, in conjunction with the Department of Health, regulating roadside junkyards.

21.0001. Contents:

21.0002. See Also:

Montana Environmental Policy Act	00.0200	
Solid Waste Management	17.0000	
Planning and Zoning	33.0000	
Subdivisions	34.0000	
Lakeshore Protection	35.0300	
Mining Reclamation Laws	54.0400	*et seq.*
Geophysical Exploration	56.0306	

21.0100. Dumping & Littering (32-4410, 26-812, R.C.M. 1947) It is unlawful to dump garbage, debris, refuse, etc. on or within 200 yards of public roads, streets, parks or recreation areas, or on private lands where public hunting or fishing is permitted. Penalties are up to $100 and thirty days in jail, and loss of hunting or fishing license. This law is enforced by the highway patrol, sheriff's offices, municipal police, fish and game wardens, and other authorized law officers.

21.0200. Highways Several laws in addition to the littering law mentioned above deal with the protection of aesthetic values along highway right-of-ways.

21.0201. Seeding & Landscaping (32-2414; 32-2423, R.C.M. 1947) The Department of Highways is directed to seed barrow pits and slopes adjacent to roadways after construction of federal-aid or state highways. The Department is directed to consult with the Extension Service, the Montana Agricultural Experiment Station, and the Soil Conservation Service for the best methods. Federal funds are available to carry out this program.

21.0202. Outdoor Advertising. (32-4715 through 4728, R.C.M. 1947; Regulations: MAC 18-2.6A1(14)S6210 through 6330) Purpose—to promote safety, convenience and enjoyment of highway travel;

—to protect public investment in highways;

—to preserve and enhance natural and scenic beauty and aesthetic features of highways and adjacent areas;

—these policies are to be consistent with those declared by Congress in Title 23, U.S. Code.

Outdoor advertising signs are prohibited within 660 feet of the right-of-way of the interstate or primary highway systems if such signs are visible from the roadway. Signs beyond 660 feet are also prohibited if they are visible from the roadway and they are designed to be read by motorists. Exceptions are allowed in commercial or industrial areas, or for ads relating to businesses conducted on the property where the sign is located. Signs which are allowed under these exceptions must comply with size, location and illumination standards as set out in the law and regulations, and must bear a permit from the Highway Department. In case of a violation of the law or regulations, the landowner or signowner will be notified and remedial action will be requested. The owner may request a hearing before the Highway Commission, but if all appeals are lost, the Highway Department will remove the sign. Non-conforming signs are considered a public nuisance.

The Highway Department is authorized to acquire by purchase, gift, or condemnation the rights to nonconforming signs which existed when this law was passed, and remove such signs. This act is not meant to abrogate more stringent local laws or ordinances. If federal rules are relaxed, the Highway Commission is required to revise its regulations accordingly.

21.0203. Roadside Junkyards (32-4513 through 4523, R.C.M. 1947) Purposes are the same as those listed in the outdoor advertising act. A license is required to operate a junkyard within 1000 feet of an interstate or primary right-of-way. Licenses are obtained from the Department of Health & Environmental Sciences. The Department of Highways may object to and participate as a party in all decisions, and may issue licenses for junkyards that are not motor vehicle wrecking facilities. The junkyard must be screened by natural objects or fences so as not to be visible from the roadway. Exceptions are allowed in industrial areas. The Highway Department is authorized to obtain such land as is needed for screening purposes by gift or condemnation. The Department may also apply to district court to abate non-conforming junkyards. This act is not meant to abrogate more restrictive local ordinances.

22.0000. OPEN SPACES AND NATURAL AREAS

State and local governments have a variety of mechanisms for acquisition and preservation of open and undeveloped areas for the enjoyment of the state's residents: Planning, zoning, and establishment and maintenance of parks. The open space and natural areas laws are specifically designed to satisfy these needs.

The open space law allows local governments to acquire conservation easements on privately owned land; i.e. without having to purchase the land, the local authorities may acquire the ability to prevent or regulate development on open space areas. The Natural Areas Act authorizes the Board of Land Commissioners to acquire or set aside state-owned lands which qualify as natural (i.e. undeveloped) areas and which have particular aesthetic, educational, scientific or other values. Such lands are then managed to preserve those values.

22.0001. Contents:

22.0002. See Also:

22.0003. Agency Programs:

22.0100. Open Space Land & Voluntary Conservation Easement Act (62-601 through 618, R.C.M. 1947) In view of population growth, expansion of urban areas, encroachment on natural areas and biotic communities, and the associated threats to scientific, educational, aesthetic, and ecological values, it is in the public interest to secure park, recreation, historic and scenic areas and to acquire or designate property rights for the preservation of open space.

Any public body may acquire by gift or purchase title or interest in real property which will provide for preservation of plant, animal, geological, aesthetic, scientific or educational resources, or designate property already owned by the public body for such purposes. Interests less than ownership in fee shall be by "conservative easement." A conservation easement is a legal device whereby the landowner relinquishes to the holder of the easement the right to develop the land or alter its natural character. Conservation easements may be acquired in perpetuity or for a term of years. Easements may prohibit or limit structures, landfill, removal of vegetation, excavation, surface uses, acts detrimental to soil and water conservation, subdivisions, etc.

No lands so acquired by a public body may be diverted from open space use unless such diversion is necessary to the public interest, consistent with any existing comprehensive planning for the area, and consistent with the conditions of the easement. The public body must acquire other equivalent open space lands within one year.

Public bodies are authorized to raise funds, accept grants, provide necessary services, remove structures, appropriate funds, levy taxes, and issue bonds in order to accomplish the purposes of this act. They may also cooperate with other state and county agencies, and participate in comprehensive planning. All conservation easements must be reviewed by the local planning agency for consistency with the local plan. This review, however, is advisory only. Lands held under a conservation easement are taxed on the basis of the restricted uses, but in no case is the tax assessment to be lower than it was prior to the easement. Qualified private organizations may also acquire conservation easements.

Conservation easements run with the land, whether or not so stipulated in the instrument creating the easement. Many of the traditional limitations which make easements difficult to enforce (e.g. lack of privity, or lack of benefit to the land) are specifically declared by this act not to affect the enforceability of conservation easements. Conservation easements are enforceable by injunction or other equitable means by the holder of the easement.

22.0200. Natural Areas Act (81-2701 through 2713, R.C.M. 1947; Regulations: MAC 26-2.14(4)-S1410 through 10401) The purpose of this law is to preserve for the benefit of future generations natural areas possessing significant scientific, educational, scenic, biological or geological values, and to preserve the integrity of natural ecosystems. The act declares the preservation of natural areas to be a worthy object of the state lands trust, and of sufficient value to fulfill the trust obligations established by the Enabling Act (See 51.0000).

22.0201. *Definition.* A Natural Area is an area affected primarily by the forces of nature, with the visual evidences of human intrusion not dominant, and possessing outstanding vegetation, wildlife, water, scenic, geological or ecological features worthy of preservation. Lands may be brought under this act by designation by the Board of Land Commissioners or the Legislature of the lands already controlled by the state, or by acquisition by the Board of sufficient interest in property by purchase, gift, or exchange of state lands for federal, county or private lands. Eminent domain proceedings are available only if specifically authorized by legislative action.

22.0202. *Designation:* Primary responsibility for identifying lands which are suitable for natural areas designation lies with the Department of State Lands, which makes its recommendations to the Board of Land Commissioners. Recommendations are also made by the Natural Areas Advisory Council, a citizens group appointed by the Governor, or by private citizens groups, local governing agencies, etc. Within 90 days after receiving a recommendation from the Advisory Council, the Board must either designate the area, direct the Department to begin acquisition negotiations, or issue a written statement containing reasons for denying the recommendation.

Before making any land use decisions involving actions which would unalterably preclude natural area designation, the Department of State Lands is required to review the area's potential for designation. Up to one year may be allowed for this review. If the area qualifies for designation, the proposed action will not be approved until the Board has had the opportunity to act on the natural area recommendation.

Every natural area must have a "managing entity" which may be the Department, a local governing body, or a private organization. The area must also have a master plan setting forth visitor carrying capacity, management agreements, reporting procedures, allowed uses and structures, land management practices, etc. The master plan is reviewed by the Natural Areas Advisory Council and the managing entity. A public meeting must be held in the locality prior to any designation. Finally, the Department submits the proposal to the Board of Land Commissioners in the form of articles of dedication which contain a description of the area, the master plan, agreements with the managing entity, and comments received at the public hearing. The Board reviews this record and makes its decision with respect to designation of the area.

22.0203. *Management.* Natural areas are protected from condemnation or development unless pursuant to specific legislative actions. Existing land uses may continue, but must be consistent with the master plan adopted for the area. If the natural area becomes part of a park, wildlife refuge or other restricted use area, the most stringent use restrictions shall apply. Water and mineral rights are to be held by the state where feasible. The Department of State Lands is to make annual inspections of designated areas to determine if any changes in the master plan are necessary.

22.0204. *Removal of Designation.* Designation may be removed from a natural area only with the approval of the Board of Land Commissioners, and only if there have been significant changes in the area such that the designation is no longer applicable, and restoration of the area to its previous condition is not reasonable or desirable. Public notice and opportunity to submit comments at a public hearing must precede any removal of natural area designation.

Agency Programs

22A.0100. Conservation Easements. In fiscal year 1976, the Recreation and Parks Division of the Department of Fish and Game participated with landowners and local governments in experimenting with the use of conservation easements to perpetuate public access to the Lower Blackfoot River in Missoula County.

23.0000. RECREATION AND PARKS

The Department of Fish & Game has been designated as the state agency responsible for developing and implementing the state-wide outdoor recreation system, and for this purpose may receive federal funds under the Land & Water Conservation Act of 1965. The Department enforces regulations for the public use of recreation areas, and administers the state-wide recreational waterway system and the state recreation and park system. The Department of Health shares responsibilities for maintaining sanitary conditions in parks and campgrounds. A parallel system of county and municipal parks and recreational facilities is administered by local governments. Dedication of parkland is often required of subdivision developers.

The national and state forest system is also an important recreational resource. State forests are administered by the Board of Land Commissioners and the Department of Natural Resources and Conservation. The National Forest Service and National Park Service coordinate their activities with the Departments of Fish & Game and Natural Resources.

Conservancy districts, organized to develop water resources, often provide water recreation facilities. Rangeland areas may also be available for recreational use.

The Montana Historical Society is in charge of preserving archeological sites and issues excavation permits. The Liquor Division of the Department of Revenue issues resort licenses which may encourage recreational development in rural areas.

23.0001. Contents: **Section**

23.0002. See Also:

23.0003. Agency Programs:

23.0100. State Recreational Resource Planning (62-401 through 62-403, R.C.M. 1947; Regulations: MAC 12-2.26(1)-S2600, 2610, 2670) The Fish & Game Department has been designated as the state's agency for implementing the Federal Land & Water Conservation Fund Act of 1965. As such, the Department is authorized to prepare a comprehensive statewide outdoor recreation plan containing an evaluation of supply of and demand for outdoor recreational resources in the state, and a program for developing those resources. The Department may accept and administer funds, acquire land (however, eminent domain is not available under the Land & Water Conservation Fund Act), and develop areas and facilities. As motivation for this program, the law states that Montana's outdoor heritage enriches the lives of its citizens, attracts new residents and businesses, and enhances the tourist industry.

23.0101. *Public Use of Recreation Areas.* The Department has established regulations for public use of designated recreation areas throughout the state. The regulations deal with such things as vehicles, campfires, refuse disposal, and personal conduct of the area users.

23.0102. State Recreational Waterway System. The Fish & Game Department is in charge of developing and managing the State Recreational Waterway System. The purposes of this system are to maintain and improve prime streams as free-flowing productive water; to encourage optimum multiple use of state waters compatible with fishing; to study streams for designation as blue ribbon fisheries; to acquire land adjacent to streams for recreational use; and, through the Fisheries Division, to conduct research and management programs related to fisheries, water quality control, habitat maintenance, and land use practices.

Criteria for designation of blue-ribbon streams include fishing and recreational potential, historic and scenic qualities, recreational economic opportunities, quality of hunting areas, waterfowl habitats, freedom from pollution, adequate public access, and popular interest. Stream designation requests are reviewed for ninety days. Once designated, the Recreation & Parks Division will incorporate the stream into the Statewide Outdoor Recreation Plan. The Department is exploring the concept of blue-ribbon recreation drainages, and is conducting studies on the economics of hunting, fishing, and other outdoor recreation. Streams designated as recreational waterways include portions of the Yellowstone, Missouri, Flathead, Rock Creek, and Smith.

The Department has adopted water safety and boating regulations, and is in charge of regulation and inspection of recreation boats. (MAC 12-2.10(14)-S10110 through 10190) The Department of Fish & Game also enforces sanitary, public health and water recreation regulations on certain designated bodies of water throughout the state. Certain areas are closed to motor boats.

23.0103. Recreation & Park System. The Department has established criteria for the designation of lands which it administers. The regulations list purpose, description, and management criteria for state parks, recreation areas, monuments, recreational waterways, recreational roads and trails, and fishing access sites.

23.0104. *Sanitary Regulations.* The Department of Health enforces sanitary regulations for campgrounds. (See 18.0600).

23.0200. Parks Montana has four levels of park systems within the state: federal, state, county, and local.

23.0201. State Parks. (62-301 through 314, R.C.M. 1947; Regulations: MAC 12-2.26(1)-S2670) The purpose of the state park system is to conserve the scenic, historic, archaeologic, scientific and recreational resources of the state and to provide for their use and enjoyment by the people of the state. The Fish & Game Department is authorized to inventory such resources, and may acquire by purchase, gift or condemnation areas or objects suitable for state parks, recreation areas, monuments or historical sites. The Department may levy and collect fees for the use of privileges and conveniences in state parks, and may adopt and enforce regulations for the use of state recreation areas. The Department is required to submit an annual report on the state park system to the Governor for transmission to the Legislature.

The Department of Highways is authorized to construct connecting roads from the state highway system to state parks, using state highway funds. The Board of Land Commissioners is authorized to accept donations of land for park, recreation and public camping purposes, and may set aside tracts of state-owned lands for such purposes.

23.0202. County Parks and Recreation Areas. (16-4810 through 4808, 62-101, 102; 16-1131, R.C.M. 1947) The law authorizes a county to establish a board of park commissioners, to be appointed by the board of county commissioners. The board of park commissioners is a department of county government, and has the authority to acquire lands and facilities (eminent domain is available) for parks, playgrounds, pools, camping, and recreation areas; furnish, equip and manage such facilities; contract indebtedness on behalf of the county (bonds must be approved by the voters); accept grants and loans from the federal government; lay out and establish park roads and pathways; make rules for management and use of county parks; and lease lands under its control which are not, in its opinion, suitable

for park use. The law sets out procedures for receipt and disbursement of funds, conduct of park board meetings, and audit and allowance of claims.

Lands dedicated to county park use may be sold, leased or exchanged, but prior to such disposition of dedicated lands the county must inventory its park and playground resources, prepare a comprehensive plan for outdoor recreation, determine that the proposed sale, lease or exchange is consistent therewith, publish notice of intent to dispose of the land, and secure the permission of any municipality within which the lands might lie. Proceeds must go to the park fund.

The board of county commissioners may deed county lands without charge to local, state or federal government agencies for park and recreation purposes, but the land reverts to the county if such use terminates.

23.0203. City, Town and School District Civic Centers, Parks & Recreational Facilities (62-201 through 215, R.C.M. 1947) Cities and towns are authorized to establish and maintain parks, pools, rinks, athletic fields, playgrounds, museums, etc. They may contract indebtedness in order to purchase or improve such facilities (bonds must be approved by the voters), and may accept gifts and bequests. The municipality may adopt and enforce all necessary ordinances for the management of such facilities and may assess user fees. The municipality may exercise jurisdiction over athletic fields and civic stadiums whether located within or outside of the city or town limits.

The city council or mayor of a first or second class city may appoint a board of park commissioners as a department of city government. The park board is entrusted with the management and control of all city parks and may lay out and establish roads and walkways, supervise landscaping, adopt rules for use of the parks and for protections of plant and animal life, and lease dedicated park lands which are not suitable for park use.

23.0300. Preservation of Antiquities (81-2501 through 81-2514, R.C.M. 1947) The purpose of this law is the enhancement, preservation and restoration of historic, archaeological, scientific and cultural sites for the use, welfare and enjoyment of the people of the state.

23.0301. *Designation.* The Board of Land Commissioners, on the recommendation of the Montana Historical Society, may designate sites on state lands for registration as historic sites, and may reserve such state lands as are necessary for the protection of such sites. The sale and development of those sites must thereafter be in accordance with this act. Such use of state lands is declared to be a worthy object of the state land trust (See 51.0000). The Historical Society is authorized to enter into cooperative agreements with private landowners for the preservation of historic sites, and the Society may also cooperate with state, federal and local agencies for the acquistion and preservation of sites. The Society maintains a state historical register of all registered sites.

23.0302. *Permits.* A permit must be obtained from the Montana Historical Society in order to excavate, remove or restore a registered site or object. Such permits are issued only to universities, museums, scientific institutions and other organizations with a view to the dissemination of knowledge. Preference is given to state residents, and all objects excavated must remain in or revert to Montana and are the property of the state. The Montana Historical Society supervises the distribution of collections of historical objects.

23.0303. *Enforcement.* The Montana Historical Society may seek injunctions to prevent the destruction of a registered site. The injunction may be granted for one year, during which time the Society may propose alternative plans to the parties involved which will alleviate the threat to the site. Persons conducting excavation or construction on lands owned or controlled by the state must report all discoveries of historic objects, and must take steps to protect them. Violations of the law constitute a misdemeanor with penalties up to $1000 or 6 months in jail.

23.0400. Liquor Resort Licenses (4-4-204, R.C.M. 1947; Regulations: MAC 42-2.12(6)-S12003) The purpose of this section of the law, administered by the Liquor Division of the Department of Revenue, is to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites. Liquor licenses are generally granted on a quota basis, with consideration being given to the number of existing licenses in a given area. In order to acquire multiple licenses within a recreational complex, a developer may apply for designation of the area as a "resort area."

23.0401. *Definition.* To qualify as a "resort area" for the purposes of this law, the complex must consist of at least 15 acres under single ownership, and the primary purpose of the development must be "providing to the general public a suitable location and the necessary facilities where persons may engage in recreational or sporting activities." The development should include food and beverage services and overnight accommodations.

23.0402. *Procedures.* The developer must submit a plat of the area to the Liquor Division showing location and general design of buildings and other improvements. The Division will schedule a public hearing following publication of notice in local newspapers at the applicant's expense. The Division must accept or reject the plat for resort area designation within thirty days of the hearing.

Once the resort area designation is approved, the Division will accept applications for individual liquor licenses within the resort area. A hearing will be held on each license following four weeks of notice in local papers, again at the applicant's expense. Upon receipt of the application, license fee, and performance bond, the Division must make its decision within thirty days after the hearing. Before final approval can be given, the establishment must comply with Department of Health regulations for food service establishments and the State Fire Marshall's regulations for fire safety.

23.0500. Snowmobile Regulation (53-1012 through 1029, R.C.M. 1947; Regulations: MAC 12-2.10(10)-S1090) Snowmobiles must be registered with the registrar of motor vehicles after receiving a certificate of ownership from the county. Operation is not permitted on controlled access highways, but is permitted on roadways if travel by other vehicles is not feasible because of snow. Use of snowmobiles to drive or harass game animals is prohibited. Noise levels from snowmobiles are regulated by the Department of Fish & Game (See 14.0000). Certain state lands are closed to snowmobile use.

Agency Programs

23A.0100. Fish and Game Department. During Fiscal Year ending June 30, 1977, the Parks Division of the Department of Fish and Game administered 9 state parks, 55 recreation areas, 156 fishing access sites, 13 state monuments, one recreation road and one recreation trail. A "strategic plan" for outdoor recreational development is scheduled for release in March, 1977. The plan will identify the current and projected future supply and demand status of outdoor recreation resources, the limiting problems, and the present and future actions necessary to best serve the state.

23A.0101. Land and Water Conservation Fund Program. Funding through the Federal Land and Water Conservation Fund Act (PL 88-578) provides assistance to Montana in acquisition and development of public outdoor recreation resources. Under provisions of the act, Montana, through the state's political subdivisions, may apply for federal matching grants on a 50-50 reimbursible basis for acquisition and development of recreation areas and facilities.

The Department of Fish and Game was designated by the Legislature in 1965 to administer the Land and Water Conservation Fund Program and to meet the requirements established by the Department of the Interior's Bureau of Outdoor Recreation. Since initiation of the program in 1965, a total of 374 projects has been funded through the Division of Recreation and Parks. This program has accounted for $33,000,000 of expenditures for outdoor recreation in the state. Of this total, one-half has come from the Land and Water Conservation Fund, and one-half from state and local government agencies. Roughly 60% of the funds apportioned to Montana have gone to political subdivisions, and 40% to state agencies.

23A.0102. Youth Conservation Corps. Under the federal Youth Conservation Corps Act of 1972 (PL 93-408), the Department of Natural Resources and Conservation administers a state Youth Conservation Corps program. Young people ages 15-19 are employed during the summer months to engage in improvement and maintenance projects on non-federal publicly owned recreation and park lands throughout the state. An important objective of the program is education of the participants in various aspects of conservation and environmental awareness.

23A.0103. Rangeland Resources Program (See 52A.0600) The Conservation Districts Division of the Department of Natural Resources and Conservation administers the Rangeland Resources Program to assist ranchers in managing and improving the conditions of the state's rangelands, and to make the public aware of the value of rangeland from an economic standpoint. One of the primary goals of the program is to expand the recreational use of native rangelands. Primary uses include hunting, fishing and camping. Other uses include hiking, photography, rock hunting, archaeology, and bird and animal watching. Plans and guidelines for developing the recreational potential of rangeland are now being developed.

23A.0104. Inter-agency Agreement (Pending). The Fish and Game Department and the Department of Natural Resources and Conservation will enter an agreement which will provide for cooperation in developing recreational facilities on classified state forest land.

23A.0300 State Historic Preservation Program. As of January 1, 1977, the program is administered by the Montana Historical Society with the State Historic Preservation Officer as the administrative head. The program is a federal-state partnership for the purpose of encouraging the preservation of historic resources at the federal, state and local governmental level and the private sector. The State Historic Preservation Officer (SHPO) has the responsibility to speak on behalf of all

23A.0300.

historic-cultural resources within the state, regardless of ownership.

Preservation is undertaken either by means of physical preservation activity, or by means of preventive actions which forestall the destruction of significant properties. The program involves any or all of the following: (1) listing properties on the National Register of Historic Places to establish the status of the site (2) funding of preservation work, or acquisition of property, by funds on a matching basis from the National Park Service, and (3) review and comment functions of the SHPO in response to proposed federal actions which may impact historic properties.

The basic working document of the program is the state inventory of historic, architectural and archaeologic sites. The continuing program of inventory of sites provides a planning tool for other agencies and the program per se.

Because more than 90% of significant historic and cultural resources are privately owned, the involvement with the private sector is a major activity and one that is anticipated to dominate the program in the future.

State-owned historic sites and monuments are administered and operated by the Department of Fish and Game through the Recreation and Parks Division. The Department acquires, develops and preserves properties with funds provided on a matching basis from the National Park Service.

24.0000. WILDLIFE

While the Montana Environmental Quality Act requires all agencies to be sensitive to the needs of wildlife in the administration of their various programs, it is the Department of Fish and Game, along with the Fish & Game Commission, which has direct management responsibility over wildlife resources. The Department regulates hunting and fishing, licenses hunters and fishermen, and establishes game management policies for the protection and propagation of game and non-game wildlife and fish species. The Fish & Game Department, in conjunction with the Board of Livestock and the Environmental Management Division of the Department of Agriculture, oversees predator control activities.

In addition, the Department conducts programs for acquisition and preservation of fish and wildlife habitats. Wildlife habitat maintenance is also an important aspect of national, state, and county forestland management under the auspices of the National Forest Service, the Department of Natural Resources and Conservation, and county governments. Grazing lands administered by grazing districts provide important wildlife habitats. Soil and water conservation district supervisors cooperate with the Department of Fish and Game in preserving streams and rivers for fish habitats. One of the purposes of water pollution control, administered by the Department of Health, is the preservation of water for use by fish and wildlife.

24.0001. Contents: **Section**

24.0002. See Also:

24.0003. Agency Programs:

24.0101. Fish & Game Commission. (82A-2004; 26-101 through 138, R.C.M. 1947) The Fish & Game Commission is a quasi-judicial board consisting of five members appointed by the Governor from geographical districts. It is the Commission's responsibility to fix hunting seasons and limits, to open and close areas to hunting and fishing, to acquire land for hatcheries, fisheries, game farms, wildlife preserves and refuges, and to hear appeals from decisions of the Fish & Game Department.

24.0102. Fish & Game Department. (26-101 through 138, R.C.M. 1947) The Department has direct administrative responsibility for regulating hunting and fishing, and all game and fish management programs. It is the responsibility of the Department to supervise wildlife, fish, game, and non-game animals; to enforce all laws relating to the preservation and propagation of wildlife; to import or breed fish and wildlife; to manage hatcheries, fisheries, game farms, wildlife preserves and refuges; to support wildlife research and demonstration projects; and to adopt rules for the use of public lands and waters under its control.

The director of the Department appoints fish and game wardens who enforce the fish & game laws, check hunting and fishing licenses, assist in the protection of wildlife, and act as ex officio fire wardens. Wardens have the powers of peace officers with respect to fish & game laws, and may serve subpoenas, search tents and vehicles (on probable cause of violations), seize contraband, and make arrests.

The Fish & Game Department makes payments to counties in lieu of taxes on Fish & Game-owned lands in the county.

24.0200. Hunting and Fishing Regulation.

24.0201. Licensing (26-201 through 26-234, R.C.M. 1947; Regulations: MAc 12-2.6(1)-S600 *et seq.*) The Fish & Game Department administers the state's hunting and fishing licensing programs. License classifications and fees are set for game birds, bow and arrow, resident and non-resident tags for deer, elk, bear, antelope, and fishing; competency requirements are established for persons under eighteen years old; special licenses are issued for moose, mountain goats, mountain sheep, mountain lions, bear, bobcat, and for trapping. The Fish & Game Department determines the number of licenses to be issued in each classification. Owners of agricultural land inhabited by deer and antelope have priority for deer and antelope licenses. The statutes and regulations set forth license application procedures and require that licenses be carried while hunting and fishing. Montana grants reciprocal privileges to persons licensed in neighboring states for fishing in boundary waters or hunting within ten miles of the state boundary. Portions of the fishing license fees are used to acquire public fishing access sites.

24.0202. Commercial Seining Licenses (26-333, R.C.M. 1947; Regulations: MAC 12-2.6(1)-S640) Commercial seining licenses are available for seining in designated waters. Application is made to the Director. Appeals are to the Commission. The Director maintains records of all seining licenses issued.

24.0203. Beaver Trapping. (26-402, R.C.M. 1947; Regulations: MAC 12-2.10(18)-S10220) Complaints may be filed with the Department of Health & Environmental Sciences that beaver are obstructing streams which flow through populated areas and into which sewage is discharged. The Department of Health will investigate such complaints and make a report to the Fish & Game Department. The Fish & Game Department may then issue a permit to the landowner to remove the beaver and dam.

24.0204. Restrictions on Taking Fish and Game. (26-301 through 345; 26-801 through 814; 26-1001 through 1008, R.C.M. 1947; Regulations: MAC 12-2.10(1)-S1000 *et seq;* 12-2.10(2)-S1040 *et seq.)* Licensed hunters and fishermen must comply with a variety of rules while engaged in hunting and fishing. The statutes and regulations set out restrictions on the manner in which fish and game may be taken—e.g.,

restrictions with respect to the use of lights, vehicles, airplanes, dogs, electronic recordings, silencers and shotguns while hunting; and nets, explosives and bait while fishing. Hunters must wear hunter's orange while hunting, and must obtain permission of landowners to hunt on private land. Ice fishing regulations have been established for Brown's Lake, Georgetown Lake, Deadman's Basin, Lake Frances, Bearpaw Lake, and Beaver Creek Reservoir.

It is unlawful for any individual or organization to establish prizes for bag limits or size of game animals taken. It is unlawful to keep caged live fish in public waters. It is unlawful to waste edible game by taking only the head and leaving the carcass—except for bear and lion. A permit is required from the Director for taking protected or unprotected fish and animals for scientific purposes. Such permits are available to schools, museums, government agencies, and other institutions. Special seasons may be established for postseason hunts if necessitated by unforeseen big game damage, changing field conditions, or local management problems.

Penalties are provided for violation of these provisions. However, when violations are due to extreme hunger, the penalties do not apply. It is unlawful to transport any illegally taken animals or skins from the state (26-701, R.C.M. 1947).

24.0205. Fur Dealer's License (26-1301 through 1306, R.C.M. 1947) Professional fur dealers must obtain a license from the Fish and Game Department. No license is required for hunters or trappers selling their own furs. Dealers must keep records of their sales and record the origin and disposition of all furs. Similarly, merchants and hotel owners selling game and game birds must keep records of all sales. (26-801, R.C.M. 1947)

24.0206. Shooting Preserves (26-1601 through 1614, R.C.M. 1947; Regulations: MAC 12-2.6(1)-S620) The Fish & Game Department is authorized to issue operating licenses for privately owned and operated shooting preserves. A shooting preserve may be no more than 1280 acres, must be at least ten miles from any other shooting preserve, and must be located so that it will not substantially reduce hunting areas available to the public. Operators must pay fees to the Department of $50 per year for the first 160 acres, and $20 per year for each additional 160 acres.

Shooting preserves are to be stocked by the artificially propogated game species specified in the act. The minimum number of animals to be released is determined by the Department. Not more than 80% of the game released may be taken by licensees and patrons of the preserve. Any wild game found on the preserve may be taken according to the game laws. The preserve's season must be at least 120 consecutive days during the period from September 1 to December 31.

A Fish & Game Department bird license is required to hunt on a shooting preserve. Special shooting preserve bird tags are supplied by the Department to licensed preserve operators. Other than the restrictions mentioned above, operators may establish their own rules with respect to the age, sex and number of animals taken. Game taken must be tagged until consumed. The operator must keep records of hunters, game taken, and game raised. The preserve's license may be revoked for violations of Fish & Game laws or regulations. The Fish & Game Department may conduct unscheduled inspections of shooting preserves.

The Fish & Game Department is authorized to negotiate with private landowners adjacent to U.S. wildlife preserves for hunting rights for licensed hunters, and may pay landowners for creation of public shooting areas. (26-1120, 1121, R.C.M. 1947)

24.0207. Outfitters & Guides (26-901 through 922, R.C.M. 1947; Regulations: MAC 12-2.10(6)-S1080, 1085) The Fish & Game Department publishes a list of licensed outfitters; a warden is designated to administer all outfitting and guide laws. The Montana Outfitter's Council consists of seven licensed outfitters elected from the seven Fish & Game administrative districts. The Council makes recommendations to the Fish and Game Department with respect to standards, rules of procedure, qualifications, revocation hearings, and health and safety rules. The Fish & Game Department has adopted regulations on licensing and has set standards for equipment, sanitation, rates, records, experience, and residency.

A license is required to be an outfitter, guide or resident guide. A permit must be acquired from the forest ranger for hunting on national forest land. The applicant must meet qualifications with respect to age, equipment, demonstrated compliance with conservation and fish and game laws, and must be innocent of any fraud, negligence or felony. He must pass a standard examination given by the Department of Fish & Game testing knowledge and ability. If the Department refuses an application for a license, it must give its reasons. Its decision must be made within 90 days of receipt of the application.

A license may be suspended if the licensee ceases to meet the qualifications, or for fraud, fraudulent advertising, felony, two or more violations of Fish & Game laws, substantial breach of contract with a client, or negligence. The Director will initiate an investigation upon a sworn and written charge submitted to him by any person. His report is forwarded to the Outfitters Advisory Council which makes a recommendation within twenty days. If there is adequate cause, the Director may recommend suspension or revocation to the Commission. The licensee is entitled to a hearing before the Commission, and a final decision may be appealed to the district court within 30 days.

24.0208. Predator Control (26-135, 210, 501.1, R.C.M. 1947; Regulations MAC 12-2.22(1)-S22060) On the request of a landowner or occupier, the Fish & Game Department may investigate reports of wild animals destroying property. The Department may open a special season, or destroy the animals itself. Predatory hawks or owls destroying poultry or livestock may be killed by the owner. Eagles may be killed only in compliance with federal law. Bounty claims are paid by the Fish & Game Department if approved by the Department and the Board of Livestock. The use of 1080 baits is not allowed on Fish & Game lands without written permission from the Department.

24.0300. Game Management Policies (26-301.1, 303.1, 307.2, R.C.M. 1947; Regulations: MAC 12-2.22(1)-S22010 *et seq.*) It is the policy of the state to preserve game animals primarily for the citizens of Montana and to avoid deliberate waste of wildlife and destruction of property by non-residents licensed to hunt in the state.

—to produce and maintain a maximum breeding stock in harmony with other land uses and consistent with available forage supply, and to utilize the available crop through hunting.

—to maintain the best possible range conditions by keeping populations in balance with forage supply.

—to encourage harmony between hunters and landowners.

—to control surplus populations causing property damage.

—to manage game on the basis of natural forage rather than artificial feeding except during extreme emergencies.

—to work out equitable allocations of forage to game and livestock where there is conflict.

—to conduct surveys of populations and habitats.

—to encourage sport hunting.

Special management policies have been established for preservation of grizzlies as a rare Montana species, control of property depradation by black bears, transplantation of wild turkeys, hunting of wild buffalo, and emergency feeding of elk.

The Legislature has consented to the provisions of the Pitman-Robertson Act which makes federal money available for wildlife restoration and management projects. Conditions imposed on the state include the requirement that hunting license fees not be diverted from the administration of the Fish & Game Department. (26-1122, 1123, 1124, R.C.M. 1947)

24.0301. Migratory Waterfowl and Wild Bird Protection (26-501 through 512, R.C.M. 1947; Regulations: MAC 12-2.22(1)-S2200, 22070) Laws relating to migratory birds are prescribed by the U.S. Department of the Interior Fish & Wildlife Service. The state Department of Fish & Game adopts and enforces regulations which comply with the federal regulations. A permit is required to take, transport or sell migratory birds, or for propagation, depradation control, or scientific and educational purposes. Applications for import and export permits are made to the Bureau of Sport Fisheries and Wildlife. The regulations set out requirements and restrictions for transportation and shipping, scientific collecting, taxidermy, banding, and waterfowl propagation. Permits for these activities are issued by the Fish & Game Department.

It is unlawful to take wild birds other than game birds, except with special permission from the Fish & Game Department. Falconry licenses are available from the Department. Department regulations set out restrictions on the practice of falconry and the issuance of licenses. Licensees must satisfy standards with respect to qualifications, facilities, equipment, and care of birds, and must pass an examination.

24.0302. Endangered Species (26-1801 through 1809, R.C.M. 1947; Regulations: MAC 12-2.14(2)-S1420; 12-2.14(6)-S1430) Policy—

—to manage certain non-game wildlife for human enjoyment, scientific purposes, and to ensure the perpetuation of species as members of their ecosystems;

—to ensure that species indigenous to Montana which are found to be endangered within Montana shall be protected to maintain and enhance their numbers;

—to assist in the protection of species deemed endangered elsewhere by prohibiting the taking, transporting or sale of such species within Montana, unless to protect the species;

—the Governor is directed to review other programs administered by him and, to the extent practicable, utilize such programs in the furtherance of the purposes of this act. The Governor is also directed to encourage other state and federal agencies to utilize their authorities to further these purposes.

The Department of Fish & Game is directed to conduct investigations with respect to populations, distribution of species, habitats, etc., in order to determine appropriate management measures, and to issue management regulations. The Department must recommend to the Legislature a list of species to be placed on the endangered list. This list is to be updated every two years. It is unlawful to take, transport or sell an species on the state or federal endangered lists, except by special permission of the Department for scientific, zoological, educational, propagational or other special purposes, or in emergency situations to protect human health. Violation of these regulations is a misdemeanor, with penalties of up to $500 and 6 months in prison for repeated offenses. This act does not prohibit the transport or sale of species endangered in Montana but not in the state where taken, if taken legally within that state.

The Department of Fish & Game is directed to

establish programs (including land acquisition) for the protection of non-game and endangered wildlife. The Fish & Game Department is to establish the necessary policies and enter agreements with state, federal, and local agencies to accomplish these purposes.

24.0303. Game Preserves (26-1101 through 1128, R.C.M. 1947; Regulations: MAC 12-2.22(1)-S2210 *et seq.)* Game preserves may be established by the Legislature or by the Fish & Game Commission. No hunting or fire arms are allowed in a preserve. Permits from the Fish & Game Department are required to capture animals for propagation or scientific purposes, or to trap fur-bearing animals.

The Legislature has given consent to the federal government to acquire land in Montana for migratory bird reservations, to acquire a supplemental water supply for the Benton Lake Wildlife Refuge, and to establish a bison exhibition park.

The Legislature has established the Flathead Lake and Teton Spring Creek Bird Preserves, and the Sun River and Gates of the Mountain Game Preserves. The Commission has established the Lone Pine, Stillwater, Seely Lake, Skalkaho, Warm Springs, Manhattan, August, Brinkman, Green Meadow, and McLean Game Preserves.

24.0304. Game Breeding (26-1201 through 1205, R.C.M. 1947) Game or fur farm permits must be obtained from the Fish & Game Department to engage in the breeding of game, birds, or fur-bearers, or to capture foundation stock. Fencing is required to prevent mixing of stock with wildlife. It is unlawful to introduce fish, eggs, game, game birds, or fur-bearing animals into the state without authorization from the Fish & Game Department.

24.0305. Roadside Zoos (26-1206 through 1212, R.C.M. 1947; Regulations: MAC 12-2.6(1)-S630) A permit from the Fish & Game Department is required to operate a roadside zoo and to capture animals for the zoo. All captured animals and their offspring born in captivity remain the property of the state. Licensing regulations include standards for record-keeping, housing, feeding, treatment, sanitation, and insurance. A zoo permit is not a game propagation permit, and the operator may not sell animals or their offspring. Zoos must be open to inspection by the Department. This law is enforced by Fish & Game wardens. Animals kept in violation of the law may be confiscated. Appeals are made to the Fish & Game Commission.

24.0400. Fish Restoration and Management

24.0401. Federal Agreements. (26-1401 through 1403, R.C.M. 1947) The Legislature has assented to the conditions of the Dingell-Johnson bill which makes federal money available for fish restoration and management projects. All such projects are the property of the state. The Fish & Game Department is authorized to engage in such projects, to enter into cooperative agreements with the federal government for projects on federal land, and to acquire land for the establishment of projects.

24.0402. Fish Propagation (26-118, 306, 330, 1701 through 1705, R.C.M. 1947; Regulations: MAC 12-2.18(1)-S1800; 12-2.18(2)-S1820) The Fish & Game Department may control waters lying wholly within state-owned lands for the purpose of fish propagation. The Department notifies the Department of State Lands, which notifies any lessees of the state land. If the state land is to be sold, the Department of State Lands notifies the Fish & Game Department to terminate the protective status of the waters.

It is unlawful for private parties to raise fish in public waters without Fish & Game approval. A fish pond license may be obtained from the Fish & Game Department to stock a private artificial fish pond. Fish may be taken from such a pond in any manner, but the Department regulates the sale of fish, eggs, or fry from the pond. Sale of game fish or spawn is unlawful except from private ponds.

The federal government is authorized to conduct fish-hatching operations in the state.

It is unlawful to bring live or dead salminid fish or eggs into the state without certification that they are free from infection. There are no restrictions on importations if the fish or eggs are first processed so as to kill any infections. Infected cargos are subject to quarantine.

24.0403. Fish Planting (MAC 12-2.18(6)-S1830, 1840) The annual fish distribution plan is reviewed and approved by the director of the Fish & Game Department and the chief of the Game Management & Research Bureau of the Fisheries Division. No state-raised fish may be planted in waters to which public access is denied. Non-indigenous fish may be introduced only after careful study. The planting of catchable trout for immediate harvest is for recreation rather than resource management, and is therefore done in response to recreational pressures. Other criteria apply for the planting of fish for population purposes. In general, catchable trout are planted only where they will not cause substantial environmental damage.

24.0404. Fish Ladders (MAC 12-2.18(2)-S1810) The director of the Fish & Game Department periodically inspects all dams and stream obstructions to see if there is free passage for fish. If not, the Fish & Game Commission prepares plans for the construction of fish ladders, and directs the owner of the dam or obstruction to comply with such plans. If the owner refuses, the Commission may take legal action. The owner is entitled

to a hearing before the Commission. Construction, operation and maintenance of fish ladders must be at the owner's expense.

24.0501. Stream Alterations—Natural Streambed & Land Preservation Act (26-1501 through 1523, R.C.M. 1947) *Policy.* That Montana's fish & wildlife resources and fishing waters, natural rivers and streams and the adjacent lands be protected and preserved in their natural or existing state except as may be necessary and appropriate after consideration of all factors involved;

—to keep soil erosion and sedimentation to a minimum;

—to recognize the needs of irrigation and agricultural use of rivers;

—to protect the use of waters for beneficial purposes.

24.0502. *Procedures.* Any state or local agency must notify the Fish & Game Department at least 60 days before commencement of any project which will alter a natural stream or its banks. The Department examines the plans and notifies the applicant within thirty days if the project is technically insufficient or if the Department determines that it will adversely affect fish or game habitats. The Department submits to the applicant its recommendations or alternative plans. The applicant must notify the Department within 15 days if it refuses to modify its plans. The Department may request the judge of the district court to appoint an arbitration panel consisting of three county residents. The panel must reach its decision in 10 days, and its decision is binding on all parties. If the panel requires modification of the proposal, any additional costs will be borne by the party who benefits, as determined by the panel. The above provisions do not apply to irrigation district projects or other irrigation systems.

Analogous procedures apply when any party not covered by the above regulations plans to alter streambeds or banks. Any such person must send written notification to the appropriate board of "supervisors": the supervisors of the appropriate soil & water conservation district, if any; if not, to the supervisors of the appropriate grass conservation district, if any; if not, to the board of county commissioners. The supervisors determine whether the proposed action is a "project" as defined by the law. If so, the applicant and the Fish & Game Department are notified within 5 days. The Department has five days to request an on-site inspection, after which the supervisors have twenty days to convene an inspection team consisting of representatives of the supervisors, the Department, and the applicant. The team members submit written reports within 50 days of the application, recommending approval, denial or modification of the proposal. The supervisors review these reports and make their decision within 60 days of receipt of the application. Any inspection team member who disagrees with the decision of the supervisors may request arbitration as described earlier. Final decisions may be appealed to the district court.

24.0503. *Emergencies.* When an emergency situation requires immediate action, the supervisors then notify the Fish & Game Department and an on-site inspection is conducted within 30 days. The supervisors may request a more suitable or permanent solution to the problem. Arbitration is available as before.

24.0504. *Monitoring.* This law is not intended to interfere with existing water rights. All provisions of the Floodway Management law must be complied with. The Fish & Game Department monitors federal activities which adversely affect fish and wildlife resources; the Department notifies the Fish & Game Commission which then notifies the appropriate federal agency. The Board of Natural Resources in consultation with the Association of Conservation Districts is directed to set minimum standards and guidelines, and conservation districts are authorized to adopt regulations to enforce these standards. Projects not authorized in accordance with these laws are public nuisances, and fines may be assessed on offenders, including state and local government agencies.

Agency Programs

24A.0100. Fish and Game Department. The Fish and Game Department is responsible for all aspects of fish, game and wildlife management. The following sections present a brief review of the Department's programs.

24A.0101. Enforcement Division. The major responsibility of the Enforcement Division is to protect fish and wildlife resources from wilful or negligent destruction by ensuring compliance with regulations and laws relating to fish, game, parks and recreation. The Division is also responsible for the enforcement of boat and water safety laws, snowmobile safety and licensing laws, outfitting laws, and litter and vandalism laws. In addition, the Division is often called on to investigate hunting accidents, trap and transplant nuisance animals, supervise trappers, conduct classes in hunter safety, conduct wildlife damage control programs, and perform license dealer audits. The Division has also been involved in a program to open private land to public recreation.

24A.0102. Conservation Education Bureau. The responsibility of this Bureau is to provide public information and education relative to the state's fish and game resources and the activities of the Fish and Game Department. It keeps sportsmen informed as to the Department's wildlife management programs, hunting seasons, regulations and relevant issues that affect fish and wildlife.

Landowner/sportsmen relations receive emphasis through a variety of public information efforts, including radio and T.V. spots and public speaking engagements. The Bureau publishes **Montana Outdoors** magazine which contains information and articles of interest to sportsmen, conservationists and the general public.

The Information Bureau is also responsible for conducting statewide surveys and inventories of non-game species.

The Ecological Service Division conducts key habitat studies through grants and contracts with a variety of funding sources. In addition, its traditional activities include such activities as stream preservation, water quality coordination, water allocation and baseline fish and wildlife inventories.

24A.0103. Fisheries Division. The Fisheries Division is responsible for management of the state's aquatic resources. Its specific goals are to maintain fish populations and to provide improved sport fishing opportunities where feasible. Activities to meet these goals include:

1. Data collection of fish populations of lakes and streams, primarily through lake and stream surveys.
2. Habitat preservation. Under the Streambed Preservation Act, the Division works with conservation district supervisors and landowners to protect streambanks and fish habitats and minimize soil erosion.
3. Provision of fisherman access.
4. Promulgation of regulations for sport fishery.
5. Planting of catchable-sized trout for immediate harvest.
6. Regulating the commercial harvest of non-game fish.

An inventory of fish habitat and available fisheries is continuing. All waters that currently or potentially may provide recreational fishing are being identified and classified. Surveys of anglers are being conducted to identify use patterns of the state's waters.

24A.0104. Wildlife Division. The Game Management Division conducts and provides continuing surveys, inventories and research relating to the state's wildlife resources. The resulting data provide the biological basis for management recommendations to the Fish and Game Commission. Wildlife management is designed to provide optimum hunting and associated outdoor recreation to sportsmen and others in the state. Game management lands controlled by the commission are managed to provide optimum wildlife habitat and compatible outdoor recreation. As of June 30, 1976, the Department owned 117,082 acres, and had use agreements for an additional 115,003 acres. In 1976, an inventory of big game and game bird habitat areas and populations was completed, tabulated and mapped.

24A.0105. Recreation and Parks Division. See Section 23A.0100 *et seq.*

24A.0300. Rangeland Resources Program. (See 52A.0600) The Conservation Districts Division of the Department of Natural Resources and Conservation administers a rangeland resources program to assist ranchers in improving the condition of the state's rangeland. One of the goals of this program is the maintenance and improvement of wildlife habitats on native rangelands. Specific wildlife management activities have not been developed. Rather, the approach is that improved wildlife habitat will be achieved as a natural by-product of the program's primary goal, which is improved range condition.

24A.0301. Water Bank Program. This program, administered by the Agricultural Stabilization and Conservation Service (See 52A.0200), is designed to prevent serious loss of wetlands and to preserve, restore and improve inland fresh water and adjacent areas for the benefit of migratory waterfowl. In return for payments from the ASCS, the owner or operator of land agrees not to drain, fill or otherwise destroy the wetland character of designated lands, nor to use such areas for agricultural purposes, and to carry out wetland conservation and development plans in accordance with the terms of his agreement. The program was applicable in 1976 in Daniels, Glacier, Pondera, Roosevelt, Sheridan, Teton and Toole counties.

24A.0400. Fisheries Inventory - 208 Management Planning. As part of the statewide 208 planning process under the Federal Water Pollution Control Act (See 18A.0107), the Fisheries Division of the Department of Fish and Game was engaged to conduct an inventory of at least 3200 kilometers (1989 miles) of streams in the state. Information collected by regional fisheries personnel included stream identification, resource value, water temperatures, fish population, habitat trends, and pollution. As of July, 1977, data were entered onto fisheries data bank forms for approximately 5800 kilometers (3604 miles) of streams in the statewide 208 planning area. After July 1, 1977, this fisheries inventory will be funded by the U.S. Fish and Wildlife Service.

30.0000. LAND USE

In a broad sense, almost any regulation of human activity will have an influence on land use patterns. Pollution control laws and pollutant limitations and standards put limits on activities which may be engaged in in given areas. Open space and natural areas laws, park and recreation statutes, and state and county forest laws provide for management of land to meet specific requirements. The development of transportation and utility systems obviously has an important impact on land use trends, as does natural resource development activity such as mining and logging. The statutory structures governing these and other activities with land use implications are described in other sections. This section describes those laws and regulations which deal specifically with the use of land—the channeling and location of human activities so as to be compatible with one another and with the physical environment.

Except with respect to management of state-owned land, most land use regulatory authority lies on the local level, with state involvement primarily in an advisory capacity or in setting minimum standards and guidelines for local officials to follow. Mechanisms are described by which public authorities may acquire or dispose of land. Procedures for the annexation of land by cities and towns are set out. The heart of land use planning on the local level is in the planning and zoning process by cities and counties. More detailed procedures are set out for the review of residential subdivision development; guidelines are established by the Department of Community Affairs, and review of sanitary facilities and environmental impacts is shared by local officials and the state Department of Health.

Special land use restrictions are imposed in areas requiring special protection or regulations: e.g., airport zones, flood plains, lakeshores. Again, primary responsibility lies with local officials, but minimum guidelines may be set by state agencies. Special tax incentives are available to encourage the development of desirable land use patterns.

30.0001. Contents:

30.0002. See Also:

Montana Environmental Policy Act	00.0200	
Air Pollution	12.0000	
Noise	14.0000	
Solid Waste	17.0000	
Water Pollution	18.0000	
Open Spaces and Natural Areas	22.0000	
Parks and Recreation	23.0000	
Wildlife Management	24.0000	
Major Facility Siting Act	41.0101	
Airport Site Approval	43.0300	*et seq.*
Motor Transportation	45.0000	
Utilities	46.0000	
State Land and Resource Policy	51.0000	
Leasing of State Lands	52.0100, 54.0101, 55.0101, 56.0100	
Soil and Water Conservation Districts	52.0301	
Grazing Districts	52.0500	
Mine Siting	54.0600	
State Forests	57.0101	
County Forests	57.0200	
Water Use Act	58.0401	
Irrigation Districts	58.0701	
Drainage Districts	58.0801	
Conservancy Districts	58.0901	

30.0003. Agency Programs:

Agency Programs

30A.0000. State Land Use Planning. The Department of Community Affairs has been designated as the state agency responsible for coordinating land use planning processes in state government. Because of consistent resistance to comprehensive land use planning initiatives by the Legislature, the Department focuses on the need to coordinate existing planning functions being undertaken at various levels of government.

Section 82-3705, R.C.M. 1947, requires the DCA to develop and adopt a comprehensive plan for the physical development of the state of Montana. This extremely broad mandate has been allocated to the planning division (see rule No. 22-2.1-0100(2) (e)). Executive Order 6-75, July 1, 1975 clarified the statewide physical planning mandate by addressing land use planning in particular and charged the DCA with coordinating relevant activities of other state and local agencies, developing data required for land use planning, initiating and maintaining interagency communication, and advising the Governor on land use issues.

These tasks are accomplished by the state Land Use Planning Bureau through several different means. Interagency and intergovernmental cooperation and coordination is sought through the Bureau Chief's membership and active participation on the Advisory Council of the Water Resources Research Center, the Highway Development Evaluation Group, the Statewide Water Quality Planning Technical Advisory Council, the Gallatin-Madison Water Quality Planning Technical Advisory Council, and the Missouri River Basin - Yellowstone Level B Study (technical council). Membership on the above councils and advisory groups requires extensive research and review and comment on technical project reports and environmental impact statements.

In response to the requirement for assembling data for land use planning, the Division is presently mapping all land uses on a statewide basis and has published and will maintain a complete compilation of state laws covering water and land planning and management.

The Division performs continuing research concerning "state of the art" in land use planning and implementation. Research products include publications for general distribution and legislative proposals submitted to the office of the Governor.

30A.0001. Status of Land Use Planning Activities in Montana. (The following review of land use planning activities was prepared by the Planning Division of the Department of Community Affairs as part of their application for a federal grant from the Department of Housing and Urban Development under Section 701 of the Housing Act of 1954. Approximately 80% of the Planning Division's budget comes from these HUD grants.)

Several state agencies are involved in programs dealing with or having an impact on land use. The authority for administration of these programs is found in 11 acts, most of them passed in the last seven years. These are designed to provide departments with the power to acquire land, enact performance standards; or give site approval to activities which affect land use. There is a need to coordinate these departmental activities and the Department of Community Affairs has been given this responsibility.

30A.0002. The Department of Community Affairs was given its overall authority for land use planning activities by the Planning and Economic Development Act of 1967. In 1973, the Montana Subdivision and Platting Act directed the Department's Planning Division to prepare and adopt requirements for subdivision regulations which cities and counties were required to adopt by January 1, 1975. The Division also prepared a Model Subdivision Regulation based on the minimum requirements which many local governments used as a basis for their own regulations. The majority of local governing bodies adopted their own regulations; those that elected not to had such regulations adopted for them.

30A.0003. The Montana Department of Natural Resources and Conservation was directed by the Montana Water Resources Act to prepare a comprehensive state water plan. Water resource and allocation studies for three major river basins are underway. An inventory of the land and water resources

of each basin is being completed and the basins' water requirements projected to the year 2020. On this basis, future water allocations will be recommended. The study of the Flathead Basin has been approved by the Board. Under this Act, the Department is also directed to begin the process of water rights adjudication for the entire state. This is presently underway for one drainage area to determine available water surplus for agricultural, municipal, and future industrial use. (See 58.0000 *et seq.*, 58A.0001 *et seq.*)

The Major Facility Siting Act (1973) requires the Department to issue a "certificate of environmental compatibility and public need" prior to the construction of any "power or energy conversion facility," or associated facilities such as transmission lines, dams, aqueducts, transportation links and certain pipelines. The Department has evaluated and acted on ten transmission corridors and an assessment of a major proposed power generating facility in southeastern Montana. (See 41.0101, 41A.0100).

Under the Montana Floodway Management and Regulations act (1971), the Legislature charged the Department with overseeing local regulation of lands in floodplains. The Department has been directed to delineate the 100-year floodplain on all streams and rivers. Over 1150 miles of stream or river are currently being regulated under the state law. Local governments have six months from the time that the floodplain is delineated to adopt land use regulations for the area. Presently, 24 floodplain areas have been delineated and eleven counties and eight cities have local regulations in effect. Eleven counties and fifty-four municipalities are participating in HUD's Floodway Insurance Program. (See 35.0200, 35A.0200, 35A.0201).

30A.0004. The Department of State Lands administers four laws which regulate surface mining operations of coal, uranium, bentonite, clay, scoria, sand or gravel. Such operations come under the provisions of the Open Cut Mining Act (1973), the Montana Strip and Underground Mine Reclamation Act (1973), and the Strip and Underground Mine Siting Act (1974). These acts provide for the reclamation of surface mining operations in the state and review authority prior to site preparation. The Hard Rock Mining Act (1971) applies to all mining not covered by the preceding laws. (See chapters 54, 55)

The Department is involved in a land classification program to classify state landholdings into four land use categories. Because state-owned lands comprise over five million acres, this study is expected to take at least ten years to complete. (See 51.0100 *et seq*, 51A.0001).

30A.0005. The Department of Health and Environmental Sciences. Under the Montana Water Pollution Control Act and the 1967 Clean Air Act of Montana, the Health and Environmental Sciences Department is authorized to regulate sources of air and water pollution. Under the first act, the Department administers a permit system covering the discharge of sewage and industrial wastes into state waters. The second act grants the Department powers to establish air quality standards and regulations. Under the federal Clean Air Act Amendments (1970), the Department has declared eight Air Quality Maintenance Areas under the State Implementation Plan and based their selection on population and population densities, air quality, and industrial concentrations. These areas will be more precisely delineated and air quality standards established for each one, based on the area's physical, social, economic and land use characteristics. This Department is also the state administering agency for the '208' water quality regions. Four '208' area-wide planing organizations are presently in the process of identifying non-point pollution sources and analyzing land management practices which will mitigate these problems. The Department is responsible for the 208 planning effort in the balance of the state not covered by the other four programs. Planning efforts for this area began in late 1976. (See 12.000 *et seq.*, 18.0000 *et seq.*

The 1967 and 1973 legislation gave the Department the authority to approve provisions for water supply and disposal of sewage and solid waste before a subdivision plat can be accepted or approved. This involves soil and slope analysis and study of groundwater depth adjacent to subdivision activity. The Department processed over 1,000 subdivisions last year. (See 18.0500).

30A.0006. The Department of Fish and Game, acting under 62-304, R.C.M. 1947, may acquire, restore, preserve and administer historical, archaeological, paleontological, scientific and cultural sites of the state. The Board of Land Commissioners may withdraw or reserve additional state land for protecting a site identified under the Act. The Department may enter into agreements with private landowners to protect specific sites and may resort to court action for the protection of these sites. Over the past several years, the Department has purchased several land tracts for game management purposes, fishing access, and land areas for historical preservation. This Department has recently completed a historical sites plan for the entire state. (See 23A. 0100 *et seq.*)

30A.0007. Montana Historical Society. Under the State Antiquities Act, the Montana Historical Society has assumed responsibility for acquisition and administration of historical, archaeological, scientific and cultural sites. (See 23A.0300)

31.0000. ACQUISITION AND DISPOSITION OF PUBLIC LAND

Most land use regulation consists of regulation of activities on privately owned lands. However, the management publicly owned land also has a significant impact on land use patterns in general. Public agencies on the federal, state, county and municipal levels all engage in land acquisition activities for the development of park and recreation systems, wildlife preserves, national, state and county forests, and transportation and utility systems. The Department of State Lands and the Board of Land Commissioners have extensive responsibilities in the management of state-owned lands. All these activities are described in other sections. In this section are described the fundamental eminent domain procedures by which public agencies acquire land.

31.0001. Contents: **Section**

31.0002. See Also:

31.0101. Eminent Domain (93-9901 through 9944, R.C.M. 1947) **Policy.** Eminent domain is the right of the state to acquire private land for public use. Public uses include construction and maintenance of public buildings and grounds, transportation corridors and facilities, utility corridors, and mining. However, the Legislature has declared that surface mining of coal is not a public use for which eminent domain powers may be exercised. In order to justify an eminent domain taking, findings must be made that the proposed use is authorized by law, that the taking is necessary to such use, and that the proposed use is more beneficial than any existing public uses of the land. Proposed public uses are to be located so as to be compatible with the greatest public good and the least public injury.

31.0102. *Procedures.* Eminent domain actions are initiated by the filing of a complaint in district court describing the proposed public use, the source of the right to such use, the property sought, and the present ownership. The complaint is filed by the state agency or other entity authorized by law to exercise domain powers. All persons with an interest in the land may be made defendants to the action. The answer filed by defendants indicates the amount of money claimed by defendants as compensation for the taking.

It is the court's responsibility to determine whether the proposed use is an authorized public use, to establish limits on the amount of property to be appropriated, and to issue a preliminary condemnation order. Upon petition of the plaintiff and payment into the court of the compensation claimed by the defendant, the court may allow plaintiff to take immediate possession of the property pending the conclusion of the proceedings. The court then appoints a panel of condemnation commissioners which, after a hearing presided over by the judge, determines the value of the property sought and the effects of the taking on the value of adjacent property not taken. The commission's report to the court setting the compensation levels may be appealed to the district court. Upon payment of the compensation, the court issues a final condemnation order.

31.0103. *Relocation Assistance.* When the condemnation of private property occurs as part of a federally assisted program, certain additional requirements must be satisfied. The state agency must observe due process guidelines including reasonable negotiating practices, payment of fair market value, 90 days notice before requiring occupants to relocate, offer to buy remnant properties, and payment of defendant's attorney's fees if the condemnation does not go through. In addi-

tion, the agency must provide relocation assistance, including payment of relocation expenses, aid in financing new homes or places of business, advisory and counseling services, and advance assurance that adequate alternate housing is available. Such assistance must also be provided in inverse condemnation cases (i.e. condemnation proceedings initiated by the land owner who is seeking compensation for damages incurred as a result of government activities.)

31.0200. Powers of City or Town (11-964, 977, 3311, R.C.M. 1947) Property within the limits of a city or town may be appropriated by the city for public use. The municipality has the power to condemn land for streets, parks, sewer systems, waterways, and drainage ditches.

The city council has the power to sell or lease city property by an ordinance passed by 2/3 of the council; a majority vote of the taxpayers is required if the land is held in trust for a specific purpose. Property may be sold to another political subdivision without passage of an ordinance by council resolution after three weeks notice to the public. The council may trade with or purchase land from another political subdivision without an appraisal.

31.0300. Powers of Counties. (16-1009, 1030, R.C.M. 1947) The board of county commissioners has the power to sell county property not required for the conduct of county business. The sale must be conducted at a public auction after notice to the public. (Sale to a school district does not require public notice.) The sale is preceded by an appraisal and the appraised value may be objected to by any taxpayer, in which case the court will order a re-appraisal. If no bid is made at the auction, the county commissioners may sell the property at a private sale for at least 90% of the appraised value. Property worth less than $100 may be sold either at auction or private sale. The board of commissioners may sell or trade land to other political subdivisions after public notice without an appraisal or auction. The county may also lease property for such purposes as the commissioners deem to be in the public interest. Lease terms may not exceed 10 years.

32.0000 ANNEXATION

Procedures for annexation of land by a municipality, whether on the initiative of the governing body or by petition of residents of the area to be annexed, all involve public notice and hearings, and opportunity for a majority of the residents of the area to reject the proposal. The Planned Community Development Act provides a mechanism for annexation of land by which provision of city services such as water and sewer are assured and coordinated in advance.

32.0001. Contents

32.0002. See also:

32.0101 Annexation of Land—*By Council Resolution* (11-401 through 405, R.C.M. 1947. *Prerequisites:* To be eligible for annexation, the land must be platted into streets, blocks, parks, etc. and a map or plat must be filed with the county. The owner of the addition may be required to lay out the streets and blocks in conformity with the city plan. In addition, the land must be contiguous to the city limits, although it may be separated from the city by a road, ditch, or a strip too small to be platted. Two or more adjacent tracts may be annexed in one procedure, even if one of the tracts by itself is not contiguous to the city.

32.0102. *Procedures:* The city or town council adopts a resolution that annexation is in the best interests of the city and of the residents of the area to be annexed (hereinafter, the "area"). A notice of this resolution is published once a week for two successive weeks in the local papers, and owners of land in the area are notified by mail. A twenty day comment period is provided (starting with the date of the first notice) during which time the council will receive written comments from residents of the city and the area. These comments are considered by the council at its next regular meeting, and if the annexation has not been opposed in writing by a majority of resident freeholders in the area or by a majority of residents of the city, the council may adopt a resolution of annexation. Owner's consent is required for annexation of industrial or manufacturing land.

32.0200. *On petition of residents* (11-506 through 511, R.C.M. 1947) A petition signed by 1/3 of the landowners of any area may be submitted to the council requesting annexation. The council then submits the question to the voters of the city and area at the next special or general election. If the voters approve, the council must adopt a resolution of annexation. Portions of an already incorporated town may not be annexed by this procedure, and lands used for agriculture, mining, smelting, refining, transportation, industrial or manufacturing purposes may not be annexed under this act. These procedures apply only to cities with populations between 20,000 and 35,000.

32.0300. *Annexation of contiguous town* (11-405, R.C.M. 1947) If a municipality desires to be annexed by a contiguous municipality, each town appoints three commissioners to arrange matters and report to their respective councils. The council of the town being annexed must approve the procedure by ordinance. The question is then submitted to the voters of both towns for approval.

32.0400. *Contiguous land owned by federal, state or local government.* (11-511, R.C.M. 1947) When contiguous land is owned by a government agency, the head of the agency may file certification with the city clerk expressing the desire to be annexed. The city council may then adopt a resolution of intent to annex the land, and publishes notice of the resolution for two consecutive weeks. A twenty day comment period is allowed to receive written comments, and a public hearing is held, after which the council may adopt a final resolution of annexation.

32.0501 Planned Community Development Act (11-514 through 526, R.C.M. 1947) *Policy:* In response to unplanned annexations which did not provide for adequate services to newly annexed areas, the Legislature established as a policy:

—that sound urban development is essential;

—that municipalities are created to provide

government services for the public health, safety and welfare;

—that municipal boundaries should be extended for those purposes;

—that annexed areas should receive essential services as soon as possible.

In order to accomplish these goals, the procedures of this act are available for annexation of areas which are contiguous to an existing municipality, and no part of which is within another municipality or fire district organized under Title 11, Chapter 20. The annexation must also be compatible with comprehensive plans adopted under Title 11, Chapter 38. (33.0101)

32.0502. *Procedures:* Annexation procedures may be initiated by the city or town council, or by a petition signed by 51% of the resident freeholders of the area to be annexed. The council passes a resolution of intent and sets a date for a public hearing to take place in thirty to sixty days. Notice of the hearing is published in local papers for four consecutive weeks prior to the hearing.

During this pre-hearing period, the city prepares a report describing its plans to supply services to the area to be annexed. The report contains maps showing present utility lines and land use patterns, long-range (5 year) plans for acquisition of land and extension of police, fire, garbage, streets, water, sewer, and utility service, and timetables for each. Financing methods are also described, and provisions for residents to vote on all capital improvements. This report must be approved by the council at least 14 days before the hearing, and notice of its availability for inspection must be published. The report may be amended on the basis of comments received at the hearing.

After the hearing, the council will receive written comments for twenty days from resident freeholders of the area. Unless annexation is opposed in writing by a majority of the resident freeholders of the area, the council may adopt an ordinance of annexation containing expression of intent to supply municipal services. After the effective date of the annexation order, the residents of the area are subject to all the responsibilities and entitled to all privileges of city residents; provided, however, that if the area is part of a sanitary or other special service district, the residents of the area are not subject to city taxes for similar services for five years.

Within 30 days after the annexation order, either a majority of the resident freeholders of the area or owners of 75% of the assessed value of the area may appeal the annexation order to the district court if improper procedures by the city have caused or will cause them injury. The court may affirm the annexation order, remand to the city for further proceedings, or remand for amendment of the boundaries of the annexed area or revision of the plans for provision of services.

If the annexation proceedings were initiated by petition of the residents and the city council takes no action within 60 days, the petitioners may file an action in district court to establish that essential municipal services are not available to them, that the city is able to provide such services, and that 1/8 of the boundary of the area seeking annexation is contiguous to the city.

32.0600 Provision of services outside of the city (11-1001, R.C.M. 1947) A municipality may provide water, sewer and other utility services to areas outside the city limits, but may require as a condition for such service that the owners of the areas to be served agree to annexation.

32.0700. Exclusions. (11-501 through 505, R.C.M. 1947) Procedures similar to annexation procedures are available for exclusion of areas from the city. A petition signed by a number of electors equal to a majority of the votes cast at the last city election, or by owners of 3/4 of the assessed value of the land in the area to be excluded, is filed with the city clerk. The area must be on the border of the municipality. The city council then adopts a resolution of intent, publishes notices in the papers for two weeks, and provides a twenty day period for receipt of written comments from the residents of the area. The council then reviews the comments, and, unless opposed in writing by a majority of the property owners in the area, may adopt a resolution excluding the territory from the city. If the excluded territory is part of any special improvement district, the residents are not relieved of any liabilities under such district, and the city retains jurisdiction to collect assessments for such districts.

33.0000 PLANNING AND ZONING

The planning and zoning laws are at the core of land use planning on the local level. The acquisition and regulation of land for parks and recreation, the annexation of land by cities, subdivision review, street and road planning, and other special land use regulations are all carried out, ideally, in a manner consistent with existing comprehensive plans and zoning regulations.

The planning law allows cities and counties, individually or jointly, to establish planning boards whose responsibility it is to develop a master plan for their jurisdictional areas. Such master plans set out goals and guidelines for comprehensive land use patterns, and establish criteria for zoning districts and regulations, subdivision review, etc. The planning boards act in an advisory capacity to their respective governing bodies (city council or county commission). Governing bodies consult the master plan for guidance in making planning and zoning decisions.

City zoning commissions (which may double as planning boards) recommend zoning districts and regulations to the city council. All zoning changes are made after public notice and hearings. Provisions are available for emergency interim zoning procedures. Zoning regulations must provide for a board of adjustments which can hear and decide on requests for variances from the zoning regulations.

Similar procedures are available for county zoning, but only if the county has adopted a master plan. Smaller unincorporated areas may, on petition of the residents, establish development patterns and regulations which apply only within such areas.

33.0001 Contents **Section**

33.0002. See Also:

Parks and Recreation 23.0000
Annexation 32.0000
Subdivisions 34.0000
Special Restrictions 35.0000
Montana Economic Land Development Act 36.0201
County Roads 45.0300
Municipal Streets and Parking 36.0201
Utilities ..... 46.0000 *et seq.*

33.0003. Agency Programs:

Planning 33A.0000
Local Planning Assistance Program 33A.0001
Non-Metro Planning Assistance 33A.0002

33.0101. Planning (11-3801 through 3842.1, R.C.M. 1947) *Purpose.* The purpose of the planning law is to enable and encourage local governments to improve the health, safety, convenience and welfare of their citizens; to plan for future development; to assure adequate highway, utility, health, educational, and recreational facilities; and to assure that the needs of agriculture, industry, and business are recognized.

33.0102 *Formation of Planning boards.* Planning boards are formed by city or town councils or by boards of county commissioners. Such boards operate in an advisory capacity to their governing body. Before creation of a county planning board, the county commissioners must notify the public and hold a hearing. If 50% of the electors of the county outside of municipalities or existing planning board jurisdictions object in writing within 60 days of the hearing, the commissioners cannot form a new planning board.

Planning board members are appointed by the city or county governing body. When a city or town intends to form a planning board it must inform the county of that intent and the county commissioners may elect either to form a joint city-county board or to allow the city to proceed with its plans. A city planning board must include at least one designee of the county commissioners. Existing planning boards may form joint planning boards by interlocal agreements under Title 16 Chapter 49.

33.0103. *Powers and Duties.* Planning boards establish a master plan for their jurisdictional area (33.0105) and serve in an advisory capacity to their governing body with respect to policies for subdivisions, public ways and structures, issuance of improvement permits, zoning ordinances, etc. Planning boards are authorized to employ staff, and city and county government agencies are directed to assist them in their functions. Governing bodies may appropriate funds for the operation of planning boards; municipalities may levy taxes on property within the city or town pursuant to the provisions of Title 11, Chapter 14. A board of county commissioners may levy taxes on property outside of municipalities as provided in Title 16, Chapter 19. Maximum levies for planning board purposes are established by law.

33.0104. *Jurisdictional Areas.* A city planning board has jurisdiction only over land within the city limits. A city-county planning board may include contiguous unincorporated areas up to 4½ miles outside of the city limits which are reasonably related to development of the area. City-county planning board jurisdiction may be extended up to 12 miles beyond the city limits on petition of 5% of the resident freeholders of the area, publication of notice, and public hearing. Opposition in writing by a majority of the resident freeholders of the area will prevent such extension of the jurisdictional area. The jurisdictional area of a county planning board is established by the board of county commissioners, and may include any areas outside of cities or towns, and outside the jursidictional area of existing city-county boards. If a city or town becomes represented on a county planning board, the jurisdictional area of the county planning board will include that city or town.

33.0105. Master Plan. The master plan is the primary planning document of the city or county. It includes surveys of existing conditions and future growth projections; maps and descriptions showing history, population, land use, densities, neighborhood units, blighted areas, streets and ways, sewers and drainage, flood control facilities, utilities, transportation, parks and recreation, public buildings, educational facilities, water, soil, mineral and other natural resources; reports and recommendations with plans for development of the above items; a long-range public works program; plans for mobile home sites.

Before submission of the master plan to the governing body, the planning board holds a public hearing for comments. After the hearing, the planning board, by resolution, recommends the plan and accompanying ordinances to the governing body. The governing body must adopt, revise, or reject the plan or parts of it. After adoption of the plan, the governing body "shall be guided by and give consideration to the general policy and pattern of development set out in the master plan" in the authorization, construction, and use of public ways and places, authorization and use of utilities, adoption of subdivision controls, adoption of zoning regulations, etc.

33.0200. City Zoning Commission (11-2701 through 2711, R.C.M. 1947) *Policy and Purpose.* In order to promote public health, safety and welfare, city and town councils are empowered to regulate the height, size, location and use of buildings; percentage of lot to be occupied, lot size, densities, and land use. Zoning regulations must be in compliance with existing comprehensive plans (33.0101) and must be designed to lessen congestion; secure safety from fire and other hazards; provide for adequate light and air; prevent overcrowding; provide adequate transportation, water, sewer, schools, parks and other facilities; consider the character of the areas and existing use patterns; conserve property values; and generally encourage the most appropriate use of land.

33.0201. *Adoption of Regulations.* In order adopt zoning regulations under this act, the city or town council must appoint a zoning commission, which may double as the city planning board under Title 11, Chapter

38. (33.0102) The zoning commission is responsible for recommending zoning district boundaries and regulations to the city council. Prior to making such recommendations, the commission will submit a preliminary report to the council, hold public hearings, and then submit a final report. No regulations or district boundaries will be adopted or amended by the city council except after at least 15 days notice and a public hearing. If changes in existing regulations are opposed in writing by owners of 20% of the lots in the area or immediately adjacent to the area concerned, such changes require a 3/4 vote of the council.

The city council divides the city into zoning districts and adopts regulations for those districts. Regulations must be uniform for each class of building throughout a district, but may vary from district to district. If there is a conflict between zoning regulations adopted under this act and provisions of other statutes, the "highest" standards will govern. If there is a master plan for the city, and if either a city-county planning board exists or the city planning board includes two representatives, designated by the county commissioners, who live in the affected unincorporated areas, the city may extend its zoning jurisdiction 3, 2, or 1 miles beyond the city limits (depending on whether it is a 1st, 2nd, or 3rd class city); provided that the county has no zoning regulations or master plan in effect in such areas. The city council may provide for enforcement of the zoning laws by penalties or by injunction of construction and use of land in violation of the regulations.

33.0202 *Interim Zoning.* A city or town council may adopt as an emergency measure an interim zoning ordinance prohibiting uses in conflict with contemplated zoning proposals. Such ordinances may be adopted after seven days notice and a public hearing, and are effective on passage. They are effective for no more than six months, but may be extended for one year after full notice and hearing and 2/3 vote of the council. No more than two such extensions are allowed.

23.0203 *Board of Adjustments.* The city council may appoint a board of adjustments which may allow exceptions to the zoning regulations under appropriate circumstances. The ordinance creating the board may limit its authority as the council sees fit. The board consists of 5 members who are appointed for a fixed term and may be removed only for cause and after opportunity for a hearing. All board meetings are open to the public.

An appeal to the board of adjustments stays all zoning enforcement actions unless it is shown that a delay would imperil life or property. The board may hear appeals from residents based on procedural errors by administrative officers, or appeals for special exemption from zoning regulations because of special hardship. The board may reverse, affirm, or modify administrative orders; four votes are required to reverse an administrative ruling or grant an exception to a zoning ordinance. Board decisions may be appealed to the district court within 30 days.

33.0300 County Zoning. (16-4701 through 4711, R.C.M. 1947) *Application.* The procedures of this statute apply in counties where the board of commissioners has adopted a master plan pursuant to Title 11, Chapter 38 (33.0101). The county commissioners may adopt zoning regulations for all or part of the jurisdictional area covered by such a master plan.

33.0301. *Purpose and Policy.* The purposes of county zoning are the same as those described for city zoning (33.0200). In addition, county zoning regulations must be compatible with the development patterns of municipalities in the county.

33.0302. *Adoption of Regulations.* County zoning regulations may include provisions similar to those described under city zoning. (33.0200). However, county zoning regulations may not prevent the complete use and development of mineral, forest, or agricultural resources by the owner.

As a first step in adopting regulations, the board of county commissioners requests recommendations from existing county or city-county planning boards with respect to proposed zoning districts and regulations. Such recommendations are advisory only. Zoning districts and regulations may be adopted for all or part of the jurisdictional area covered by the county's master plan. Regulations must be uniform within each district, but may vary from district to district.

After receiving recommendations from the planning board, the board of county commissioners publishes a notice for two weeks describing the proposed district boundaries and regulations. A public hearing is held after which the county commissioners may adopt a resolution of intent to adopt zoning regulations. Notice of this resolution is published for two weeks, and a thirty day comment period is provided during which time the commission will receive written comments from landowners within the areas to be zoned. Unless written protests are received from 40% of the affected freeholders, the county commission may adopt a resolution creating the zoning districts and enacting regulations. They may also appoint enforcement officers and provide for construction permits. Zoning regulations may be enforced by fines, imprisonment, and injunction.

33.0303 *Interim Zoning.* If the county is in the process of adopting or amending its master plan or zoning regulations, the county commissioners may adopt as an emergency measure temporary interim zoning

regulations to prevent development which would conflict with the proposed master plan or permanent zoning regulations. Such temporary regulations are effective for one year and may be extended once for an additional year. A recent court decision has held that the full notice and hearing procedures described above also apply to interim zoning.

33.0301. *Board of Adjustments.* The board of commissioners must provide for the appointment of a board of adjustment to hear appeals and grant variances from the zoning regulations. The functions of the county board of adjustments are similar to those of the city board of adjustments. (33.0203)

33.0400. County Planning and Zoning Districts (16-4101 through 4107, R.C.M. 1947) In unincorporated areas which are not covered by county zoning regulations, special zoning districts may be established. On petition of 60% of the resident freeholders of an area (which must be at least 40 acres in size), the board of county commissioners may establish a planning and zoning district and appoint a planning and zoning commission which consists of three county commissioners, the county surveyor, and the county assessor. The commission may employ staff, and its operations may be funded by a levy of no more than one mill on property in the district. Such a district may not include areas zoned by a municipality under Title 11, Chapter 27. (33.0200)

The planning and zoning commission is empowered to adopt a development pattern for the district which may include regulations for the erection and maintenance of buildings, carrying on of trades and industries, size of buildings, area of yards, future land use patterns, and the issuance of construction permits. The regulations may not hinder the use of lands for grazing, horticulture, agriculture or timber production. Existing non-conforming uses must be allowed to continue. The board of county commissioners may adopt planning and zoning district boundaries and regulations after publication of notice and a public hearing, and may grant variances from the regulations in hardship cases.

The planning and zoning commission may propose regulations and procedures, which may be adopted by the board of county commissioners, for appeals from decisions made under zoning regulations. All decisions of the planning and zoning commission or the board of county commissioners may be appealed to district court within 30 days.

Agency Programs

33A.0000. Planning. (The Planning Division of the Department of Community Affairs is the state agency with responsibility for assisting local planning efforts. The following narrative was prepared by the Planning Division as part of an application for a federal grant from the Department of Housing and Urban Development under Section 701 of the Housing Act of 1954.)

Planning activities in Montana continue to increase, particularly in smaller jurisdictions, with the result that all but six of Montana's 56 counties now have countywide planning boards, and 56 of the 58 communities over 1,000 population are represented on a planning board. Much of this increase can be attributed to the policy of the Division of Planning to initiate continuous planning programs carried out by local full time staff. Since resources of an individual jurisdiction are often insufficient to maintain an ongoing program, the Division of Planning will continue to use the majority of the HUD 701 money available for local and nonmetropolitan recipients to encourage combinations of local units of government to jointly support staffs to maintain continuous planning programs.

Montana's multi-county district program in the past has not proceeded at the rate anticipated at the time of issuance of Executive Order 2-71 which establishes multi-county districts. Recently, good progress has been made, with a total of four District Councils organized. The objectives of that Executive Order are:

—To enable the use, by all state and federal agencies, of a common set of districts for planning, administration, and coordination of programs at sub-state levels;

—To provide a consistent area framework for the gathering, processing, and analzying of planning and administrative information and data;

—To eliminate or reduce overlap, duplication and competition between various levels of government, and thus facilitate the most effective use of the state's resources;

—To provide a strengthened role for county and municipal officials in the utilization of state and federal programs in their communities.

A review of the criteria for designation as a district council has been undertaken to meet the changing needs of Montana's local governments. These new criteria represent a realistic approach to current situations, and are critical if Executive Order 2-71 is to be effectively implemented.

33A.0001. Local Planning Assistance Program. The Planning Division of the Department of Community Affairs encourages and aids comprehensive planning at the sub-state level, provides technical assistance and seeks and administers federal planning funds (82-3702(7),(8), 82-3705.1 R.C.M. 1947). In providing technical assistance, staff members work on a scheduled basis with assigned planning boards and local elected officials, monitor local 701 contracts, and frequently perform direct technical planning services. Pursuant to 11-3862(11) and 11-3863(2) R.C.M. 1947, the Bureau administers rules (MAC 22-2.4B(1)-S400 through MAC 22-2.4B(30)-S4100) which provide minimum surveying requirements and minimum contents of local subdivision regulations. The Bureau also reviews all subdivision plats and provides for other public agency review as required by 11-3863(2) R.C.M. 1947. A major portion of the Bureau's total effort consists of providing answers to technical and legal questions concerning planning, zoning, and subdivision regulation. Section 82-3710(1) R.C.M. 1947 requires the department to administer that portion of the coal severance tax earmarked for county planning and that responsibility has also been assigned to the Planning Division.

In response to the general charge to aid and assist local planning, the Local Planning Assistance Bureau also prepares, publishes and disseminates technical papers, manuals and model regulations pertaining to planning, zoning and subdivision regulation.

33A.0002. Non-Metro Planning Assistance. This program, conducted by the Planning Division of the Department of Community Affairs, has similar objectives and elements to the local assistance program described in 33A.0001. However, the emphasis of this program is on promoting intergovernmental cooperation, and encouraging multi-county approaches to problem solving.

34.0000 SUBDIVISIONS

Subdivision review is conducted jointly by local and state agencies. Minimum guidelines and regulations for subdivision review have been established by the Department of Community Affairs. Primary responsibility lies with the local governing body: city council or county commission. Planning boards are consulted in master planning areas. Review of major subdivisions includes preparation of an environmental assessment, a public hearing, and a finding that the subdivision is in the public interest. Summary procedures are available for small subdivisions. Before final subdivision plats can be filed, sanitary restrictions must be lifted by the Department of Health and Environmental Sciences. The Department's review of major subdivisions may require preparation of an environmental impact statement.

Advertising and promotional activities by developers are regulated by the Board of Real Estate. Truth-in-advertising requirements and special procedures for out-of-state sales may apply.

34.0001. Contents **Section**

34.0002. See Also:

34.0003. Agency Programs:

34.0101 Subdivision & Platting Act (11-3859 through 3879, R.C.M. 1947; Regulations: MAC 22-2.4B(1)-S410 through 2.4B(30)-S1400) *Purpose.* The purposes of this act are to prevent overcrowding and congestion in the streets; to provide adequate light and air, utilities, parks, and recreational facilities; to encourage development in harmony with the natural environment; to make approval of subdivisions contingent on a written finding of compatibility with the public interest; and to provide uniform surveying and monumentation standards. Regulations adopted under this act may provide for the orderly development of the jurisdictional area; coordination of the system of roads and streets; dedication of parks and easements; provision of open spaces, light, recreational, transportation, water, drainage and sanitary facilities; and avoidance of congestion and environmental degradation.

34.0102. *Application.* All divisions of land which create a parcel of fewer than twenty acres must be surveyed and platted in accordance with the act. No transfer of title may be filed until a certificate of survey or subdivision plat is filed with the county clerk. (An exception is allowed for parcels acquired by the state for highway construction or maintenance.) The review requirements of this act do not apply to subdivisions resulting from relocation of common boundaries; sales to immediate family members; sales which include a covenant running with the land which provides for exclusively agricultural use of the land; "occasional sales"; subdivisions resulting from court orders, mortgages, or severance of oil, gas or water interests from surface ownership; creation of cemetery lots; or lease or rental for farming or agricultural purposes. The Department of Community Affairs is authorized to adopt regulations establishing minimum requirements for locally adopted regulations. The Department's regulations include interpretations of the exemptions listed above. Although subdivision review does not apply in the above situations, the certification of survey requirements do apply. Department regulations include minimum survey and monumentation standards.

34.0103. *Adoption of Regulations.* Local governing bodies are required to adopt subdivision regulations following publication of notice and public hearings. The Department of Community Affairs has adopted minimum requirements for such regulations, including content of environmental assessments,

procedures for planned unit developments, flood hazard requirements, and regulations for mobile home parks and condominiums. Regulations must provide for dedication of a fraction of the tract for public park use. Cash payments may be accepted in lieu of park dedication in appropriate cases. The park dedication requirements may be waived by the local governing body if other arrangements are made which assure permanent open space will be provided: e.g., all parcels are five acres or more and covenants prohibit future resubdivision; or a property owner's association is formed and is given parkland by the developer. If local regulations have not been adopted by July, 1974, the Department's regulations will apply.

34.0104. *Procedures.* The developer submits his preliminary plat to the appropriate local governing body. (If a planned unit development is contemplated, the developer should recieve PUD designation from the governing body prior to submission of the preliminary plat). A municipality may have subdivision review authority over adjacent unincorporated territories until such time as the county adopts zoning regulations for such areas.

The governing body of a city or county with a planning board or master plan must seek the advice of the planning board on all matters relating to subdivision approval, and may require compliance of subdivision plats with the master plan. Plats are submitted to the planning board, which makes recommendations to the governing body, but the governing body is the final authority. Copies of the plat are also sent to appropriate state agencies for review, but local approval is not contingent on state review.

An environmental assessment prepared by the developer must accompany the preliminary plat. The assessment must contain a description of hydrology, topology, vegetation, wildlife, and soils, and a community impact report describing the demands the development will make on local services (fire, police, roads, etc.) The governing body reviews recommendations of the planning board with respect to compliance with the master plan and other regulations, determines whether waiver of the park dedication is appropriate, and after notice and a public hearing, makes its final decision. Action must be taken within 60 days of receipt of the preliminary plat. The basis for the governing body's decision, after reviewing the plat, the environmental assessment, comments at the hearing, and the planning board's recommendations, is whether the subdivision would be in the public interest. In making this determination, the governing body must consider the need for the project, public opinion, and effects on agriculture, local services, taxation, the natural environment, wildlife, and public health and safety.

The preliminary plat may be approved for one year, and the governing body may require a bond to guarantee completion of improvements called for before the final plat will be approved. The preliminary plat approval may be conditioned on the completion of such improvements or revisions, but once conditional approval is given, no further conditions may be imposed. Sales contracts for conveyance of parcels within the tract may be entered into, but only if all purchase monies are paid into an escrow account which is released only after approval of the final plat. The final plat will be approved by the governing body if it is in conformance with the conditions imposed on the preliminary plat. A final plat may not be filed with the county clerk until the State Department of Health has lifted all sanitary restrictions. (18.0500)

34.0105. *Summary Review.* Summary review procedures are available in certain situations. If the subdivision is in compliance with a master plan and zoning regulations, it is deemed to be in the public interest and is exempt from the environmental assessment requirement. The development may also be exempted from all or part of the environmental assessment requirements if it contains fewer than ten parcels and less than twenty acres. Tracts with five or fewer parcels are eligible for special expedited procedures: the first such subdivision from a given tract must be acted on by the governing body within 35 days, and a public hearing and environmental assessment are not necessary. Subsequent subdivisions of five or fewer parcels from the same tract may also be subject to summary proceedings if they are approved by the Department of Health, but the governing body may require a hearing on part or all of the environmental assessment if it sees fit.

34.0201. Foreign Land Sales Act. (67-2101 through 2136, R.C.M. 1947; Regulations: MAC 40-3.98(6)-S9880) This act provides protection to potential purchasers of subdivision parcels and applies to subdivisions of five or more parcels which are offered as part of a common promotional advertising scheme, or are offered for sale or lease outside of Montana. The act is administrated by the Board of Real Estate. The Board has the authority to adopt rules including advertising standards, provisions for escrow and trust agreements, and application procedures. The Board may seek injunctions to enforce compliance with the act, and may intervene in lawsuits involving subdivided lands. The Board may make all necessary investigations both inside and outside the state, and may hold hearings, subpoena witnesses and documents, administer oaths, etc. The Board may exempt subdivisions of twenty-five or fewer parcels if the promotional advertisements are directed primarily at the local community.

34.0202 *Out of-State Sales.* A seller of subdivided land must notify the Board of Real Estate of his intention to make offers outside the state, and must submit a $50 filing fee with the Board. If the Board deems it necessary, it may require a questionnaire to be filled out, and an additional $100 fee submitted for processing of the questionnaire. The Board may conduct whatever investigations of the subdivision and sales records it deems necessary, and will require provisions for the protection of purchasers: escrow agreements, titles held in trust pending completion of investigation, and posting of performance bonds. The Board may order the seller to discontinue his sales if any violations in the law or regulations are detected.

34.0203. *Truth-in-advertising.* When five or more parcels of subdivided land are offered as part of a common promotional advertising plan, an additional registration fee of $500 is required. Lands which are located outside of the state must be registered before offers for sale are made in the state. A public offering statement must be provided to potential purchasers describing the land and revealing all material circumstances relating to the land. (e.g. encumbrances, easements)

The registration application submitted to the Board of Real Estate must include a description of the land; a list of other states where the land is registered; copies of all encumbrances, easements and zoning regulations affecting the land; a description of the seller;s promotional plan; and a copy of the public offering statement. The Board will review the application to assure that there are no misleading promotional plans, and that all requirements of the act are satisfied. The Board must accept or reject the application within 90 days. If it is rejected, the applicant may request a hearing before the Board. If the application is accepted, the subdivision will be registered and a bond will be filed with the Board to assure compliance with the law and to protect purchasers. The seller must submit annual reports to the Board describing sales and promotional activities.

If after an investigatory hearing the Board discovers violations of provisions of the act, instances of false or deceptive advertising, substantial changes in development plans subsequent to registration with the Board, or sale of unregistered lands, the Board may issue a cease and desist order. In an emergency situation, the Board may issue a temporary cease and desist order effective immediately, and provide the opportunity for a hearing within 20 days. As a result of such violations, registration may be revoked, penalties of up to $5000 may be assessed, prison sentences may be imposed, and purchasers of land may recover their money, plus interest.

Agency Programs

34A.0101. Subdivision Review. All counties have adopted subdivision regulations. The Planning Division of the Department of Community Affairs assists local governments and planning boards in enforcing subdivision regulations, providing technical review of subdivisions, monitoring current enforcement of the law, and determining the social, economic, and environmental effects of subdivision activities.

35.0000. SPECIAL LAND USE RESTRICTIONS

This section describes special land use restrictions which may be imposed in areas requiring special protection or regulation.

Local authorities must impose special restrictions on land use activities in the vicinity of airports.

Special regulations also apply in floodways and floodplains. Such areas are designated by the Board of Natural Resources and Conservation, and minimum regulations are established by the Department of Natural Resources and Conservation, but primary enforcement and permit responsibility lies with the local authorities.

Lake shores also receive special protection. Land use regulations and permit procedures on or near lake shores may be adopted by local authorities, or by the Department of Natural Resources by request of the residents.

Highway right-of-ways are also subject to special restrictions on commercial enterprises and outdoor advertising structures.

In addition, special land use restrictions are discussed in other sections relating to activities in open space and natural areas, along streams and stream beds, in forested areas, and in soil and water conservation districts where land use regulations have been adopted by the district supervisors.

35.0001. Contents.

35.0002. See Also:

35.0003. Agency Programs:

35.0101. Airport Zoning (1-701 through 709, R.C.M. 1947) The purpose of this law is to eliminate obstructions of air space near publicly owned airports. For this reason, the height of structures near public airports may be regulated by the governing body which owns or operates the airport. Regulations must be designed to take into consideration the safe ascent, descent and operation of aircraft near airports, and the operation and maintenance of lights, markers and other navigational aids. Permits are required for building construction or crop cultivation within a two-mile radius of public landing fields. No variances from the height limits are allowed. The governing body has eminent domain power to acquire and remove structures which exceed the limits. No lights may be maintained within the restricted zone which might interfere with airport operations. The governing body may enforce this law by litigation or injunction. Violation of the law is a misdemeanor punishable by fine and imprisonment.

35.0102. *Airport Hazard Zones.* (1-710 through 723, R.C.M. 1947) This law applies to areas surrounding all landing fields, public or private. It declares "airport hazards" (obstructions of airspace near a landing field) to be public nuisances which may be regulated by exercise of the police power without

compensation. Regulation is accomplished through zoning procedures.

Any political subdivision containing an airport hazard area may adopt and enforce airport zoning regulations specifying land uses permitted in such areas and regulating the height of structures and trees. A joint zoning board may be formed if the airport lies within one political subdivision, but the hazard areas extend into other jurisdictions. Airport zoning regulations may become part of a comprehensive zoning ordinance and enforced as part of it. If there are conflicts with other zoning regulations, the most stringent apply.

The governing body appoints an airport zoning commission (which may be the city or city-county planning board) to recommend boundaries and regulations and hold public hearings before submitting a report to the governing body. Airport zoning regulations may then be adopted following the procedures set out in Title 11, Chapter 27 (33.0200). The regulations must be reasonably related to airport safety, and must establish a board of adjustments as required in section 11-2720 (33.0203). The regulations cannot require the removal of existing structures, but the governing body may acquire air rights or other property interests by eminent domain if hazards cannot be removed by regulation alone. The regulations may establish a permit system for construction in airport hazard zones. Permits must be obtained for alteration of non-conforming uses which will increase the height of structures, but will not be granted if such alteration would increase the hazard. Property owners may apply to the board of adjustments for variances in case of special hardship and if the variance would not be contrary to the public interest. The governing body may require the installation of markers and lights (at its own expense) as a condition of granting a permit or variance.

The governing body may enforce its regulations by injunction. Violations are misdemeanors, punishable by fine or imprisonment. If application of the regulations to a particular structure is deemed a compensable taking, this will not invalidate the regulations with respect to other structures.

35.0103. *Airport Influence Areas* (1-724 through 739, R.C.M. 1947) Local governments with airports included on the National Airport System are required to adopt noise, height and land use regulations for land in the vicinity of their airports. The land to be restricted is to be determined by Federal Aviation Administration rules and guidelines and by locally developed criteria.

The law is designed to protect airplane users, people living near airports and land located near airports.

35.0200. Floodway Management (89-3501 through 3515, R.C.M., 1947; Regulations: MAC 36-2.14B(1)S1400 through 2.14B(22)-S14050) *Purpose and Policy.* The Legislature has declared that the public interest requires the management and regulation of flood-prone lands to prevent and alleviate threats to life and property. It is the policy of the law:

—to guide development of floodways;

—to recognize the right and the need of watercourses to periodically overflow;

—to provide state coordination of floodway management programs and technical assistance to local governing bodies;

—to coordinate state, federal and local management activities;

—to encourage local adoption of land-use regulations;

—to authorize the Department of Natural Resources and Conservation to carry out a comprehensive floodway management program.

More specific objectives are:

—to restrict land uses which are dangerous in time of flood;

—to require vulnerable uses to be equipped with flood protection measures;

—to develop information to identify flood hazard areas;

—to develop regulations which balance the greatest public good with the least private injury.

This law applies to the regulation of obstructions only where the stream drainage upstream of the obstruction covers more than twenty-five square miles in area.

35.0201. *Duties of the Department.* The Department of Natural Resources is directed to conduct a program for delineation of floodways and floodplains in all drainages of the state. Before an area is designated by the Board of Natural Resources and Conservation, the Department consults with the local governing body and holds a public hearing. After designation of an area by the Board, the Department furnishes maps, data, and suggested minimum standards to the local governing body. The local governing body then has six months to adopt land use regulations for the delineated floodway and floodplain. These regulations must be approved by the Board. If local regulations are not adopted in the required time, the Department of Natural Resources will enforce its minimum standards until such local regulations are adopted and approved. If the Board determines after a hearing that the local governing body is failing to adequately enforce its regulations, the Board may suspend the local body's authority, and the Department of Natural Resources will enforce the regulations until such time as the local authorities can demonstrate their ability to do so. In the following discussion, the term "administering agency" will refer to either the local governing body or the Department, depending on which is exercising enforcement authority.

In addition to the above responsibilities, the Department may also, at its own cost, remove obstructions caused by fallen trees, debris, etc. Letislative appropriations to the floodway obstruction removal fund pay for such activities.

35.0202. *Minimum Requirements.* An artificial obstruction or non-conforming use in a delineated floodway or floodplain is a public nuisance unless a permit is obtained from the administering agency. It is unlawful to establish such an obstruction or use without a permit, and alteration of an existing obstruction or use requires written approval.

Certain open-space uses are allowed without a permit if not prohibited by other ordinances or laws and if they do not require permenent structures: agricultural activities, loading and parking areas, emergency landing strips, recreation areas, forestry activities, lawns and gardens, livestock supply wells, irrigation works, and rail or wire fences.

Permits are required, but **shall** be granted (if not prohibited by other ordinances or laws) in floodplains but outside of floodways for uses which are permitted in floodways, and for structures meeting minimum standards with respect to floodproofing and elevation. (Floodproofing standards cover usch things as electrical, heating, plumbing, water and sewer systems.) Uses requiring permits include railroads, streets, utility lines, domestic water supplies (if precautions are taken against pollution by flood waters), and campgrounds. Water diversions under the Water Use Act (Title 89, Chapter 8) (58.0401) will be checked to see how they will affect flood flow. Flood control works subject to permits include levees, rip rap, and dams.

Uses which are prohibited in floodways include places of assembly or permanent use by people, excavations which would divert or obstruct natural flood flow, and objects subject to flotation.

35.0203. *Permits.* Permits may be granted by the administering agency for obstructions and non-conforming uses which would otherwise violate the minimum requirements described above. In passing on permit applications, the administering agency will consider danger to life and property from back-up water, danger of the obstruction/use being swept downstream, availability of alternate locations, construction methods which may lessen dangers, the permanence of the obstruction/use, and anticipated development of the area which may be affected by the obstruction/use. The administering agency may impose reasonable conditions on the permit. Action must be taken on the application within 60 days; however, an environmental impact statement may be required on permit applications to the Department of Natural Resources. Variances granted by the local governing body must be approved by the Department. The permit requirement of this act is in addition to any other regulations or requirements.

35.0204. *Enforcement.* The administering agency may enter private lands to make inspections to assure compliance with the law. The Board of Natural Resources may order the removal of non-exempt obstructions. If the order is not carried out by the property owner, the Department may remove the obstruction at the property owner's expense. Such orders of the Board become effective after a hearing, and may be appealed to the district court. Violations of the law constitute a misdemeanor punishable by fine and imprisonment. A wrongful failure to comply with this act creates a rebuttable presumption that the obstruction or non-conforming use was the proximate cause of flood-related damage. However, lawsuits against the state are not allowed for flood damage caused by permitted obstructions or uses.

35.0300. Protection of Lake Areas. (89-3701 through 3712, R.C.M. 1947) *Policy.* Natural lakes are high in scenic resource values, and the conservation and protection of such lakes is important to lakeshore property owners and to the state. Local governing bodies should play the primary role in establishing policies for lakeshore protection. The purpose of this act is to confer power on local authorities to do so. The law applies to natural lakes which cover one hundred sixty acres or more for at least half the year. Local authorities may choose to regulate lakes as small as 20 acres.

35.0301. *Adoption of Regulations.* Regulations must be designed to control activities which alter the course, current or cross-sectional area of lakes or shorelines. All local governing bodies must adopt regulations in the form of criteria for the issuance of permits. Recommendations will be obtained from local planning boards, if any. The regulations must favor issuance of the permit if the proposed action will not diminish water quality, fish or wildlife habitat; interfere with navigation or recreation; create a public nuisance; or create a discordant visual impact. These are minimum requirements which may be strengthened at the discretion of the local governing body. The governing body may provide summary procedures for proposals which would have minimal impacts, and may adopt varying regulations for different lakes within its jurisdiction. If more than one governing body has jurisdiction over a lake, coordinated agreements are encouraged for joint regulation of the lake. If local authorities have not adopted regulations, five lakeshore property owners, or 30% of the owners of shore property (whichever number is smaller) may petition the Department of Natural Resources to adopt and enforce regulations.

35.0302. *Permit Procedures.* Any person wishing to do work which would alter the course, current, or cross-sectional area of a lake or its shore must obtain a permit from the local authority which administers the Subdivision and Platting Act in the area (34.0100). Examples of projects requiring permits include channels, ditches, dredging, lagooning, filling, construction of breakwaters, wharves, docks. A permit application fee of $10 is required. The governing body will seek recommendations from the planning board with respect to compliance with the permit criteria. If there is no planning board, the governing body will do this review itself. The governing body must make its decision within 90 days of receipt of the application. If the governing body proposes to grant a variance from the regulations, it must first prepare an environmental impact statement and hold a public hearing. If work is done without a permit, the governing body may require the owner to restore the lake to its prior condition.

35.0303. *Enforcement and Court Review.* Violation of the law constitutes a misdemeanor punishable by fine and imprisonment. The district court may hear petitions of the governing body requesting restoration of the lake to its prior condition as noted above. It may also hear the petition of any interested person for review of a governing body's final decision on a permit application or on adoption of regulations.

35.0400. Highway Right-of-Way (32-4310, R.C.M. 1947) No commercial enterprise or structure is allowed on the publicly owned right-of-way of a controlled access highway or on any publicly owned or leased land used in connection with such a highway. (See Outdoor Advertising; 21.0202)

Agency Programs

35A.0200. Floodway Management. As of October, 1977, 24 different study areas totaling about 1150 stream miles had been established as designated floodplains by the Board of Natural Resources and Conservation.

In the fiscal year ending June, 1976, the Board designated 7 floodplains totaling 133 stream miles. The Department of Natural Resources assisted in the adoption of local floodplain regulations by Park and Granite counties. The Department began enforcement of floodplain regulations on the Bitterroot River in Ravalli County, and on Sand Coulee Creek and the Sun River in Cascade County. Floodplain delineation studies were initiated for Big Spring Creek in Fergus County, Rattlesnake Creek in Missoula County, and Clark Fork River in Granite County.

In the fiscal year ending June, 1977, the Board designated seven floodplains totaling 755 stream miles. The Department ended its enforcement of floodplain regulations on the Bitterroot River in Ravalli County. However, enforcement continues on Sand Coulee Creek and the Sun River. Floodplain delineation studies were initiated for Blue Creek and Duck Creek in Yellowstone County, all major streams in Fergus, Silver Bow and Carbon counties, and the Yellowstone River through Miles City.

35A.0201. National Flood Insurance Program. The primary goal of the National Flood Insurance Program is the same as the state floodplain management program—i.e., sound floodplain land-use regulation. In addition, however, the Flood Insurance Program provides low-cost, subsidized flood insurance to those who are already located in a flood-prone area. Thus, the insurance serves to encourage land-use regulation and, at the same time, to indemnify flood losses to existing flood-prone property.

The Flood Insurance Program is administered by the Department of Housing and Urban Development (HUD). One of the key provisions of the Flood Insurance Act requires HUD to notify and furnish a preliminary flood hazard map to all flood-prone communities in the nation. Upon receipt of this notification, the affected community has one year to adopt some minimal land-use regulations and to apply for participation in the Insurance Program.

In October, 1977, President Carter signed legislation amending the Flood Insurance Program. Federally insured banks and savings and loan associations may now make loans in a community which is not participating in the Flood Insurance Program by a prescribed date. However, federal disaster aid will not be available to such purchasers in the event of flood disaster. (Direct federal assistance programs such as FHA and VA mortgage guarantees are still prohibited from operating in non-participating communities.)

After a community has entered the Flood Insurance Program, HUD contracts with an agency or private consultant to perform a detailed study of the community's flood hazard. Following this detailed study, the community's floodplain regulations must be upgraded, and a second layer of flood insurance is made available. The second layer of flood insurance is obtainable only at actuarial rates, and any new construction in the floodplain can buy insurance only at actuarial rates.

Many communities in Montana are affected by both the state floodplain law and the National Flood

35A.0201.

Insurance Program. In addition, many Montana communities not presently affected by the state law are obligated to enter the F.I. program within the next year. During the fiscal year ending June, 1976, the Department of Natural Resources and Conservation helped 18 new communities become eligible for the National Flood Insurance Program, and in fiscal year 1977, 12 new communities were added, making a total of 65 eligible communities. Flood insurance studies were initiated in Cascade, Gallatin, Lewis and Clark, Flathead, Lincoln, Silver Bow, Carbon, and Yellowstone counties, and Miles City.

36.0000 TAXATION

Taxation of real property can provide an effective incentive to desirable land use patterns. For example, lands on which conservation easements have been granted will be taxed according to the reduced use levels of the land. The so-called "Greenbelt Act" is designed to encourage the continuation of agricultural land in agricultural use by allowing lower tax rates on such land than might otherwise be assessed. The Montana Economic Land Development Act (MELDA) provides a mechanism by which local officials can encourage development consistent with comprehensive master plans by taxing land in accordance with both use and location within zoning districts. MELDA becomes operational only by choice of the voters in a given community.

36.0001. Contents. **Section**

36.0002. See Also:

36.0101 Greenbelt Act (84-437.1 through 437.17, R.C.M. 1947; Regulations: MAC 42-2.22(1)-S2250 *Policy*. It is the legislative intent to relieve agricultural land of excessive tax burdens by assessing such land at a value exclusive of urban influences or speculative purposes. Normally, land is assessed at fair market value, but under this act agricultural land is assessed only according to its value for agricultural production. The regulations include schedules of valuations of agricultural land determined according to productivity.

36.0102. *Requirements.* To qualify as agricultural land under this act, the land must **either** (1) consist of at least five contiguous acres (including buildings, structures, ditches, etc. which are related to agricultural operations) and be actively devoted to agricultural use, which means: used to produce crops, used for grazing, or in a cropland retirement program; **or** (2) agriculturally produce for sale or home consumption an equivalent of at least 15% of the owner's annual gross income.

36.0103. *Roll-back.* If a landowner has taken advantage of this act and the land is then converted to non-agricultural use, a back tax will be collected totalling the difference over the preceding four years between what was collected under this act and what would have been collected under normal assessment policies. A change of ownership does not affect taxability — only a change of use. Change of use of part of the land will not affect the taxability of the remainder if the remainder still qualifies. The Department of Revenue may make its own determination that land should be reclassified to non-agricultural status. The owner will be notified of such a decision and will have the opportunity to protest before the State Tax Appeal Board.

36.0201. Montana Economic Land Development Act. (84-7501 through 7521.1, R.C.M. 1947) *Policy*. In recognition of the problems faced by the state relating to urban development and growth, the Legislature declared that the state should develop a land use policy:

—in which local decision making and control are fundamental;

—in which tax incentives are the primary mechanisms;

—which does not impede economic progress, but meets social and economic challenges;

—which adopts land use patterns and procedures supplementary to and consistent with zoning provisions adopted under Title 11, Chapter 27, and Title 16, Chapters 41 and 47. (33.0000 *et seq.*).

Specific goals include:

—encouragement of urban growth with greater densities in already built-up areas and control of urban sprawl;

—guiding industrial and commercial development into patterns compatible with the total development pattern of the area;

—control and direction of development occurring on the local level within existing land use standards and classifications.

36.0202. *Procedures.* The law applies only to class 1 and 2 cities and only within the city limits. Class 1 and 2 cities which are already planned and zoned under the provisions of the planning and zoning laws (33.0000) must adopt the provisions of this act if an initiative petition is signed by 15% of the voters and approved by a majority of votes cast at the next general or special election.

If the procedures are adopted, the city council will identify and classify lands within the city limits as residential, commercial or industrial. Classifications will depend on current use patterns and "highest and best use."

Landowners may petition for a change in the classification boundaries. Within 10 days of receipt of a petition, the city council sends copies to local planning boards and appropriate state agencies. Between 60 and 120 days after receipt of the petition, the council will hold a public hearing. The petitioner must show that the area which is the subject of the petition is needed for a use other than that for which it has been classified, and that the present classification is no longer suitable because of changing conditions or outside influences. The council must act on the petition within 120 days of its receipt. Landowners may also petition for re-subclassification within a given classification.

36.0203. *How it works.* In general, the law operates through a system of tax benefits and penalties which encourage construction and remodeling of uses which are compatible with the classification of the area in which they are located, and discourage nonconforming uses. The Department of Community Affairs is directed to adopt regulations, in consultation with local governing bodies, for the administration of the law. The primary residence of a person over 62 years old is exempt from the provisions of this law. Existing nonconforming uses are also taxed without regard to this law until remodelled or changed to a different use.

36.0204. *Residential Areas.* New residential construction receives a 10% tax break for the first ten years (i.e. it is assessed at 10% below its normal assessment valuation) if constructed on land designated for residential use, and a 25% tax penalty for ten years if constructed on land designated for other use. In either case, assessments are adjusted to normal in equal increments over the second ten years. Special tax breaks are available for high density multi-family residences if built in the central business district, the urban core area, or adjacent to a neighborhood commercial area. Special tax breaks are also available for planned urban developments (PUDs) constructed within the "civic band" (that area between the central core area and the city limits; the core area includes and extends up to three blocks beyond the central business district.)

36.0205. *Commercial Areas.* Unimproved land in areas designated for commercial use which remain vacant five years after the effective date of this act will suffer tax penalties of up to 50%. Commercial construction and expansion is exempt from taxation during construction and receives tax breaks for the first few years if located in areas designated for commercial use; it is taxed during construction and receives tax penalties if located in non-commercial areas. The size of the bonuses or penalties and the length of time applied depend on the area (central core, civic band, etc.) and type of use (e.g. neighborhood or regional commercial area).

36.0206. *Industrial Areas.* Bonuses of up to 50% per year for ten years and penalties of up to 200% per year for ten years are applied to industrial construction and expansion depending on the designation of the land where the construction occurs, and on the number of environmental criteria satisfied. These criteria include: the burden on existing public services such as street, schools, fire and police; availability of an adequate water supply; compliance with air and water pollution standards; adequate sewage and solid waste disposal facilities.

36.0207. *Remodeling.* The law also encourages the remodeling and rehabilitation of existing structures, and penalizes the failure to make such improvements. Tax breaks are applied to the increase in taxable value resulting from remodeling. If no remodeling is done for five years which increases the value of the property by at least 2½%, tax penalties are applied. The local governing body must waive the requirements of this section unless it is shown that lack of regular maintenance has caused the property to depreciate in value.

10.0000 FACILITIES AND SERVICES

This section presents the laws and procedures governing the provision of essential services to the human environment: energy, transportation, and utilities. It is through the structure of these service systems that the natural resources derived from the physical environment are delivered to or utilized by society. In addition, energy, transportation and utility policies are inextricably interwoven with land use planning policies in general. The nature and availability of transportation and utilities, for example, will obviously be a significant input into any comprehensive development plan for an area.

In this section, state and local maintenance and regulation of the public transportation systems — air, rail, and highway — are described. The Public Service Commission is responsible for the regulation of railroads and of common carriers on the state's highways. State transportation planning is heavily influenced by federal policies and programs for planning, funding, and regulation of traffic and commerce.

The Public Service Commission also has major responsibility for the regulation of utility systems: gas, water, electricity, sewers, etc. A variety of organizational and funding mechanisms are available to local governments for establishing utility and transportation systems.

Because of the growing importance of developing a state policy on energy, this topic is given separate treatment. The Major Facility Siting Act regulates the siting, construction, and operation of large energy generation and transmission facilities. A variety of measures have been enacted to encourage conservation of energy and development of renewable energy sources. Montana is party to the Western States Nuclear Compact which encourages the development of nuclear technology.

10.0001. Contents.

10.0002. See also:

Planning and Zoning	33.0000

41.0000 ENERGY

In a society as energy dependent as ours, it is hard to find any aspect of human activity, or government involvement in such activity, which does not influence or is not influenced by energy policies and programs. The Montana Environmental Policy Act calls attention to the need for conservation of natural resources, including energy resources. The energy impact of a proposed action is one of the factors which should be discussed in an environmental impact statement prepared pursuant to MEPA. The state's solid waste management plan has as one of its goals the recovery of energy from solid waste. The Public Service Commission has major impact on energy policies as it presides over gas and electric utilities, as does the Board of Land Commissioners in its management of state-owned lands and resources. Laws regulating the siting and operation of coal and uranium mines and oil and gas wells, and the reclamation of such lands, obviously play an important role in the state's energy policy. All of these activities are described in other sections.

This section describes the Major Facility Siting Act, under which major energy generation and transmission facilities are licensed. A comprehensive system of studies, hearings, and long-range planning are involved in approving the siting, construction, and operation of such facilities. Primary responsibility lies with the Department of Natural Resources and Conservation, with support from the Departments of Health, Fish & Game, Public Service Regulation, Highways, and Community Affairs. The final certification decision is made by the Board of Natural Resources.

A number of measures have recently been enacted to encourage the conservation of energy and the development of renewable energy sources: tax incentives, gas curtailment and conservation plans for utilities and major customers, home weatherization programs, conservation speed limits on highways, and revision of building codes to include conservation standards.

The 1977 Legislature enacted an emergency energy bill which gives the Governor special emergency powers in the event of energy supply alerts or emergencies.

The Department of Business Regulation regulates the sale and pricing of petroleum products.

Montana is party to the Western States Nuclear Compact which encourages the development of nuclear technology in this part of the country.

Gas and electric energy utilities are regulated by the Public Service Commission and by local governing bodies.

41.0001. Contents. **Section**

41.0002. See also:

Montana Environmental Policy Act	00.0200
Solid Waste	17.0000
Public Service Commission	46.0000 *et seq.*
State Land and Resource Policy	51.0000
Coal, Uranium and Geothermal Resources	54.0000
Oil and Gas Exploration	56.0000

41.0003. Agency Programs:

Montana Energy Office	41A.0000
Montana Energy Conservation Program	41A.0001
Montana Energy Data Program	41A.0002
Montana Fuel Allocation Program	41A.0003
Montana Energy Research Coordination Program	41A.0004
Montana Energy Research Information System	41A.0005
Montana Energy Policy Program	41A.0006
Facility Siting	41A.0100
Renewable Alternative Energy Program	41A.0200
Winterization	41A.0201

41.0101. Major Facility Siting Act (70-801 through 829, R.C.M. 1947; Regulations: MAC36-2.8(1)-S800 through 2.8(14)-S8050) *Policy.* This act provides for the comprehensive review of the siting and construction of major facilities engaged in the generation, distribution or conversion of energy. The goal is to maintain and improve a clean and healthful environment for future generations, to protect the environmental life support system from degradation, and to prevent the unreasonable depletion of natural resources. The Legislature has found that additional power conversion facilities may be required to meet increasing demands; that such facilities have major impacts on the environment, on population concentrations, and on the welfare of the citizens of the state; and that therefore it is necessary to insure that the location, construction and operation of such facilities will produce minimal adverse impacts. Such facilities must receive a certificate of environmental compatibility and public need from the Board of Natural Resources and Conservation.

41.0102. *Applicability.* The act applies to:

—facilities which can generate 50 megawatts of electricity (or additions thereto which cost more than $250,000);

—facilities which can produce 25 million cubic feet of natural gas per day (or major additions thereto);

—facilities which can produce 25,000 barrels of liquid hydrocarbon products per day (or major additions thereto);

—uranium enrichment facilities;

—facilities which can utilize, refine or convert 500,000 tons of coal per year;

—electric transmission lines with capacity of more than sixty-nine kilovolts or, if the line is ten miles or less, more than 230 kilovolts);

—facilities for the development and use of geothermal resources;

—facilities for underground *in situ* coal gasification;

—pipelines leading from or to a facility as defined above.

Oil and gas refineries and facilities under exclusive federal jurisdiction are exempt.

41.0103. *Application Procedures.* No one may commence to construct a facility without making application to the Board of Natural Resources and Conservation for a certificate of environmental compatibility and public need. Applications are submitted to the Department of Natural Resource and Conservation and must include a description of the facility and its proposed location with a discussion of alternative sites; a statement of the need for the facility with projections of future demands, efforts to promote energy conservation, and discussion of reasonable alternative energy sources; summaries of existing environmental studies; and the applicant's efforts to mitigate adverse impacts.

The Department has two weeks to notify the applicant whether the application is complete. An application fee is assessed based on the estimated cost of the facility. If the applicant submits a notice of intent to file an application 12 months in advance of actually filing, a 5% discount may be allowed on the filing fee. Notice of the application is published in the affected community.

On receipt of the completed application, the Department conducts a thorough study and evaluation and reports to the Board with recommendations. This report must be made within two years of receipt of the application (one year for transmission lines and pipelines of less than 30 miles). During this period, the

Departments of Health, Highways, Fish & Game, and Public Service Regulation also conduct studies (using portions of the fee money) and make reports to the Department of Natural Resources.

The Board of Natural Resources sets a hearing date within 120 days of the Department's report. Parties to the hearing may include the applicant, the Department, affected municipalities and their residents, and interested environmental organizations. The hearing is conducted under the contested case provisions of the Administrative Procedures Act, (82-4209 through 4217, R.C.M. 1947) and the burden is on the applicant to justify granting of the certificate.

The Board must make its decision within 90 days after the conclusion of the hearing. The certificate may not be granted unless the Board finds:

—that the facility represents the minimum adverse environmental impacts with respect to land use patterns, water resources and quality, air quality, solid waste disposal problems, radiation, and noise;

—that the facility is consistent with regional plans for expansion of utility grids;

—that the facility complies with applicable state and local laws and regulations;

—that the Department and Board of Health have certified that the facility will not violate state and federal air and water quality standards and implementation plans;

—that the facility serves the public interest, convenience and necessity and satisfies an identified need; (this finding refers only to public utilities.) In making this determination, the Board must consider need, environmental impacts, benefits to the applicant and to the state, the effects of resulting economic activity, and the effects on public health, safety and welfare.

The Board must issue a written opinion, and the certificate, if granted, must include an environmental evaluation statement discussing unavoidable adverse impacts, objections raised by other agencies, alternatives to the facility, a monitoring plan, and a statement of agreement by the applicant to abide by any conditions imposed. The Board may waive provisions if an emergency showing is made. Any party may appeal the Board's decision to district court.

Notwithstanding other laws, no other state or local agency may require any permits or other authorizations for construction or operation of a facility if certification has been granted under this act. However, the state air and water quality agencies retain their authority to determine compliance with and to enforce state and federal standards and implementation plans.

41.0104. *Long-range Plans.* Every public utility or other person contemplating the construction of a facility within the next ten years must file an annual long-range plan with the Department of Natural Resources showing:

—location, size and type of facility contemplated;

—description of efforts to involve environmental protection and land-use planning agencies in the planning of the facility;

—other efforts to mitigate environmental impacts;

—projections of the demands for the services to be provided by the proposed facility.

Such long-range plans must also be filed with the Environmental Quality Council, the Department of Health & Environmental Sciences, the Department of Highways, the Public Service Commission, the Department of State Lands, the Department of Community Affairs, and interested citizen groups. The Department of Natural Resources may begin its study and evaluation of any such facilities which are proposed for construction within five years.

41.0105. *Enforcement and Monitoring.* A certificate may be revoked for false statements in the application, for failure to maintain pollution control standards or to comply with the conditions imposed by the certificate, or for other violations of the law. The Board and Department of Natural Resources are responsible for monitoring the operation of facilities.

Any resident of the state may submit a written and sworn affidavit to a state employee charged with enforcing this law, notifying such employee of violations. If this does not result in enforcement by the state, the petitioner may seek a writ of mandamus in court to compel enforcement. Violations of the law carry penalties up to $10,000 for each day of violation. Knowing and wilful violations may result in imprisonment.

41.0106. *Moratorium.* The 1975 Legislative Assembly imposed a moratorium on the granting of certificates under this law pending submission of a long-range state energy conversion policy and plan by the Governor to the 1977 legislative session.

41.0200. Energy Conservation and Alternative Energy Sources. (84-7401 through 7415, R.C.M. 1947) In order to encourage the conservation of energy and the use of renewable energy sources, tax and other incentives are provided.

41.0201. *Conservation.* Deductions are allowed from gross income for expenditures for energy conservation improvements in buildings:

Principal Residence	Other Buildings
100% of first $1000	100% of 1st $2000
50% of 2nd $1000	50% of 2nd $2000
20% of 3rd $1000	20% of 3rd $2000
10% of 4th $1000	10% of 4th $2000

Applications for such tax treatment are made to the Department of Revenue, which may consult with the Departments of Natural Resources and Administration. Deductions may not be claimed for portions of expenses paid by state, federal or private grants. Tax savings may not be claimed by persons in the business of supplying gas or electric service.

A public utility may install energy conservation materials in a customer's home or business, and the customer may pay back the utility in installments added to the monthly utility bill. The utility may charge no more than 7% interest, but may claim the difference between interest received and the prevailing market rates as a credit against its electric energy producer's tax (Title 84, Chapter 16), or its corporation license tax (Title 84, Chapter 15).

41.0202. Renewable Energy Resources. An Alternative Energy Research & Development Account has been established and is funded by 2½% of the coal severance tax until December 31, 1979, and 5% of the coal tax thereafter. The Department of Natural Resources administers grants from this fund, and appoints an Alternative Energy Advisory Committee. Any person may apply to the Department for a grant to support research, development or demonstration of alternative energy systems. The project must be designed for completion within one year, and preference may be given to projects which have been approved for federal funding and require matching money, or to independent research centers. All information resulting from funded research will be public property. The Department will make a report to each legislative session on the conduct of the fund program.

A tax credit is allowed for installation of alternative energy systems in a principal residence before December 31, 1982: 10% of the first $1000 and 5% of the next $1000 of the costs of the system, less grants received, will be allowed against income tax liability (half these amounts if the federal government offers similar credits). Tax credit in excess of tax liability may be carried over for four years.

41.0203. Gas Energy Conservation (MAC 38-2.20(1)-S2000, 2010) Natural gas utilities and major natural gas consumers (over 50,000 mcf/yr) must submit conservation plans to the Public Service Commission aimed at improving the efficiency of energy usage. Plans will include detailed time tables and deadlines for installation or phase out of equipment and processes. Such deadlines will then become part of the PSC's rate tariff for that user.

A major customer who fails to file a satisfactory plan by September, 1975, or who fails to comply with a submitted plan is subject to a 10% curtailment in natural gas supply. Such curtailment may be ordered by the PSC following notice and hearing.

41.0204. Conservation Speed limit. (32-2144.1, R.C.M. 1947) National speed limits have been set at 55 m.p.h. to promote fuel conservation. Because of the long highway distances in Montana, the Legislature raised Montana's conservation speed limit to 65 m.p.h., to become effective as soon as it is determined that Montana's eligibility to receive federal highway funds will not be jeopardized thereby.

41.0205. Weatherization. (35-601 through 603, R.C.M. 1947) The Legislature has allocated $300,000 from the interest earnings of the coal tax trust fund (54.0701) to match federal funds available for home weatherization assistance to low-income people. No more than 5% of the total state and federal money may be used for administration of the program by the Department of Community Affairs. Half of the remaining money is allocated among the Governor's substate planning districts in proportion to the number of eligible households in each district, and half is allocated in proportion to the value of in-kind services contributed by local agencies and persons.

41.0206. State Building Code (69-2111, R.C.M. 1947; Ch. 173, Laws of 1977) The Department of Administration is directed to adopt rules for the inclusion of energy conservation standards in the state building code by March, 1978. Hearings will be held pursuant to the Administrative Procedures Act.

41.0301. Energy Emergency Planning. (Chapter 577, Laws of 1977) *Findings and Purpose* The Legislature has recognized that energy supplies are increasingly subject to shortages and supply disruptions, and that resulting energy emergencies may endanger public health and safety. It is therefore the intent of this act to establish planning and information gathering mechanisms, and to provide for exercise of emergency powers by the Governor in the case of an energy alert or emergency situation.

41.0302. *Energy Policy Committee; Duties of Governor.* A legislative energy policy committee is established, consisting of the leadership of both houses, to advise and consult with the Governor on all actions taken under this law. With the advice of the committee, it is the Governor's responsibility to develop provisions for the allocation, conservation and consumption of energy, giving consideration to supplying vital public services during an energy supply alert or emergency. The Governor must develop procedures for obtaining energy information from producers, suppliers, consumers, and public agencies, in order to assist him in determining the need for a declaration of energy supply alert or emergency. The Governor may request energy suppliers to submit curtailment plans, which he may review and approve. The Governor must seek to coordinate all plans

and procedures with any federal or regional plans in existence. The Governor may subpoena witnesses and records if necessary to obtain the required information.

41.0303. *Declaration of Alert or Emergency.* A supply alert lasts for 90 days and may be extended for 90-day periods. During an alert, the Governor may direct state and local officials and agencies to reduce energy consumption and to promote conservation and recycling.

When conditions exist which may threaten life, health or property, the Governor may declare an energy emergency, which lasts 14 days unless extended by a joint resolution of the Legislature. During an emergency, the Governor may implement programs for the mandatory allocation, production, curtailment, conservation, and consumption of energy. He may suspend or modify existing pollution control standards. Emergency actions should be coordinated with other states. Environmental impact statement requirements under the Montana Environmental Policy Act (00.0200) do not apply to emergency actions.

41.0100. Hydroelectric Sites on State Lands (81-1801 through 1806, R.C.M. 1947) The State Board of Land Commissioners is authorized to grant leases or licenses for the construction and operation of hydroelectric plants on state lands. Joint licenses may be granted with the federal government if part of the development will be on federally controlled lands.

On receipt of an application, the Board of Land Commissioners makes a preliminary examination as to the value of the site and the proposed development plans. If this preliminary evaluation indicates that further proceedings are justified, notice of the application is published for six weeks preceding a meeting of the Board at which the application and all competing bids are heard. The Board may reject any and all bids for the site. A bid must be accepted if (1) applicant offers to pay an adequate rental, (2) applicant is capable of carrying out the proposed development and providing adequate service to customers, and (3) applicant is ready and able to procede with the development without delay. All other factors being equal, a bid by a municipality will have preference. Lease terms are for no more than 50 years, and the lease may provide for amortization of the capital investment so that the state will become the eventual owner of the works.

41.0500. Western States Nuclear Compact (82-4401 through 4403, R.C.M. 1947) Montana is party to the Western States Nuclear Compact whose purpose is to recognize and encourage contributions to the economic development of the area by the proper employment of nuclear science and technology.

Contributions from member states fund the operations of the Western Interstate Nuclear Board which is authorized to:

—encourage interstate cooperation in nuclear development;

—encourage the development and use of nuclear technologies;

—analyze the situation in the western states with respect to the application of nuclear technology, and advise and consult with the federal government;

—collect and disseminate information;

—conduct or cooperate in training programs, demonstration and research projects;

—recommend changes in laws and regulations;

—formulate a regional plan for dealing with nuclear incidents.

41.0601. Petroleum Products Regulations (60-234 through 245, R.C.M. 1947; Regulations: MAC 8-2.10(6)-S1050) The Department of Business Regulation establishes standards and specifications for petroleum products based on nationally recognized standards. Petroleum dealers must obtain a license from the Department and annual fees are assessed on each pump, meter, and tank. The Department may investigate all dealer facilities and records. Meters and tanks must be calibrated and approved by the Department.

41.0602. *Discrimination in Petroleum Pricing* (60-401 through 407, R.C.M. 1947) A person selling petroleum products must charge the same prices throughout the state, after accounting for differences in transportation and other business costs, volume of sales, etc. Complaints of violations of this act may be filed with the Attorney General or County Attorney, who investigates the complaint and brings an action in court if appropriate. Dealer's licenses may be revoked for violations.

41.0700. Electric and Gas Utilities.

41.0701. Electric Energy Producer's License Tax. (84-1601 through 1611, R.C.M. 1947) In addition to all other taxes and fees imposed, a producer of electric power must pay a tax of $.0002 per kilowatt-hour.

41.0702. Electric Suppliers Territorial Integrity Act (70-501 through 508, R.C.M. 1947) The purposes of this law are to avoid unnecessary competition among suppliers of electric power, and to encourage the most economical provision of new service. In general, the law provides that new service areas should be served by the supplier with the nearest existing lines, or, in the case of new commercial or industrial customers, by the supplier who can provide service at the least cost. An electric supplier may file a complaint in district court if it believes that another supplier is violating the law.

41.0703. Rural Electric Cooperatives. (14-501 through 531, R.C.M. 1947) The purpose of this law is to authorize the organization of cooperative, non-profit, membership corporations to supply electricity and phone service in rural areas. Such a cooperative, once formed, has all powers, including eminent domain, necessary to do business and to construct and operate phone and electric power facilities. The law sets out requirements for organization procedures, articles of incorporation, election of directors, consolidation and mergers of two or more cooperatives, and dissolution. Any electric supplier corporation may convert to a cooperative and bring itself under the provisions of this act. An electric cooperative pays a fee of $10 per 100 persons served, but is exempt from all other excise and income taxes, and is also exempt from the jurisdiction of the Public Service Commission.

41.0704. Electric Lines (70-301 through 304, R.C.M. 1947) Authorization is given to electric and telephone public utilities to construct lines along public streets and roads. Lines in new service areas must be constructed underground where technically and economically feasible. City councils may regulate the erection of poles and cables within city limits. (11-945, R.C.M. 1947)

41.0705. Underground Conversion of Utilities (70-601 through 635, R.C.M. 1947) This law authorizes the establishment of special improvement districts for the conversion of overhead utility lines to underground. On its own initiative or on petition of 60% of the landowners owning 60% of the property in the proposed district, a local governing body may pass a resolution of public convenience and necessity, and request the affected public utilities to study the costs and feasibility of conversion. On receipt of the utilities' report, the governing body may adopt a resolution of intent, set a hearing date, and publish notice of the resolution describing the district boundaries, the nature of the work to be done, the estimated costs, and the intent to assess property owners to pay the cost. Copy of the notice is mailed to all property owners in the proposed district. Written protests from property owners will be received. If protests are received from 40% of the owners representing 40% of the property in the proposed district, the project must be dropped and may not be renewed for one year.

After the public hearing, the governing body may modify or drop the proposal, or adopt an ordinance establishing an improvement district. An ordinance is prepared declaring total costs, and an assessment list is prepared indicating who will be assessed and how much. Assessments are in proportion to area of property adjoining the improvement, and in proportion to benefits received. A public hearing is held to hear arguments with respect to benefits received and the amount of assessments. The governing body may make corrections in assessments as a result of the hearing. The assessment ordinance is then adopted. Property owners may challenge the assessments in court within 30 days, after which assessments are payable. The property owner may choose to pay in installments over a period of up to 20 years at 8% interest. The assessment constitutes a lien on the property assessed. The governing body may issue bonds up to the amount of the unpaid balance of assessments.

Conversion which must take place on private property will be at the property owner's expense. The utility must receive an easement from the property owner to do the conversion work on his land.

41.0706. Pipeline Carriers (8-201 through 211, R.C.M. 1947) Persons owning or operating pipelines for transportation of petroleum or coal products are designated as common carriers and the pipelines are designated public utilities. Pipeline companies are granted the right to construct across or along public roads or streams. Eminent domain powers are granted if the operator agrees to file with the Public Service Commission as a common carrier. City councils must grant permission for construction within city limits.

The PSC may establish rates after notice and hearing. The Commission may also require interconnections among lines. Pipeline carriers must make monthly reports to the Commission, and all books and records must be available for inspection. Discrimination in prices or service is prohibited.

41.0707. Local Authority (11-775, 11-1114, R.C.M. 1947) With some limits on the debt which can be incurred, and with the approval of their taxpayers, cities and towns are authorized to construct or purchase a system of gas lines for residents in their vicinity. Any incorporated town may, by ordinance, regulate the inspection and measurements of energy supply systems which run through its corporate limits.

Agency Programs

41A.0000. Montana Energy Office. The Montana Energy Office, located in the office of the Lieutenant Governor, has responsibility for coordinating Montana's energy policies. Descriptions of MEO's programs follow.

41A.0001. Montana Energy Conservation Program. The 1975 Energy Policy and Conservation Act (P.L. 94-163) designated funds for states to develop comprehensive energy conservation plans. The Federal Energy Administration is coordinating the development of these plans in every state. In Montana, the state's Energy Office has been given the lead responsibility for developing Montana's plan. The project objectives are: (1) to establish a set of energy conservation options for the state of Montana; (2) to perform analysis of conservation options identified above; (3) to review existing statutes, policies, programs and codes of Montana and other states that affect energy conservation and summarize relevant literature which may achieve goals of reduced energy consumption and increased utilization of renewable resources; (4) to determine the impacts of program measures to be included in the final plan; and (5) to develop the final integrated State Energy Conservation Plan and the Plan's Implementation Guidelines.

41A.0002. Montana Energy Data Program. This project involves assembling and assessing Montana energy data and compiling this data into a data storage and retrieval system. Data is primarily collected from published reports of state and federal agencies.

The primary objectives of the project are to: (1) make the data more easily interpreted and readily available to state agencies and researchers involved in Montana energy demand studies; (2) provide verification of this data between the various sources; (3) provide a flexible interface with state and regional energy modeling; and (4) provide computerized access to data base for updating and retrieval.

41A.0003. Montana Fuel Allocation Program. Under the Emergency Petroleum Allocation Act of 1973 and Governor Judge's Executive Order Number 6-76, the Montana State Fuel Allocation Office was created and housed within the Montana Energy Advisory Council (now Montana Energy Office). The Montana State Fuel Allocation Office was created to effectively and efficiently administer the state fuel allocation program as provided within the Mandatory Petroleum Allocation and Price Regulations guidelines.

The Montana State Fuel Allocation Office provides relief for petroleum hardship and emergency fuel problems. In addition, the office provides technical assistance to the people of Montana in the form of information and procedures necessary to solve problems such as allocation adjustment, new business fuel requirements, impact area requirements, interruptible natural gas customer's standby fuel needs, regulation advice, and Canadian crude oil curtailment.

41A.0004. Montana Energy Research Coordination Program. The chief objective of the Energy Research Coordination Program is to work toward the timely and effective use of energy research (both data and analysis) by Montana state government (and others) by serving as coordinator, communication facilitator and research information focal point. The energy research coordinator interacts directly and on a continuing basis with research efforts of the university system, the federal government, state government, and the private sector, and all state and federal legislation dealing with energy is tracked. In addition to the primary objective of research utilization by state government, the Energy Research Coordination Program provides leadership in the development of a state strategy for energy research. During the last year, the Energy Research Coordination Program focused on the development of plans for the maximum utilization of all types of renewable energies in the State of Montana, and the development of a delivery mechanism to provide energy information to the appropriate audience.

41A.0005. Montana Energy Research Information System. The Montana Energy Office has, as one of its primary functions, the responsibility for coordination of energy-related research activities within state government. In partial fulfillment of this responsibility, MEO has established the Montana Energy Research Information System which is used to keep track of all ongoing and recently completed energy research occurring in or for Montana.

The Energy Research Information System provides a necessary information tool for researchers, state government planners and decision-makers, and others involved in energy activities. By maintaining a central, comprehensive and up-to-date inventory of energy-related research, MEO hopes to (1) enhance communication among energy researchers, (2) avoid unnecessary duplication of effort, (3) help funding agencies pinpoint areas of additional research needs, and (4) permit the effective utilization of research by interested persons.

To accomplish the above state objectives, the Energy Research Information System (1) maintains an Energy Research Matrix Board, which is continuously updated, for quick reference to information on Montana energy research; (2) maintains research information files; (3) prepares an annual publication in which all project information is summarized in a comprehensive report; and (4) provides a search and referral service for individuals who wish to obtain up-to-date information on the status of any project.

41A.0006 Montana Energy Policy Program. House Bill 453 directed the Governor of Montana to prepare and submit "directly to the Legislature a long-term, comprehensive state energy conversion policy and plan including but not limited to alternative long-term growth goals, a statewide siting inventory and a proposed

siting policy for the coordinated siting of energy conversion facilities to meet Montana's energy needs." Governor Judge assigned these tasks to the Montana Energy Advisory Council (now the Montana Energy Office) and an Energy Policy Study was initiated. This is an ongoing project and MEO continues to work towards the formulation of a comprehensive state energy policy with the built-in flexibility to adapt to changing conditions.

11A.0100. Facility Siting. During fiscal year ending June, 1976, the Energy Planning Division of the Department of Natural Resources and Conservation prepared draft or final environmental impact statements on the Clyde Park-Dillon, Anaconda-Hamilton, and Broadview-Grass Range transmission lines, and completed hearings before the Board of Natural Resources on the Colstrip 3 and 4 generating plants.

The Division initiated development of methodology and criteria for a statewide energy facility siting inventory to assist the Montana Energy Advisory Council (now the Montana Energy Office) in its preparation of a state energy policy.

11A.0200. Renewable Alternative Energy Program. The Energy Planning Division of the Department of Natural Resources and Conservation administers grants under the Renewable Alternative Energy Program (See 41.0202). During 1976, grants totaling over $489,500 were distributed as follows:

Solar	45%
Wind	17%
Biomass	4%
Water	4%
Geothermal	3%
Wood	2%

In addition to the types of projects listed above, $100,000 was granted to the Center for Innovation, part of the Montana Energy and MHD Research and Development Institute in Butte, and over $24,000 to the New Western Energy Show, a traveling educational show put on by the Alternative Energy Resource Organization of Billings.

11A.0201. Winterization. During the fiscal year ending June, 1976, the Human Resources Program conducted by the Department of Community Affairs winterized the homes of 1,944 low-income, handicapped and elederly people, effecting a savings in heating payments of over $300,000. During fiscal 1977, 1,298 homes were treated for a savings of over $180,000.

42.0000 TRANSPORTATION

The state's transportation system is divided into three sectors: air, rail, and highway. In all three sectors, the influence of federal laws and regulations is pervasive. Because it is difficult to consider a state's transportation system apart from the national system of which it is a part, federal authority pre-empts state and local authority to a greater degree in transportation law than in most other areas considered in this index. State and local activity is therefore, generally, of two types: (1) implementation of federally funded or assisted programs or enforcement of federal standards and regulations, and (2) regulation of strictly intra-state transportation and commerce.

The Board of Aeronautics and the Department of Community Affairs have authority over air travel in the state. The Board gives approval for siting and construction of county or municipal airports, and oversees the construction or acquisition of state airports. The Board also regulates the intra-state operation of air carriers: rates, ticketing, service, routes, and schedules.

Railroads are regulated by the Public Service Commission, which oversees intra-state rates, services, and business activities. Siting and construction of railroads is controlled by the Interstate Commerce Commission.

The state's highway system may be divided into federal, state, county, and municipal systems. The Department of Highways maintains the state system, and the Public Service Commission regulates common carriers on the public highways. The highway system is discussed in more detail at 45.0000.

42.0001. Contents.

42.0002. See also:

Planning and Zoning	33.0000
Airport Zoning	35.0101 *et seq.*
Public Service Commission	46.0000 *et seq.*

42.0003. Agency Programs:

Transportation Planning	42A.0000
Department of Agriculture -	
Marketing and Transportation Division	42A.0001
Aeronautics Division	43A.0000

Agency Programs

42A.0000. Transportation Planning. The Planning Division of the Department of Community Affairs is responsible for statewide multi-modal transportation planning, state planning for public transit and for administering various federal and state programs of technical and financial transit assistance to localities. Since transportation planning is an integral element of comprehensive planning, the general authority for this function is derived from the Division's general planning enabling legislation under section 82-3705, R.C.M. 1947.

The Executive Director of the Montana Department of Planning and Economic Development (forerunner of the Planning Division) was designated by the Governor in 1972 to develop statewide needs estimates and to prepare capital improvements programs for all modes of transportation for inclusion in the 1972

National Transportation Study conducted by the U.S. Department of Transportation. Subsequent executive directives designated the Planning Division of the Department of Intergovernmental Relations (now DCA) to update this study in 1974 and 1976. In preparing current and future transportation needs estimates, the Department obtained the assistance of modal transportation agencies, including the Montana Highway Commission, the Montana Aeronautics Commission and local planning staffs.

By executive directive of May 13, 1974, the Governor designated the Division of Planning to "develop plans for a state level role in mass transit planning." Pursuant to this directive, the Division developed programs of state transit planning and local technical and financial assistance. To assist in financing this program, the U.S. Urban Mass Transportation Administration agreed to provide funds under section 9 of the Urban Mass Transportation Act of 1964, as amended.

On November 1, 1974 Governor Thomas L. Judge designated the Department of Intergovernmental Relations as the state agency responsible to manage a capital grant program for transportation needs of elderly and handicapped persons, as authorized by section 16(b)(2) of the Urban Mass Transportation Act of 1964, as amended.

In accordance with guidelines established under Section 147 of the Federal Aid Highway Act of 1973, on March 6, 1975 Governor Judge also designated this Department as the state agency responsible for the administration of the Rural Highway Public Transportation Demonstration Program. Under this program of technical assistance, the Division assisted in the design of rural transit programs and assisted in the preparation and review of local applications for highway demonstration funds.

Section 11-5413 requires the Department of Community Affairs to administer $300,000 from the state earmarked revenue fund highway account, half of which is to be distributed to cities operating public transportation systems to help offset operating deficits. The other half is distributed to counties for public transportation or other transportation purposes.

12A.0001. Department of Agriculture—Marketing and Transportation Division. The objectives of the Department of Agriculture's transportation program are to insure Montana citizens of the availability of adequate and efficient transportation services and to foster just and reasonable freight rates. These objectives are pursued by providing technical transportation expertise to agriculture shippers and producers, and by representing their interests in transportation matters with carriers and regulatory agencies. The Department's Transportation Division estimates that because of its participation in cases before the Interstate Commerce Commission, Montana grain shipping rates have been held down by approximately $5 million since August, 1973.

In addition to participating in transportation cases, the Department has developed a grain movement report to identify traffic flow to Montana's grain producing centers, and has developed a library for legal researchers including ICC decisions and orders, ICC supplementary reports, and other resources.

43.0000. AIR TRANSPORTATION

43.0100. Board of Aeronautics (1-101 through 103; 1-201 through 205, R.C.M. 1947; Regulations: MAC 22-3.6(6)-S620 et seq.) The Board of Aeronautics, attached to the Department of Community Affairs, is responsible for the implementation of the state's policies relating to air travel. Among the Board's charges are the protection and promotion of air safety, the development and expansion of the statewide system of airports, the adoption and enforcement of uniform regulations, and cooperation with federal officials in the national air travel system. The Board also offers technical aid and other assistance to local governments in establishing and operating airports, and may act as the agent of local governments in applying for federal grants and loans. One cent per gallon of the gasoline tax collected on aircraft is allocated for the administration of the aeronautics laws.

13.0200. Regulation and Licensing (1-301 through 326, R.C.M. 1947) The Department of Community Affairs may require annual registration of federal licenses and permits of aircraft and instructors, registration of repair shops, dealers, aircraft, and air schools, and approval and licensing of airport sites and navigational facilities.

13.0300 Airport Site Approval (1-304 through 310, R.C.M. 1947) A city or other entity acquiring property for construction of an airport must first apply to the Department of Community Affairs for a certificate of approval of the site. The Department's approval decision is based on location, size, layout, relationship to the state's comprehensive air transportation plan, availability of safe expansion areas, obstructions, terrain, and compliance with minimum standards of safety and public interest. The applicant may request a public hearing before the Board of Aeronautics, and final decisions may be appealed to court. These review requirements do not apply to small fields operated for personal use, or to fields operated by the federal government.

13.0100. Commercial Air Carriers (1-314 through 325, R.C.M. 1947) The Board of Aeronautics regulates common air carriers, other than those certified by federal authorities, with respect to ticketing, passenger service, rates, etc. Rates are set after opportunity for a hearing. After public notice and hearing, the Board issues certificates of public convenience and necessity, giving consideration to the applicant's business experience, financial stability, insurance, type of aircraft, proposed routes and schedules, ability to give adequate service, and the need for the service. The Board investigates complaints against air carriers and may issue and enforce compliance orders.

13.0500. State Airports. (1-401 R.C.M. 1947) The Department of Community Affairs, on behalf of the state, may acquire, establish, construct, own and operate airports, and acquire necessary easements to eliminate hazards on adjacent lands. The power of eminent domain may be used for these purposes.

13.0600. Municipal Airports Act. (1-801 through 828; 11-986, R.C.M. 1947) This act authorizes municipalities and counties to do all things necessary to establish, own and operate city or county airports and airport parking facilities. The power of eminent domain may be exercised for such purposes, and a tax levy of up to two mills may be collected to finance local airports. If this is insufficient, bonds may be issued after approval by the voters. The Department of Community Affairs may assist in securing federal aid. Revenues from operation of the airport are to be used solely for airport purposes. Joint operations with other public agencies either in or outside of the state are allowed. Airport property is tax exempt.

13.0700. Municipal and Regional Airport Authorities (1-901 through 927, R.C.M. 1947) This act provides for the establishment of a municipal airport authority by a city or town council (or the council may choose to exercise all the powers itself). Two or more cities may jointly establish a regional airport authority. The airport authority is a political subdivision of the city and is given all powers necessary for the establishment, construction, operation and maintenance of an airport, including the power of eminent domain and the authority to establish airport zoning regulations (35.0101).

The airport authority may issue bonds repayable from operating revenues, special airport taxes, federal grants and other sources. Bonds may be issued without a vote by the electors up to the amount of revenues expected from airport operations. If approved by the voters, the city may levy a general tax to make up deficiencies for the repayment of bonds.

Agency Programs

13A.0000 Aeronautics Division. The Aeronautics Division of the Department of Community Affairs operates the state aircraft pool which provides most air transportation for state officials, provides technical assistance in planning, engineering and financing local airport development projects, and performs various air safety and educational functions. Among the Division's activities are the following:

43A.0000.

Airport Development Loan Program. The Division assists local communities financially in all phases of airport construction and improvement. During fiscal year ending June, 1976, over $62,800 was loaned for improvements to various community airports throughout the state.

Navigational Aids Development. Various types of state-owned communications and navigation aids are installed at selected locations. During fiscal year ending June, 1976, beacons, lighting systems and communications systems valued at $33,900 were installed at twelve community airports and on the enroute airway system.

Technical Assistance to Communities. Advice and engineering services in all areas of aviation (safety, engineering, communications, navigation, etc.) were provided on request to airports in 45 locations throughout the state during fiscal 1976.

State Airports: The Division manages state-owned airports or landing fields at ten locations.

Registration and Licensing. During fiscal 1976, the Division registered 3,182 pilots and 1,663 aircraft.

Information and education. The Division distributes Montana Aeronautical Charts and Airport Directories. In addition, the Division issues aviation training scholarships, conducts flight instructor refresher courses and aircraft mechanics seminars, hosts aviation teacher workshops and provides teaching materials at all levels, and hosts high school aviation courses and ground training schools.

44.0000. RAIL TRANSPORTATION

44.0100. Regulation of Railroads (Title 72, R.C.M. 1947) The Public Service Commission has general jurisdiction over the operation of railroad companies and the provision of rail service between points in the state. City and town councils may grant right-of-way and regulate laying of track and operation of trains within city limits. (11-913, 968, R.C.M. 1947).

44.0101 *Rates.* The PSC approves rates for service between points in the state. Railroads may apply for rate changes, and the Commission will make a decision after public notice and hearing. A railroad may not charge more or less than the approved rates.

44.0102. *Service.* The PSC oversees the service provided by railroads to their customers, and has general supervision over common carriers. The law describes railroad company responsibilities with respect to baggage handling, passenger accommodations, ticket sales, discrimination in charges and rates, shipping facilities, station maintenance, safety equipment, maintenance of highway crossings, right-of-way maintenance including fences, ditches, cattle guards, and weed control, and condition of cars and equipment. The PSC may compel provision of adequate service and may order the construction or expansion of loading platforms, industrial spurs, and stockyards. The PSC may also inspect safety equipment, and require employee protection when a station is discontinued. Complaints may be filed with the Commission by railroad companies, shippers, or passengers, and the Commission will investigate and issue orders after notice and hearing. Orders may be appealed to court.

44.0103. *Business Activities.* The Public Service Commission also oversees the general business activities of railroad companies, including inspection of records and receipt of annual reports. Railroad companies are specifically authorized by law to engage in all activities necessary to locate, construct, operate and maintain rail service. Eminent domain powers are granted to railroad companies, but right-of-way must be shared in narrow canyons. The law sets out requirements for articles of incorporation, issuance of stock, consolidation with or purchase of other lines, and issuance of bonds. Annual reports are submitted to the State Auditor with respect to capital, stock, expansion activities, operations and expenses, and revenues.

45.0000 HIGHWAY TRANSPORTATION

The state's highway system comprises federal, state, county, and municipal roads and streets. The Department of Highways is responsible for construction and maintenance of the federal-aid and state primary and secondary road systems. The Department is also responsible for traffic control and licensing of vehicles.

County governments are responsible for maintenance of county road systems, bridges and ferries. Special improvement districts may be established for the construction of county roads.

Municipal governments are responsible for city streets and parking facilities. City councils may establish parking commissions and urban transportation districts to maintain and operate parking facilities and public transportation systems.

Streets, roads and highways are funded from a variety of sources: fuel taxes, mineral royalties, vehicle registration fees, county tax levies, county bridge and road bonds, and special improvement district assessments. The Highway Department is responsible for allocating gasoline tax revenues among the various sectors of the state's highway system.

The Public Service Commission regulates common carriers on the public highways, overseeing rates, service, routes, and schedules.

45.0001. Contents.

45.0002. See Also:

Aesthetics	21.0200
Acquisition of Public Lands	31.0000
Petroleum Products Regulation	41.0601, 41.0602
Public Service Commission	46.0000 *et seq.*
Highway Easements	46.0300
Special Improvement Districts	47.0101 *et seq.*
Rural Improvement Districts	47.0201 *et seq.*
Coal Severance Tax	54.0701

45.0003. Agency Programs:

45.0100. Policy (32-2201 through 2203, R.C.M. 1947) The Legislature has found that safe and efficient highway transportation is of important interest to the state, that inadequate highways are detrimental to the state's welfare and economy, and that it is therefore a proper public function to provide a safe and adequate highway system. The Department of Highways is the custodian of the federal-aid and state highway system; the several boards of county commissioners are responsible for the maintenance of county roads, and municipal governments supervise the city street systems. The state's goal is an integrated system of highways, roads and streets.

45.0200. State Highway System

45.0201. *Federal-Aid Highways* (32-2401 through 2429, R.C.M. 1947) A major portion of the Highway Department's activities is the administration of the federal-aid road system. Montana has assented to the provisions of the Federal Aid Road Act and the Highway Department is empowered to plan, construct and maintain the state's federal-aid system. The State Highway Commission designates road segments for inclusion in the federal-aid interstate, primary and secondary systems. The Highway Department is responsible for maintenance of the system in safe condition, right-of-way seeding and revegetation, maintenance of port-of-entry and checking stations, fencing and cattle guards, and keeping statistics.

45.0202. *Acquisition* (32-3901 through 3931, R.C.M. 1947) The Department of Highways is authorized to acquire property for highway construction, exercising eminent domain powers if necessary. Land may be acquired and reserved for future use. Land no longer needed for highway purposes may be leased or sold. The Department provides relocation assistance for persons or businesses displaced by highway construction, and special compensation is available for moving expenses and replacement of dwellings. Aggrieved persons may request a hearing before the Director of the Department. In general, the eminent domain laws apply (31.0101).

45.0203. *Controlled Access Highways; By-passes* (32-4301 through 4311; 32-1628, R.C.M. 1947) The Highway Commission designates roads for controlled access status after a finding of necessity and desirability. Consent of a municipality is required for controlled access facilities within city limits. Commercial structures are not allowed on the right-of-way of a controlled access road. The Department may not construct a by-pass diverting traffic away from a city or town without the consent of the town.

45.0204. *Traffic Control* (32-1123.1 through 1131; 32-2101 through 21-180, R.C.M. 1947) The Highway Department supervises the use of state highways with respect to regulation of speed, size and weight of vehicles, permits for over-sized vehicles, traffic signal maintenance, and inspection of automobile equipment.

45.0205. *Licensing.* (Title 32, Chapters 32, 33, 34, R.C.M. 1947) The Department of Highways collects vehicle license fees and special fees for trucks, trailers, buses, and tow-away transporters.

45.0300. County Roads Boards of County Commissioners have general responsibility for laying out, establishing and maintaining county roads, bridges and ferries. (16-1004, R.C.M. 1947). The county may acquire right-of-way, keep plat books, inspect roads and order improvements, and control vegetation along right-of-ways. (32-2801 through 2820, R.C.M. 1947) County roads are to follow section lines whenever feasible. Any construction or excavation along county roads must be approved by the board of commissioners. (32-4401 through 4414, R.C.M. 1947) Counties may exercise eminent domain powers for acquisition of right-of-way. (32-4001 through 4018, R.C.M. 1947) On petition of any ten, or a majority, of freeholders in a county road district, the board of commissioners may open, alter, construct, or discontinue a county road. Discontinuation of streets or roads is at the expense of petitioning land-owners.

45.0301. Bridges and Ferries (32-1501 through 1518; 32-2901 through 2907, R.C.M. 1947) A person desiring to operate a ferry between two counties must make application to the boards of county commissioners, who must make a finding of public convenience and necessity after notice and hearing. The board of commissioners fixes toll rates and makes rules as to operation, maintenance and passenger accommodation.

The operator must furnish a bond to assure adequate maintenance and service. A ferry will not be approved within one mile of an existing ferry except in special circumstances.

Public ferries may be constructed and maintained and a tax levied of up to two mills. For construction of over $10,000, bonds may be issued after approval by the voters.

45.0302. Local Improvement Districts (32-3103 through 3131, R.C.M. 1947) Local residents may petition the board of county commissioners for the establishment and construction or improvement of a public road through the creation of a special improvement district (47.0000). The petition must be signed by owners of two-thirds of the lineal feet of land fronting on the proposed or existing road. The board of commissioners holds a meeting attended by the county road superintendent, the petitioners, and other landowners. A panel of supervisors is appointed by those present at the meeting to review the proposal, ascertain costs, and to determine the lands which should be included in the improvement district. At its next regular meeting, the board of county commissioners will hear this report and may establish the improvement district. The county may share up to 65% of the costs of the improvements, and the rest is paid by assessments on the property benefitted by the road. Bonds may be issued which are secured by the assessments.

45.0400. Municipal Streets and Parking City governments are responsible for the care and maintenance of streets within city limits (11-3307, R.C.M. 1947), and must pay half the costs of curb and gutters for the state highways running through the city (32-1627, R.C.M. 1947). The city council has the power to lay out, establish, construct and improve streets and alleys. (11-906, R.C.M. 1947; See Special Improvement Districts, 47.0000). Streets may be discontinued on petition of 75% of the adjoining lot owners, at the petitioners' expense. (11-3801, R.C.M. 1947) The city council may regulate the operation of vehicles within city limits. (11-956, 1002, R.C.M. 1947)

45.0401. Parking Commission (11-3701 through 3723, R.C.M. 1947) This law provides cities with a mechanism to deal with inadequate parking facilities in urban areas by establishing off-street parking facilities. On its own motion, or on petition of 100 residents, the city council may establish a parking commission as a political subdivision of the city. The parking commission may acquire property (using eminent domain powers), and construct and operate parking facilities. Facilities may be leased to a private bidder to operate for the city. Revenue bonds may be issued, payable from operating revenues or from state or federal contributions, parking meter revenues, or assessments under the provisions of the Special Improvement Districts Law (47.0101).

45.0500. Funding. A variety of funding mechanisms are available for the construction and maintenance of state and local roads and streets.

45.0501. *Fuel Taxes* (84-1830 through 1865, R.C.M. 1947) A tax of 10¢/gallon is levied on the sale of all diesel fuel, and 8¢/gallon on regular gasoline. These revenues go to the Department of Highways, cities and counties for road construction and maintenance. Fuel distributors must be licensed by the Department of Revenue and submit regular reports of sales to the Department. The taxes are collected by distributors from purchasers as part of the sales price, and turned over to Revenue which then allocates the money to Highways. Customers may apply to the Department of Revenue for refunds of taxes paid on fuels which were not used to propel vehicles on public highways.

45.0502. *Mineral Royalties* (79-211, R.C.M. 1947) 37-1/2% of all money paid by the federal government to the state as the state's share of gas, oil and other mineral royalties under the Federal Mineral Lands Leasing Act goes to the Highway Department.

45.0503. *Registration Fees* (Title 32, Chapter 37, R.C.M. 1947) Vehicle Registration fees go to county road funds for construction and maintenance.

45.0504. *County Tax Levies* (32-3601 through 3605, R.C.M. 1947) Boards of county commissioners may levy taxes on the property in the county to maintain a county road fund. Maximum allowable levies are as follows:

—Construction, maintenance and improvement of roads: 12 mills; (up to 15 mills in 4th through 7th class counties (i.e. counties with a taxable valuation of less than $20,000,000.)]

—Bridge maintenance: 3 mills; (a higher levy may be allowed in counties with several bridges.)

—Municipal bridges: 5 mills; (for county maintenance of bridges within cities or town.)

An additional special tax of up to 10 mills may be levied after voter approval.

45.0505. *County Road and Bridges Bonds* (Title 32, Chapter 38, R.C.M. 1947) Boards of county commissioners may issue bonds to finance road construction and maintenance. Bond issuance is subject to the provisions of Title 16, Chapter 20 (County Bonds). No single bond issue may be for more than 2-1/2% of the total taxable value of the county, and the total of all outstanding bonds may be no more than 5% of the total taxable value of the county.

45.0506. *Special Improvement Districts* (Title 11, Chapter 22; Title 16, Chapter 16; Title 32, Chapter 31) These mechanisms are discussed in other sections. (47.0000, 45.0302)

45.0507 Allocation of Funds (32-2601 through 2627, R.C.M. 1947) Gasoline tax revenues are allocated by the Department of Highways to various purposes. As much as is needed goes to the highway bond account to pay principal and interest on highway bonds which have been issued to finance highway construction. Six-tenths of a percent of all revenue goes to the state park account for maintenance of parks where motorboating is allowed; three-tenths of a percent goes to the snowmobile account for promotion of snowmobile safety. The rest is expended on federal-aid and other highway systems for construction and maintenance. Each year, the Department develops an allocation formula for dividing the money among the following uses:

45.0507(a) *Federal-Aid System.* So much money as is necessary to match available federal money is allocated to the federal-aid system. Federal-aid money is divided among the state's interstate, primary and secondary systems. Interstate money is allocated to highway districts in accordance with estimated costs. Money available for the secondary road system is divided among the districts according to the following formula: 1/4 is allocated in proportion to rural area served, 1/4 in proportion to rural population served, 1/4 in proportion to rural road mileage, and 1/4 in proportion to the assessed value of rural lands in the district.

45.0507 (b) *County and City Matching Funds.* Money is allocated to county and municipal governments to match available federal funds for local streets and roads.

45.0507(c) *Bridges.* Up to $1,000,000 may be allocated each year for bridge construction and improvement.

45.0507 (d) *Safety Construction.* Allocations are made to the safety construction program.

45.0507 (e) *Bike and Footpaths.* At least .75% of the highway construction funds (state, county, and city) must be allocated to development of bicycle and footpaths. The Highway Department will provide technical and other assistance to local governments for such purposes.

45.0507 (f) *Priority Routes.* The Highway Department, in consultation with local governments and subject to the approval of the U.S. Department of Transportation, may designate priority primary routes for increased levels of federal funding, and allocate state money to such routes.

45.0507 (g) *Economic Growth Centers.* On the recommendation of the Department of Highways and the Governor, the Department of Transportation may designate economic growth centers for increased levels of federal highway funding. An economic growth center must be an area with a population of less than 100,000, and in recommending an area, the Governor must consider geographic, economic, education and recreational factors.

45.0600. Urban Transportation Districts (11-4501 through 4513, R.C.M. 1947) This law authorizes the establishment of urban transportation districts to furnish public transportation services and facilities in urban areas. On petition of 20% of the electors residing in the proposed district, the board of county commissioners will publish notice and hold a hearing, after which the board may adopt a resolution referring the question of creation of a transportation district to the voters at the next general or special election. A three-member transportation board is initially appointed by the board of county commissioners and the governing bodies of any municipalities included in the district. At the first general election following creation of the district, board members are elected to 4-year terms.

The transportation board is given all powers necessary to establish, operate, maintain and administer a public transportation system to serve the residents of the district. The transportation board submits an annual budget to the board of county commissioners which may then levy a tax of up to 12 mills on property in the district. The transportation board may also issue general obligation or revenue bonds worth up to 5% of the taxable value of land in the district.

A transportation district may be enlarged on petition of 51% of the electors in the area to be added, and majority vote of the transportation board. A district may be dissolved on petition of 51% of the electors in the district presented to the county commissioners, who hold a public hearing and may order dissolution if the district has no outstanding debts.

Cities may establish and operate a bus system without establishing a transportation district. Bonds may be issued with approval of the voters, and the bus system may serve an area up to eight miles beyond the city limits. (11-1019, R.C.M. 1947)

The Department of Community Affairs allocates money to cities and towns for operation of public bus lines or other transportation systems. Allocations are based on operating deficits and rates of usage. (11-4513, R.C.M. 1947)

45.0700 Regulation of Motor Carriers. (8-101 through 132, R.C.M. 1947; Regulations: MAC 38-2.6(1)-S600 through 6190; 38-2.10(1)-S1000 through 10450) The Public Service Commission has general supervision over motor carriers in the state, and may set rates, regulate facilities, operations, and services. City governments may set rates for motor carrier operations within city limits. (11-956, R.C.M. 1947)

Common carriers may not operate without a certificate of public convenience and necessity from the PSC. The application must specify routes, type of service, type of equipment and vehicles to be used, schedules, and proposed rates. The Commission will hold a hearing, after publication of notice, to consider the application, and will give consideration to such factors as the existence of other transport service in the area, the likelihood of service being maintained on a continuous and year-round basis, and the effect on other essential transport services. A certificate may be denied without a hearing if the proposed routes have already been the subject of an investigation and no need for service was found. The hearing must be held within 60 days of receipt of the application, and a decision issued within 90 days. The rules of procedure which apply to rail cases will generally apply here. Interstate carriers need not show public convenience and necessity except with respect to service between points within the state. Certification may be revoked, after opportunity for a hearing, for violation of the law or rules of the Commission.

All rate changes must be approved by the PSC. Notice of application for rate changes will be published. Proposed rate changes will become effective in 30 days unless disallowed before then by the Commission. On its own motion or on complaint of any interested party, the PSC may, within 20 days of the filing of the proposed rates, suspend them for 180 days and hold a public hearing on them. Once rates are set, rate preferences or discrimination by carriers is prohibited, and the PSC will investigate complaints.

The PSC has general supervision over carrier service. The Commission may make rules with respect to insurance and bonds, and inspect all books and records. An annual per-vehicle fee of $5 is collected, and carriers must pay a tax of .575% of gross revenues to the PSC. Carriers may not lease or sell certificates of convenience and necessity to other carriers without PSC approval, and Commission approval is also required for use of power transport equipment, interchange of equipment between carriers, and joint agreements among carriers with respect to rates and charges. Agreements with respect to pooling or division of traffic will not be approved.

Regular carrier service over fixed routes (e.g. bus lines) may not be discontinued without PSC approval, and the Commission may compel a bus line to provide adequate service. A carrier may request suspension of service for six months if there is no present public need. After 12 months of suspension, the PSC may presume the absence of public need and cancel the carrier's certification after notice and hearing. The PSC may grant temporary authority to a carrier to serve an area without a public hearing if an urgent need exists.

Agency Programs

45A.0000. Highway Department Programs. The Department of Highways is responsible for all aspects of the design, construction and maintenance of the state's highway system. A brief review of some of the Department's programs follows. (Descriptions of the Department's construction and maintenance programs are found in the Statute Section, 45.0000, *et seq.*

45A.0001. Highway Information System. The Department maintains a comprehensive, computerized file system containing data relating to roadway characteristics, traffic volumes, accidents, railway crossings, bridges, sign inventories, construction and maintenance activities, etc.

45A.0002. Action Plan - Environmental Programs. Under Section 136(b) of the Federal Aid Highway Act, each state was required to develop a plan for increased public involvement in highway planning. The plan includes provisions for input from local planning boards, cities, counties, etc. Major elements of the plan are the Impact Evaluation Group - representatives of other state agencies who review highway projects and provide information and recommendations on economic, social and environmental effects; and the Impact Evaluation Team - Department specialists and expert consultants in landscape planning, noise, air quality, biology, water quality, horticulture, and social-economic impacts who seek solutions to special problems which may be encountered on projects.

45A.0003. Public Hearings. The Department disseminates information to the public and obtains public opinion regarding highway proposals. Under federal law, the Department is required to hold two public hearings for each major construction project—one to discuss location alternatives and one to discuss design options.

45A.0004. Travel Promotion. The Department of Highways Travel Promotion Unit uses national advertising and publicity to encourage travel to Montana. Other divisions in the Department coordinate convention promotion, tour groups, and film location efforts.

45A.0005. Federal Aid Safety Programs. Safety programs on the federal-aid system include bridge replacement, railroad crossing hazard elimination, elimination of high hazard locations, elimination of roadside obstacles, pavement marking programs, and off-system signing programs.

46.0000. REGULATION OF UTILITIES

The Public Service Commission has primary responsibility for regulation of public utilities in the state. The PSC regulates service, rates, and business activities of regulated utilities. Rate changes are allowed only after a hearing and approval by the PSC. The PSC may conduct investigations into the activities and services of utilities on its own initiative or in response to complaints. Local government authorities also have control over the establishment and expansion of utilities within their jurisdictions. The Department of Highways approves the use of highway right-of-way for laying utility lines.

Utility regulation and planning is an important part of local planning and zoning activity and subdivision review. Energy planning also involves provision of utility services. These topics are considered in other sections.

46.0001. Contents:

46.0002. See Also:

46.0101. Public Service Commission (70-101 through 136, R.C.M. 1947; Regulations: MAC 38-2.14(1)-S1400 through 2.14(6)-S14740) The Public Service Commission is charged with the supervision and regulation of public utilities in the state. The PSC consists of five members elected from geographic districts. Members serve 4-year terms, and vacancies may be filled by the Governor.

A Public Utility is defined as any entity that owns, operates, or controls plants or equipment within the state for the production, delivery or furnishing to other persons or entities: heat, street railway service, light, power (in any form or by any agency), water (for business, manufacturing, household use or sewerage), telegraph or telephone service.

Public utilities are required to provide reasonably adequate service at reasonable rates. Books and records must be made available to the PSC for inspection on request, and annual reports of operations are submitted to the PSC. All records and reports in the PSC's possession are available for inspection by the public.

46.0102. *Rates.* Public utilities must file rate schedules with the PSC. No changes in such rates may be made except with approval of the PSC. Before approving a rate change, the PSC publishes a notice of the proposed change, announces a hearing date, and informs the public how to participate in the proceedings. The hearing is conducted under the contested case provisions of the Administrative Procedures Act, and the Consumer Counsel may participate. Temporary rate changes may be approved pending the hearing. If the PSC has taken no action within nine months after the requested changes are filed, the new rates become effective automatically. In setting rates, the PSC takes into account the expenses and capital of the utility. The Commission may ascertain the value of the utility's property. The utility's advertising costs are not to be included as expenses in setting rates, except for advertising which encourages energy conservation or development of renewable energy sources. A utility may not charge more or less than the rates filed with and approved by the PSC.

46.0103. *Business Activities.* The PSC may investigate all aspects of the management of a public utility's business, and may regulate the issuance of securities by a utility. The utility must apply to the PSC for permission to issue or acquire securities. Such permission will be granted unless (1) it would be inconsistent with the public interest, (2) it would be for a purpose not permitted by the law, or (3) the aggregate amount of securities outstanding and proposed would exceed the fair market value of the utility's property. Notes of obligation for a term of no more than one year and for a principal amount of no more than 5% of the utility's outstanding securities may be issued without PSC approval.

46.0104. *Investigations.* Either on its own motion or on the filing of a complaint alleging unfair, discriminatory or unreasonable rates, inadequate service, or unreasonable rules or procedures, the Commission may

conduct an investigation and hold a formal hearing after which it may issue orders adjusting rates, procedures and service. The Commission may exercise subpoena powers in conducting such hearings. Temporary orders may be issued pending a hearing to be held within twenty days.

Any interested party may appeal a PSC order to district court within 30 days. An injunction may be sought to stay the order pending trial; otherwise the order is effective after twenty days. If new evidence is raised at trial, the court may transmit such evidence to the PSC and await the Commission's redetermination based on such evidence.

The PSC investigates all serious accidents which occur in the operation of a public utility. Utilities are obligated to report such accidents to the PSC.

46.0200. Local Authorities City councils have power to permit the use of city streets for the laying of gas, water and other mains. (11-975, R.C.M. 1947) Boards of county commissioners have similar powers with respect to county roads. (16-1114, R.C.M. 1947) A city council may authorize a public utility to extend service outside the city limits. (11-1001, 3316, R.C.M. 1947)

A law passed in 1975 allows an owner of agricultural land who wishes to install a sprinkler irrigation system to request the district court to order relocation of any utility line running across his or her land. (24-201, *et seq.*, R.C.M. 1947) The request will be granted if the court finds that there is an adequate alternative route, and if there will be a substantial improvement in agricultural productivity. The cost of relocation will be shared equally by the landowner and the utility; however, if the irrigation system is not installed within two years, the landowner will be required to bear the full cost of relocation.

46.0300. Highway Utility Easements (MAC 18-2.6A1(6)-S6080 through 6120) All public utilities and all common carrier pipelines have the authority to utilize public right-of-way, but proposals must be reviewed by the Department of Highways to achieve maximum public use of right-of-ways while protecting public safety and avoiding conflicts between utility needs and transportation needs. These regulations apply only to the federal-aid highway system, and do not apply to utilities operated by local governments within city limits, unless utility lines are proposed on federal-aid right-of-ways. The Highway Department reviews utility proposals for conformance with minimum safety standards, and for proper drainage, vegetation, debris control, traffic protection, and scenic enhancement.

47.0000. SPECIAL DISTRICTS AND FINANCING

There is a variety of mechanisms available to local governments for the establishment and maintenance of transportation and utility facilities and services. The basic mechanism is the Special Improvement District (SID) which can be used to establish streets, parking facilities, recreation facilities, water and sewer systems, etc. The SID is established by resolution of the city government, and residents of the proposed district have the opportunity to reject the proposal. Lands within the district are assessed a special tax to pay for the improvements. These assessments are collected in the same manner as regular property taxes, and are used to pay off bonds which are issued to fund the construction of improvements, and to pay operating and maintenance expenses.

Similar procedures are available to county governments in establishing Rural Improvement Districts (RIDs). The Municipal Revenue Bond Act enables local governments to raise money for construction of utilities and other facilities without incurring a debt on the city treasury. Revenue bonds may be issued which are repaid from the operating revenues of the facility to be constructed. The bonds create a lien on the facility itself, not on the general credit of the city or town.

Special purpose districts for creating water and sewer systems are discussed in another section.

47.0001. Contents:

47.0002. See Also:

47.0101. Special Improvement Districts (11-2201 through 2290, R.C.M. 1947) The primary mechanism for financing physical improvements and facilities in cities and towns is the Special Improvement District (SID). SIDs may be established for a number of types of projects including establishing, altering and maintaining streets and alleys, (including sidewalks, culverts, bridges, etc); pedestrian malls; on or off-street parking facilities; street lighting; safety devices for open ditches and watercourses; municipal swimming pools and other recreational facilities; sewers and drainage systems; waterworks, including mains, hydrants and distribution systems; fire protection facilities; flood protection facilities; tree and grass planting along streets; sanitary sewers; irrigation and sprinkling systems; and maintenance, operation and repair of any of the above.

47.0102. *Procedures.* In general, the same procedures apply no matter what type of project is contemplated. The city or town council passes a resolution of intent to establish an SID, setting forth the boundaries of the proposed district, describing the improvements to be made, and estimating the cost. Notice of this resolution is published in local papers and copies are mailed to landowners in the proposed district. At this time, notice is also given of the time and place at which a public hearing will be held.

For fifteen days after first publication of the notice described above, the city council will receive written protests from owners of property in the district. These protests will be considered at the next regular meeting of the council following termination of the protest period. If written protests are received from owners of more than 50% of the property in the district, no further action may be taken for six months.

When all protests (if any) have been heard and dealt with, the council has jurisdiction to pass a resolution establishing the district and ordering improvements. If all the property owners in a proposed district sign a petition requesting the establishment of such a district, the city council has immediate jurisdiction to proceed without the publication of notice and hearing.

47.0103. *Bidding and Contracting.* The council then publishes an invitation for bids on the work. Bidding procedures are governed by Title 6, Chapter 5 (Public Bids). If all bids are rejected or none are received, the council may readvertise for bids within two years of passage of the resolution without repeating all the above procedures. Owners of 75% of the property in the district may contract to do the work themselves at least 5% below the lowest bid. If the lowest bidder fails to exe-cute a contract, bids may be relet. If the contractor fails to complete the work within the contracted time, the council may relet the remainder of the work. All contractors must execute a bond on entering the contract.

47.0104. *Bonds and Assessments.* Costs of the improvements are paid by the sale of bonds and warrants to the highest and best bidders at no less than face value. Proceeds of the sales are used to pay the contractors. Sales are made after publication and notice, and the procedures of Title 11, Chapter 23 (Municipal Bonds and Indebtedness) apply.

In order to repay the bonds, plus interest, and to raise operating and maintenance expenses, the property within the SID is assessed in proportion to area, or in proportion to lineal footage fronting on the streets where improvements are being made, or by a combination of these methods. If the improvements are of more than local or ordinary benefit, or if the cost of the improvements are more than one-fifth of the total taxable value of the abutting property, the city council may extend the boundaries of the district to include nonabutting property for the purposes of assessment. Federal property is exempt from assessment, and the share of the total which would be assigned to such property is paid by the city. Unplatted parcels may be included and assessed.

Once the size of the assessment is determined, the city council adopts a resolution to levy a tax on the assessed property. The resolution describes each lot and parcel assessed, the amount of assessment on each parcel, and the payment due date. Payment may be made by installments over a period of not more than twenty years. A notice of this resolution is published in local papers, stating the time and place for filing objections. The council meets to hear such objections, and may modify its assessment orders. Following this hearing, a final resolution is adopted. The city treasurer certifies the assessments to the county clerk who enters them on the tax rolls. Tax collection procedures of Title 84, Chapter 47 apply. When the validity of an assessment is challenged, the property owner may pay under protest and sue within 60 days to recover the payment.

Damages caused to property owners as a result of improvements are added to the costs of improvements and are paid for by these assessments.

When a purpose of the SID is maintenance and operation of improvements, the city council must make an annual statement of expenses and an estimate of expenses for the coming year. Notice and public hearing are provided to discuss such statement, and the yearly assessment is fixed by the second Monday in August.

All assessments and other revenues are deposited in an SID fund from which operating and construction costs are paid, and payment of the principal and interest on bonds and warrants are made. Excess money in any SID fund may be invested in U. S. bonds or certificates of deposit.

47.0105. *Revolving Fund.* In order to assure prompt payment of bonds and warrants when they become due, the city council must establish a Special Improvement District Revolving Fund. The city may make loans from the city's general fund to the revolving fund, and must levy a tax on all property in the city as necessary to meet the financial requirements of the fund. The total contribution from these two funding sources may be no more than 5% of the outstanding principal of all SID bonds and warrants.

When payments of principal or interest on SID bonds or warrants are due, and the appropriate SID revenue or sinking fund does not have sufficient money at the time to make such payments, the city council may make a loan from the revolving fund to the SID fund. At the time SID bonds are issued, the city may undertake a yearly obligation to make loans available from the revolving fund. Loans from the revolving fund constitute a lien on the SID fund. Excess money in the revolving fund may be invested in U.S. bonds or certificates of deposit, or transferred to the general fund, or used to buy tax delinquent property on which there are unpaid SID assessments. Such property may then be leased or resold with the proceeds going to the revolving fund.

47.0106. *Special Provisions.* Special provisions apply to various types of SIDs.

47.0106(a). *Street Improvements.* (Widening, Grading, Resurfacing, Parking) The city council may require that connections be made from gas, water, or steam heating pipes to the curb line before doing any street improvements. The city may make such connections and then assess the adjoining property owners.

The maintenance of trees and grass along streets is the city's responsibility, and may be paid for by assessments as described in 47.0104. Yearly costs, including debt service, are estimated in advance and assessments then levied.

The city may establish a supplemental revolving fund from parking meter revenues to secure prompt payment of principal and interest on bonds and warrants for SIDs established for improvements on streets and alleys. The supplemental revolving fund may be established by ordinance, subject to approval by vote at a city-wide general or special election. The ordinance may also provide for the installation and maintenance of the parking meters. The electors may vote to issue bonds guaranteed by the supplemental revolving fund in lieu of bonds issued under the regular procedures described in 47.0104. Loans from the supplemental revolving fund may be made to individual street improvement SID funds for payment of debt service on the SID bonds and warrants.

The city council may adopt a resolution to abandon maintenance of an on-street parking SID. Ten days notice must be given before passage of the resolution. If opposed in writing by 40% of the abutting property owners, the resolution fails. Otherwise, the resolution passes and property owners must maintain their own on-street parking.

47.0106(b). *Pedestrian Malls and Off-Street Parking.* If a petition requesting the formation of an off-street parking SID is signed by a majority of the owners of the property in the proposed district, the city council must adopt a resolution of intent and continue with the procedures for establishment of the district as described in 47.0102.

SIDs for pedestrian malls and off-street parking may use either the normal funding and assessment procedures described in 47.0104, or the revenue bond procedures described in 47.0106(f) for water and sewer systems. For off-street parking, assessments may be made in proportion to the benefits received, based on distance from the parking facility, the individual property owner's need for parking, the assessed value and area of his property, floor space, and availability of on-site parking. The formula used for assessment must be established after notice and hearing and before creation of the SID.

As with other types of SIDs, bonds are issued and paid for by collection of assessments levied on the benefitted property owners. The owner of property benefitted by a pedestrian mall or off-street parking may request that the bond issue not apply to his property. He must then agree to secure the payment of his assessment by other means.

An SID may be established to lease private property for off-street parking. No improvement bonds may be issued for such an SID. Only ad valorem assessments will be levied, and such an SID may have no other purposes.

47.0106(c). *Sidewalks, Curbs, Gutters, Alley Approaches.* These improvements do not require the establishment of a special improvement district. The city council adopts an order for the work to be done and notifies the adjoining property owner. The owner has thirty days to have the work done himself. Otherwise, the city will have it done and assess the owner for costs.

47.0106(d). *Street Lighting.* Between one-quarter and three-quarters of the costs must be paid by the benefitted property owners. Assessments may be in proportion to area or in proportion to lineal frontage. Property outside the city limits but abutting the boundary may be assessed. The owners of three-quarters of the property in the district may petition for discontinuance of the service.

47.0106(e). *Street Sprinkling.* The city may borrow money from the federal government to conduct a street sprinkling program. The resolution to establish an SID may be defeated by written protests from 40% of the owners in the proposed district. At least 75% of the costs must be paid by assessments.

47.0106(f). *Sewer and Water Systems.* A city's sewer system may be divided into public, district, and private systems. Public sewers follow the major drainages and comprise trunk lines, etc. Public sewers may be paid for by city appropriations from the general or sewer fund, from a bond issue as described below or, if the public system also serves as a district system, by assessments on the properties served.

When a district sanitary sewer system is proposed to be established by SID, and written protests have been received from owners of more than 50% of the property involved, the city council may overrule such protests, unless protests have been received from owners of more than 75% of the affected property.

On petition of 5% of the voters, the city will present to the voters the question of whether user charges and rentals may be assessed for use of the system. Such fees must be based on the quantity and nature of sewage introduced into the system. These revenues will be kept in a separate sewer fund for maintenance, operation and debt service, but not for extension of the system. Any twenty-five electors may file a complaint with the Public Service Commission that the rental charges are unreasonable. The PSC will hold a hearing and issue orders with respect to such a petition.

On a majority vote of the electors, the city may establish, construct, or expand a sanitary and/or storm sewer system, a sewage treatment or disposal plant, or a water supply or distribution system. The city may charge user fees based on the benefits received. Sewer rates may be based on water consumed. The city may discontinue water service for non-payment of water bills. The election mentioned above may be called for by petition of the voters, or by a resolution adopted by the city council.

The voters may also authorize the issuance of revenue bonds to pay for the improvements described above. Bond issues are subject to the provisions of Title 11, Chapter 23 (Municipal Bonds). Such bonds do not impose a debt on the city, but only against the water or sewer system being funded. Revenues from operation of the water or sewer system are deposited in a sinking fund from which the bonds are repaid. The city may issue bonds without an election for the purpose of redeeming previously issued bonds. Electors may authorize the issuance of additional series of bonds for reconstruction or expansion of the system.

47.0201. Rural Improvement Districts (16-1601 through 1638, R.C.M. 1947) This law provides for financing of physical improvements and facilities in densely populated areas outside of cities and towns. The procedures are essentially the same as those described for municipal special improvement districts (See 47.0101), with the board of county commissioners replacing the city or town council as administering agency. The most important variations from the SID law are set out below.

47.0202. *Procedures.* (See 47.0102) A petition of 60% of the property owners in the proposed district is required before the county commissioners may adopt a resolution of intent.

An RID may include territory in more than one county. In such a case, the boards of county commissioners of the affected counties appoint a board of trustees, at least one trustee from each county. The trustees serve three-year staggered terms, and exercise the same powers as county commissioners would over a single-county RID.

If an area included within an existing RID is annexed by a city or town, the municipality may take over operation of the facility and may levy assessments and taxes for that portion of the improvement which has been annexed.

47.0203. *Bidding and Contracting.* (See 47.0103) Owners of 50% of the property fronting on the proposed improvements may contract to do the work themselves.

47.0204. *Assessments.* (See 47.0104) (Within 60 days after the contract is awarded, a property owner may protest that faulty procedures in establishing the district or in letting the contract will cause him harm, or his property will be damaged by the proposed project. Protest is made in writing to the board of county commissioners. If damages are awarded, they are paid out of the assessments as part of the cost of the improvements.

Assessments are in proportion to areas or in proportion to the assessed value of property in the district. However, the latter method may be used only if the district lies more than five miles from the nearest town.

47.0205. *Revolving Fund.* (See 47.0105) No important differences.

47.0206. *Special Provisions.* (See 47.0106) The only special provisions for particular types of improvements are described below:

47.0206(d). *Lighting Systems.* (See 47.0106(d) The county commissioners may contract with a person or corporation to furnish lighting services. Assessments are in proportion to assessed value of property or lineal frontage abutting the lighting facilities. Yearly maintenance costs are assessed in addition to construction costs.

47.0206(f). *Sewers.* (See 47.0106(f) When a sanitary sewer system is proposed to be established by RID, and written protests have been received by owners of more than 50% of the property, the protests may be overruled by a unanimous vote of the county commissioners.

47.0300. Municipal Revenue Bond Act (11-2401 through 2414, R.C.M. 1947) This law provides a mechanism for cities and towns to finance the acquisition or construction of large projects without incurring a debt on the city treasury. The law applies to the financing of water and sewer systems (including supply, distribution, treatment and disposal); airport construction; convention, recreation, and parking facilities; and other revenue producing facilities authorized by law. Municipalities are authorized to construct, acquire (by eminent domain if necessary), and operate such undertakings, to issue bonds for the financing of the undertaking, collect user fees, enter cooperative agreements with industry, receive grants from the federal government for construction of water pollution prevention projects, and contract for the provision of sewer services to industry. Revenues collected from user fees are pledged to the repayment of the bonds.

The project may be constructed or acquired either inside or outside the city limits. Permission is required from another city or town to construct or acquire a

facility within that city or town. Two or more cities may enter into a joint project, or one city may contract to supply services to another. No permit or authorization is required from any state agency to acquire or construct a facility under this act, but the supervisory powers of the State Department of Health & Environmental Sciences still apply. The powers provided in this act are in addition to authorizations provided by other laws.

47.0301. *Bonds.* Projects and the bonds to fund them may be authorized by a resolution of the city council without an election, but the council may present the question to the voters if it chooses. The bonds must bear an interest rate of no more than 9% and must be payable within 40 years. They may be sold either privately to an agency of the federal government, or publicly after notice in a major national financial newspaper. The notice requirement applies only if the bond issue is for more than $150,000.

The resolution authorizing the bonds may include covenants with respect to the purposes to which the proceeds of the sale may be put, the use of the revenues from the project once constructed, payments from the general fund for receipt of services by the city, operation and maintenance of the project, insurance, terms under which bond holders may have a receiver appointed, etc. The resolution shall specify that revenues from operation of the project will be pledged for security on the bonds, and will specify the priority of liens if more than one series of bonds is issued. The bonds do not constitute a debt of the city, and may not be repaid by taxation of property. User fees are to be set so that the project will be self-supporting and to pay off the bonds. If refunding bonds are issued to redeem previously issued bonds, they are subject to the same provisions.

48.0000. WATER AND SEWER SYSTEMS

In addition to Special Improvement Districts and municipal revenue bonds, described in other sections, special mechanisms are available for construction and maintenance of water and sewer systems. Metropolitan Sanitary and Storm Sewer Districts are organized along the lines of SIDs or RIDs, but they are especially designed for systems which will serve both municipalities and unincorporated areas. County Water and Sewer Districts involve a more complex organizational structure. A board of directors is appointed to supervise the affairs of the District. The District is given all powers necessary to construct, operate and maintain a water or sewer system. The Board of Directors may issue bonds and assess user fees and taxes.

A variety of laws relate to the maintenance of a suitable public water supply: Water Pollution Control Act, Public Water Supplies, Solid Waste Management, Planning and Zoning, Subdivision Review, and the various laws relating to development of water resources. These laws are discussed in other sections.

48.0001. Contents:

48.0002. See Also:

Solid Waste Management	17.0000
Water Pollution	18.0000
Public Water Supplies	18.0200
Planning and Zoning	33.0000
Subdivision Review	34.0000
Special Improvement Districts	47.0000, 47.0106(f)
Rural Improvement Districts	47.0201, 47.0206(f)
Water Resources	58.0000

48.0101. Metropolitan Sanitary / Storm Sewer Districts. (16-4401 through 4418, R.C.M. 1947) Ths law provides a mechanism for financing a sanitary or storm sewer system which will serve both incorporated and unincorporated areas. Procedures are essentially the same as those provided for Rural Improvement Districts (47.0201). Important differences are described below.

48.0102. *Procedures.* (See 47.0202) The procedures are initiated by a resolution of intent passed by the board of county commissioners. The resolution is transmitted to the city or town council which must concur or no further action may be taken. The county commissioners act as ex officio commissioners of the district and have sole and complete jurisdiction over drainage structures and sewage treatment plants in the district. The board of commissioners is authorized to apply for federal funds on behalf of the district, and may assess user fees for sewage treatment works.

Boundaries of the district may be changed by resolution, but areas may not be deleted which may contribute to the pollution of watercourses. (Areas within 1500 feet of a proposed or existing sanitary sewer are conclusively presumed to contribute to the pollution of a watercourse.) Assessments may not be increased as a result of altered district boundaries without repeating the notice and hearing procedures.

48.0103. *Bidding and Contracting.* (See 47.0203). No major differences.

48.0104. *Bonding.* (See 47.0204). No major differences.

48.0105. *Assessments.* (See 47.0204). The board of commissioners may set user fees, charges and rentals. Fees must take into account the nature and quantity of sewage introduced into the system. After public notice and hearing, the board of county commissioners may set rates of no more than $7 per unit per year for operation and maintenance of the system, an additional fee of no more than $7 per unit per year for operation and maintenance of a sewage treatment plant, and a tax of no more than 2 mills for maintenance of a reserve fund (48.0106). A public hearing is held at least thirty days before setting the district's budget. An accounting of expenses and revenues for the past year and estimates of costs for the coming year must be filed with the county clerk and available for public review at least thirty days before the hearing.

48.0106. *Reserve Fund.* (See 47.0105, 47.0205) Serves the same purpose as the Revolving Fund in the SID and RID laws.

48.0201. County Water & Sewer District (16-4501 through 4535, R.C.M. 1947) This statute provides an alternative mechanism for establishing water and sewer systems in cities, towns and counties.

48.0202. *Establishment Procedures.* Residents of a city or town, a county, any portion thereof, or any combination of the above may petition for the establishment of a County Water/Sewer District (CWSD). The petition must be signed by 10% of the voters in the proposed district (if the district includes areas in more than one county, the petition must include signatures of 10% of the voters of the included areas of each county), and presented to the board(s) of county commissioners. The board(s) of commissioners hold a public hearing to consider the petition and to pass on written protests which have been received. The board(s) may modify the proposed boundaries, but may not delete areas which would be benefitted, nor include areas which would not be benefitted. A property owner whose land would be benefitted may petition to be included in the district.

After hearing all testimony at the hearing, the board(s) determine whether the petition satisfies the provisions of the law. A positive determination is conclusive against all challenges except a suit filed by the Attorney General on behalf of the state within one year of the hearing. Within 60 days after the hearing, an election is held in the proposed area, following publication of notice. Qualified electors who reside or own property in the district may vote. If at least 40% of the eligible voters have voted and if a majority of the votes cast in each city and in each county are favorable, the board(s) of commissioners adopt a resolution establishing the district. If the vote fails, the proceedings may be renewed at any time.

48.0203. *Election of Directors.* Within 90 days after formation of the district, a board of directors is established for the district. Five members are elected by the voters (three if the CWSD contains ten or fewer electors), one member is appointed by the mayor of each municipality in the district, and one member is appointed by the board of county commissioners of each affected county if there is unincorporated territory included. A director must be a resident, landowner, or lessee in the district. Elected members serve 4-year terms, and appointed members serve 6-year terms.

A petition nominating a person for the board must be signed by five qualified voters and presented to the county clerk no less than thirty and no more than forty-five days prior to the election. The petitions are reviewed and verified, and a list of candidates is posted. All general laws concerning elections, voting, etc. apply insofar as they are not inconsistent with this act. An officer of a corporation holding property in the district may cast one vote on behalf of the corporation. Directors are subject to recall by the voters as provided in Title 11, Chapter 32.

48.0204. *Powers and Duties of the Board and District.* All actions of the board must be by ordinance or resolution passed by a majority of the total number of board members. Ordinances may also be passed or repealed by the electors of the district under the laws providing for direct legislation (initiatives and referenda) for cities and towns. The board appoints a general manager, a secretary, and an auditor who receive salaries and serve at the pleasure of the board.

The CSWD enjoys perpetual succession; may sue and be sued; hold property; acquire, construct, operate and maintain water rights, water works, sewer works, distribution systems, and land necessary for the above purposes and for flood prevention and control, irrigation, drainage, water supplies, wildlife protection, recreation, pollution abatement, and livestock watering. Works may be constructed across waterways, streets, and railways. The state will grant necessary right-of-way across state lands. The district may also store water; conserve water for future uses; engage in actions for the acquisition and protection of water rights and stream flow; lease waterworks; sell water; accept federal, state and local assistance; borrow money; incur indebtedness; levy taxes; and make contracts.

48.0205. *Bonds.* The board of directors may, by resolution, approve the issuance of bonds. The resolution must state the purpose and terms of the bonds. An election must be held after publication and notice, and the bond issue must be approved by 60% of the votes cast. Bonds, if issued, are tax exempt. Elections on formation of a district, selection of officers, and issuance of bonds may be combined in one election.

48.0206. *User Fees and Taxes.* The board of directors sets water and sewer rates and user charges. Rates are set so as to pay operating expenses, service the district's debt, and to provide a sinking fund for the repayment of bonds. Industrial users are charged in proportion to the use made of sewage treatment works.

If the revenues from the rates and charges described above are not sufficient to pay the district's debts and operating expenses, property in the district must be assessed to make up the difference. The board of directors must notify the appropriate city or town councils and boards of county commissioners of the need for such an assessment at least fifteen days before the local governing bodies are required by law to set their tax assessments. Assessments are set in proportion to area or taxable valuation. The same method of assessment must be used in all political jurisdictions included in the district. The local governing body publishes notice of the assessment and a hearing is held to hear protests. The tax may be paid under protest and recovered later by lawsuit. The water tax will be levied on the property benefitted and collected at the same time and in the same manner as other county and city taxes by the city and county, and then paid over to the district. The tax constitutes a lien on benefitted property if it is assessed for payment of a bonded debt which was incurred for the benefit of the property assessed. If it was incurred for other purposes, it consitutes a lien on all property in the district.

48.0207. *Alteration of Boundaries.* Area may be added to an existing district by petition in the same manner as provided for the establishment of a district. The addition must be approved by an ordinance of the board of directors and ratified by the electors within 70 days.

Two or more districts may be consolidated by petitions submitted to the board of directors of each affected district. Similar procedures apply. The petition must be signed by 10% of the electors in each district, approved by ordinances of each board of directors, and submitted to the electors within 70 days.

Territory within a district which is not benefitted by the district may be excluded from the district by the board of directors on petition of the owners of 50% of the value of such territory. After publication of notice, the board will meet to hear testimony from owners or taxpayers in the district. The board may then order the exclusion, but pre-existing taxes and assessments will still be due.

The board may initiate exclusion proceedings by adopting a resolution requiring interested parties to appear at a later date and show cause why the exclusion should not be ordered. Final actions are subject to referendum by the voters.

48.0300. Water Supplies. Fluoridation of public water supplies is regulated by the Dental Health Bureau of the Department of Health and Environmental Sciences. Fluoride will be added to water supplies only on request of the local governing body. (MAC 16-2.18(2)-S1810)

Cities and towns have the power to take necessary actions to secure local water supplies. (11-981, 11-1001, R.C.M. 1947) A city or town operating a municipal water and/or sewage system may sell those services to individuals and companies outside its corporate limits. The city or town may require annexation to the city of the property to be served as a condition for providing the service.

Hotel owners are required to provide an ample source of pure drinking water, free from privy vault contamination. (34-212, R.C.M. 1947) Water quality is subject to inspection by the Department of Health and Environmental Sciences.

50.0000. NATURAL RESOURCES

This section presents Montana's natural resource law: the legal framework surrounding the discovery, development, and conservation of the state's land, water, mineral, timber, and agricultural resources. A complete consideration of natural resources must include a discussion of scenic, recreational, and wildlife resources, as well as the resource of clean air which Montana still enjoys in relative abundance. These topics are discussed in other sections. Also discussed elsewhere are the state's policies for energy conservation, which has an impact on the conservation of other resources.

The Department of State Lands, under the direction of the Board of Land Commissioners, is responsible for the management of state-owned lands. State lands may be leased for agricultural or grazing purposes, for mineral exploration and development, or classified as forest land and managed for its forest resources. Statutes describe conditions under which state lands may be leased or sold, or easements granted across them. The Legislature has established a policy to encourage the development of state land resources, and has created a Resource Indemnity Trust Fund, a Resource Development Account, and a renewable resource development program for the purpose of preserving and enhancing the state's renewable land resources.

Utilization of agricultural and grazing land is influenced by both federal and state land management policies. Much grazing land is state or federally owned and leased to private operators. Soil and Water Conservation Districts and Grass Conservation and Grazing Districts are among the mechanisms available to assist agricultural operations. The Department of Natural Resources coordinates the activities of such organizations. The Agricultural Experiment Station provides valuable assistance to farm and ranch operators. Programs exist to study and control saline seep, weeds, pests, and plant and animal diseases.

The discovery and development of mineral resources is regulated by a variety of statutes. Statutes of general applicability describe procedures for location and recording of mining claims, establishing mining right-of-ways, and creating mining partnerships. Laws also deal with reservation of mineral rights by state and county governments, sale and lease of state mineral lands, mine safety codes, and taxation of mines.

The growing importance of coal to Montana's economy is reflected in legislation aimed specifically at coal mining. The Department of State Lands administers laws dealing with issuance of mining leases and permits on state lands, as well as siting, operating, and reclamation permits and approvals for coal mines located anywhere in the state. A special severance tax has been levied on coal to help meet the increased demands for public services which will be occasioned by expanded mining activities. A Coal Board is responsible for management of these coal revenues.

Uranium mining is subject to many of the same regulations as coal mining. The Department of State Lands also regulates the mining of other metallic and non-metallic minerals, granting leases and permits and approving reclamation contracts.

The Board of Oil and Gas Conservation has primary responsibility for regulation of exploration and drilling for oil and natural gas in the state. Montana is a member of the Interstate Compact for Conservation of Oil and Gas.

Montana's forest lands are divided among federal, state, county and private ownership, and policies and procedures for development of forest products depend on the jurisdiction within which a given tract lies. State law deals with the responsibilities of state or county government as owners of forest land, as well as the state's governmental responsibilities to protect all forest resources in the state from fire, pests, and disease. The forestry laws are administered by the Department of Natural Resources and Conservation, and the Board of Land Commissioners has final authority over state-owned land.

The Department of Natural Resources is also responsible for management of the state's water resources: construction of water development and conservation projects, adjudication of water rights, granting water use permits, inspection of dams and reservoirs, and development of a comprehensive water resource management plan for the state. A variety of organizations and special purpose districts may be formed for development and conservation of water resources. Local governments may participate in flood control and water conservation projects. Montana is party to a number of interstate compacts for management of water in interstate streams. The Department of Natural Resources issues weather modification permits.

50.0001. Contents: **Section**

50.0002.

50.0002. See Also:

51.0000. STATE LAND AND RESOURCE POLICY

State-owned land is a major resource. This section deals with the state's policy for managing state-owned land, and developing resources throughout the state. Management of specific categories of state land is also discussed in other sections: designation and management of natural areas by the Department of State Lands, acquisition and management of parks and wildlife management areas by the Department of Fish & Game, management of state forests by the Department of Natural Resources, and acquisition and use of land for highway construction by the Department of Highways. Also discussed in other sections are leasing policies for oil, gas, and mineral exploration and agricultural operations on state land.

In this section are discussed the state's policies for management of the school trust lands: those lands granted to Montana by the federal government when the state was created. Two sometimes conflicting policies apply: state lands are to be managed to achieve maximum feasible revenue for the state's public schools, and lands are to be managed for multiple use and long-term productivity. The Department of State Lands has management responsibility under the direction of the Board of Land Commissioners. Lands are classified for best use as mineral land, forest land, agricultural land, or other. Statutes set forth requirements for lease, sale, mineral reservations, and easements across state lands.

A number of laws are designed to encourage the development of the state's land and other renewable resources. The Resource Development Account provides funds to develop or conserve state-owned water, timber, agricultural and grazing land. The Resource Indemnity Trust Account, administered by the Department of Revenue, is funded by taxation of mining and is used to rectify environmental damage caused by extraction of non-renewable resources. The Renewable Resources Development Account, administered by the Department of Natural Resources, is funded by a fraction of the coal severance tax and provides money for grants and loans to individuals and public agencies for development of renewable resources.

51.0001. Contents.

51.0002. See Also:

51.0003. Agency Programs:

51.0100. State Lands. Laws regulating the use of state land apply to lands granted to Montana by the United States for any purpose, either directly or through exchange for other lands, as well as land deeded or devised to the state by any person and land coming to the state by operation of law. They do not apply to land conveyed by the state by patent or lands used for building sites, campus grounds or any other land used by state institutions. (81-102(4), R.C.M. 1947)

51.0101. *Policy* (81-103, R.C.M. 1947; Art. X, S. 11, Montana Constitution) State law establishes the following principles for administration of state lands:

—land and funds derived from it are held in trust for the support of education and attainment of other goals which contribute to the well-being of the people of the state; they should be administered to gain the largest legitimate and reasonable advantage to the state.

—the multiple use concept should govern actual management of the land: Various resources should be utilized in combination to best meet the people's needs. It is recognized that some land will not be used for all resources, since the goal is to achieve harmonious and coordinated management which will not impair the productivity of the land. Consideration will be given to the relative values of various resources in establishment of management policies.

51.0102. *The Board of Land Commissioners* (81-103, R.C.M. 1947) The Board, made up of the Governor, the Superintendent of Public Instruction, the State Auditor, the Secretary of State and the Attorney General (Art. X Sect. 4, Montana Constitution), exercises general authority over the administration of laws relating to state land. It is responsible for the care, management and disposition of lands, as well as administration of funds arising from the leasing, use and sale of those lands.

The Board may lease state lands for purposes other than agricultural, grazing, timber harvest and mineral production; however, except for leases for power and school sites, such leases are limited to 25 years. (See also, Leasing of Agricultural Land, 52.0100)

51.0103. *Department of State Lands* (81-105, R.C.M. 1947) Under the Direction of the Board, the Department is in charge of the actual selection, exchange, classification, appraisal, leasing, management, sale and other disposition of state lands.

51.0200. Selection, Location and Exchange of Lands Granted by the United States (81-301 *et seq.*, R.C.M. 1947)

51.0201. *Selection:* The United States granted Montana sections 16 and 36 of each township when it became a state; however, some of these sections could not be conveyed because of prior conveyance to individuals, Indian tribes, etc. In addition, the state may waive its rights to specific sections and may exchange land with the federal government. In such cases, the Department of State Lands is required to select alternative federal land which is of equal or greater value than that to which it has a right or is exchanging, giving careful attention to the water which is available for appropriation for domestic, livestock and irrigation uses.

51.0202. *Exchange:* The Department of State Lands may exchange lands with counties and private individuals for the purpose of consolidating its holdings as long as the areas are of approximately the same size and value. When the exchange involves an individual, the Board must hold a public hearing in the county in which the state land to be exchanged is located. If specific objections are raised the Board must make findings of fact which address the objections and explain its action. Exchanges with individuals are not allowed if they would encourage large-scale commercial, industrial or residential development unless the development value is considered and the development would not adversely affect existing state land or land which the state would receive under the proposed exchange.

51.0203. *Land Classification.* In order to carry out its management policies, the Department of State Lands classifies state lands according to whether they are principally valuable for:

1) grazing purposes;

2) existing timber, growing timber or watershed protection;

3) crop production;

4) other uses.

In classifying land, special attention must be paid to the actual capacity of the land to support the designated use. Before a land classification may be changed, a capability inventory must be made which includes the following: Soils capacity, vegetation, wildlife use, mineral characteristics, public use, aesthetic and cultural values, surrounding land use and other zoning and land use information. Although land may be classified for one value, it must be managed as much as possible to maintain or enhance multiple-use values.

All state land must be sold, leased or used only according to its classification.

51.0301. Sale of State Land—*Policy* (Art. X, Sec. 11, Montana Constitution) All dispositions of state land are governed by the Montana Constitution:

—state land is held in trust for the people, to be disposed of for the purposes for which they have been or may be granted, donated or devised.

—no land or interest in land shall be disposed of except as provided by law or until full market value has been paid to the state.

—no land held by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except as prescribed without the consent of the United States.

—all land shall be classified by the Board, and may be exchanged for other land which is equal in value and, as closely as possible, equal in area.

51.0302. *Sale to the United States and the Department of Natural Resources and Conservation* (81-801, R.C.M. 1947) The Board may sell state land to the United States for the following purposes:

—reclamation of arid land

—flood control

—river regulation

—water conservation

—transmission and distribution of electric energy.

Mineral reservations applying to the sale of land received from the United States apply to land sold to it; however, prospecting, exploration and mining of minerals may not interfere with the purpose for which lands have been purchased by the United States. The Board may also sell land to the Department of Natural Resources and Conservation for federally financed projects which have the same purposes.

51.0303. *Sale to Individuals and Other States* (81-908, R.C.M. 1947; Regulations: MAC Rule 26-2.2(6)-S220) Sales are limited to:

—citizens of the United States who are at least 18 years old;

—individuals who have declared their intention to become citizens who are least 18 years old;

—any other state, including its organizational and political subdivisions.

Sales to individuals and other states are governed by the following policies:

—state land will be sold to other states for educational and scientific purposes;

—state land will be sold only to settlers or to those likely to improve the land;

—state land will not be sold to those who intend to hold it for speculative purposes, i.e., reselling it at a higher price without adding to its value.

Each sale is limited to one section, of which not more than 160 acres is irrigable.

51.0304. *Land Not Subject to Sale* (81-901, R.C.M. 1947) The Board may not sell the following kinds of state land:

—land classified as timberland (see Land Classification, 51.0203);

—land which, in the judgement of the Board, may contain sand, gravel, building stone, brick clay or similar materials.

51.0305. *Sale Procedures.* (81-832, 81-905, 81-910, R.C.M. 1947)

The Board of Land Commissioners has discretion in deciding whether land to be offered for sale is surveyed or platted unless it is in or within three miles of town or city limits. Land so located must be subdivided into tracts of up to 5 acres each, which must be sold alternately at regular sales of state lands.

Notice of a sale of state land must be published in a newspaper of general circulation in the county where the land is located for four weeks before the sale. Lands are offered at auction, but no land may be sold for less than the appraised value or for less than statutorily designated amounts. Proceeds from the lands sold are credited to the permanent fund arising from the grant to which they belong. Deeds or patents are executed when the state has received full payment.

The law sets out details concerning forfeiture, terms of payment, liens on improvements and crops, settlement for improvements, certificates of purchase, default and taxation.

51.0400. *Mineral Deposits* (81-801, *et seq.*, 81-901 *et seq.*, R.C.M. 1947) The state reserves from any sale of the state land all rights to valuable mineral deposits which were not reserved by the United States, as well as the right to explore for and remove minerals. If the state grants a mineral lease on land sold, the lessee must pay the purchaser for damage resulting from mining operations. This reservation applies to coal, oil, oil shale, gas, phosphate, sodium and other valuable minerals; it does not apply to sand, gravel, building stone and brick clay.

51.0500. Easements on State Land (81-801 *et seq.*, R.C.M. 1947) *Policy:* See Sale of State Land (51.0301)

Montana law grants easements on state lands to the United States for ditches, canals, tunnels, telephone, telegraph and electric power lines if they are used for the following purposes:

—reclamation of arid land

—flood control

—river regulation

—water conservation

—transmission and distribution of electric energy.

The Board may also grant easements for school sites, public parks, community buildings, cemeteries and other public uses.

If the land ceases to be used for one of the permitted purposes, the easement right of way reverts to the state.

Applications, which must include extensive information about the land desired, are made to the Department of State Lands, which reports its findings to the Board of Land Commissioners. The Board fixes compensation and damages to be paid to the state. Compensation is based on the fair market value of the interest to be conveyed; damages are the actual damages to surrounding land.

An individual who has a certificate of purchase or sales contract for land through which the easement is to run may be a party to the Board's proceedings. His written consent must be secured before the easement can be granted. The Board may allocate a portion of the compensation and damages to be paid to an individual purchaser of the land to be affected.

51.0600. Development of State Land Resources (81-2401 *et seq.*, R.C.M 1947) Montana law establishes that it is in the state's best interest to seek the highest development of state land in order to derive greater revenue for the support of schools and other institutions which benefit, as well as to assist the economy of the local community.

The Resource Development Account is an earmarked revenue fund in the state treasury which is used only for the improvement and development of state land acquired by grant or foreclosure. Money from the fund may be used for the following purposes:

—to develop or conserve surface and underground water, grazing land, agricultural land and timberland to the benefit of the state;

—to perfect title to land claimed by the state which is suitable for development;

—other expenses which the Board of Land Commissioners determines are necessary to develop or increase the value of the land or revenue derived from it.

Income derived from school lands, other institutional lands or capitol building lands may be used only to defray expenses incurred from developing public land of the same trust unless the Board determines that an individual trust has insufficient funds to finance development. If funds are insufficient, money may be borrowed from other trusts in the account, with provisions for reimbursement.

Not more than 2½% of the income from the trusts can be allocated for development.

51.0700. Resource Indemnity Trust Account (84-7001 *et seq.*, R.C.M. 1947; Regulations: MAC 42-2.14(14)-S14250) The law establishing the trust account has a specific legislative policy "to provide security against loss or damage to the environment from the extraction of nonrenewable resources". Recognizing the need to protect Montana's total natural environment, as well as the social, economic and cultural conditions of its people, the policy finds it necessary that the state be indemnified for resources which are extracted from its land.

The trust account, which is administered by the Department of Revenue, is established within the trust and legacy fund. An annual tax of $25, plus 1/2 of 1% of the amount of gross value of the product at time of extraction, if in excess of $5,000, is levied on mining operations in the state. All nonrenewable merchantable minerals extracted from the surface or subsurface of Montana land are taxed.

The law establishes the following schedule for use of trust account funds:

—until the account reaches $10 million, all net earnings are added to it.

—after the account reaches $10 million, only net earnings may be appropriated until the account reaches $100 million.

—after the account reaches $100 million the Legislature must appropriate all net earnings and all receipts.

Once a trust account reaches $100 million, it may not have a balance of less.

The Board of Investments has discretion for investment of all money paid into the account.

The funds may be put to any use which will "improve the total environment and rectify damage" to it.

Although reports from mineral producers are required and are considered public records, they are open to inspection only upon the order of the Governor and under rules and regulations prescribed by the Board of Equalization.

51.0801. Renewable Resource Development (89-3601, *et seq.*, R.C.M. 1947) *Policy.* The policy statement supports taxation of nonrenewable resources to support development of renewable resources to insure preservation of the state's natural heritage and the quality of its land, air, water, fish, wildlife and recreational opportunities. The policy statement decelares that borrowing in anticipation of

revenues is necessary to prevent consumption from outpacing replacement. Whenever possible, the policy requires that the program be used for "multiple-use projects" which will not diminish the quality of existing resources.

51.0802. *Loans to Individuals.* The Board of Natural Resources and Conservation, upon recommendation of the Department of Natural Resources and Conservation, may make loans to farmers and ranchers who:

—are citizens of the U.S. and also residents and citizens of Montana;

—have enough farming or ranching experience to assure the likelihood of success of the proposed operation;

—are or will be owner-operators of farms or ranches.

If the qualifications are met, the loans are made without regard to the applicant's form of business organization (partnership, corporation, etc.). Loans may be made for refinancing existing indebtedness incurred in projects which fulfill the purposes of the program, which include conservation, management, utilization, development, or preservation of the land, water, fish, wildlife, recreational and other renewable state resources.

Loans may not exceed $100,000 or 80% of the fair market value of the security offered, whichever is less. The state has a lien on all projects constructed with loans, and can foreclose like any other lender. Interest rates are set by the Board, although it may not set a rate greater than 1% more than the rate of the renewable resource development bonds. Loans may not be made for more than 30 years.

51.0803. *Loans to State and Local Agencies* Loans made to government entities must be approved by the Legislature. Applications must be made to the Department of Natural Resources, which in turn makes proposals for funding to the Governor. All proposals must be made to the Legislature by the twentieth day of the session. Loans are made to state agencies, commissions and departments or to local governments under the same general terms as those for individuals.

51.0804. *Grants to State and Local Agencies* Government units may also receive grants; however, the grants can be made only from the coal tax revenue which is deposited in the sinking fund account.

51.0805. *Public Participation.* The Department of Natural Resources is required to solicit in its evaluation process, the views of state and federal agencies as well as other interested and affected persons.

51.0806. *Development Bonds.* The Board of Examiners must finance the renewable resource development program through sale of up to $5 million in bonds, which are backed by the state. Refunding bonds may be issued to meet principal or interest obligations or to reduce the cost of outstanding bonds.

51.0807. *Earmarked Accounts.* Principal and interest from loans, proceeds of refunding bonds, 2½% of proceeds from the strip coal mine license tax and income from other sources authorized by the Legislature are placed in the sinking fund account to meet bond obligations and to accumulate a reserve for future obligations. Deficiencies in the fund are made up by temporary transfers from the general fund.

Proceeds from the sale of all bonds (except refunding bonds), are placed in the clearance fund account for loans and costs of administering the program.

51.0900. Natural Resources Development Policy (MAC Rule 12-2.14(1)-S1410)

In January, 1970, the Fish and Game Commission adopted a general policy statement which recognizes the inevitability of future development of the state's mineral, timber and water resources. In order to avoid environmental damage which has accompanied past resource development, the Commission offers its cooperation to private companies in planning activities which will minimize harm done to the environment. The statement urges that private industry recognize its responsibilities to the land and support a policy of cooperation with the Commission.

Agency Programs

51A.0001. Lands Administration. The Lands Administration Division of the Department of State Lands has direct responsibility for classification and management of state lands. The Division evaluates tracts for renewal of agricultural and grazing leases. The Division also establishes policies for the management of state-owned lands which are under agricultural or grazing leases; e.g., minimum requirements for land breaking for crops or range renovation; use of pesticides and herbicides on state lands; sagebrush control programs.

51A.0002. Resource Development Program. This program is responsible for developing and improving state lands to increase revenue for the trust fund and to restore and preserve state land resources. Among the activities carried out during fiscal year 1976 were:

—initiation of a Stockwater Development Program to secure water rights for state school trust lands; water rights were secured for 53 tracts of trust land;

—improved over 26,000 acres of deteriorating rangeland by entering joint range renovation programs with the Bureau of Land Management;

—developed irrigation projects on 550 acres of state school trust lands, and determined the feasibility of future irrigation projects on 1,700 acres of state school trust lands.

51A.0800. Renewable Resource Development Program. During fiscal 1977, the Department of Administration received applications from state agencies for loans and grants totaling over $7,675,000. The Department recommended approval of loans and grants totaling over $3,900,000. The Legislature approved a loan of $2,000,000 and a grant of $300,000 to the Department of Health for the solid waste management and resource recovery program (See 17A.0002), and $640,000 in grants to the Department of Natural Resources for reservoir construction, dam repair and irrigation systems. (See 58A.0103). All of the grant money is administered through the Department of Natural Resources.

52.0000. AGRICULTURAL AND GRAZING LAND

Perhaps Montana's most important natural resource is its agricultural and grazing land. Government policies, primarily at the state and federal levels, have significant impact on agricultural land management. Much agricultural and grazing land is owned by the state and federal governments and leased to private operators. State and federal laws set out leasing policies and requirements for management of public lands to encourage development and conservation of the land's productivity. The state's resource development policies and Rangeland Resources Act provide support for enhancement of land resources. The Greenbelt Act provides a tax break for agricultural land in order to discourage the conversion of prime agricultural lands to non-agricultural purposes.

Enabling legislation provides mechanisms for private operators to establish special purpose districts to take advantage of state and federal funds and technical assistance. Soil and Water Conservation Districts enable their members to engage in conservation and land management projects which enhance the productivity of their land. Similarly, Grazing Districts may be established to take advantage of federal rangeland programs, and to control and stabilize grazing on public lands.

In addition to land management policies, a variety of supporting services are available to aid farmers and ranchers in conducting their operations. The Agricultural Experiment Station and the Cooperative Extension Service conduct research and demonstration projects and provide valuable information and technical assistance. Government programs aid farmers and ranchers in controlling saline seep, weeds, mosquitos and other pests and diseases. Use of fertilizers and pesticides is regulated by the Department of Agriculture.

In addition, any discussion of agricultural and grazing land must mention the importance of water resources and water use policies, without which the development of such lands would be impossible. Water resource management is discussed in another section.

52.0001. Contents.

52.0002. See also:

52.0003. Agency Programs:

52.0100 Lease of Statate Land: (81-401 *et seq.*, R.C.M. 1947) The Board of Land Commissioners is responsible for the leasing of state land. Agricultural leases are based upon a "crop share rental value" of not less than one-fourth of the annual crop, or "the usual landlord's share", whichever is greater. Grazing land leases are based on appraised animal-unit-month carrying capacity. An animal unit is one cow, one horse, five sheep or five goats; animal-unit-month carrying capacity is the amount of natural feed necessary for the complete subsistence of one animal unit for one month.

In order to gain a sustained income for the school and other trust funds, the law requires a rental value appraisal at least once during the term of any lease of land-grant and other state lands, agricultural and grazing land and town and city lots.

An individual who has previously leased state or local land and has met the terms of the lease has a preference right over others seeking to lease the same land. In order to exercise the right, however, the present holder of the lease must meet the highest bid made by any other applicant. The present holder may appeal to the Board if he feels the highest bid was excessive and not in the state's best interest.

The Board must accept the highest bid when advertising presently unleased land, unless it determines that the highest bid is not in the state's best interest.

All agricultural and grazing leases are for five or ten years, but may be cancelled if rent is not paid by statutorily set deadlines or if specific lease conditions are not met. (In order to achieve uniformity in the number of leases up for renewal each year, the Department of State Lands may issue 4-, 5-, or 6-year leases during 1979-1983.)

Leases may be assigned only with approval of the Department of State Lands. Preference is given to assignments to individuals who want the land for personal use, "so that the full advantage coming from the leasing and use of the land may reach those who actually till the soil, and so that they are not compelled to pay a higher rental than that due the state". Any assignment based on less advantageous terms than the original lease will be cancelled if not approved by the Department.

A person holding a lease who makes improvements directly related to conservation of the land or necessary for proper use of it must be paid for their value by any individual who subsequently leases the land.

52.0200. County Land Advisory Boards (16-1501 *et seq.*, R.C.M. 1947) County land advisory boards exist to work with boards of county commissioners in administering county owned land. Boards are made up of five members who are appointed by the district judge, including the state senator and one state representative. They advise the county commissioners on the control, care, management and disposition of county land.

The law authorizing the advisory boards declares that it is the policy of the state:

—to promote conservation of the natural resources of the state;

—to provide for the conservation, protection and development of forage plants, and for the beneficial use of grazing land by livestock;

—to encourage storage and conservation of water for livestock and irrigation;

—to place the farming and livestock industries on a permanent and solid foundation;

—to extend preferences in sales and leases of land to resident farmers, stockmen and taxpayers;

—to gradually restore to private ownership, the areas of land which have passed to the counties because of tax delinquencies.

52.0301. Soil and Water Conservation Districts (76-101 through 121, R.C.M. 1947) *Policy and Purpose.* The soil and water conservation district law was adopted in response to the drought and dust-bowl years of the thirties. Federal conservation assistance programs were initiated and conservation districts were established in every state to provide mechanisms for utilizing federal assistance. In its policy statement, the law declares that Montana's farming and grazing lands are among the state's basic resources and that their preservation is essential for the public health, safety and welfare. Because improper land use practices contribute to the erosion of the agricultural lands, it is necessary to encourage proper land use methods, including construction of terraces, dams, channel improvements and drainage systems, and the utilization of such practices as strip cropping, contouring, land drainage irrigation, and forestation.

It is the purpose of the law to provide for conservation of soil resources, control erosion, prevent flood damage, and to conserve, develop and utilize water resources.

52.0302. *Department of Natural Resources & Conservation.* The Department acts in a support and advisory capacity to local conservation districts. The Department assists in the organization of districts, aids district supervisors in the discharge of their duties, facilitates information exchange among districts, coordinates (through advice and consultation) the activities of conservation districts, secures the cooperation of the federal government, and disseminates information throughout the state concerning conservation activities.

52.0303. *Creation of Conservation Districts.* The process begins when ten electors from the proposed area petition the Department to request the organization of a district. Within 30 days, a notice is issued informing residents of the area of a public hearing on the necessity and desirability of forming a district. Based on the hearing and other information, the Board of Natural Resources will determine if there is need for a district and will set the proposed boundaries. In its decision, the Board will consider topography, soils, existing erosion conditions, prevailing land use practices, watershed and agricultural activity, and the existence of other conservation districts in the area. If the petition is denied, six months must elapse before another petition will be considered.

If the Board determines that there is need for a district, it then determines the administrative feasibility of establishing one. A referendum is conducted in the proposed area, after which the Board makes its final decision based on the attitudes of the electors, the result of the vote, the wealth of the residents of the area, and the costs of the proposed conservation activities. The Board may not approve the creation of the district unless a majority of the votes cast are favorable. If approved and certified, the conservation district becomes a political subdivision of the state.

District boundaries may be expanded by following procedures similar to those described above. A new district may not include territory lying within an existing district. However, districts may be divided or combined following submission of a petition to the Department, signed by a majority of the supervisors of each affected district, and a public hearing. There are also similar procedures for discontinuance of all or part of a district.

52.0304. *Selection of Supervisors.* Upon creation of the district, two supervisors are appointed by the Board of Natural Resources and three are elected by voters living within the district. Thereafter, all supervisors are elected. The Department pays the expense of all elections. If the district includes a municipality, the city or town council appoints two supervisors after consultation with the elected supervisors. The unincorporated area of the district may be divided into 5 supervisor areas. The supervisors may invite a city or town to designate representatives for consultation on matters of policy and program which affect the municipality. Supervisors serve three-year terms without salary.

52.0305. *Powers of Conservation Districts.* Under the direction of its supervisors, conservation districts are authorized to:

—conduct surveys and research in cooperation with the federal or state government;

—conduct soil, vegetation, and water conservation projects within the district with the consent of the landowner;

—carry out conservation and control measures (e.g. water and range management projects, cultivation methods) on state lands or on private lands with the consent of the owner;

—furnish financial aid to agencies or land owners for the conduct of conservation practices;

—acquire and manage property (which is then tax-exempt);

—make equipment, machinery, seeds, etc. available to land owners in the district;

—develop comprehensive plans for conservation of soil and water resources, specifying possible actions, policies, land use methods, engineering projects, etc., bring such plans to the attention of land owners and occupiers in the district;

—designate sites for off-stream water storage reservoirs;

—take over from and act as agent of the state or federal government in the operation of soil or water conservation projects, irrigation and drainage works, etc;

—sue and be sued, make contracts, incur indebtedness, levy taxes, apply for and receive federal revenue-sharing funds;

—require contributions or other conditions from land occupiers who receive the benefits of district activities.

52.0306. *Land Use Regulations.* District supervisors may adopt land use regulations in the interest of conserving soil and water resources and preventing and controlling erosion. They may hold a public hearing on the proposed regulations, and must issue a notice of intent to adopt them and make copies available for inspection. A referendum is then held, and the regulations may not be adopted unless approved by a majority of the votes cast. If adopted, the regulations have the force of law. Any elector in the district may petition for the adoption, amendment or repeal of regulations. The same procedures for hearing, notice and referendum are followed.

The regulations may include provisions requiring engineering projects, cultivation or grazing methods, retirement of highly erosive areas, and other provisions as necessary to carry out the purpose of the act. The regulations must be uniform throughout the district, but lands may be classified with respect to soil types, drainage, erosion, etc., and regulations may vary according to the land classification.

Supervisors may enter private lands to investigate charges of violations of the regulations. If such violations exist, the supervisors may petition the district court to require the land owner to perform necessary work or to allow the supervisors to have the work done at the land owner's expense. If the petition is granted, the court retains jurisdiction until the work is completed. The regulations apply to state lands within the district, and state agencies must cooperate in their enforcement.

The regulations must provide for a board of adjustments which may grant variances from the regulations because of practical difficulties and unnecessary hardships which would be entailed in complying with the regulations. The board consists of three members appointed for three-year staggered terms by the Department of Natural Resources with the approval of the district supervisors. Board members may be removed by the Department for neglect or malfeasance after opportunity for a hearing.

All board meetings are open to the public. Any elector in the district who is opposed to the granting of a variance may be made a party to the hearing. Board decisions must be based on written findings and may be appealed to the district court. Board findings, if supported by the evidence, are conclusive, but additional evidence may be taken by the court.

52.0307. *Discontinuance of Districts.* Any time after five years of operation, ten electors in a district may petition the Department of Natural Resources to discontinue the district. Within 60 days after receipt of the petition, the Department issues a notice of referendum. The Board of Natural Resources determines whether continued operation of the district is feasible and desirable. The Board may not determine that the district should continue if a majority of the votes cast oppose it. If the Board determines that the district should be discontinued, the district supervisors immediately proceed to terminate the district's affairs; district property is disposed of at public auction and proceeds go to the state. All district land use regulations become void, and the Department of Natural Resources assumes all contractual obligations of the district.

Soil and Water Conservation Districts—Funding
(76-201 through 233, R.C.M. 1947)

52.0308. *Legislative Appropriations.* (76-115, R.C.M. 1947) Conservation district activities may be funded directly by appropriations from the Legislature, although this approach has seldom been used. The Department of Natural Resources would transmit requests for appropriations to the Department of Administration, which would then include them in the Governor's budget request to the Legislature. Seventy-five percent of the appropriations would be distributed among the districts in proportion to their acreage, and 25% would be distributed in proportion to the expense of carrying on the particular programs within each district.

52.0309. *Mill Levies.* The primary source of funds is mill levies assessed on the value of land in the district. Before the beginning of each fiscal year, the district supervisors notify the board of county commissioners of the amount of money which they intend to raise by assessment. The levies are collected by the county as part of the regular tax collection procedures. Regular assessments may be up to 1½ mills, and special assessments up to 3 mills.

52.0310. *Bonds and Borrowing.* The district may borrow money if the mill levies do not raise enough. Up to 50¢ per acre of land in the district may be borrowed.

Bonds may be issued to finance special projects. A special election is held to vote on the bond issuance. The district must comply with the provisions of the Municipal Revenue Bond Act, Title 11, Chapter 24. (See 47.0300.)

52.0311. *Special Project Areas.* A conservation district may establish a special project area on petition of a municipality, the county, a special purpose district (e.g. county sewer district), or 50% of the landowners in the proposed project area. On receipt of the petition, the district supervisors issue notice of a public hearing. Prior to the hearing, the supervisors investigate the need for the project and prepare a report. The supervisors will also receive written protests which will be considered at the hearing. If the owners of 50% of the land in the proposed project area protest, no further action may be taken for six months. If the supervisors determine that the project is feasible and desirable, an election is held in the proposed area. If the majority of votes approve, the supervisors must establish the project area.

The supervisors then estimate the coming year's expenses for the project area. The expenses are paid in whole or in part by regular or special assessments which are levied in proportion to the taxable valuation of the land in the project area. This assessment is not applicable to federal land unless the federal agency desires to take advantage of the project. The district supervisors have the duty to maintain and operate any project petitioned for or created by the state or federal government under this act.

52.0100. Management of Federal Grazing Lands. (43 U.S.C. 315 through 315o; 43 U.S.C. 1171; 5 U.S.C. 485; 43 C.F.R. 4100). In 1934 the U.S. Congress passed the Taylor Grazing Act, giving the Department of Interior administrative control of the public domain, excluding Forest Service land. The Department's Grazing Service identified and catalogued the public land and established local grazing districts to aid in the administration process.

Under the Act the federal grazing policy is to stop injury to the public grazing land by preventing overgrazing and soil deterioration; to provide for the orderly use, improvement and development of damaged land; and to stabilize the livestock industry dependent on the public range.

The Secretary of the Interior is authorized to establish local grazing districts. Each has a Board of Advisors of five to twelve local stockmen and a wildlife representative who are recommended to the secretary by range users in the district through election. The Board meets at least once a year, offering advice and making recommendations on each application for grazing permits within the district. The Board also offers advice on rules and regulations under the Taylor Grazing Act, and on establishment of grazing districts, modifications of district boundaries, seasons of use, and range carrying capacity. In promulgating rules and regulations, the Secretary is required to seek the advice of the advisory boards in advance of issuing regulations affecting the grazing districts.

Money for range improvements comes from grazing fees. The Taylor Act stipulated that funds collected from grazing fees should be used to pay for rangeland improvements in counties in which the land is located.

One-half of the money paid by the grazing districts to the federal government goes to the state and is subject to legislative appropriation.

The law requires that reasonable fees be charged. In setting the fees, the Secretary of Interior is required to take into account "the extent to which districts yield public benefits over and above those occurring to the users of the forage resource for livestock purposes". Fees consist of a grazing fee for the use of the range, and a range improvement fee, which, when appropriated by Congress "shall be available.....solely for the construction, purchase or maintenance of range improvements".

During periods of range depletion due to severe drought or other natural causes, or in case of a livestock epidemic during the life of the permit, the Secretary of Interior is authorized to limit grazing and to reduce or refund grazing fees for the duration of the emergency.

The Federal Range Code for Grazing applies to land within grazing district boundaries. Under the code, grazing privileges are granted with a view toward protecting established livestock operators. To be eligible for a grazing permit, an applicant must be a U.S. citizen engaged in the livestock business or a group or association, all of whose members are in the livestock business, or a corporation in which controlling interest is vested in an individual engaged in the livestock business. Preferences are given to those within or near a grazing district who are landowners engaged in the livestock business, bona fide occupants or settlers or owners of water rights, as may be necessary to permit the proper use of land, water or water rights owned, occupied or leased by them. Although the maximum time for a permit is 10 years, the permittee has the right to outbid other applicants when the permit is up for renewal.

52.0500. Grass Conservation and Grazing Districts. (46-2301 *et seq.*, R.C.M. 1947). Montana's law enabling it to cooperate with federal government programs on grazing land is known as the Grass Conservation Act. Its stated purpose is "to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse.....and to

provide for the stabilization of the livestock industry and the protection of dependent.....ranching operations.....". The Department of Natural Resources and Conservation in cooperation with the Department of State Lands and the Board of County Supervisors is responsible for supervising the formation and operation of conservation districts established by the law.

52.0501. *Creation of Districts.* In order to create a district, three or more livestock operators who own or control land within the proposed district submit to the Department of Natural Resources a statement requesting organization and a plat of the proposed district. A public hearing with adequate notice must be held. If the Board of Natural Resources and Conservation approves the request, articles of incorporation are prepared by livestock owners in the district.

52.0502. *Powers.* Incorporated districts have the power:

—to purchase and market livestock and livestock products, supplies and equipment;

—to sue and be sued;

—to acquire grazing or agricultural land by lease, purchase or cooperative agreements;

—to manage and control use of its range;

—to acquire and construct fences, reservoirs, and other livestock facilities;

—to set grazing fees;

—to alter district boundaries, although merging with another district or subdividing the district requires the approval of the members and the Department;

—to reseed and carry out other range improvement programs.

Grazing districts are required to reserve a reasonable amount of the land's capacity for the maintenance of wild game animals.

52.0503. *Grazing Preferences.* The distribution of grazing preferences within a district is governed by a set of statutory priorities which are primarily based on the land's carrying capacity and the degree to which a member's livestock operations are dependent upon district land. Grazing preferences are attached to (appurtenant to) the land, and usually must be transferred with the land when it is sold. The Board of Natural Resources and Conservation may make exceptions to this general rule if statutory requirements are met.

52.0504. *Membership.* Membership in the district is limited to "persons" engaged in the livestock business who own or lease grazing land within or near the district. (Some exceptions are made for individuals acting as agents for an owner.)

52.505. *Dissolution of the District.* A state district, with the approval of three-fourth of its members, may request the Board of Natural Resources and Conservation to dissolve the organization. If a district is dissolved, its assets are distributed to its creditors and then to district members.

52.0600. Montana Rangeland Resources Act (76-301 through 307, R.C.M. 1947) This law establishes a rangeland management program in the Department of Natural Resources and Conservation to:

—coordinate the use of rangeland to minimize conflicts between government agencies and ranchers;

—strive to create understanding and compatability between users, including sportsmen, recreationists and ranchers;

—participate in zoning and planning studies in order to assure that native range is adequately represented;

—coordinate range management research to help prevent duplication and overlap of effort.

The Governor is authorized to appoint a committee composed of ranchers, representatives of ranchers' organizations, and federal and state agencies. The committee is to review and recommend annual and long range work programs, suggest work priorities and provide advice to the coordinator of the state program.

52.0700. Agricultural Experiment Station (75-841.1 *et seq.*, R.C.M. 1947) The Agricultural Experiment Station, located at Montana State University in Bozeman, was established in response to the federal Hatch Act to conduct and promote studies relating to "agriculture, natural and rural life". Six research centers under the control of the Experiment Station are located throughout the state. A Montana wool laboratory and a Montana grain and seed laboratory are established by the law as part of the experiment station.

52.0800. Saline Seep Control Program (Ch. 100, L. 1975; Ch. 395, L. 1977) This law requires the Department of State Lands to conduct extensive research into the problem of damage from saline-alkalai concentrations caused by agricultural practices. Studies required by the act were to be completed by July 1, 1977; however, the 1977 Legislature extended the termination date to June 30, 1979, and appropriated additional money for the program. Another 1977 bill amended the law relating to conservation districts to allow them to investigate the saline seep problem.

52.0900. Mosquito Control. (16-4201 through 4214, R.C.M. 1947). This law provides for the establishment of a Mosquito Control District and appointment of a Mosquito Control Board in counties where the need exists. On petition of 25% of the electors in the proposed district, the board of county

commissioners will hold a hearing and, if appropriate, establish the district and appoint the board members. The Mosquito Control Board may enter contracts, hire employees, and conduct mosquito control programs. The Department of Health advises such boards, and the boards submit annual reports of their operations to the Department. The Board's activities are funded by a mosquito control fund which is established by mill levy on property in the district.

52.1001. Weed Control: *Control of Weed Seeds* (3-802.1 through 814, R.C.M. 1947). The Department of Agriculture regulates the labeling, sale, and transport of agricultural seeds for the purpose of controlling the spread of noxious weeds. Seed samples are inspected by the Agricultural Experiment Station in Bozeman. Rules are at MAC 4-2.6(10)-S680.

52.1002. *Weed Control Districts* (16-1701 through 1727, R.C.M. 1947). It is unlawful to allow designated noxious weeds to go to seed, and in order to control such weeds, every county is directed to establish a weed control district and to appoint a board of county weed supervisors. The supervisors are directed to control weeds on all lands in the county, taking particular precautions to preserve beneficial vegetation and wildlife.

The board of supervisors may inspect property and issue orders for destruction of weeds. If such an order is not obeyed, the supervisors may institute control measures. Expenses will be paid from the county weed fund — established by mill levy or by appropriation from the county general fund — and charged to the property owner. Weed control along a highway right-of-way will be charged to the state highway fund. (32-2814, R.C.M. 1947). Fines and penalties may be assessed for failure to comply with this act.

County weed boards are empowered to cooperate with any available state or federal weed control program.

52.1100. Pest and Disease Control (3-1101 *et seq.*; 3-1201 *et seq.*; 3-1301 *et seq.*, R.C.M. 1947). The Department of Agriculture is responsible for the control of fruit pests and diseases. Inspectors regularly visit nurseries, orchards, warehouses and other places where horticultural products and fruit are located. The Department may order disinfection, destruction or quarantine of infested plants and facilities. All nursery stock must be inspected and certified by the Department before it can be delivered to a nursery or shipped out of it. The Governor is given the power to prohibit importation of any kind of plant from areas which are known to be infested with pests or disease.

Agency Programs

52A.0001. Grazing District Supervision Program. This program, conducted by the Conservation Districts Division of the Department of Natural Resources and Conservation, is responsible for the conservation, protection, restoration and proper utilization of grass, forage, and range resources in Montana, guiding and encouraging agencies and rangeland owners in the optimum development of livestock forage and wildlife habitat, water conservation and production, pollution and erosion control, and enhancement of the state's natural beauty. During fiscal year 1976, the Division conducted workshops for county range leaders, engaged in a variety of educational activities, assisted in the adoption and implementation of individual range plans, over 10,000 of which now cover over 32 million acres, and monitored the conditions of all Montana rangeland, 59% of which is now in good-to-excellent condition.

52A.0002. Conservation District Supervision Program. This program, administered by the Conservation Districts Division of the Department of Natural Resources and Conservation, is responsible for proper development and management of land through supervision of and assistance to soil and water conservation districts. During fiscal year 1976, the Division assisted with conservation district programs under which over $25 million was invested in land and water improvements throughout the state.

52A.0100. Government Agencies Involved in Range Management. (The following discussion of government agencies involved in range management was taken from the Department of Natural Resource, Conservation Districts Division publication describing the Rangeland Resources Program).

52A.0101. State Agencies. Several departments and bureaus of state government have responsibilities for grazing lands. The following have been selected for discussion since they have lands under direct management.

The largest state land manager is the *Department of State Lands*. This Department is responsible for the School Trust Lands and other smaller areas.

These lands are generally rented out on long-term leases to individual operators. These lessees have applied all degrees of management. As a result, range condition varies from poor to excellent. The Land Department is moving into more extensive management planning. Management regulations are enforced through periodic inspections.

The *Department of Fish and Game* has been steadily acquiring tracts of land that are important to both recreation and game management. These tracts are usually well managed, but population pressure on some of the areas which are used to gain access to streams and picnic sites makes it difficult to maintain a good condition range.

The *Conservation Districts Division's* responsibilities are to both the State Cooperative Grazing Districts and Conservation Districts.

The Division's basic responsibilities are to promote good natural resource management at the grassroots level; therefore the rangeland program is one of the highest priority items considered.

Conservation Districts have a two-fold responsibility. The first is a direct responsibility to properly manage any grasslands that may be owned by the districts. Whenever a district acquires land, proper management is applied not only for the benefits derived but also so the area can be used for demonstrational and educational purposes. The second responsibility is to properly manage, protect, and utilize the soil, water and vegetative resources of the state.

Grazing Districts hold an important position in the improvement of Montana's rangelands. Project areas of Conservation Districts are areas that can be established to carry out specific resource management and improvement proposals.

Indian Reservations own large areas of the rangelands in Montana. They have a major responsibility for improving management on the grasslands. Tribal Councils and other organizations are working to achieve range improvement through proper management.

Railroad lands were given to the railroads to enhance their development and to assist in financing the original construction of the rail lines. The railroad companies are endeavoring through trained range specialists to achieve proper management on these tracts.

Responsibilities of the *State Forestry Division* include both timber and grazing management. Their lands are generally in the form of grazable timber lands. Grazing management is usually secondary to timber management; however, grazing management is being applied to these areas and good results are evident. With improvement of condition on the rangelands over the entire state, the State Forester's responsibility for fire protection becomes critical. Good to excellent condition ranges, with an abundance of vegetative growth, creates a fire hazard.

The *State Experiment Stations* have areas of rangelands that are used to carry out research projects beneficial to the total range management program. Generally, the lands of the experimental stations are well managed and in an improving condition.

Some *University lands* are classed as rangelands. These are usually well managed and planned and are either in good or improving condition.

Institutional lands of the state are now mostly well planned and in an improving condition. A good example is the prison ranch where excellent planning has been developed, and the vast acreage of rangeland is in good to excellent condition.

52A.0102. Federal Agencies. Various federal agencies control approximately 30% of the land area in Montana. Thus, these agencies have a large responsibility to the rangelands that they administer and an equal obligation to the grazing lands that are affected by the various agencies' decisions and plans.

The *Forest Service* administers the largest area of federal lands in the state. Much of the National Forest land is suitable for grazing. It supplies summer forage for many ranchers, plus habitat and forage for wild game. Water production and recreation are primary responsibilties of these lands.

The Bureau of Land Management is the designated agency to manage Taylor grazing and other similar types of federal lands. Their scattered and fragmented pattern makes management difficult. These lands are often quite fragile and easily damaged by grazing and other disturbances, thus adding to the difficulties of land management. In most cases the management plans developed are directly affected by intermingled private lands.

The *Bureau of Indian Affairs* owns and manages approximately 125,000 acres. Primarily, their responsibility is one of advice and guidance to the reservations. The BIA has an indirect responsibility for large areas of tribal-owned rangeland on the different reservations.

The *National Park Service* has over a million acres of grazing land in Montana. These lands are intensively managed, but, due to the pressure of people and their demands, they are hard pressed to keep these ranges in an improved condition. Game management controls and travel patterns are high priority items in National Parks.

The *Bureau of Reclamation* has about 162,000 acres of rangeland included in their projects. The Bureau is responsible for seeing that these rangelands are properly cared for and good management planning is applied.

The *Bureau of Sport Fisheries and Wildlife* administers over one million acres of grazing land. These lands are managed and planned for improvement of the vegetative cover for watershed protection and food and habitat for wildlife. In many instances they also provide summer forage for ranchers' livestock.

The *Agricultural Research Service* plays a double role in research and land management. The ARS is responsible for managing its own rangelands in the best and most scientific manner.

In addition, ARS is responsible for carrying on research on rangelands to help solve some of the problems confronting land managers and owner-operators.

The *Army Corps of Engineers* is not primarily a grazing land manager by title or charge. However, it controls more than one-half million acres in Montana and many of these tracts are rangeland.

52A.0103. Technical Assistance. Technical assistance, particularly to the private landowner and/or operator, is vital to the management and improvement of Montana's rangeland resources. This assistance is also vitally needed by the many land management agencies so they may gain maximum results from their various programs.

The *Soil Conservation Service* is prepared to assist ranchers in developing and carrying out management plans that are based on the conservation needs of the individual ranch operation. The services are available upon requst. The SCS, through Conservation Districts, has placed strong emphasis on vegetative practices. Evidence of this is the re-enforcement of their range management staff and the establishment of a Plant Materials Center at Bridger, Montana. At the PMC various varieties of native plants are studied and developed to make better plants available for revegetating cropland areas and establishing cover where needed.

The *Cooperative Extension Service* supplies technical assistance through a state, federal, and county cooperative program. The major service they provide is education. Promoting range management to ranch operators, children in 4-H programs and urban people is an important part of the education process.

The *Montana State University Department of Animal and Range Science* has produced research in grassland management in addition to its classes for range management graduates.

The *University of Montana School of Forestry's Range Management Department* is a source of technical knowledge, particularly in the field of grazable woodlands.

52A.0200. Agricultural Stabilization and Conservation Service. The ASCS was organized under federal law and operates through a hierarchy of state and county committees elected by local farmers and ranchers. The county committees approve federal cost-sharing funds for individual operators within the committee's jurisdiction. Among the ASCS's programs are the following:

52A.0201. Agricultural Conservation Program. Authorized by the Soil Conservation and Domestic Allotment Act of 1936; Congressional appropriations are used to provide relief for wind erosion; cost sharing funds to aid farmers and ranchers with conservation projects; emergency conservation funds to share costs of tornadoes, floods, etc. Among the activities funded by the ASCS are tree planting, tree thinning, restoration of vegetative cover, construction of water impoundment and livestock watering facilities, streambank stabilization, sediment control, weed control, solid waste disposal, and establishment of windbreaks. Money from the Forestry Incentives Program (57A.0002) is available for forestry activities.

52A.0202. Commodity Loans and Purchases. Price support loans and purchaes are made to help insulate agricultural producers from severe fluctuations in market prices.

52A.0203. Storage Facility Loans. Helps producers provide adequate on-farm storage and handling facilities so that grain may be held until market prices are favorable.

52A.0204. Wheat and Feed Grain Disaster Program. The Agriculture and Consumer Protection Act of 1973 provides for programs through 1977 which enable producers to earn deficiency payments to supplement income in the event of low market prices, and to earn disaster payments to help offset crop losses caused by natural disasters.

52A.0205. Wool Payments Program. Payments under the National Wool Act of 1954 and the Agriculture and Consumer Protection Act of 1973 provide incentives to wool growers and encourage increased domestic production.

52A.0206. Forestry Incentive Program. (See 57A.0002.)

52A.0207. Water Bank Program. (See 24A.0301.)

52A.0300. Lewis and Clark Conservation District Sediment Control Project. Under a two-year grant from the Environmental Protection Agency, the Lewis and Clark Conservation District has developed and adopted land-use regulations aimed at controlling soil erosion and sediment. These land use regulations are the first in the nation for a conservation district. Adoption occurred in mid-1977, and implementation is just beginning.

The regulations apply throughout the entire district, which includes all of Lewis and Clark County outside of the corporation limits of Helena and East Helena. The regulations adopt as minimum conservation standards selected practices developed by the USDA Soil Conservation Service, and the Montana State Forestry

Committee. Landowners whose land is being managed in compliance with an approved conservation plan are considered in compliance with the regulations. All subdivision, forestry and construction activities (with some exceptions including single-family residences, farm buildings, and approved SCS projects) must be reviewed and approved by the supervisors prior to any land disburbance. Complaints of violations are filed with the supervisors, and the supervisors have the authority to order corrective action and to go to court to seek injunctions or fines. A board of adjustments is established to hear appeals and grant variances.

52A.0600. Rangeland Resource Program. This program was first established by joint resolution of the Legislature in 1973 and was funded through the Montana Conservation Commission. The Montana Rangeland Resources Act of 1977 put the program on a statutory basis and made the Department of Natural Resources and Conservation responsible for implementation.

As originally formulated, the program established a series of long-range (10-year) goals:

—Establishment of intensive management planning for 80% of the state's rangeland; to be accomplished through cooperative agreements among federal, state and private participants, and technical assistance from the Cooperative Extension Service, Soil Conservation Service, Bureau of Land Management, and the Forest Service.

—80% of the native range to be in good to excellent condition by 1980; to be accomplished by educational and demonstration projects and establishment of range management regulations for state-owned school trust lands.

—Increase range and pasture forage production by 40%; to be achieved through practices such as rest rotation, deferred grazing, fencing and brush control, reseeding and fertilization.

—Development of stock watering facilities; full development on 80% of the range and development under way on the remainder.

—Increase recreational use of native range by 500%; through improvement of the vegetative cover, planning of recreational areas, educational programs, and memoranda of understanding between landowners and public land agencies.

—Improvement of wildlife habitat on native ranges; through improvement of vegetative cover, set-aside of wildlife areas, and controlled hunter harvests.

A request to the Renewable Resource Loan Program for a grant to establish a revolving fund for long-term, low-interest loans for range improvements is being prepared for submission to the next Legislature.

52A.0700. Agricultural Experiment Station. The AES was established at Montana State University in 1893 by the Montana Legislature under authority of the Federal Hatch Act of 1887. During fiscal 1976, research accomplishments were made in the following:

—increasing efficiency of grain and forage crop production methods;

—increasing production efficiency of cattle, sheep and swine;

—research on best use and conservation of natural resources: range renovation, soil conservation, water use and quality maintenance, reclamation of mined lands, saline seep problems;

—rural community development;

—improved crop varieties and livestock.

52A.0800. Saline Seep Control. The 1973 Governor's Emergency Committee on Saline Seep recommended that a program be established and funded for the study and control of saline seep problems. Following their recommendations, the 1974 Legislature appropriated funds to the Department of State Lands, and the Governor directed the Department to establish and coordinate a statewide Saline-Alkali Control Program. In April, 1974, the Governor appointed a 7 member Saline-Alkali Advisory Council to assist the Department in establishing the program.

The 1977 Legislature extended authorization and reduced funding through June, 1979, to phase out the research programs. The local Soil and Water Conservation Districts are to assume responsibility for dissemination of information and implementation of preventive and corrective measures. The Department of State Lands no longer has a full-time saline seep project coordinator.

52A.0801. *Goals.* The Department and Advisory Council determined that program activities should fall into the following areas:

a. Development and implementation of the practices for prevention and control of dryland saline seep and irrigation salinity.

b. Measurement of the magnitude, nature and location of the problem and its effect on water quality.

c. Evaluation and development of related agricultural programs that relate to the saline seep problem.

d. Development of technology for the management of the problem.

e. Seek additional funds for saline seep work from other sources.

52A.0802. *Activities.* A number of agencies are engaged in ongoing saline seep control projects:

The Agricultural Experiment Station and the Cooperative Extension Service at Montana State University are developing dry-land cropping practices and demonstrating means of reclaiming seep areas.

The Paradise Irrigation District has been selected as a pilot demonstration project to determine the cause of decline in soil productivity and to develop guidelines for improving production.

The Agricultural Economics Department at the University of Montana is developing crop rotation strategies. The University is also conducting a mineralogical study of the water salinization process.

Soil and Water Conservation Districts throughout the state are evaluating salt-tolerant vegetation.

The Montana Bureau of Mines is examining the hydrological aspects of saline seeps.

The Department of Health is conducting a baseline study of water quality problems related to salinity.

The Agricultural Stabilization and Conservation Service is administering a federal cost-sharing program for the control of saline seep and the reclamation of seep areas.

The Federal Crop Insurance Corporation is making recrop insurance available to support flexible intensive cropping practices.

The U.S. Department of Agriculture's Agricultural Research Service is conducting detection and monitoring of seep areas.

The Department of State Lands and other consulting agencies are engaged in mapping, infrared photography and satellite imagery programs to clearly identify the problem areas.

The Department of Natural Resources and Conservation is seeking funding for a demonstration-information program and to provide technical assistance to farmers to introduce a "flexible-cropping" system to replace the traditional crop-fallow system.

Additional funding has been made available from the Old West Regional Commission and the Montana Wheat Commission.

52A.1000. Weed Control. During 1976, the Department of Agriculture initiated a remote sensing program to determine the location and degree of infestation of noxious weeds.

52A.1100. Insect Control. During 1976, the Department of Agriculture conducted insect detection surveys in 36 counties, delineated two million acres of cropland economically infected with grasshoppers, performed insect pest monitoring surveys, and provided information and assistance on insect control.

53.0000. MINERALS—GENERAL REGULATION

Mining has been an important part of Montana's economy since the territory was first settled. A variety of laws of general applicability has accumulated over the years to regulate the conduct of mining activity in the state. Procedures are set out for locating and recording a mining claim and establishing right-of-ways required to develop mining claims. Surface owners must be notified before the owner of subsurface mineral rights may begin mining. Special provisions govern the establishment and operation of mining partnerships, which differ in some respects from regular partnerships. Safety codes have been established for operation of coal and non-coal mines. When the state sells land, mineral rights are reserved, and state mineral lands may not be sold. Revenue from mineral production is subject to taxation. Some of this tax money goes to the Resource Indemnity Trust Account which was established to repair environmental damage caused by development of mineral resources.

53.0001. Contents. **Section**

53.0002. See also:

State Land Policy 51.0000
Mineral Deposits 51.0400
Resource Indemnity Trust Account 51.0700

53.0100. Location and Recording of Mining and Millsite Claims (50-701 *et seq.*, R.C.M. 1947) Any individual wishing to file a claim for minerals (including gold, silver, cinnabar, lead, tin, copper or other deposits having commercial value) located on federal land subject to entry and patent under federal mining law, must meet the following requirements:

—post a notice on the land where the minerals are to be claimed which includes his or her name, and information about the claim;

—within 30 days after posting notice, physically mark off the boundaries of the claim;

—within 60 days after posting notice, record the location of the claim with the county clerk and recorder, sink a shaft near the point of discovery and comply with federal mining laws.

The clerk and recorder must send a copy of the claim to the Department of State Lands.

Failure to physically mark off the boundaries of the claim before it is recorded may result in a 5 year prison sentence, a $5,000 fine or both.

Amendment or relocation of a claim is allowed if the location and recording requirements are met.

If federal law requires annual work on the claim to prevent forfeiture, the owner of the claim must file an annual report which describes work performed during the past year with the county clerk and recorder.

53.0200. Mining Rights of Way (50-801 *et seq.*, R.C.M. 1947) The owner of a mining claim is entitled to a right-of-way over land and other mining claims which are necessary to developing the claim. The right-of-way can be used for roads, ditches, cuts, flumes, shafts or tunnels. Land can also be condemned for development of an open pit mine.

A right-of-way may be procured either through private agreement or court proceeding. If an agreement cannot be reached, the individual seeking the right-of-way must file a compalint in district court. If the judge determines that mining can only be conveniently carried out if the right-of-way is granted, he or she must grant the mining claim owner's request. Three disinterested residents of the county are then appointed to assess the damage caused by the right-of-way.

If land is being taken for open pit mining, a mineral owner must serve notice to surrounding owners and must purchase all property within 300 yards of the condemned area if the surrounding owners file a written offer with the court. If the parties cannot agree on a price for the property, legally defined methods for valuing land will be used.

53.0300. Landowner Notification Act (50-1301 *et seq.*, R.C.M. 1947) This law, passed in 1971, requires that the owner of mineral rights, if he does not own the surface rights, must notify and obtain the written consent of the surface owner before beginning operations with mechanical equipment.

The law does not apply to land owned by city, county, state and federal governments. If the land is government owned, the mineral owner must secure whatever permits are required.

53.0400. Mining Partnerships (63-1001 *et seq.*, R.C.M. 1947) A mining partnership exists when:

—two or more persons own or acquire a mining claim in order to extract minerals **and**

—when they actually engage in mining operations.

If these qualifications are met, there will be a partnership even if the individuals involved do not expressly enter a partnership agreement. Profits and losses are shared in proportion to the interest each has in the operation.

The following provisions distinguish mining partnerships from other types of partnerships:

—each partner has a lien for the debts due partnership creditors as well as money he or she contributes;

—a mining partnership is not dissolved if one partner sells or gives his interest to a non-partner;

—a new partner is liable for all previous debts of the mining partnership;

—no member of a mining partnership may bind the partnership without explicit authority to do so.

53.0500. Mineral Reservations (16-1122, R.C.M. 1947) All reservations of minerals and royalties made by counties are ratified under state law, even if the size was more or less than authorized by law at the time the reservations were made.

53.0600. Sale of State Land (81-902, R.C.M. 1947; Regulations: MAC Rule 26-2.2(6)-S220) The state may not sell most mineral deposits on state land, except on a rental or royalty basis. (Exceptions include sand, gravel, building stone and brick clay.) Purchasers of state land do not acquire mineral rights. Along with the mineral rights, the state reserves the right to develop minerals on any land it sells to individuals. However, if the mineral rights are leased, the individual or company must pay the surface owner for any damage which results from mining operations.

53.0700. Mine Safety

53.0701. *Non-Coal Mines* (50-101 *et seq.*, R.C.M. 1947; Regulations: MAC Rule 24-3.18A11(1)-S1800) The Worker's Compensation Division of the Department of Labor and Industry is in charge of inspecting mines and enforcing safety rules. Safety regulations apply to the mining of all minerals, except coal and lignite.

53.0702. *Coal Mines* (50-401 *et seq.*, R.C.M. 1947) The Coal Mining Code establishes a system of inspection, reporting requirements and enforcement to insure safe conditions in coal mines. The Code also requires safety and conservation measures for abandoned mines.

53.0800. Mines Taxation (84-5401 *et seq.*, R.C.M. 1947; Regulations: MAC Rule 42-2.22(18)-S22260 through S22370) The Net Proceeds of Mines Law provides for the taxation of minerals which are extracted from the ground (as opposed to a property tax on minerals still in place). It is essentially a tax levied against the income of the mineral producer. Minerals subject to taxation include precious or semi-precious stones, gold, silver, lead, coal, tranite, marble, gravel, talc, phosphate, rock or stone extracted from underground mines, placer mines, quarries, open pits, dumps or tailings. One-half of the sales price of coal sold by a small producer (less than 20,000 tons per year) is exempt from taxation (84-202, R.C.M. 1947).

Every mining operation must file an annual report with the Department of Revenue. The Department assesses the net proceeds from the operation (by subtracting statutorily defined deductions from the gross proceeds) and the royalties paid by it. Both assessments are sent to county assessors, who are responsible for collecting taxes due. Tax revenues go directly to the county where the mining operation is located.

54.0000. COAL, URANIUM AND GEOTHERMAL RESOURCES

In recent years, a number of laws have been passed dealing with the development of Montana's energy mineral resources: coal, uranium, and geothermal. Most of the attention so far has been focused on coal mining. In particular, since much of Montana's coal is amenable to surface mining, much of this legislation specifically addresses the problems of large scale surface mining operations.

The Board of Land Commissioners issues leases on state lands for coal exploration and mining. Payments are made to the state on a rent/royalty basis.

Because of the potential threat to the environment of large-scale strip mining, the Legislature has declared that the power of eminent domain may not be used to acquire surface mining rights where the surface and mineral rights are under separate ownership.

The Department of State Lands administers the mining reclamation laws. Permits are issued for exploration and mining of coal and uranium, whether on state, federal, or private lands. Before mining may begin, a reclamation plan must be approved indicating the techniques which will be employed by the mining company to restore the stripped land to its original condition. A coal conservation act requires mining companies to submit a mining plan to the Department of State Lands which will assure the maximum feasible utilization of coal in a given site once strip mining operations begin. The Department of State Lands also administers the mine siting law which calls for the review and approval of mining and reclamation plans for new mines before new mining activity may begin.

The Legislature has determined that the state should obtain maximum benefit from the exploitation of its coal resources and that revenues from coal mining should be used to offset adverse impacts on local rural communities caused by large-scale mining activity. A severance tax is assessed on coal: 3% to 4% for underground mining and 20% to 30% for surface mining. The coal tax money is used to fund a variety of government services including alternative energy research, highway construction in impacted areas, and aid to local communities in coal mining areas. A Coal Board, allocated to the Department of Community Affairs, has been established to supervise the use of coal tax revenues.

Uranium mining activities are subject to the siting and reclamation laws which apply to coal mining. In addition, the Legislature has determined that uranium solution extraction poses special environmental problems and has imposed a moratorium on such activities until regulations are devised by the Department of Health.

Laws administered by the Board of Land Commissioners and the Department of State Lands regulate the lease of the state lands for the development of geothermal resources.

54.0001. Contents

54.0002. See also:

54.0003. Agency Programs:

54.0100. Coal Mining Leases and Permits (81-501 *et seq.*, R.C.M. 1947; Regulations: MAC Rule 26-2.2(2)-S210 and 26-2.2(14)-S240). The Board of Land Commissioners may lease any state land for coal mining. Leases must be awarded through a competitive bid system (including a bonus for the first year's rental); the state must receive at lease the fair market value of the coal reserves, as determined by the Board. All leases carry the condition that coal must be mined, handled and marketed in a manner which will prevent waste. Mining operations must be carried on in an orderly and systematic manner and must not make subsequent mining more difficult or expensive than it would otherwise be.

54.0101. *Leases.* Leases are issued for an initial term of 10 years and will be re-issued as long as the mining operation is producing commercial quanities of coal. If the mining operation is not producing commercial quantities within 10 years, the lease will be terminated unless the operator has a strip mining permit (54.0402) or a mine site location permit (54.0602) before the 10 year term expires.

The Board of Land Commissioners may not issue leases:

—to a foreign corporation, except to Mexican and Canadian companies;

—to a U.S. corporation who sells coal to foreign corporations, except Canadian and Mexican companies;

—if it determines that strip mining would adversely affect future deep mining operations.

54.0102. *Payments to the State.* Payment is on a rental and royalty basis. Rental payments must be at least $2 per acre, and royalty payments must be at least 10% of the f.o.b. mine price of a ton prepared for shipment. Rates may be adjusted at the end of the 10 year lease and every five years after expiration of the initial lease. The Board of Land Commissioners may set higher figures for both rental and royalties.

54.0103. *Disposition of Payments.* All fees are credited to the state general fund;

—all rentals and bonuses are credited to the income fund of the grant to which the land under lease belongs;

—all royalties are credited to the permanent fund arising from the grants to which the land under lease belongs.

54.0200. Eminent Domain Policy for Coal Strip Mining (93-9902.1, R.C.M. 1947) A law passed in 1973 prohibits use of the state's power of eminent domain for coal mining where the holder of mineral rights is not also the surface owner. The following reasons were given for making this exception to Montana's eminent domain law:

—because of renewed interest in coal development, it is potentially more destructive environmentally and more extensive geographically than other forms of mining.

—mineral ownership and surface ownership of land is often split in eastern Montana; it is the state's policy to encourage current productive uses and to discourage mining which would end those uses.

—the magnitude of potential coal development will subject landowners to undue harrassment by excessive use of eminent domain.

—surface mining of large areas would be contrary to the state's policy of encouraging diversity of land ownership.

54.0300. Coal Resource Policy (Mac Rule 12-2.14(1)-S1400) In 1972 the Fish and Game Commission adopted a statement endorsing the following actions to insure protection of fish and wildlife resources in coal development areas:

—state legislation strengthening reclamation laws, including prohibition of mining of ecologically critical areas and provision for minimum flows in affected rivers;

—state legislation to regulate coal conversion plant siting;

—a moratorium on federal coal leasing until adequate reclamation legislation is assured;

—rescission of the right of eminent domain for mining;

—support of research of alternative cleaner and more efficient methods of energy production.

The statement notes that only one development had studied the wildlife community objectively and adequately, despite Fish and Game's offer to cooperate in such efforts.

54.0400. Strip and Underground Mining and Reclamation (50-1034 *et seq.*, R.C.M. 1947; Regulations: MAC Rule 26-2.10(14)-S10460 through 10370) This law applies to coal and uranium mining operations which remove more than 10,000 cubic yards of mineral or overburden, and is administered by the Board of Land Commissioners and the Department of State Lands.

54.0401. *Policy and Findings.* The law, passed in 1975, recognized the following state policies:

—to protect its environmental life-support system from degradation;

—to prevent unreasonable degradation of its natural resources;

—to restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural and recreational sites;

—to demand effective reclamation of all lands disturbed by the taking of natural resources, and

—to require the Legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of distrubed lands) in order to achieve the aforementioned objectives.

The Legislature found that in order to implement these policies and the Constitution and to protect the health and welfare of the people, it is reasonably necessary to require annual permits for mining operations, to require a comprehensive plan for reclamation, to require an adequate performance bond and to prohibit mining on certain land.

54.0402. *Permit Requirements.* A one year prospecting permit must be secured from the Department of State Lands (DSL) before any exploratory work may be done. The application for a permit must include a prospecting map, a prospecting reclamation plan, and a description of prospecting techniques to be used. Before final approval, an applicant must file a reclamation and revegetation bond.

Before actual mining begins, a five year permit must be secured from DSL. The application must contain extensive information about the applicant and the area reasonably anticipated to be mined in the 5 year period, as well as a detailed plan for the mining reclamation, revegetation and rehabilitation of the land and water to be affected. A reclamation bond of between $200 and $2,000 per acre (minimum $2,000) must be filed before final approval is given.

54.0403. *Grounds for Permit Denial.* A permit applicationwill be denied if DSL finds any part of the proposed prospecting or mining operation would be contrary to the purpose of the act, if the land to be explored or mined has exceptional characteristics, or if neighboring land with exceptional characteristics would be adversely affected by exploration or mining activities.

Special characteristics include the following:

—biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

—ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonably forseeable future;

—ecological importance, in the sense that the particular land had such strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimension;

—scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. Particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

—If the Department finds that the overburden on any part of the area of land described in the application for a prospecting, strip mining or underground mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the Department shall delete that part of the land described in the application upon which the overburden exists;

—if the Department finds that the operation will constitute a hazard to a dwelling house, public building, school, church cemetery, commercial or institutional building, public road, stream, lake, or other public property, the Department shall delete those areas from the prospecting, strip mining or underground mining permit application before it can be approved.

54.0404. *Protection of the Surface Owner.* As defined by the act, a surface owner means a person who holds legal or equitable title to the land surface **and** 1) whose principal place of residence is on the land or 2) who personally conducts farming or ranching on land to be directly affected by strip mining operations or 3) who directly receives a significant portion of his or her income from farming or ranching operations. (The State of Montana is considered the surface owner of state land.)

54.0405. *Reclamation Requirements.* A mining operation must begin reclaiming disturbed land "as rapidly, completely and effectively as the most modern technology and the most advanced state of the art will allow". Every effort must be made to eliminate damage to landowners, the public, roads, streams and other public property from soil erosion, subsidence, landslides, water pollution and other hazards. The law requires specific actions which must be completed in the reclamation process, and contains technical requirements for backfilling, grading and topsoil replacement.

The law provides some flexibility in the reclamation plan. An operator may propose alternatives to backfilling, grading, highwall reclamation or topsoiling if the plans are "consistent with the purpose of the act". The operator must submit annual reports to the Department describing progress in mining and reclamation activities. The Department may order such changes in the mining or reclamation plan as are appropriate.

54.0406. *Mining and Reclamation Fund.* All fees, forfeit funds and other money received under the Strip and Underground Mining Reclamation Act are credited to the mining and reclamation fund, and are used for administration and enforcement of the act and for reclamation and rehabilitation of land and water affected by mining operations.

54.0407. *Legal Remedies.* The following remedies are available to the state, residents and owners of water rights for violations by mining operators:

—The state may sue the operator for civil penalties of between $100 and $1,000 for a violation and between $100 and $1,000 for each day during which the violation continues.

—the state may sue a mining operator for willfully violating the act, which constitutes a misdemeanor. If convicted, the mining operator may be required to pay between $500 and $5,000 and between $500 and $5,000 for each day during which the violation continues.

—a resident of the state may, after a request that the reclamation law be enforced, sue a public official to compel him or her to enforce any provision which is being violated.

—an owner of an interest in real property whose use of underground water is impaired, may sue the mining operator for damages.

54.0501. Strip Mined Coal Conservation (50-1401 *et seq.*, R.C.M. 1947; Regulations: MAC Rule 26-2.10(14)-S10460 *et seq.*) *Policy.* The 1973 Legislature passed the Strip Mined Coal Conservation Act, which declares that it is public policy of Montana to provide for orderly development of strip mining to assure wise use and to prevent waste of coal.

54.0502. *Mining Plan.* Operators who remove more than 10,000 cubic yards of coal or overburden must submit a strip mining plan to the Department of State Lands (DSL). The plan must contain enough information for the Department to make a determination of whether there will be any waste of coal. (Department regulations list the kinds of information which must be submitted.) DSL must approve or disapprove the plan within six months; if approval is denied, the Department must recommend what the operator must do to get approval. If the Department takes no action within six months, the plan is automatically approved. An operator whose plan is disapproved may appeal the decision to the Board of Land Commissioners. Mining plans are effective for five years from the date the plan is approved, with annual reports submitted to the Department indicating whether any waste has occurred or is expected to occur.

54.0503. *Waste Defined.* The law prohibits "the nonremoval or nonutilization" of coal which can be removed by methods adaptable to the mining location, which is economically feasible to mine, and which is fit for sale in the usual course of trade.

54.0504. *Penalties.* An operator who mines without an approved mining plan, or who violates the terms of a mining plan is liable for civil penalties of between $100 and $1,000 for each violation and additional penalties of the same amounts for each day during which the violation continues.

54.0601. Strip and Underground Mine Siting (50-1601 *et seq.*, R.C.M. 1947; Regulations: MAC Rule 26-2.10(18)-S10380) *Policy.* The Strip and Underground Mine Siting Act, passed in 1974 and amended in 1975, declares a state policy "to provide adequate remedies for the protection of the environmental life support systems from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources". The law applies to coal and uranium mines.

54.0602. *Permit Requirements.* Any person intending to operate a new strip or underground mine involving removal of more than 10,000 cubic yards of mineral or overburden must secure a mine site location permit from the Department of State Lands (DSL) before beginning "preparatory work" on the mine. Preparatory work includes all on-site disturbances (except prospecting), including railroad, building, and transmission line construction, and erection of draglines and loading shovels. Within one year of receipt of a complete application, the Department must notify the applicant if the application is acceptable. If the application is acceptable, DSL will issue a one year permit which is renewable until the operator secures a

permit under the Strip and Underground Reclamation Act (54.0402).

DSL may not issue a mine siting permit if it finds: 1) the proposed mine violates the policies and purposes of the act, 2) the area could not be approved under the selective denial criteria of the Strip and Underground Mine Reclamation Act(54.0403), 3) Reclamation plans do not meet the requirements of the Strip and Underground Mine Reclamation Act.

Contents of an application for a mine site location permit are listed in the regulations; by statute, any application must include a reclamation plan for the proposed site.

Before a permit is issued, the applicant must post a surety bond of between $200 and $10,000 per acre to be disturbed unless the actual estimated cost of reclamation is higher; if actual reclamation cost will be more than $10,000 per acre, the bond must be for that amount. An operator who forfeits a bond is not eligible for future permits unless the site has been reclaimed without cost to the state.

54.0603. *Reclamation Fund.* All fees, forfeit bonds, etc. are credited to a mining and reclamation fund. By appropriation, this money may be spent for administration and enforcement of the act and for reclamation of land and water affected by mining.

54.0604. *Violations.* A permit is suspended if the Department discovers violations of the law or regulations, and all other permits held by the operator will also be suspended. Additional permits will not be issued to an operator who has repeatedly violated provisions of the act.

An operator who has not complied with the law or Department regulations is liable for civil penalties; a willful violation constitutes a misdemeanor and makes the operator liable for stiffer money penalties.

54.0605. *Citizen Suits.* Any resident of Montana who knows of requirements of the act or Department regulations which are not being enforced may sue the responsible state officer to force him or her to carry out its provisions. Before suing, the resident must notify the state officer of the violation and request an enforcement action.

54.0701. Severance Tax on Coal (84-1313 *et seq.*, R.C.M. 1947; Chapter 540, Montana Session Laws 1977; MAC Rule 42-2.14(6)-S14080 *et seq.) Purpose:* The first section of the coal severance tax act notes that differences between coal and metals or petroleum justify a different type of taxation. The purposes of the tax are:

—to allow the severance taxes on coal production to remain a constant percentage of the price of coal;

—to stabilize the flow of tax revenue from coal production to local governments;

—to simplify the structure of tax revenue from coal production, reducing overlap and improving predictability of revenue projections;

—to establish categories which recognize the unique character of coal.

54.0702. *Tax Schedule.* The statute sets up the following schedule for taxation of each ton of coal which is mined:[1]

Heating quality (BTU per pound of coal):	Surface Mining	Underground Mining
Under 7,000	$.12 or 20% of value[2]	$.05 or 3% of value
7,000-8,000	.22 or 30% of value	.08 or 4% of value
8,000-9,000	.34 or 30% of value	.10 or 4% of value
Over 9,000	.40 or 30% of value	.12 or 4% of value

The schedule which yields the greater tax will be used.

[1]The first 20,000 tons of coal produced in each year is exempt from the tax.

[2]"Value" means the contract sales price.

54.0703. *Disposition of Severance Tax Revenue* In 1976, Montana voters approved an amendment to the Constitution to create a permanent trust fund with part of the coal severance tax revenues. Until 1980, 25% of all tax revenues will be placed in the trust fund; thereafter, 50% of all revenue will be placed in trust. The remaining revenue is allocated as follows:

	Before 1980	**After 1980**
Coal producing counties	2% of tax paid for coal mined in the county	— — —
Alternative energy research development and demonstration account	2-1/2%	5%
Local impact and education trust fund	26-1/2%	37%
Coal area highway improvement account	13%	— — —
State equalization aid to public schools	10%	10%
County land planning account	1%	1%
Renewable resource development bond account	2-1/2%	2½%
Park acquisition	1-1/4%	— — —
Park trust fund	1-1/4%	5%
General Fund	All remaining revenue	All remaining revenue

54.0800. Coal Board — Impact from Coal Development (50-1801 through 1810, R.C.M. 1947) The purposes of this act are to assist local governments to meet increased demands for local services created by large-scale coal developments, to assist highway construction and reconstruction in impacted areas, to aid local planning, and to estqblish a permanent fund for the support of public schools.

A Coal Board is established, with members appointed by the Governor, and allocated to the Department of Community Affairs, to consider applications for grants from the local impact and education trust fund account (54.0703), and to award such grants. In awarding such grants, the Coal Board will take into account the need for community planning in areas which are expected to feel impacts from coal development. The Department of Community Affairs will designate counties, towns, school districts and other governmental units which have experienced population increases of at least 10% as a result of coal development to guide the Coal Board's considerations.

54.0900. Uranium Solution Extraction (50-1701 through 1704, R.C.M. 1947) The Legislature recognizes that increasing energy shortages have stimulated interest in prospecting for and developing uranium ore resouces, and that because of the geological configuration of such resources in Montana, the only feasible method of extraction is by injection of a solvent into subsurface deposits and subsequent withdrawal of the solution. The Legislature further recognizes that this process threatens the quality of Montana's land and water resources. The Legislature has therefore imposed a moratorium on any uranium solution extraction operations in Montana until April, 1978, unless the Department of Health before that time adopts rules regulating such activities. (Uranium mining activities are also subject to the provisions of the Strip and Underground Mining and Reclamation Law (54.0400), and the Strip and Underground Mine Siting Act (54.0601).)

54.1000. Geothermal Resources: Leases on State Land (81-2601 through 2613, R.C.M. 1947; MAC Rule 26-2.6(2)-S6070 *et seq.*) The Board of Land Commissioners is authorized to lease state land, including the beds of navigable streams and lakes, for exploration and development of geothermal resources. Leases for other uses, such as grazing or coal mining, do not give surface lessees the right to develop geothermal resources.

Generally, no lease may include more than 640 acres. Leases are for an initial term of 10 years, and may be extended if, at the end of the term, the lessee is producing the resource in paying quantities or is actively engaged in drilling operations. The lessee is expected to be diligent in exploring and developing geothermal resources. After the third year of the lease a "delayed exploration penalty" must be paid for each year exploration is not either begun or continued. Failure to actively explore and develop the resource may also result in termination of the lease.

The law establishes a system of rentals and royalties to be paid by the lessee for energy, minerals and chemicals produced. Regulations require that if these payments do not equal at least $2 per acre per year, the lessee must make additional payments so that the $2 minimum is met.

Fees collected go to the general fund. Rentals, penalties and bonuses go to the income fund of the grant to which the land under each lease belongs. Royalties go to the permanent fund arising from the grant to which the land being leased belongs.

The state reserves all surface rights to land leased for geothermal development. If a geothermal lease is granted for land which is currently leased for other uses, the geothermal lessee must pay the other lessee for any damage which results from resource development.

Agency Programs

54A.0000. Water Quality Study. As part of the Statewide 208 project (See 18A.0107) a study was initiated in June, 1977 to evaluate water quality problems and management needs associated with mining activities. The mineral fuels portion of the study will inventory and assess past, existing and future developments of oil, natural gas, coal and uranium resources that degrade water quality. Possibilities for solution of the water quality problems and an appraisal of management and abatement techniques and their costs will be discussed. A major emphasis will be placed on future mineral fuels development and their water quality impacts. A prioritized list of future problems will be developed, existing control programs will be summarized, and programs appropriate to solve present and future problems will be recommended. A draft copy of the report is expected in January, 1978.

54A.0400. Social-Economic Impact Assessment. During fiscal 1976, the Old West Regional Commission made grants to local governments in the coal-impacted areas to hire planning personnel, and also made a grant to the Crow and Cheyenne Tribes to assess the socio-economic impacts of coal development. The Agricultural Experiment Station generated information on the effects of coal development on rural communities.

54A.0800.

54A.0800. Coal Board. During fiscal year ending June, 1976, the Coal Board received $3,855,567.21 from the coal severance tax. Estimated future receipts are:

Fiscal 76/77	$ 6.710 million
Fiscal 77/78	$ 8.120 million
Fiscal 78/79	$10.490 million
Fiscal 79/80	$ 9.330 million
Fiscal 80/81	$10.260 million

As of June, 1977, grants totalling over $13,742,500 had been made to local governments in the Southwest Montana coal area, including aid to elementary and high schools, water and sewer treatment facilities, county planning, libraries, and other capital improvements

Grant applications are distributed to other state agencies with relevant expertise for review. Guidelines for evaluation of applications include need, severity of impact from coal developments, degree of local effort, population changes, comparison of similar cities, counties or school districts, and availability of funds. The Coal Board holds a majority of its meetings in the impacted areas, and has conducted several tours of the area to familiarize itself with the problems.

55.0000. OTHER MINERALS

The Department of State Lands, under the supervision of the Board of Land Commissioners, administers mining laws which apply to a variety of metallic and non-metallic minerals. Exploration and mining permits and leases may be granted for operations on state lands. In addition, any mining activity which involves open pit, surface, or auger mining must be approved by the Department. The Department reviews and approves reclamation plans for all such activity to assure that mined land will be revegetated and restored, if possible, to its original condition.

55.0001. Contents **Section**

55.0002. See also:

State Land and Resource Policy 51.0000
Minerals — General Regulation 53.0000

55.0003. Agency Programs:

Water Quality Study 55A.0000
Bentonite Reclamation Study 55A.0001

55.0100. State Lands — Mining Leases — Metallic Minerals (81-601 *et seq.*, R.C.M. 1947; Regulations: MAC Rule 26-2.2(2)-S210 through 2.2(14)-S240) This law applies to the prospecting and mining of all metallic minerals, precious, and semi-precious stones on state land.

55.0101. *Prospecting Permits.* Permits issued by the Board of Land Commissioners are limited to either metallic minerals or gems; neither can be removed except for testing and sampling unless the Board provides otherwise.

A person holding a permit may apply for a lease of the land or mineral rights covered during the life of the permit. He or she has a preference right to a lease for 40 acres, which is granted without competitive bidding. If the remaining land under permit is leased to another person, the person holding the permit must be reimbursed for the value of work done.

55.0102. *Leases.* The Board of Land Commissioners may lease state land, including the beds of navigable rivers. Leases are conditional on the lessee diligently carrying on mining operations. The term of the lease is at the discretion of the Board, which may exercise "business discretion" in most lease terms. However, the lease must reserve a royalty to the state which, when combined with other payments, is not less than 5% of the returns from or the full market value of the minerals or gems mined. Rentals and royalty schedules can be found in the Department's regulations.

If the land which is to be leased has either been sold or leased for another prupose, the Board is required to protect those holding prior rights.

55.0200. State Lands — Mining Leases — Nonmetallic Minerals (81-701 *et seq.*, R.C.M. 1947; Regulations: MAC Rule 26-2.2(2)-S210 through 2.2(14)-S240) Leases and permits on state land which are

regulated under this law include those for mining the following: stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, phosphate, sodium, potash, sulphur, fluorite, barite and all other nonmetallic minerals. Coal, oil and gas are specifically excluded if valuable for commercial purposes.

55.0201. *Leases.* Leases are made on a royalty basis caculated on gross value by weight or cubic measurement. Current rental and royalty schedules can be found in the Department of State Lands regulations. The Board of Land Commissioners has broad discretion in determining lease terms; the only statutory requirements are that leases are limited to a ten year term, and that current leases for other uses and other prior rights be protected.

55.0202. *Permits for Public Use.* The Board of Land Commissioners may grant permits to state, county and local government agencies to allow removal of stone, gravel or sand from any state land for the construction, maintenance and improvement of public roads, bridges, streets or alleys. Terms of the permit are at the Board's discretion, except that it must protect any person who has prior rights on the land covered by permit.

55.0300. Reclamation of Mining Lands (Hardrock Mining Act) (50-1201 *et seq.*, R.C.M. 1947; Chapter 427, Montana Session Laws 1977; MAC Rule 26-2.10(2)-S10000 *et seq.*) The Hardrock Mining Act, which became law in 1971, regulates reclamation of land which has been disturbed by open pit mining or mining by the auger method of any ore, rock or substance other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate, rock or uranium. Miners who will disturb less than 5 acres are exempted from requirements of the act if they agree not to pollute any stream and to take adequate safety precautions.)

55.0301. *Policy and Purpose.* The first section of the act states that mining is an essential activity, "making an important contribution to the economy of the state and the nation". It also recognizes that the state has an obligation "to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology and property rights of the citizens of the state". Recreational and scenic values of land are termed a benefit to the state.

The section states that although the character of many types of mining operation preclude complete restoration of the land to its orginal condition, the Hardrock Mining Act will allow development of mineral resources while adequately providing for the subsequent beneficial use of mined land by establishing on a continuing basis the vegetative cover, soil stability and safe conditions.

55.0302. *Exploration Licenses and Development Permits.* An exploration license must be secured from the Board of Land Commissionrs prior to any exploratory activity. Licenses are for a term of one year and may be renewed; the applicant must agree to reclaim any land disturbed by exploration activity and must not be in default of other reclamation obligations under the act. A reclamation bond of between $200 and $2,500 per acre must be filed with the Department of State Lands before an exploration license will be issued. If an applicant has met all the requirements for a development or operating permit, reclamation may be postponed until mining operations are complete; otherwise, reclamation of land disturbed by exploration activity must be complete within 2 years after completion of exploration activity or abandonment of the site.

A development permit will be issued by the Board of Land Commissioners when statutorily required information is received. Application for a permit must include a reclamation plan, and a reclamation bond must be filed.

A person holding a permit may engage in such actuvities as excavating or construction for treatment mills, railways, transmission lines, alteration of any natural flowing streams or removal of overburden.

55.0303. *Operating Permit.* Actual extraction may begin only after an operating permit has been granted by the Board of Land Commissioners. Reclamation requirements are more detailed and stringent than are those for an exploration license or development permit. Reclamation bond requirements are the same as those for an exploration license.

The Department of State Lands must, within 60 days of receipt of an application, either issue a permit or return an incomplete or inadequate application with a request for more information. This 60 day period may be extended up to 180 days if adverse weather conditions prevent the Department from inspecting the site. If a major operation requires extended review, the Department and applicant may negotiate an extension of the 60 day period up to 365 days.

The operating permit is valid for the period required to complete mining operations unless it is suspended or revoked for noncompliance with the act or the reclamation plan.

After completion or abandonment of mining operations the operator has two years to reclaim the disturbed land, unless the approved reclamation plan specifies otherwise. If necessary, the Department will reclaim the land and require the operator and reclamation bondholder to pay the costs.

Both development permits and operating permit applications may be denied if the proposed mining conflicts with state air or water pollution standards or if the reclamation plan does not provide an acceptable method for reclamation under the act.

55.0304. *Public Participation.* "Any person whose interests may be adversely affected" by state actions taken under the provisions of the act may become a party to all hearings and appeal procedures upon a showing that he or she can adequately represent the interests claimed.

Information contained in exploration license applications and information obtained from small operators is confidential; information collected by the Department for development and operating permits is considered public.

55.0305. *Reclamation Account.* All fines, fees, penalties and other moneys collected by the Department under this act are placed in a hard-rock mining and reclamation account and are available to the Department for research, reclamation and revegetation of land and rehabilitation of water affected by mining activities.

55.0400. Open Cut Mining Reclamation (50-1501 *et seq.,* R.C.M. 1947; Regulations: MAC Rule 26-2.10(6)-S10110) The Open Cut Mining Act, passed in 1973, applies to the mining of bentonite, clay, scoria, phosphate rock, sand or gravel by removal of the overburden and mining directly from the exposed natural deposits, or removal of the overburden to determine the location, quality or quantity of the deposits. The act does not apply to federal land if federal requirements are at least as strict.

55.0401. *Policy.* It is a state policy to provide for the reclamation and conservation of land subjected to open cut mining. The purpose of the act is to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim agricultural, recreational, home and industrial sites subjected to open cut mining, to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic or other unique areas and to promote the health, safety and general welfare of the people of the state.

55.0402. *Reclamation Contracts.* Before any mining operations are begun which will result in the removal of 10,000 cubic yards or more of product or overburden, a mining operator must enter into a mining contract with the Board of Land Commissioners for the reclamation of the land affected. Under the act, reclamation means "the reconditioning of the area of the land affected by open cut mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, residential and industrial sites".

Before a contract is approved, the operator must provide the following:

—information on the operation, the mining method to be used, the location of the site, volume of earth to be removed and the date when operations will begin.

—a reclamation plan. The mining operator may request an examination of the land by the Department of State Lands which will make recommendations regarding reclamation.

—a bond or other security of between $200 and $1,000 per acre (State agencies, counties, cities and towns are exempt from the security requirement.)

55.0403. *Reclamation Plan.* If the Board does not notify the operator that the reclamation plan has been approved or disapproved within 30 days after receiving the plan, it will be automatically approved unless the Board notifies the operator that time for consideration has been extended an additional 30 days.

The Board may approve a reclamation plan only if it finds that the plan provides for the "best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed, the affected land shall be reclaimed to a productive use".

The act provides a detailed check list of what a reclamation plan must contain, including specific uses to which the land will be put, provisions for avoiding water pollution and infringement of other land-owners' rights, removal of waste, protection of archaeological and historical values, plans for reclamation concurrent with mining operations when possible, and a time by which reclamation will be completed.

An approved reclamation plan is subject to annual review and modification by the Board.

55.0404. *Enforcement and Appeals.* Violation of the act constitutes a misdemeanor, with each day during which the violation continues constituting a separate offense.

"A person aggrieved" by a final decision of the Commissioner of State Lands is entitled to a hearing before the Board under the Administrative Procedure Act.

55.0501. Taxation of Metals, Gems, and Stones (84-2001 *et seq.,* R.C.M. 1947) A license tax is levied on all businesses with mines and facilities which extract or recover any kind of metal, precious or semi-precious gems, or stones of any kind, with the following exceptions: discovery work required to locate mining claims, annual assessment work, work required to obtain title to mining property from the United States, or work required by federal or state law in order to hold possessory title to mining claim.

The tax is assessed by the Department of Revenue

on the gross value of the products according to the following rate schedule:

$0 to $100,000	0.15 of 1%
More than $100,000, less than $250,000	0.575 of 1%
More than $250,000, less than $400,000	0.86 of 1%
More than $400,000, less than $500,000	1.15%
More than $500,000	1.438%

55.0502. Taxation of Micaceous Minerals or Hydrous Silicates (Vermiculite, Perlite, Kerrite, Maconite) A license tax is required for every person or company operating a mine which extracts micaceous minerals or hydrous silicates. The Department of Revenue assesses the tax at the rate of $.05 per ton of material produced each year.

Agency Programs

55A.0000. Water Quality Study. As part of the Statewide 208 project (See 18A.0107), an evaluation is being made of water quality problems associated with mining acitivities. The initial step is identification of existing, past and future water quality problems associated with mineral development activities in the state. In addition, existing control programs will be evaluated, and programs designed to achieve state water quality goals will be recommended. A draft copy of the report is expected in January, 1978.

55A.0001. Bentonite Reclamation Study. Under a grant from the Old West Regional Commission, the Department of State Lands is conducting a study designed to formulate procedures and recommendations for proper reclamation of bentonite spoils in the Old West Region (Montana, Nebraska, North Dakota, South Dakota and Wyoming). More land has been disturbed in the Old West Region by bentonite mining than by removal of coal, but little information is available concerning reclamation problems. This study will provide much-needed research in the area. It is expected to be completed by January, 1978.

56.0000. OIL AND GAS

The Board of Oil and Gas Conservation, attached to the Department of Natural Resources and Conservation, has primary responsibility for the regulation of oil and gas drilling in the state. The purposes of the regulations are the prevention of waste in oil and gas exploration and production, the reclamation of disturbed lands, and the prevention of water pollution. In order to prevent waste, the Board may order the creation of well spacing units. Abandoned wells and shot-holes must be plugged and disturbed lands restored. Operators must post bonds to assure proper performance.

The Board of Land Commissioners may issue leases for oil and gas exploration on state lands. Boards of county commissioners and school district supervisors may lease locally owned lands for similar purposes.

Eminent domain powers may be exercised for the development of underground gas storage reservoirs.

Oil and gas are subject to severance and net proceeds taxes.

56.0001. Contents **Section**

56.0002. See also:

Water Pollution Control Act 18.0100
State Land and Resource Policy 51.0000

56.0100 Oil and Gas Leases on State Land (81-1701 *et seq.*, R.C.M. 1947; MAC Rule 26-2.6(1)-S600 *et* seq.). The Board of Land Commissioners is authorized to lease state lands to which the state holds the oil and gas rights. Leases, generally limited to 640 acres each, are granted for a primary term of 10 years and continue as long as oil or gas is produced in paying quantities or drilling is continued. A lease is subject to termination by the Board of Land Commissioners if: 1) drilling has not begun within 2 years; 2) after drilling a dry hole, a new well is not begun before the anniversary of the lease following completion of the first well; 3) delay drilling penalties are not paid.

Rental fees and royalties are set by the Board, with minimum amounts set by statute.

The Board of Land Commissioners may also grant leases for up to 20 years (with preferential rights of renewal) for underground storage facilities for natural gas. Those leasing land for storage sites must take precautions to avoid waste, injury or destruction of gas and oil deposits; failure to do so is grounds for termination of the lease.

56.0200. Lease of Local Government Land (60-701 *et seq.*, R.C.M. 1947) State law authorizes local governments and school districts to lease their land for oil and gas development. Leases must be for the best terms obtainable with a royalty of not less than 12-1/2% and a maximum initial term of 10 years. Local governments and school districts may enter into agreements for pooling acreage with others for unit operations and for apportionment of royalties. Oil and gas development must not interfere with the normal use of land being used for specific purposes.

56.0300. Conservation of Oil and Gas (60-126 *et seq.*, 82A-1508, 60-901, R.C.M. 1947; MAC Rule 36-3.18(10)-S18020 *et seq.*) This law regulates oil and gas extraction operations in order to avoid waste and establishes criteria for reclamation of surface land disturbed by those operations. It generally applies to wells on both private and public land, with some limitations for federal land. Waste includes any practice which results in inefficient extraction, excessive surface loss, inefficient storage or unnecessary dissipation of oil and gas.

56.0301. *The Board of Oil and Gas Conservation* The Board, consisting of five members, two of whom are from the oil and gas industry, is charged with the responsibility of enforcing the law's provisions. It is given broad powers to investigate and prevent the

loss and pollution of oil and gas and pollution of water. The Board is responsible for insuring that required reports are submitted; supervises drilling operations to assure that water pollution, fires and other dangerous accidents do not occur; supervises plugging of dry or abandoned wells and restoration of surface land. It may require full production of some types of wells if it is considered necessary in the interest of conservation to do so.

56.0302. *Well Spacing Units and Pooling of Interests.* On its own initiative or in response to an application of an interested person, the Board may order well spacing units for a particular oil and gas pool in order to prevent waste and to insure efficient extraction. Before ordering a unit operation the Board must hold a hearing and determine, based on the information presented, that: 1) the unit is necessary to increase ultimate recovery; 2) the benefits of such an arrangement outweigh the costs; 3) the pool to be included in the unit has been reasonably defined by drilling operations. An order for unit operations cannot become effective unless approved by most of the owners of the oil and gas interests. The order directs that no more than one well can be drilled for a common source of supply on any spacing unit, and specifies the well's location. It also includes extensive information about the planned operation.

If there is more than one owner of oil and gas interests within the well spacing unit, the Board, if requested by an interested person, may order that all interests be pooled. The order provides for the drilling and operation of a well on the spacing unit and allocates costs among the owners. The law specifically exempts voluntary pooling arrangements which have been approved by the Board from state anti-trust laws. The Board must find that a voluntary pooling agreement is in the public interest and is reasonably necessary to increase ultimate recovery or to prevent waste before it approves pooling agreements.

56.0303. *Reclamation of Disturbed Land.* A well owner must plug abandoned wells and shot holes and must restore land disturbed by drilling operations to its previous grade and productive capacity unless the surface owner agrees, with the approval of the Board, to a different plan of restoration. The well owner must give notice to the owner of his intention to plug and abandon a well. The owner may direct the well operator to buy the well pipe (60-901, R.C.M. 1947).

The Department of Natural Resources and Conservation is required to maintain a list of abandoned wells and shot holes which disturb land, water or wildlife resources in violation of plugging, pollution prevention and reclamation rules. An owner on the list will not be allowed to engage in any new drilling until he or she submits a plan to reclaim previously disturbed land within three years.

If an owner cannot be located or identified, the Board may restore land using funds from the Resource Indemnity Trust Fund, (51.0700).

56.0304. *Notice and Permit Requirements.* An operator must give the Board a copy of the notice of intention to explore, which is filed with the county, before beginning seismic exploration with explosives. Before beginning drilling operations for an oil or gas well, an operator must file a written notice of intention to drill with the Board and secure a drilling permit.

56.0305. *Bonds, Fees and Licenses.* The operator of a gas or oil well must post a bond sufficient to assure that each dry or abandoned well is plugged; according to schedules in the law, companies engaging in oil and gas development must pay a drilling permit fee and a privilege and license tax.

Revenues are used to pay for administration and enforcement of the law.

56.0306. Geophysical Exploration (69-3301 through 3308, R.C.M. 1947) Any person engaged in geophysical exploration utilizing explosives and seismographic measurements for any purpose must first obtain a permit from the board of county commissioners, in consultation with the Board of Oil and Gas Conservation. A bond must be filed to assure that all shot holes are plugged and covered properly so as to avoid adverse impacts on ground water or aesthetics. The bond will be released when the Board of Oil and Gas Conservation is satisfied that adequate reclamation of such shot holes has been performed.

56.0400. Interstate Compact for Conservation of Oil and Gas (60-601 *et seq.*, R.C.M. 1947) Montana, along with twenty-nine other states, is a member of the Interstate Compact, which was executed in 1935. Each member is committed to passing laws which assure the conservation of oil and gas by preventing physical waste from any cause. The Governor represents Montana on the Commission established by the Compact.

56.0500. Underground Gas Storage Reservoirs (60-801 *et seq.*, R.C.M. 1947) This law authorizes the limited use of condemnation by natural gas public utilities for land to be used for gas storage reservoirs. Before land can be condemned, the Board of Oil and Gas Conservation must find that it is suitable for such use and that the public interest is served by the reservoir.

56.0600. Severance and Net Proceeds Tax on Oil and Gas Producers (84-2202 *et seq.*, 84-6201 *et seq.*, R.C.M. 1947) Every person producing or extracting oil or natural gas must pay a severance tax on the total gross value of marketable oil or gas produced.

56.0600.

Oil is taxed at 2.1 percent of the first $6,000 produced from each lease, and 2.65 percent of the gross value of production in excess of that amount. To encourage new production, wells begun before 1981 are entitled to a 3-year exemption from half this tax liability, but only if the gas produced will primarily serve Montana consumers.

The net proceeds tax is levied and collected by those counties which have drilling operations producing oil and gas. Allowable deductions from gross income include royalties and the costs of production, including reclamation. (Recipients of royalties must, however, pay the net proceeds tax.) The amount due is based on tax levies determined by county boards of commissioners. Tax revenues go to the county in which the drilling operation is located.

57.0000. FOREST PRODUCTS

Montana's forest lands are divided among federal, state, county and private ownership. Most of the forest land lies in National Forests under the supervision of the Forest Service. State-owned land which is principally valuable for timber is classified as forest land and is managed by the Department of Natural Resources and Conservation, under the supervision of the Board of Land Commissioners.

The state plays two roles in its management of forest lands: (1) In its proprietary role as owner of state forest lands, the state, through the Board of Land Commissioners, manages activity on those lands: acquiring, exchanging and leasing. The Department of Natural Resources manages state forest land for timber production, and conducts timber sales. State forest lands may also be managed for other purposes, e.g., parks, recreation and wildlife mangement under the supervision of the Department of Fish & Game, and natural areas management by the Department of State Lands. (2) In its governmental role, the Department of Natural Resources cooperates with federal and local agencies to provide protection from natural forces which do not recognize jurisdictional boundaries: fire, pests and disease. The Department also provides information and technical assistance to private owners in developing and enhancing their forest resources.

57.0001. **Section**

57.0002. See also:

57.0003. Agency Programs:

57.0101. State Forests (81-1401 *et seq.*; 81-1601 *et seq.*; 81-901, R.C.M. 1947) State lands which are principally valuable for timber and watershed protection are classified as state forests and reserved for these purposes.

Sale of state timber is directed by the Board of Land Commissioners and administered by the Department of Natural Resources and Conservation. The Department is responsible for all phases of state forest management, including conservation, appraisals prior to timber sales, and fire control. Proposed sales of more than 100,000 board feet must be advertised for bids. The sale will be awarded to the "highest responsible bidder" unless the Department exercises its authority to reject all bids. Minimum prices are set by law. A timber sale agreement between the Department and the successful bidder outlines conditions for cutting, including those "essential to the perpetuation of state forests". The Board may require payments of fees for brush disposal and timber stand improvement. The Department is required to supervise the cutting to secure the most complete utilization possible, consistent with current forest management practices. Land classified as timberlands are not subject to sale.

57.0102. *Acquisition and Exchange* (81-2201 *et seq.*, R.C.M. 1947) The Board of Land Commissioners, after investigation and approval by the Department of Natural Resources and Conservation, may exchange timbered, cut or burned-over state land for similar private land of equal value. Any exchange must be based on a finding by the Board that it is in the public interest.

If the Board approves a proposed exchange it must give public notice and hear objections to the transaction before giving final approval.

The Legislature has given consent to purchase state and private land by the federal government when the land is necessary to consolidate national forests or to carry out other "national forest purposes". (83-110, R.C.M. 1947)

The Board of Land Commissioners may accept gifts of land suitable for forestry or park purposes; it may also lease or purchase land which is desirable as forestland. (81-1103, R.C.M. 1947)

57.0200. County Forests (28-501 *et seq.*, R.C.M. 1947) The Board of County Commissioners of any county may create county forests from any county land principally valuable for timber or the growing of timber.

Counties are authorized to exchange any land which is suitable for national forest purposes for federal land or timber if the exchange is in the best interests of the county. The lands involved in the exchange must be of equal value. (16-1132, R.C.M. 1947)

57.0300. Portable Sawmills (28-801 *et seq.*, R.C.M. 1947) Owners of small portable sawmills must secure a license from the Department of Natural Resources and Conservation before beginning mill operations. The license may be revoked if the sawmill is used to process any timber cut in violation of state law.

57.0400. Fire Protection and Forest Conservation (28-101.1 *et seq.*, 26-345, 16-1104, 28-404 *et seq.*, R.C.M. 1947) The purposes of these laws are to protect and conserve forest resources, range and water, regulate streamflow, prevent soil erosion, and encourage cooperation between state, public and private agencies.

Under the law, the Department of Natural Resources and Conservation provides technical information to landowners to assist them in conserving forest resources and administers a forest fire protection program for all forested land in the state in cooperation with federal and other state agencies.

The Department of Natural Resources and Conservation is authorized to classify forested land for which conservation and fire protection are needed, and to establish forest fire protection districts with the approval of a majority of affected landowners. Owners of land classified as primarily forest land must comply with fire regulations and programs or pay a per acre fee for the Department's fire protection costs.

During the fire season, no person may start a fire within forest lands without first securing a fire permit from fire wardens or other authorized individuals. (An exception is made for campfires.)

Private owners of forest land or timber must dispose of timber slash and debris as quickly as possible in order to reduce the hazard of fire. The Department of Natural Resources and Conservation must be notified prior to any cutting of timber, and must approve the landowner's or timber owner's plans to dispose of the slash.

If an owner fails to properly dispose of the slash, the Department may seek an injunction against further cutting, or dispose of the slash itself and charge the owner for its expenses. Violation of the law is a misdemeanor, with fines of up to $1,000.

The Department may request the Governor to close an area to the public where there is extreme fire danger.

For forested areas not protected by federal, state or other protective agencies, boards of county commissioners are authorized to establish resource and fire protection programs. A county program may include organization of a volunteer rural fire control department and establishment of a fire season with regulations on burning.

Boards may appropriate money both for general forest protection and conservation programs and for fire control protection.

57.0500. Forest Insect Pests and Tree Diseases (28-204 *et seq.*, R.C.M. 1947) The Department of Natural Resources and Conservation is authorized to control pests and disease on both public and private forest land. It may, with the Board of Natural Resources and Conservation's approval, establish a zone of infestation where pests or disease threaten state timber resources and take whatever measures are necessary to eliminate the threat.

57.0600. State Conservation and Forest Experiment Station (28-301 *et seq.*, R.C.M. 1947) The Experiment Station, administered by the University of Montana's forestry school, carries out a broad forest research program which ranges from studies on windbreaks and timber use to sudies on how forest resources can best benefit the state economically and socially.

57.0700. Timberland Assessment and Taxation (89-429 *et seq.*, R.C.M 1947; Chapter 566 L. 1977) Both standing timber and timberland are assessed and taxed annually. Timber assessments are based on the tree species, the size of the timber and the number of board feet per acre. Timberland assessment is based on the land's accessability to roads, its topography and its distance from market.

A 1977 law which revised the tax classification system failed to specifically mention timberland. At the time this report was written the Department of Revenue had not formally decided which class would be used. It is likely, however, that timberland will be considered Class Six property, thereby being taxed at 30% of its assessed value.

Agency Problems

57A.0001. Forest Management and Improvement. The Division of Forestry of the Montana Department of Natural Resources administers a number of federal cost-sharing programs which provide assistance to private land owners in forest management. The Division provides personnel and technical resources, and under various agreements, federal agencies supply from 50% to 100% of the funding. Such programs include community watershed improvement; nursery operations involving tree and shrub planting for establishment of windbreaks and shelter belts and for reforestation; rural area development programs involving technical aid for conservation projects; and reforestation programs. The Forestry Division has cooperative agreements with the Agricultural Stabilization and Conservation Service (See 52A.0200) and the U.S. Forest Service, and memoranda of understanding with the Soil Conservation Service, the Cooperative Extension Service, and the various state soil and water conservation districts. (See 52.0301). In addition, the Division operates the state forest tree nursery which provides seeds and seedlings for the various programs, and develops new and improved stock.

Among its ongoing activities, the Division conducts land capability and water quality surveys on state forest lands and develops land use plans for state forests. The Division responds to over 2,000 requests each year for technical forestry assistance on private woodlands and to forest product processors and holds training sessions in silvicultural and ecosystem management.

57A.0002. Forestry Incentives Program. The Forestry Incentives Program was authorized by Congress for the specific purpose of increasing the nation's supply of timber products. Emphasis is placed on increasing future supply of softwood saw timber; continued sustained yield management of private, non-industrial forest land; and cost-effectiveness of forest improvement practices.

The Program is jointly administered by the Agricultural Stabilization and Conservation Service and the U.S. Forest Service. Arrangements have been made for the Division of Forestry of the Montana Department of Natural Resources to provide on-the-farm technical service. The program is offered only in designated Western Montana Counties with high timber production potential. Timber stand improvement services are offered on a 100% cost-sharing basis. Both annual and long-term programs are available.

57A.0003. Section 208 Project—Silviculture Inventory. As part of the statewide Section 208 Planning Project (See 18A.0107), the U.S. Forest Service is responsible for an evaluation of water quality problems and management needs associated with forest practices on national forest lands. Westech Corporation will conduct a similar assessment on state and private forest lands. Silvicultural assesments will be based on compilations of existing forest management plans, existing inventories, aerial and ground surveys, and discussions with forest managers and private landowners. The studies will identify stream segments currently being polluted by silvicultural activities, determination of control needs, and projection of the potential for future water quality problems caused by silvicultural activities.

57A.0004. Timber Harvest Regulation. Timber sales procedures are set by statute. Receipts, less fees for timber stand improvement and slash disposal, go to the school trust fund. Sales from state lands are for the purpose of harvesting over-mature timber, or to thin overstocked immature stands.

The Forestry Division issues permits for salvage of damaged timber, and for special uses such as christmas trees, domestic firewood, and post and pole permits. Rates and bid procedures have been established by regulation.

The Division issues licenses for small sawmills on forest lands, and evaluates the operation of sawmills and logging companies.

Prior to conducting any forest cutting operations, the operator must enter a hazard reduction (slash removal) agreement with the Division. Debris burning permits are issued by the agency with protection responsibility over the land where the burning is to take place.

57A.0400. Fire Prevention and Control. By state law, the owner of classified forest land is responsible for providing fire protection. Owners within organized fire districts meet this responsibility by paying an annual assessment to the district. Others can request protection from the Division of Forestry.

Cooperative fire protection agreements between the Division of Forestry and the counties provide a higher level of protection than would otherwise be available. State support aids in the development of county fire protection plans and provides equipment, personnel and training. Counties may organize rural fire districts and suppress wildfires on state and private land.

In addition, the Division of Forestry has cooperative agreements with the U.S. Forest Service to define areas of responsibility and to provide federal cost-sharing money. Federal agreements also allow the Division to acquire excess federal property for fire suppression operations. All jurisdictions, state, federal and local, enter cooperative agreements for suppression of major fires which begin near or spread to jurisdictional borders.

For assistance during fires, the Division has agreements with the National Guard, the Montana State

Prison and with the U.S. Weather Service for maintenance of a mobile weather station. Federal emergency funding is available during disaster situations.

The Division may order closure of fire hazard areas, appoint fire wardens, and enforce fire protection regulations.

57A.0500. Insect and Disease Control. Through a cooperative agreement with the U.S. Forest Service, the Division of Forestry's entomologists and pathologists provide guidance to private land managers, coordinate continuing detection and evaluation surveys of forest land, and provide technical assistance in the suppression of outbreaks of pests and diseases. The Forest Service provides 50% of the funding and makes technical assistance available.

Among its activities, the Division conducts an annual aerial insect and disease detection survey and issues an annual Insect and Disease Conditions Report. The Division also evaluates the effectiveness of insecticides in controlling forest pests.

58.0000. WATER RESOURCES

For obvious reasons, the development, enhancement and conservation of the state's water resources is fundamental to all other natural resource development — indeed, to all human activity. The Department of Natural Resources and Conservation has primary responsibility for coordination and implementation of Montana's water resource policies. The Department is directed to inventory the state's water resources and to develop a comprehensive state water plan. The Department constructs and operates dams, water storage and diversion projects, sells water, and coordinates the water development activities of other public agencies and organizations. The state is party to a number of interstate compacts for the allocation of water in interstate streams.

The Department also administers the water rights law: conducting surveys for the establishment and adjudication of existing water rights, and issuing water use permits for the appropriation of new surface and groundwater rights. State and local government agencies, conservation districts and water users associations may apply for reservations of water for future use.

The laws provide for the establishment of a variety of organizations which enable farmers and ranchers to construct and operate irrigation and drainage systems, water storage facilities, and to conduct flood control, water conservation and development projects. Local and county governments may also participate in such projects.

The Department also administers the weather modification law, issuing permits for rainmaking and other weather modification activities.

58.0001. Contents. **Section**

58.0002. See also:

58.0003. Agency Programs:

58-0101. Water Resources Act. (89-101.1 *et seq.*, R.C.M. 1947) *Policy.* This law, passed in 1967, provides a broad statement of the state's policies for managing its water resources. The policy statement endorses state coordination of water resource allocation to insure that it will be put to "optimum beneficial use". Purposes for which water is to be used, developed, conserved and protected include economic growth, social prosperity, public recreation and wildlife protection. The Department of Natural Resources and Conservation (DNRC) is responsible for coordinating local, state and federal water development projects and for coordinating water development with development of the state's other natural resources.

58.0102. *Water Projects.* The substance of the Act deals primarily with the DNRC's authority to construct dams and other water storage and diversion projects for almost any purpose, including irrigation, flood prevention, fish and wildlife protection, power development and domestic and industrial consumption. The Department may acquire land, water rights or any other property interest (using condemnation if necessary), sell bonds to fund individual projects, sell water from the projects, and sell the projects themselves. Projects may be sold only to another public body of the state. Land owned by the state which is used for water conservation is exempt from county property taxes. (84-203, R.C.M. 1947)

58.0103. *Water Users Associations* Water users associations may be organized under provisions of the Federal Reclamation Act to operate or share the expenses of state water projects or to purchase water from the Department (89-1101 through 1107, R.C.M. 1947). When repair or alteration of water projects involves major expenditures which will be borne by a water users association, the association may appeal the Department's decision to the Board of Natural Resources.

58.0104. *State Water Plan.* The Department is required to compile and maintain a comprehensive inventory of the state's water resources, including ground water, and develop a comprehensive plan for the coordination, conservation and development of the state's waters. The plan must be submitted to each general legislative session.

58.0200. Interstate Compacts. The Department may negotiate interstate water compacts which govern the use and distribution of rivers running through the state with other states and with the federal government.

58.0201. *Fort Peck Dam and Reservoir—Concurrent Jurisdiction with the Federal Government* (83-109, R.C.M. 1947) Under this law, Montana, while consenting to federal purchase and condemnation of land for the Fort Peck Dam and Reservoir, retains the power to enforce its civil, criminal and tax laws on federally purchased land. The federal government is given the authority to exercise police or military authority on the same land.

58.0202. *Ratification of the Yellowstone River Compact* (89-903 *et seq.*, R.C.M. 1947) This law ratifies the compact between Montana, North Dakota and Wyoming, which apportions the water of the Yellowstone River and its tributaries. Although North Dakota is a signatory of the compact, it was not deemed necessary that it be represented on the compact commission, whose members consist of representatives of Montana, Wyoming and the U.S. Geological Survey. (The federal representative votes only if the states cannot agree on administration of the compact.)

The compact's distribution schedule applies only to water which was unused and unappropriated as of January 1, 1950.

The waters of the Yellowstone River are apportioned between Montana and North Dakota only between May 1 and September 30 of each year. Each state is entitled to "the beneficial use" of the river's flow below Intake, Montana, on a proportionate basis of acreage irrigated. Water from tributaries originating and entirely located in either state are alloted to that state.

Unused and unappropriated water of the Yellowstone River's tributaries which run through both Montana and Wyoming may be diverted or stored in each state according to the following formula:

Clarks Fork, Yellowstone River

Wyoming — 60%
Montana — 40%

Big Horn River (Exclusive of the Little Big Horn)

Wyoming — 80%
Montana — 20%

Tongue River

Wyoming — 40%
Montana — 60%

Powder River (Including the Little Powder River)

Wyoming — 42%
Montana — 58%

Actual amounts of water are determined by applying the formula in the compact which is based on an "annual water year basis" from the preceding year.

Water may not be diverted from the Yellowstone River Basin without the unanimous consent of the signatory states. The following uses are exempt from the compact's provisions:

—existing and future domestic and stock water uses of water if capacity of any reservoir for stock water does not exceed 20 acre-feet;

—devices and facilities for the control and regulation of surface water.

58.0203. *Sage Creek Basin Compact.* (89-3001 *et seq.*, R.C.M. 1947) This law authorized Montana's Governor to agree to a compact between the United States, Montana, Canada and Alberta which apportions water from a Canadian reservoir located in the Sage Creek Basin between Montana and Alberta farmers and ranchers. The compact is administered by an international board created by the International Joint Commission. By ratifying this compact, the states and their citizens waive any rights they might have under the Boundary Waters Treaty of 1909 which is the international mechanism to resolve disputes over the use and development of waterways that form or cross the U.S.-Canadian boundary.

58.0300. Dams and Reservoirs (89-701 through 714, R.C.M. 1947) The Department of Natural Resources and Conservation is responsible for insuring the safety of dams and reservoirs throughout the state. It has jurisdiction over reservoirs with capacity of 50 acre-feet or more, or 25 feet or more in height.

On its own motion, or on complaint of a property owner whose land or property is threatened, the Department will examine a dam or reservoir believed to be unsafe. If unsafe conditions are found, the Department notifies the county attorney who will then take the necessary steps to abate the danger. If any party is dissatisifed with the Department's findings, a complaint may be filed in district court. The judge will appoint an impartial three-member panel to investigate the dam or reservoir and report back. The judge may then issue an order to the owner of the dam to take appropriate action. The owner may contest the order and have the issue of the dam's safety tried in court before a jury. If the jury finds the dam unsafe, it may be declared a public nuisance and all the water withdrawn.

If a complaint is brought to the board of county commissioners during the construction of a dam or reservoir, a panel of three experts may be appointed to supervise the construction. This panel must give its approval before the dam may be filled.

58.0400. Water Rights (Art. IX, Sec. 3, Montana Constitution) The Constitution specifically confirms all existing water rights. It declares that all water is owned by the state, but is subject to use and appropriation by its citizens. It directs the Legislature to provide for the administration, coordination and regulation of water rights, and specifically requires establishment of a centralized record system for water rights.

58.0101. Water Use Act (89-865 *et seq.*, R.C.M. 1947) The Water Use Act was passed in response to the new constitution's requirements for administration of and centralized records for water use and appropriation. The legislative policy established by the Act is "to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystem". The Act specifically states that use of water for slurry to export coal from Montana is not a beneficial use.

The Act, which is administered by the Department of Natural Resources, provides a system by which existing and future rights for both surface and groundwater are to be determined. Existing rights are determined by judicial proceedings and new appropriations are granted by permits secured from the Department.

58.0102. *Determination of Existing Rights* (Rights existing before July 1, 1973) The Department must determine existing rights through a complicated process which begins with a determination by the Department of those areas or rivers most in need of water rights adjudication. DNRC must compile information necessary for the determination; then petition the district court for an order requiring each person claiming an existing right to file a declaration of his or her right with the Department. Following the order, DNRC notifies known water appropriators by mail and in newspapers that they must declare their rights within one year.

Following the one year waiting period, the Department files with the district court the names of all persons who have filed declarations as well as others who appear to have water rights. Based on this information, the district court issues a preliminary decree declaring existing rights. Those named in the decree, as well as others who can offer "good cause" for their involvement, may object to the preliminary decree. If objections are filed, the district court must hold a hearing to review them. DNRC is required to be a party to any hearing and is entitled to be heard on any objections.

Following a hearing on the preliminary decree a final decree will be issued by the court. If there are no objections to the preliminary decree, it will automatically become final. The final decree establishes all existing rights and priorities based upon written findings of fact and conclusions of law which support those rights. The decree must include detailed information on the appropriators, the date of priority for the rights, and information about the water source and method of diversion. The final decree is conclusive regarding all existing water rights for the source or area under consideration. An individual whose water rights are affected may appeal the final decree only if he or she requested and participated in a hearing on the preliminary decree, or if his or her rights were altered as a result of a hearing on the preliminary decree which was requested by another.

A certificate of water rights will be issued for each right granted under the final decree. After the certificate is recorded by the county clerk and recorder, it will be sent to the holder of the right. The Department also keeps a central file with copies of all certificates.

58.0103. *Permits for Appropriations of Water* After July 1, 1973, the only way an individual can secure a new water right is by receiving a permit from the DNRC. Diversion of water outside the state requires an act of the Legislature. When the Department receives an application for an appropriation permit, it must give public notice by publishing the information in a local newspaper for three weeks, unless it determines that the application will not interfere with existing rights.

Any objection to the application must be filed with the Department between 30 and 60 days after the last public notice. (The Department sets the specific deadline date.) If the Department determines that the objection is valid, it must hold a public hearing.

A permit application must usually be granted or denied within 120 days after publication (or 180 days if a hearing is held). Time extensions up to 60 days are available if an environmental impact statement must be prepared. Whenever the Department determines that review of a permit application will require preparation of an environmental impact statement under the Montana Environmental Policy Act (00.0200), a fee may be asssessed according to a schedule based on the estimated cost of the project. The Department and applicant may negotiate the amount of the fee and the use of environmental information produced by the applicant or a third party in preparation of the impact statement. If the application is denied or modified, the applicant has a right to a hearing. The Department must approve a permit if the following criteria are met:

—there are unappropriated waters in the source of supply which are available in amounts and at times of the year required by the applicant;

—the rights of a prior appropriator will not be adversely affected;

—the proposed means of diversion or construction are adequate;

—the proposed use of the water is a beneficial use;

—the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

—an applicant for an appropriation of 10,000 acre-feet per year or more, or 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected.

The Department may attach conditions to the permit regarding construction projects, rights of other

appropriators, and may issue temporary or seasonal permits.

An approved permit must be recorded with the county clerk and recorder, and must be filed in the Department's Helena office; it may be revoked if its conditions are violated. A certiciate of water right will be issued when the applicant actually begins using the water; however, it will not be issued until existing rights are adjudicated for the area or water source. Similarly a permit issued prior to final adjudication of existing rights is provisional and might be changed if it interferes with existing rights.

There is an exception to these procedures for construction of a stock watering impoundment if the capacity is less than 15 acre-feet and the appropriation is not from a perennial flowing stream. In such a case, a permit is not required. However, before commencing construction, the appropriator must file a permit application with the Department. If the Department determines that the rights of other appropriators will be affected, it may impose conditions or limitatons on the construction of the impoundment.

58.0104. *Transfer and Abandonment of Appropriation Rights.* Water rights are automatically transferred when the land on which they have been exercised is transferred, unless specifically exempted in the transfer agreements. The individual receiving the water right must notify the Department of the transfer. An appropriator can transfer a water right separate from the land only with approval from the Department. The Department will approve the separate transfer if it will not adversely affect the rights of others; if it might affect others' rights, the Department will give public notice. If an objection is made to the separate transfer, the Department will hold a hearing to determine whether it would affect others' rights.

A water appropriation will be considered abandoned if the appropriator stops using the water with the intention of abandoning it or if he or she fails to meet its terms. Failure to use the water or to meet conditions attached to the right for ten years creates a presumption that the right has been abandoned. A water right will be legally abandoned only after a district court, at the request of the Department, determines that it has been abandoned.

58.0105. *Prevention of Waste.* If the Department decides that a person is wasting water or using it illegally, it may petition the district court to take whatever actions are necessary to prevent future waste or illegal use. The Department may also direct its own attorney or request the Attorney General or the county attorney to bring suit to enjoin the wasteful or illegal actions.

58.0106. *Water Reservations.* Any federal, state or local agency may apply to the Board of Natural Resources and Conservation to reserve water for existing or future beneficial uses, to maintain a minimum flow level, or to maintain a certain quality of water. The applicant must establish the purpose of the reservation, the need for it, the amount of water necessary, and that the reservation is in the public interest. The reservation may not adversely affect any existing water rights. If the reservation is approved, no future permit application will be accepted which interferes with it. The Board must review existing water reservations at least once every ten years to insure their purposes are being met.

58.0107. *Priority Dates for Appropriations and Reservations.* Among appropriators, first in time is first in right. The priority date for those who hold appropriation permits is generally the date when the permit application was filed with the Department. Priorities of existing rights are determined by the district court. The priority date for a water reservation is the date on which the Board adopts the order reserving waters.

53.0108. *Yellowstone Moratorium.* The Legislature has imposed a moratorium on the processing of applications for diversion of surface waters in the Yellowstone River basin pending the determination of applications for water reservations from that drainage. The moratorium is in effect until January, 1978, unless litigation delays the final determination of such reservation applications beyond that date.

58.0109. *Appropriation of Water by the State* (81-2018, R.C.M. 1947) The State Board of Land Commissioners may appropriate water for use on state land by following the same procedures as must be followed by individual appropriators.

58.0110. Appropriation and Regulation of Groundwater (89-2911 *et seq.*, R.C.M. 1947) Appropriations of groundwater are generally governed by the Water Use Act (58.0101, *et seq.*). However, disputes over priorities and quantities of groundwater rights will be determined under this law, through administrative hearings of the Board of Natural Resources and Conservation.

The Department and Board of Natural Resources and Conservation have the responsibility for insuring that water from aquifers is not depleted through excessive withdrawals. The Board may designate "an area of controlled groundwater use" for any area where 1) withdrawals exceed recharge rates; 2) excessive groundwater withdrawals are likely in the near future; or 3) there are significant disputes over water rights or amounts of water being used by appropriators. Following a hearing, the Board may limit withdrawals from a controlled groundwater area. Permits to withdraw water from such an area will be granted by the Department

only if it decides the requested withdrawal will not exceed the aquifer's capacity.

In order to prefent waste and contamination of groundwater, the Department regulates construction and maintenance of water wells. Wells which are polluting groundwater or are producing water which is not being put to beneficial use must be plugged or capped. Well drillers must inform the Department of new wells.

58.0500. Water Commissioners (89-1001 through 1024, R.C.M. 1947) Whenever water rights have been determined by decree of a district court, it is the duty of the judge, on application of the owners of 15% of the water rights affected by the decree, to appoint one or more commissioners to supervise the distribution of waters to the parties to the decree. When the rights of all appropriators from a given source have been determined by the decree, the Department of Natural Resources may request the appointment of water commissioners. Water commissioners may also be appointed on the application of one or more irrigation districts (58.0701.) to supervise the distribution of water to members of the districts.

Any water user who is dissatisfied with the methods or decisions of a water commissioner may appeal to the court and a hearing will be held to consider the complaint.

58.0600. Designation of Water Storage Sites (76-118 through 121, R.C.M. 1947) Each soil and water conservation district (52.0301) is authorized to designate at least one off-stream water storage site for the construction of a reservoir. After a site designation has been filed with the county, no state or local government agency may acquire or use the property for any purposes other than construction of a reservoir. Conservation districts may seek funding from the renewable resources fund (51.0801) for construction of such a reservoir. Reservoirs shall provide water storage for appropriators in the district, and may be part of a federal reclamation project or a flood control project. The conservation district may sell excess water to any peron who will apply it to an agreed beneficial use within the state, in accordance with priorities established by each district.

58.0701. Irrigation Districts (89-1201 through 89-2101 *et seq.*, R.C.M. 1947) *Creation of Irrigation Districts.* Irrigation districts are formed so that farmers in a particular area can pool their resources and cooperate with federal reclamation projects to construct or purchase dams and other structures to enable them to irrigate their land. Sixty percent of the owners of an area (who represent 51 percent of the irrigable land in the proposed district and 51 percent of the proposed water use) must petition the local district court requesting that a district be created. Except when proposed projects are being carried out under a federal reclamation program, the Department of Natural Resources is required to prepare a written report or opinion for the court on the engineering features involved in proposed projects, water supply potentials, and a copy of the decree of the district court showing the adjudicatd water rights for streams from which the district would divert water.

Notice of the hearing on the petition is published in local newspapers; only non-resident landowners in the proposed district are given individual notice. The court must determine whether statutory requirements for inclusion of land in the district are met. Individuals may support or object to inclusion of their land in the district at the hearing on the petition, and may appeal the district court's decision to the Supreme Court. (The appeal must be made within sixty days of the order.) Nonconsenting owners may be included in the district unless the court finds that their lands will not be benefited by district projects.

58.0702. *Board of Commissioners.* Commissioners must own land included in the district, and must be residents of the county or counties in which the district is located. The law establishes terms, bonding levels, compensation and conflict of interest requirements. All board meetings are open to the public, and records of all meetings must be kept. Irrigation district records are subject to examination by the state examiner.

The Board is the operating agency for the irrigation district. As such, it is responsible for the operation and maintenance of irrigation and drainage works and for delivery of water to land included in the district. The Board is authorized to:

—locate irrigation works on land within the district;

—appropriate and purchase water and water rights;

—purchase existing canals, reservoirs and dams;

—purchase (by condemnation if necessary) land for rights of way, water project maintenance, and enlargement of existing water projects;

—regulate, supervise and apportion water controlled by the district, except water to which a landowner had rights prior to the district's creation;

—sue and be sued, make contracts, incur indebtedness, levy taxes, apply for and receive federal funds;

—purchase and resell land within the district which is being sold to pay for delinquent district assessments;

—convey district land, property and water rights to the Department of Natural Resources.

Commissioners are elected annually by the electors of the entire district; vacancies which occur between elections are filled by the district court.

58.0703. *Boundary Changes.* A majority of the landowners in an existing irrigation district (who also own a majority of land in the district) may petition the

district court to exclude land which cannot be successfully irrigated with district projects or for which the irrigation costs will become burdensome. Hearings, notice and appeal procedures are the same as those required for the creation of an irrigation district.

Land may be added to the district if owners of two-thirds of the land being considered for inclusion petition the district court. Land which is presently irrigated, land which has water rights attached, and land which can be more easily irrigated by means other than inclusion in the district can be added only with the landowner's written consent.

An individual landowner may petition the district court to exclude from the irrigation district any part of his or her land not susceptable to the district's irrigation projects, or to correct errors which put him on record as having more land than he actually owns. Hearing, notice and appeal procedures are the same as for other irrigation district procedures.

58.0704. *Authority to Regulate Construction of Irrigation Ditches* (11-948, R.C.M. 1947) City and town councils have the power to regulate both the construction and use of irrigation ditches, drains and flumes within their limits.

58.0705. *Apportionment of Water.* The Board of Commissioners apportions the irrigation district's water; it can apportion no more than can be beneficially used. The right to district water is attached to the land and cannot be sold separately. The Board may sell any surplus water if the sale will benefit the district.

58.0706. *Bonding Authority.* Bonds must be authorized by sixty percent of the landowners (who must also own 60% of the land in the district) or by seventy-five percent of the resident landowners (who must also own 75% percent of the land in the district). In any one year, indebtedness of as many dollars as there are acres in the district may be incurred. Bonds are not a general obligation of the district, but are a charge (lien) against lands within the district. All bond issues must be approved by district court. Any appeals from district court actions must be made within ten days to the Supreme Court.

58.0707. *Taxes and Assessments.* (89-1801 *et seq.*, R.C.M. 1947) Most irrigable land within an irrigation district is subject to special taxes or assessments levied by the Board to pay off bonding and other debts, including loans from the federal government. Assessments may also be levied to create and maintain a sinking fund required by the statute if certain types of bonds are sold. Delinquent irrigation district taxes are collected in the same manner as delinquent state and county taxes (84-4101, R.C.M. 1947). A landowner may repurchase (redeem) land which has been sold to pay delinquent taxes for two years following the sale. Liability for taxes passes with the land when ownership is transferred. However, liens remain on the land for only eight years.

58.0708. *Debt Limitation, Bankruptcy and Dissolution.* (89-1701 *et seq.*; 89-1901 *et seq.*, R.C.M. 1947) Irrigation districts may not become indebted in any one year for more than fifteen percent of the assessed valuation of the district. Exceptions include debts to pay for organization, "immediate purposes" of the act, or costs incurred because of a calamity or other unforeseen circumstances. Irrigation districts are authorized to file for bankruptcy under the federal bankruptcy law.

Sixty percent of the owners (who must also own sixty percent of the land within the district) may request the district court to dissolve the district if it owns no land or water projects and has no outstanding debts. Notice and hearing requirements are the same as those for other irrigation district procedures, (58.0701). The request will be granted if the court finds that the district has no debts, including outstanding bonds, and that dissolution is in the best interest of the landowners. Additional requirements and procedures must met if there are debts and property in the district's name.

58.0709. *Taxation of Irrigated Land.* (84-429.7, R.C.M. 1947) As an incentive for irrigation of agricultural land, such lands are taxed at the current rate for non-irrigated farm land for three years after the introduction of an irrigation system.

58.0801. Drainage Districts (89-2201 through 89-2301 *et seq.*, R.C.M. 1947) *Creation and Dissolution.* Drainage districts are established to enable landowners to share the cost of altering non-navigable streams or constructing and maintaining ditches and levees to drain swampy boggy land. A district can be created by a request to the district court from a majority of landowners in the proposed district who represent at lease one-third of the land to be benefited. The district may be dissolved by a request from owners of more than one-half of the acreage in the district. The request for dissolution must be granted if the court verifies that landowners of more than sixty percent of the land have requested it. Public notice and hearing procedures are similar to what is required for formation and dissolution of irrigation districts (58.0701.)

58.0802. *District Commissioners.* The court approving the request for creating a drainage district must divide the district into three equal parts and appoint one commissioner from each. Thereafter, commissioners are elected to staggered terms by district members. Immediately following their initial

appointment, commissioners are required to appoint a secretary, an attorney and a civil and drainage engineer to determine if the proposed work is necessary, if it will serve the public health and welfare, and if the benefits outweigh the costs. These conclusions are then summarized in a preliminary report to the court, which must approve all district work. A hearing with adequate notice must precede approval of the preliminary report. At the hearing, all issues relating to any proposed work will be tried by the court (without a jury). The court will not allow any construction if it finds, after reviewing any objections and the preliminary report, that the work is too costly, is not in the public interest, or is unnecessary.

If the court approves the preliminary report, the commissioners may make detailed plans for the drainage project, including what land will be damaged by the work, construction and maintenance costs, and assessments to be levied on individual pieces of land. The information must be compiled in a report to the court, which must review all proposed actions. Later alterations of the drainage system and additions to the district of land being benefited by the system must also be approved by the court.

58.0803. *Bonding Authority.* The commissioners may issue bonds up to the amount of the assessment for construction and repair costs and other debts which they have properly incurred.

58.0901. Conservancy Districts. (89-3401 *et seq.*, R.C.M. 1947) This act, which was passed in 1969, enables one or more counties to form districts which have broad powers to carry out water related activities which:

—prevent and control floods, erosion and sedimentation;

—regulate stream flows and lake levels;

—improve drainage to reclaim wetlands;

—promote recreation;

—develop and conserve water, land, forests, fish and wildlife resources;

—develop and utilize land and water for beneficial uses.

58.0902. *Creation and Dissolution of Conservancy Districts.* In order to establish a district, at least ten percent of the registered voters in the proposed district must petition the Department of Natural Resources and Conservation. The petition must describe the proposed district's boundaries, the purpose of the district, the water projects which will be constructed by the district, and request the Department to conduct a preliminary survey. (The Department may also prepare a preliminary survey even if a petition is not submitted.)

Within a year, the Department is required to make a preliminary survey, determine the cost of the proposed project, sources of financing, and its desirability, and submit the information gathered to the residents requesting the district as well as to the affected state and federal agencies. A hearing on the proposed district will be held if requested by any applicant or if the Department feels a hearing would be desirable.

If the Department decides the district is feasible and consistent with the state water plan (58.0103) it petitions the local district court to request establishment of the conservancy district. If the court grants the request, it is responsible for establishing its boundaries, and setting up the organizing election. Fifty-one percent of the eligible voters must cast ballots in the election, and a majority of those voting must approve the establishment of the district. A district will be dissolved if a majority of the electors voting approve a dissolution petition which may be submitted to the district court by either the directors of the district or twenty percent of electors who represent ten percent of the valuation of the land in the district.

58.0903. *Conservancy District Directors.* If the eligible voters approve of the organization of a conservancy district, the court appoints between three and eleven individuals to serve staggered terms as directors. The directors are authorized to:

—sue and be sued;

—adopt rules to promote water recreation, including requirements for public access and facilities, for use of reservoirs, other waters and picnic sites;

—appropriate water and initiate or participate in the adjudication of streams;

—acquire, construct, operate and maintain water projects;

—acquire and dispose of land (using condemnation if necessary), water and water rights and rights of way;

—merge with other special districts;

—issue tax exempt bonds and use other means for borrowing money;

—levy assessments on land in the districts;

—enter into contracts with the federal government for construction and maintenance of water projects (with approval of a majority of the electors);

—petition the district court to annex property which is being benefited by district projects.

58.1000. Flood Control and Water Conservation. (89-3301 *et seq.*, R.C.M. 1947) As originally written, this act authorized city and county governments to participate in flood control projects with state and federal agencies. A 1967 amendment expanded this authority to enable cities and counties to participate in water projects for additional purposes, including water conservation, water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use and pollution abatement. The act "contemplates" that the federal or state government will

actually construct the project, with local and county governments acquiring necessary rights-of-way, operating and maintaining projects once they are constructed.

In order to carry out water projects, cities and towns may:

—acquire land (using condemnation powers if necessary);

—accept financial assistance from private organizations and government agencies;

—allocate a portion of street or road funds to the acquisition of land and to operation and maintenance costs of the project;

—levy special assessments on land benefited by the projects;

—collect fees from those benefiting from the project;

—issue special improvement district or rural improvement district bonds to fund the project (if approved in a special or general election).

58.1100. Weather Modification. (89-310 *et seq.*, R.C.M. 1947) The Department and the Board of Natural Resources and Conservation supervise weather modification activities in the state. In addition to issuing permits and licenses to private individuals who are involved in weather modification, the Department itself may carry out research and development programs. The Board is responsible for establishing research standards if they are necessary to minimize danger to health, safety, welfare or property.

58.1101. *Licenses and Permits.* Any individual wishing to engage in weather modification must secure both a license and a permit from the Board. A separate permit is required for each operation. The Board may exempt from the licensing and permit requirements government and non-profit agencies, laboratory research, emergency activities and programs not usually used for weather modification.

Licenses, which cost $100 per year, are issued for one year and may be renewed. Licensing is a prerequisite for a permit. The Department, at the applicant's expense, must provide public notice through local newspapers of the proposed weather modification program. The Board may, but is not required to, hold a public hearing on the permit application in the area to be affected. It will grant a permit only after determining that the proposed modification is for "the general welfare and public good". The Board may revoke a license or permit if it determines that statutory requirements are not met, that permit conditions are being violated, or that termination of the weather modification activity is necessary to protect the health or property of "any person".

Agency Programs

58A.0001. Water Planning Program. The Planning Bureau of the Department of Natural Resources and Conservation collects, compiles and analyzes water and related land resource data, studies potential impacts of water withdrawals, and develops sections of the State Water Plan. During Fiscal Year 1976, the Bureau completed Volume I of the Framework Report for the State Water Plan. The Board of Natural Resources and Conservation has approved the first unit of the Plan for the Flathead Basin. Work on the rest of the plan is proceeding.

58A.0002. Water Quantity Assessment - Section 208 Project. As part of the Statewide Section 208 Water Quality Management Project (See 18A.0107), a number of project task-force participants will be gathering data on water quantity. The agricultural non-point source pollution inventory will provide information on irrigated land; stream segments which are periodically dewatered will be identified by the fisheries and agricultural non-point source pollution inventories.

58A.0003. Other Agency Activities. Among the water development programs conducted by other agencies are the following:

—*Agricultural Stabilization and Conservation Service* Agricultural Conservation Program. The ASCS supports a variety of water conservation projects. (See 52A.0201)

—*Bureau of Mines and Geology;* studies the effects of mining on groundwater resources in eastern Montana.

—*Agricultural Experiment Station;* conducts studies on water use and conservation methods; (See 52A.0700).

—*Department of State Lands* conducts water development projects on state lands. (See 51.0600, 51A.0002)

58A.0100. Water Engineering Program - Water Conservation Projects. Most water storage or distribution projects currently administered by the state were constructed by the State Water Conservation Board (SWCB), formed in 1935 during nationwide depression and serious drought. These projects were built with financial assistance from the federal Public Works Administration (PWA) as a means to provide emergency employment and to provide water conservation projects to help stabilize Montana's agricultural economy.

The state now owns over forty water conservation projects. The Water Resources Division of the

Department of Natural Resources and Conservation is the state agency charged with administering them. Most of the projects are administered through a contractual agreement with the local water users association. These water marketing contracts require the association to repay the state its investment in the project and to collect and expend an operation and maintenance charge in exchange for delivery of the water. To save money and more efficiently run the projects, most of the associations have agreed to operate the projects themselves, with the Department maintaining a supervisory capacity.

In its continuing program to improve the projects, the Department is attempting to rehabilitate the projects in immediate need of repair and to divest itself of any property interest in those projects in which future state involvement is not desirable.

At the request of the Legislative Auditor, the Engineering Bureau is completing critiques of each project. Each critique is to be a complete engineering, economic, and financial analysis of the project. It should identify actions needed to make a project structurally and financially stable and recommend the degree of future Department involvement. Alternatives available to the Department for each project include: (1) rehabilitating the project and retaining state ownership, (2) releasing the ownership of the project to the interested water users association, or (3) abandoning the project after taking measures to permanently eliminate all safety hazards. As of March, 1977, three critiques of major projects have been nearly completed (Broadwater-Missouri, Deadman's Basin, and Delphia-Melstone). Several minor projects have been abandoned or released.

58A.0101. *Inspection.* The Engineering Bureau of the Department in 1972 initiated a regular inspection program of state-owned water conservation project structures. This program has emphasized dam safety inspections, but other structures are checked as well.

Twenty-three state-owned dams are now inspected annually by engineers from the Department and members of the local water users associations. In the dam safety report written after each of these inspections, recommendations for maintenance or repair, if needed, are directed to the local association. If serious repairs are needed, the report is followed up with any assistance the Department can offer, such as technical expertise or help in obtaining financing. Inspection of project features other than dams, such as canals and associated structures, is completed as time permits. Special examinations are made when it is determined that annual inspections are not sufficient or when special studies such as project critiques are underway.

The Department also inspects some privately owned dams upon request when their safety is in question. Dam safety reports are written for these dams, including recommendations to the dam's owner for repair or maintenance. If a private dam is unsafe when inspected, the Department has no legal authority to force the owner to restore it to a safe condition; however, in that case, copies of the dam safety report are sent to the county attorney of the affected county, who may take legal action to see that the structure is made safe.

58A.0103. *Renewable Resource Grants.* Under the Renewable Resources Development Program (See 51.0801, 51A.0800), the 1977 Legislature made a $500,000 grant to the Boulder River Reservoir project which will provide 12,000 acre-feet of irrigation water to 10,700 acres of cropland; a $90,000 grant to the Westbench Irrigation Project for upgrading the existing irrigation system; and a $50,000 grant to the Department of Natural Resources for repairs on the Nevada Creek Dam.

58A.0400. Water Rights Program. The Yellowstone River basin has been selected as the first location for the determination of existing water rights under the Water Use Act. The Department of Natural Resources has started the adjudication process in the Powder River drainage and is presently collecting data from individual water rights claimants. The process is a slow and complex one; during fiscal year 1976, the Department conducted 1,453 field checks of water rights claims, which represents 17% of the drainage area.

58A.1100. Weather Modification - High Plains Cooperative Program (HIPLEX). This program, a cooperative Montana-U.S. Bureau of Reclamation Weather Modification project, conducts research in determining the ecological, social, agricultural, land use and economic consequences of additional moisture on the Northern High Plains. Activities include the design and operation of an extensive raingauge network, compilation and analysis of rainfall and other climatological data, and the determination of how frequency, amount, and seasonality of moisture affects production of important native grasses and cereal grains, transfer of energy and nutrients within plant-animal communities and community composition.

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