

INTRODUCTION

Welcome to the Environmental Quality Council (EQC). In an attempt to provide you with an organized jump start to the interim's committee work, the EQC staff has produced this fourth edition of *A Council Member's Guide to the Environmental Quality Council*. The Guide is designed to provide you with the necessary information to roll up your sleeves and participate effectively and efficiently in the interim process.

The EQC deals with some of the most complex and emotionally divisive environmental, natural resource, fish, wildlife, recreation, water, and energy issues in the state of Montana. It is an entity that brings a diverse set of interests to the table with the ultimate goal of solving problems for the benefit of all Montanans.

The Guide is divided into seven sections. The first addresses the questions most frequently asked about the EQC. The next six sections are appendices that provide more detailed information. Previous members have found this publication to be very helpful. Your continued feedback is appreciated, so let us know what you think. You can reach us at:

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FREQUENTLY ASKED QUESTIONS

What is the Environmental Quality Council?

The Environmental Quality Council (EQC) is a statutory bipartisan interim committee that operates within the legislative branch of state government. Created by the 1971 Montana Environmental Policy Act (MEPA), the EQC generates information, reviews and appraises state programs, conducts investigations and studies, develops and recommends policy, and generally promotes a unified effort in carrying out state policy for the enhancement of the state's natural, economic, and social environments. (For a detailed list of duties, see Appendix D.)

Who is on the EQC?

The EQC has 17 members composed of:

- six House members selected by the Speaker of the House,
- six Senate members selected by the Committee on Committees,
- two public members selected by the President of the Senate with the concurrence of the Senate Minority Leader,
- two public members selected by the Speaker of the House with the concurrence of the House Minority Leader, and
- one nonvoting member who represents the governor.

At least 50% of the EQC's legislative members must be selected from the standing session committees that consider issues within the jurisdiction of the EQC.

The EQC is the only standing statutory committee in the Legislative Branch that has public members that vote on issues before the committee. Throughout its 32-year history, the EQC's public members have provided invaluable nonlegislative perspectives and information.

Committee members serve 2-year terms, starting and ending on the 50th day of each legislative session. Members may serve no more than three terms (6 years total).

In order to be appointed to the EQC, the following qualifications of the legislator or public member must be considered:

- ① the ability to analyze and interpret environmental trends and information of all kinds;
- ② the ability to appraise programs and activities of the state government in the light of the policy set forth in 75-1-103, MCA;

- ③ the ability to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and
- ④ the ability to formulate and recommend state policies to promote the improvement of the quality of the environment.

The 2003-2004 members are:

Senate members

Dan McGee (R-Laurel)	Robert Story (R-Park City)
Walter McNutt (R-Sidney)	Jon Tester (D-Big Sandy)
Glenn Roush (R-Cut Bank)	Ken Toole (D-Helena)

House members

Debby Barrett (R-Dillon)	Chris Harris (D-Bozeman)
Norma Bixby (D-Lame Deer)	Don Hedges (R-Antelope)
Paul Clark (D-Trout Creek)	Jim Peterson (R-Buffero)

Public members

Tom Ebzery (Billings)	Ellen Porter (Missoula)
Julia Page (Gardiner)	Howard Strause (Great Falls)

Governor's representative

Todd O'Hair

A Chair and Vice Chair are traditionally selected at the first meeting of the interim. The EQC rules and procedures guide the selection process and are also adopted at the committee's organizational meeting. (See the 2001 EQC Rules and Procedures, Appendix F.)

What can the EQC do for you?

As an EQC member, you have the opportunity to:

- Develop expertise in environmental, natural resource, fish, wildlife, recreation, water, and energy issues and oversee the state agencies associated with those issues.
- Plan and participate in forums to create, evaluate, and refine legislative policy.
- Allow your constituents year-round access to critical legislative policy decisions.
- Evaluate state agency administrative rules.
- Promote governmental accountability.
- Generate nonpartisan and unbiased information.
- Investigate complex legislative policy problems and propose solutions.

What are your responsibilities as an EQC member?

In a nutshell . . . be engaged and participate. A legislator or public member who seeks and accepts appointment to the EQC must be prepared to devote time and effort to understanding the issues, evaluating the information presented, and formulating sound recommendations. In fulfilling this role, an EQC member needs to:

- read each report, plan, proposal, and set of minutes presented by staff or interested persons *in advance of meetings*;
- share reports, plans, and other study documents with interested persons in your area to stimulate participation;
- invite comments and suggestions from constituents who are knowledgeable or concerned;
- bring to the meetings previously prepared questions and comments;
- pose questions and offer suggestions during meetings;

- redirect discussion to central issues when conversation strays from the topic; and
- communicate frankly with staff on matters such as preferred style and length of presentations, conduct of meetings, format of reports, and other topics pertinent to EQC business.

What does the EQC do during a typical interim?

The EQC typically focuses on two to three major study topics, while conducting general oversight of the state's natural resource programs and observing its other statutory duties. The EQC is required to meet each quarter, though the number of meetings and the EQC study agenda is determined in part by the number of issues that can be effectively addressed within the EQC budget and with the available time and resources of committee members and staff and interested parties.

At its first organizational meeting, the EQC selects and prioritizes its activities for the interim based on a draft interim work plan assembled by staff. The options in the work plan are generated from studies assigned by the Legislative Council, the EQC's statutory responsibilities, issues of concern to EQC members, and agency oversight responsibilities. It is up to the EQC to prioritize and decide which, if any, of the options to adopt for the final work plan or to generate its own work plan options. (See **Figure 1.**)

Once the EQC selects and prioritizes the work plan options, staff develop a detailed draft work plan and timetable that includes each major study or activity for approval by the committee. Subcommittees or working groups may be appointed to address certain issues.

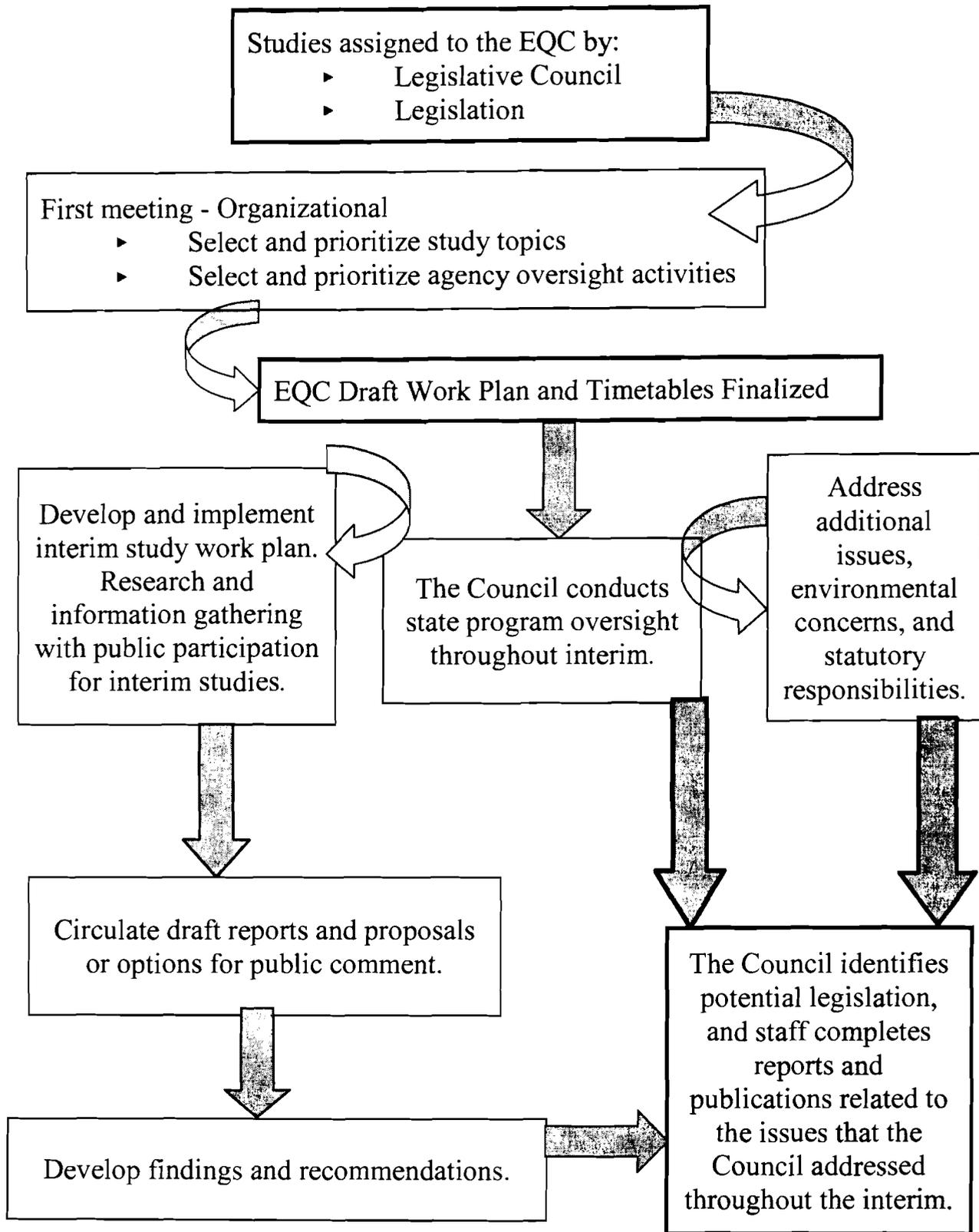
During the interim, additional issues or environmental concerns inevitably come to the attention of the EQC. These "headline issues" may be driven by state or federal agency decisions, judicial rulings, development proposals, natural disasters, citizen inquiries, or many other factors. The EQC may choose to investigate or analyze these issues as they arise, provided there is sufficient time and interest, especially if the issue may be resolved through legislative policy decisions.

At the end of the interim, EQC staff produce draft study reports that reflect the activities, deliberations, findings, recommendations, and potential legislation. The EQC reviews the report and then adopts, modifies, or rejects the recommendations and potential legislation.

As required under Legislative Council rule, the committee must wrap up its interim work by September 15th of even-numbered years. EQC members are then free to engage in political campaigns and the staff concentrates on drafting legislation and preparing for the upcoming legislative session.

Figure 1

Environmental Quality Council Interim Process



What does the EQC do during a typical meeting? How is the agenda developed?

Potential agenda items are identified in a number of ways:

- A review of the work plan.
- Discussions at previous meetings.
- Requests from individual members.
- The staff informs the Chair about new programs, actions, current events, or other developments that fit in with the EQC's work plan.

Typically, the staff begins developing a draft agenda for review by the EQC Chair 4 to 6 weeks prior to the committee meeting. The Chair determines the final agenda.

EQC members are encouraged to suggest agenda items that would be of interest to the committee and consistent with its work plan. Items may be suggested during meetings or discussed with the Chair. It is equally important for EQC members to speak up when potential or past agenda items are not helpful, appropriate, or not a high priority in light of the EQC's work plan. The committee's time and resources are limited so it is important to prioritize agenda items.

Although it is difficult to define a "typical" agenda, a sample of past agenda items may give you an idea of what the EQC might do during a meeting:

- Tour the Beaverhead Valley to learn about the implementation of state and federal water quality laws, fisheries management, local irrigation projects, and other local projects and issues.
- Review a Water Policy Subcommittee report that discusses the subcommittee's work plan progress and provide insight to subcommittee members and staff on specific questions.
- Receive an update on the Clark Fork Natural Resource Damage Claim Lawsuit from the Attorney General's office.
- Receive a report from Montana legislators who participated in a Legislative Leadership Council on River Governance meeting in Idaho.
- Listen to an update on Montana Department of Environmental Quality guidelines for implementing MEPA.
- Decide on recommendations and conclusions for an EQC report on waste tire management after hearing the recommendations of the committee-appointed Waste Tire Working Group.

- Travel to Dillon, Missoula, and Great Falls and listen to the concerns of residents.
- Hear public testimony regarding state laws that authorize the permitting of gravel pits.
- Receive an update on the Montana Department of Natural Resources Renewable Resource Grant and Loan Program.

The type of action that is needed varies with each agenda item. Usually the Chair invites the audience (citizens, lobbyists, or other interested persons) to comment on topics being discussed. Many items are informational and provide EQC members with an opportunity to ask questions, make suggestions, provide direction, or decide if further committee action is appropriate. Other items require a decision by the EQC.

How does the EQC involve the public in its deliberations?

Public participation is essential for the EQC to function as a policy development and oversight body of the Legislature. The EQC encourages the public to be involved and to comment on its deliberations. The staff sends agendas and other notices to over 250 interested individuals and organizations at least 10 days in advance of meetings or hearings. Announcements are also posted in the Legislative Services Division *Interim*, through press releases, and on our website. The Chair has the option of holding meetings outside Helena in order to reach Montanans who cannot attend meetings at the Capitol. The committee has developed public participation guidelines that are listed in the 2001 EQC Rules and Procedures, Appendix F.

How can the EQC respond to an issue?

It is the EQC's role to gather and analyze information in order to make informed policy recommendations and decisions about complex natural resource and environmental issues. The investigation of these issues is limited only by the resources of the EQC, as there is no shortage of issues or debate over the balance between people and their environment. Some of the ways the EQC may respond to these issues are listed in Appendix C.

How does the EQC make decisions?

The EQC has used a variety of methods to make decisions, including acting based on a majority vote or working towards consensus. Whatever approach the EQC ultimately chooses, it is beneficial to discuss that approach early in the interim.

What is the EQC's role during legislative sessions?

The EQC's function during a legislative session is to support any committee-proposed legislation and to offer a position and/or an analysis on specific issues that arise during a session. Members may support the activities of the EQC by sponsoring legislation, providing testimony, responding to amendments, talking to other legislators about EQC legislation, and generally shepherding EQC legislation through the legislative process. Members develop an environmental expertise that is useful to their legislative colleagues.

EQC Staff Mission and Duties

The EQC staff is a principal subdivision within the Legislative Services Division and works under the guidance of the Legislative Environmental Analyst. The staff's mission is to assist the EQC in achieving its mission and to provide the *best* information possible to the EQC, the Legislature, and the public. The EQC's mission is set forth in its enabling legislation (MEPA) and its statutory duties.

Best information means the most complete, objective information available. The staff's goal is to inform the EQC of the issues; provide information regarding those issues; identify options, if requested; and analyze the impacts--environmental, fiscal, societal, etc., of selecting those options. **The option selection itself is left to committee members.**

Staff responsibilities include:

- researching and writing reports;
- organizing and monitoring public meetings and hearings;
- drafting proposed legislation;
- responding to information requests from EQC members, legislators, the public, and agencies;
- writing legal opinions;
- organizing studies assigned by the Legislature and the EQC;
- arranging meetings, i.e., contacting speakers, arranging for site visits, etc.;
- writing and distributing informational materials; and
- drafting legislation and staffing committees during the legislative sessions.

In general, the EQC staff acts as an impartial and nonpolitical source of information on environmental and natural resource matters for the EQC, the Legislature, Montana citizens, and state agencies. In addition, members of the EQC staff serve as committee staff to several standing committees during legislative sessions.

Your current EQC staff are:

Phone:

Legislative Environmental Analyst. Todd Everts
Resource Policy Analyst Larry Mitchell

444-3747
444-1352

Resource Policy Analyst Mary Vandebosch 444-5367
Resource Policy Analyst.....Krista Lee Evans 444-3957
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APPENDIX A: EQC MEMBER PHONE NUMBERS AND ADDRESSES

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APPENDIX B: SALARY AND REIMBURSEMENT

Legislator Claims for Reimbursement of Interim Activities

The following information is provided by the Legislative Services Division, Financial Services Office to answer your questions about payment of salary and reimbursement of expenses for interim activities. If you have questions, please call 444-3411 or 444-3201.

Generally, legislators should use the mode of travel that provides the lowest overall cost to the state. Make your lodging reservations early to obtain state-rate rooms and ALWAYS request state employee rates. If you use commercial air, make reservations early to obtain discounted rates and try to avoid costly schedule changes.

Statutory Provisions

"5-2-302. When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

1. a mileage allowance as provided in 2-18-503;
2. expenses as provided in 2-18-501 and 2-18-502; and
3. a salary equal to one full day's pay at the rate of a classified state employee, described in 5-2-301(1) for each 24-hour period of time (from midnight to midnight), or portion thereof, spent away from home on authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, he may not be compensated for the additional day."

Reimbursement Rates

In-State Meals (receipt NOT required)	Breakfast \$5.00; Lunch \$6.00; Dinner \$12.00
Mileage (receipt NOT required)	Usually \$.36/mile for first 1,000 miles each month; \$.33/mile thereafter
Lodging October 15 thru May 14 (receipt required)	\$35/day day, plus applicable taxes, total \$37.45
Lodging May 15 thru October 14 (receipt required)	\$55/day (Fed Standard Rate), plus applicable taxes, total \$58.85
Nonreceipted Lodging (i.e., you stay with friends or family), all dates	\$12/day

Guidelines for Evaluating Reasonableness of Claims

These guidelines are used to determine if time spent away from home reasonably falls within the context of authorized legislative business:

1. Overnight lodging is reasonable when the member would be required to leave home earlier than 6:30 a.m. or arrive home later than 9:30 p.m. in order to have attended all of the meeting or have conducted all of the legislative business authorized. To compute whether this would be required, an average travel speed (overall including incidental stops) of 50 miles an hour is used.
2. A legislator is entitled to a day's salary when necessarily away from home for authorized legislative business. A member is considered necessarily away from home on the day of a meeting or other authorized legislative activity and on any other day when travel qualified under (1) above is required.
3. A meal falling within reasonable travel times may be claimed.

The following mitigating factors will be applied in interpreting the above guidelines:

1. The welfare of a legislator must be considered. Weather and health issues are key considerations.
2. If a member flies instead of drives, variations are considered.
3. At times, members may choose more expensive modes of travel because of schedule conflicts that would make it otherwise impossible to conduct authorized legislative business. Such cases shall be considered in establishing reasonableness.

Legislators Who Live in Helena

A legislator who lives in Helena and attends an interim committee meeting in Helena is not entitled to mileage or lodging reimbursement. However, the legislator is entitled to a midday meal allowance on the day of the meeting regardless of the proximity of the meeting place to the individual's residence. In addition, the legislator may claim salary in the same manner as all other legislators.

Submission of Claims

To receive payment of salary and reimbursement of expenses for interim legislative work, a legislator must complete and sign a Statement of Expense for Montana Legislators. Forms are available from committee secretaries and from the Legislative Services Division financial office, Room 154 in the Capitol.

The legislator must return the claim to the committee secretary or to the Legislative Services Division financial office, accompanied by original receipts as noted on the claim form. The legislator should clearly note the number of days of salary, lodging, and meals claimed. The claim should be completed and signed in ink. If special circumstances apply to the claim, those should be noted.

Claims will be processed as quickly as possible. The salary portion of the claim will be paid with the next biweekly state payroll cycle. Warrants for expenses, not including salary, will be issued within 3 working days of receipt of the claim **in the financial office**. This means that you will usually receive two state warrants for each claim you submit, one for the expenses and one for the payroll. Claim forms that are incomplete or that do not include required receipts may be returned to the legislator for completion. In such cases, the claims processing period may be extended.

APPENDIX C: HOW THE EQC MAY RESPOND TO ISSUES

The following choices are informally arranged from the efforts that are the most simple to the most resource-intensive for EQC members and staff to complete. Before beginning research on a topic, it is necessary to decide if the issue warrants investigation given the demands and objectives of the work plan, and if so, for what purpose and in what depth.

Presenting an issue to the EQC.

- Request staff to conduct independent research and report to the EQC.
- Request EQC staff to work with agency staff to address questions.
- Request that agency staff answer specific questions in writing or by presentation.
- Request EQC staff to work with agency staff and interest groups to provide multiple perspectives.
- Same as above with actively solicited public attendance and comment.
- Solicit interested persons or issue experts to present information to the EQC.
- Request EQC staff to organize a panel discussion on the issue.

Tracking an ongoing issue.

- Request EQC staff or agency staff to provide updates at subsequent meetings.
- Committee members investigate the issue in their districts and report back to the EQC at the next meeting.
- Committee members request periodic reports/publications on the issue produced by the agency or interest group.
- Committee members request that EQC staff track an issue nationally or regionally and provide periodic updates at meetings.
- Committee assigns an EQC subcommittee or working group to investigate and report on the issue over the interim.

Refining an issue.

- Convert an issue to a work plan item for the EQC, subcommittees, working groups, or staff to research and report on.
- Committee members and/or EQC staff develop more specific follow-up questions on an issue for EQC or agency staff to research and report back to the EQC.
- Committee workshop/work session involving all affected parties.
- Committee requests performance or fiscal audit.
- Convene an EQC subcommittee or working group to discuss issue and report back to the EQC.
- Solicit and arrange for testimony from diverse participants; host a general discussion of the issue or ask specific questions.
- Conduct a site visit, tour, or hearing and prepare a report on the result.

Identifying options to address an issue.

- Ask interested parties/experts for suggestions on what could be done to resolve the issue.
- Request that EQC staff evaluate how other states deal with similar issues.
- Request EQC staff to develop potential options to present to the EQC independently or in consultation with agency staff and interested parties.
- Request EQC staff to develop "white paper" or "issue paper" with options on how to address the issue.
- Convene subcommittee to work with staff to develop options and report back to the EQC.
- Convene a working group to work with all affected parties to develop options and report to the EQC.

Recommending actions.

- EQC determines issue can be addressed through information mechanisms:
 - requests that EQC staff add information to EQC publication/website.
 - requests that EQC/agency staff develop strategies for information dissemination on issue.
 - directs EQC staff to plan a special meeting, workshop, or symposium.
 - directs EQC staff to work with other potential sponsors to plan a meeting, workshop, etc.
- EQC provides comments for inclusion in a public comment process on a proposal.
- EQC provides suggestions or general recommendations for agency actions:
 - forwards recommendations to agency via EQC letter.
 - forwards recommendations to Legislature via report.
- EQC recommends EQC staff or agency prepare specific legislative proposal:
 - study resolution for future effort
 - bill
- EQC prepares formal letter to other governing entity (e.g. Governor, Congressional delegation, multistate Commission, etc.)
- EQC recommends participation in state, regional, or national policy review group.
- EQC schedules special hearing during legislative session to discuss proposals.

APPENDIX D: STATUTORY DUTIES

A brief summary of the EQC's statutory duties is followed by a detailed compilation of the statutes taken from the Montana Code Annotated (MCA).

A Summary of the EQC's Specific Statutory Responsibilities

Under MEPA

1. 75-1-201 calls for state agencies to assist the EQC and to provide copies of all environmental reviews to the EQC for review. (Agency MEPA administrative rules also require agencies to submit environmental review documents to the EQC.)

2. 75-1-208 allows the sponsor of a project under MEPA review to appear before the EQC at a regularly scheduled meeting. The EQC is required to ensure that state agency personnel are available for questions.

3. 75-1-314 requires the Departments of Environmental Quality, Agriculture, and Natural Resources and Conservation to report specific compliance and enforcement information to the EQC.

4. 75-1-324 directs the EQC to:

- gather information concerning conditions and trends in the quality of the environment;
- review state programs and activities to determine the extent to which the programs are contributing to the policy established in MEPA (75-1-103);
- develop recommendations for state policies that promote environmental quality;
- conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
- document changes in the natural environment and accumulate data and other information for a continuing analysis of these changes;
- make and furnish studies, reports, and recommendations with respect to matters of policy and legislation at the request of the legislature;
- analyze legislative proposals in environmental areas or in areas that have environmental consequences;
- assist legislators who are preparing environmental legislation;
- review agency environmental programs to identify possible conflicts and suggest legislation to remedy those situations; and
- perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following agencies and the entities attached to the agencies for administrative purposes:
 - (a) department of environmental quality;
 - (b) department of fish, wildlife, and parks; and
 - (c) department of natural resources and conservation.

Other

5. 2-4-402 through 2-4-412 set out the administrative rule oversight powers and duties of the EQC.

6. 2-15-1514 requires participation of a Legislative Services Division staff person on the natural resource data system advisory committee.

7. 2-15-1523 requires participation of a representative of the Legislative Services Division on the ground water assessment steering committee.

8. 5-5-202 and 5-5-215 discuss the organization and duties of interim committees.

9. 5-16-101 through 5-16-105 discuss the composition and terms of the EQC.

10. 50-60-801--the statement of intent discusses involvement in residential energy efficiency due to the EQC energy policy study.

11. 75-10-111 requires the Department of Environmental Quality to circulate solid waste management plans to the EQC for its review.

12. 75-10-913, 75-10-918, and 75-10-927 require EQC participation in the Megalandfill Siting Act review process.

13. 77-2-301, et. seq. establishes a State Land Bank Fund to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements. Authorizes the Board of Land Commissioners to acquire lands for the financial benefit of trust beneficiaries. Requires that a detailed report of the land banking program be submitted to the EQC by July 1, 2008.

14. 77-5-301, et seq.--the legislative statement of intent requires the Department of Natural Resources and Conservation, along with the technical committee charged with advising the department on implementation of the streamside management zone laws, to evaluate and report on the implementation of the act to the EQC.

15. 85-1-203 requires the Department of Natural Resources and Conservation to submit a copy of the State Water Plan to the EQC.

16. 85-1-621 requires the Department of Natural Resources and Conservation to submit a biennial report to the EQC describing the status of the renewable resource grant and loan program.

17. 85-2-105 establishes the EQC's water policy duties. The EQC is specifically required to analyze and comment on the state water plan, the state water development

process, water-related research, and the adequacy of the water resources data management system. The EQC also receives assignment of various interim studies on water-related issues.

18. 85-2-436 requires the Department of Fish, Wildlife, & Parks, in conjunction with the EQC, to conduct and coordinate a study of water leasing.

19. 90-4-1001 and 90-4-1003 set out Montana's energy policy and specifically require the EQC, in cooperation with the Consumer Counsel and the Public Service Commission, to maintain a process to develop the components of a comprehensive state energy policy.

20. 90-4-1010 and 90-4-1011 discuss the state's transportation and alternative fuels energy policy. The statement of intent for the enabling legislation recognizes the EQC's 1995 energy policy study.

STATUTES THAT INVOLVE THE EQC OR ITS STAFF TAKEN FROM THE MONTANA CODE ANNOTATED



Legislative Review of Rules--The EQC's State Agency Oversight on Rulemaking

2-4-402. Powers of committees -- duty to review rules. (1) The administrative rules review committees shall review all proposed rules filed with the secretary of state.

(2) The appropriate administrative rule review committee may:

(a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter.

2-4-403. Legislative intent -- poll. (1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) Should 20 or more legislators object to any rule, the committee shall poll the members of the legislature.

(3) The poll shall include an opportunity for the agency to present a written justification for the rule to the members of the legislature.

2-4-404. Evidentiary value of legislative poll. In the event that the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find that the proposed rule is contrary to the intent of the legislature, the rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

2-4-405. (Temporary) Economic impact statement -- family impact note. (1) Upon written request of the appropriate administrative rule review committee based upon the affirmative request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the committee a copy of the request. The agency shall also prepare a family impact note upon receipt by the agency or the appropriate administrative rule review committee of a written request for a family impact note made by at least 15 legislators. If the request is received by the appropriate administrative rule review committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the appropriate administrative rule review committee a copy of the request. A family impact note must contain the material required by 5-4-504 if appropriate data is available. As an alternative, the committee may, by contract, prepare the estimate or the family impact note. Except to the extent that the request expressly waives any one or more of the following, a requested economic impact statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) A request to an agency for a family impact note or economic impact statement or a decision to contract for the preparation of a note or statement must be made prior to the final agency action on the rule. The note or statement must be filed with the appropriate administrative rule review committee within 3 months of the request or decision. A request or decision for a note or statement may be withdrawn at any time.

(3) Upon receipt of an economic impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a family impact note or economic impact statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section. (Terminates October 1, 2003--sec. 8, Ch. 339, L. 1999.)

2-4-405. (Effective October 1, 2003) Economic impact statement. (1) Upon written request of the appropriate administrative rule review committee based upon the affirmative request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the committee a copy of the request. As an alternative, the committee may, by contract, prepare the estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) A request to an agency for a statement or a decision to contract for the preparation of a statement must be made prior to the final agency action on the rule. The statement must be filed with the appropriate administrative rule review committee within 3 months of the request or decision. A request or decision for an economic impact statement may be withdrawn at any time.

(3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section.

2-4-406. Committee objection to violation of authority for rule -- effect. (1) If the appropriate administrative rule review committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency that promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

(3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt of the

objection, publish the objection in the register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response must be paid by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by court judgment because the agency failed to meet its burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable attorney fees against the agency.

2-4-407 through 2-4-409 reserved.

2-4-410. Report of litigation. Each agency shall report to the appropriate administrative rule review committee any judicial proceedings in which the construction or interpretation of any provision of this chapter is in issue and may report to the committee any proceeding in which the construction or interpretation of any rule of the agency is in issue. Upon request of the committee, copies of documents filed in any proceeding in which the construction or interpretation of either this chapter or an agency rule is in issue must be made available to the committee by the agency involved.

2-4-411. Report. The committee may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 2-4-412 and make other recommendations and reports as it considers advisable.

2-4-412. Legislative review of rules -- effect of failure to object. (1) The legislature may, by bill, repeal any rule in the ARM. If a rule is repealed, the legislature shall in the bill state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the bill. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also by joint resolution request or advise or by bill direct the adoption, amendment, or repeal of any rule. If a change in a rule or the adoption of an additional rule is advised, requested, or directed to be made, the legislature shall in the joint resolution or bill state the nature of the change or the additional rule to be made and its reasons for the change or addition. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction in a bill.

(3) Rules and changes in rules made by agencies under subsection (2) must conform and be pursuant to statutory authority.

(4) Failure of the legislature or the appropriate administrative rule review committee to object in any manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the validity of any rule.



Member of Natural Resource Data System Advisory Committee

2-15-1514. State library commission -- natural resource data system advisory committee. (1) (a) There is a state library commission created in Title 22, chapter 1.

(b) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members are as prescribed by law.

(2) (a) There is a natural resource data system advisory committee consisting of an employee of the **LEGISLATIVE SERVICES DIVISION**, of the department of administration, of the state library, and of each principal data source agency, appointed by the head of the respective state agency, and by the board of regents of higher education for the Montana university system.

(b) The state library shall provide staff support to the committee, within the limits of the library's available resources.



Member of Ground Water Assessment Steering Committee

2-15-1523. Ground water assessment steering committee. (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies that have responsibility for ground water protection, management, or information. The member must be appointed by the head of the respective state agency:

(a) the department of natural resources and conservation;

(b) the department of environmental quality;

(c) the department of agriculture; and

(d) the Montana state library, natural resource information system.

(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

(a) the **LEGISLATIVE SERVICES DIVISION**;

(b) the board of oil and gas conservation;

(c) the Montana bureau of mines and geology;

(d) a unit of the university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the Montana university system;

(e) a county government, appointed by an organization of Montana counties;

(f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

(g) each principal federal agency that has responsibility for ground water protection, management, or research, appointed by the Montana head of the respective federal agency; and

(h) one representative of each of the following, appointed by the governor:

(i) agricultural water users;

- (ii) industrial water users; and
- (iii) a conservation or ecological protection organization.
- (3) The ground water assessment steering committee shall elect a presiding officer from its voting members.
- (4) The Montana bureau of mines and geology shall provide staff support to the committee.



Interim Committees

5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, **ENVIRONMENTAL QUALITY COUNCIL**, and state-tribal relations committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

- (a) economic affairs committee;
- (b) education and local government committee;
- (c) children, families, health, and human services committee;
- (d) law and justice committee;
- (e) energy and telecommunications committee;
- (f) revenue and transportation committee; and
- (g) state administration, and veterans' affairs committee.

(3) An interim committee or the **ENVIRONMENTAL QUALITY COUNCIL** may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee.

5-5-215. Duties of interim committees. (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
- (b) subject to 5-5-217(3), conduct interim studies as assigned;
- (c) monitor the operation of assigned executive branch agencies with specific attention to the following:
 - (i) identification of issues likely to require future legislative attention;
 - (ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
 - (iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;

(d) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and

(e) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The LEGISLATIVE SERVICES DIVISION shall keep accurate records of the activities and proceedings of each interim committee.



EQC Appointments

5-16-101. Appointment and composition. The ENVIRONMENTAL QUALITY COUNCIL consists of 17 members as follows:

(1) the governor or the governor's designated representative is an ex officio member of the council and shall participate in council meetings as a nonvoting member;

(2) six members of the senate and six members of the house of representatives appointed before the 50th legislative day in the same manner as standing committees of the respective houses are appointed. No more than three of the appointees of each house may be members of the same political party.

(3) four members of the general public. Two public members must be appointed by the speaker of the house with the consent of the house minority leader, and two must be appointed by the president of the senate with the consent of the senate minority leader.

5-16-102. Qualifications. (1) In considering the appointments under 5-16-101(2) and (3), consideration must be given to the appointees' qualifications to:

(a) analyze and interpret environmental trends and information of all kinds;

(b) appraise programs and activities of the state government in the light of the policy set forth in 75-1-103;

(c) be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and

(d) formulate and recommend state policies to promote the improvement of the quality of the environment.

(2) At least 50% of the members appointed pursuant to 5-16-101(2) must be selected from the standing committees that consider issues within the jurisdiction of the ENVIRONMENTAL QUALITY COUNCIL.

5-16-103. Term of office. The terms of office of all council members shall be 2 years and shall terminate upon appointment of a new council before the 50th legislative day. Council members may be reappointed. However, in no case shall a member serve more than 6 years.

5-16-104. Vacancies. (1) A vacancy on the council of a member appointed under 5-16-101(2) occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the same method as the original appointment. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-16-101.

(2) (a) When a vacancy on the council of a member appointed under 5-16-101(3) has occurred or is expected to occur, the appointing authority shall have posted in a conspicuous place in the state capitol a notice announcing the actual or anticipated vacancy and describing the procedure for applying for appointment.

(b) A copy of the notice required under subsection (2)(a) must be sent to the lieutenant governor, who may publish the notice in an appropriate publication.

5-16-105. Officers. 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 2 years.



EQC Involvement in Residential Energy Efficiency

50-60-801. Statement of policy on residential energy efficiency. The legislature finds that the people of Montana have an interest in energy efficiency in certain residential buildings for the purpose of protecting and improving their economic and environmental well-being and energy security, while recognizing the basic need for safe and affordable shelter. It is the policy of the state of Montana to encourage energy efficiency in residential buildings through strategies that ensure that:

(1) the housing consumer has access to the information required to make informed choices about structures and energy efficiency measures;

(2) energy efficiency measures are safe, reliable, and readily available for use in Montana;

(3) investments in energy efficiency measures are cost-effective;

(4) the cost of energy efficiency measures on the combination of down payments, monthly mortgage payments, and monthly utility bills does not adversely affect the affordability of housing to prospective home buyers and renters; and

(5) energy efficiency measures do not place an undue or inequitable burden on residential building owners or renters, the residential construction industry, financial institutions, real estate salespersons and appraisers, energy providers, or state and local governments.

Compiler's Comments:

Preamble: The preamble attached to Ch. 383, L. 1993, provided: "WHEREAS, the **ENVIRONMENTAL QUALITY COUNCIL**, as part of its study of energy policy under the

requirements of House Joint Resolution No. 31, adopted in the 1991 Legislative Session, created a Residential Energy Efficiency Working Group (Working Group) to address a long-standing controversy surrounding

residential energy efficiency and specifically the energy provisions of the state building code; and

WHEREAS, the Working Group included broad representation from energy utilities, the home building industry, energy consumers, state and local governments, the lending and real estate industries, low-income and conservation groups, and the building supply industry; and

WHEREAS, the Working Group met nine times during the 1992 interim and agreed that any final recommendations must be adopted by consensus and supported by all participants as a package, with all elements to be adopted or none at all; and

WHEREAS, the Working Group adopted by consensus the policy statement embodied in [section 1] [50-60-801] and then adopted by consensus a package of implementation strategies; and

WHEREAS, the implementation strategies include:

(1) information strategies for consumers, builders, building code officials, home inspectors, bankers, realtors, and appraisers, specifically encompassing education, training, and technical assessment and demonstration of conservation measures, as well as an energy labeling sticker and initiation of first steps toward a home energy rating system;

(2) financial strategies geared toward making energy- efficient new homes more affordable, including:

(a) petitioning the Federal Home Administration (FHA) to increase the upper limits of FHA home mortgages;

(b) initiating a residential mortgage program for energy-efficient homes under the Montana Board of Housing that would maintain a low down payment requirement and raise mortgage ceiling levels above FHA limits; and

(c) establishing a loan reserve account in the Department of Natural Resources and Conservation that allows the Board of Housing to sell bonds to enable it to

offer loans above the FHA limit that would be funded by home buyers, utilities, and the State of Montana as provided in House Bill No. 10 [Ch. 496, L. 1993];

(3) energy provider strategies in which utilities would continue to offer on a voluntary basis incentive programs to their customers to purchase energy-efficient products or services; and

(4) building code strategies, including enforcement of the energy conservation provisions of the state building code in certain residential buildings through a combination of builder self-certification and state and local government enforcement for those residences currently subject to the state building code, as well as increasing the efficiency standards in the energy code according to the consensus levels adopted by the Working Group; and

WHEREAS, it is the consensus of the Working Group that implementation of the building code strategies relating to the applicability of the energy code to certain residences is contingent on the establishment, funding, and operation of the financial strategy concerning the Board of Housing program promoting the affordability of energy-efficient new homes; and

WHEREAS, this bill embodies those consensus recommendations of the Working Group requiring statutory authorization."

1993 Statement of Intent: The statement of intent attached to Ch. 383, L. 1993, provided: "A statement of intent is necessary for this bill because it directs the department of commerce, in adopting rules pertaining to energy conservation in buildings under the provisions of 50-60-203, to conform those rules to the policy provided in [section 1] [50-60-801] and to the relevant policies that may be developed according to the provisions of Senate Bill No. 225 [Ch. 242, L. 1993].

This bill also requires that the department of commerce design a labeling sticker describing the energy efficiency measures in newly constructed homes. In

designing this energy labeling sticker, the department of commerce should consult with the department of natural resources and conservation and with interested building industry and consumer groups.

It is the intent of the legislature that the department of commerce adhere to the recommendations related to energy efficiency in residential buildings developed under the auspices of House Joint Resolution No. 31, adopted by the 1991 legislature.

In accordance with the recommendations resulting from the directive of House Joint Resolution No. 31, the legislature intends that rules pertaining to energy conservation in certain residential buildings may not apply to those buildings containing less than five dwelling units and not otherwise subject to the state building

code unless an affordable energy-efficient housing program is established as provided by House Bill No. 10 [Ch. 496, L. 1993]. The coordination instruction in [section 7] reflects this intent.

It is further the intent of the legislature that in applying the energy conservation provisions of the state building code to certain residential buildings as provided in [section 2] [50-60-102], the enforcement of those provisions be accomplished through builder self-certification as provided in [section 4] [50-60-802] and not through enforcement by the department of commerce, except for those residential structures containing five or more dwelling units or for those residential structures otherwise subject to the state building code."



Montana Environmental Policy Act (Unofficial post-2003 session version.)

Part 1

General Provisions

75-1-101. Short title. Parts 1 through 3 may be cited as the "Montana Environmental Policy Act".

75-1-102. Intent -- purpose. The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that environmental attributes are fully considered.

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an **ENVIRONMENTAL QUALITY COUNCIL**.

75-1-103. Policy. (1) The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, 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 humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, 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 coordinate state plans, functions, programs, and resources so that the state may:

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

(b) ensure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

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

(d) protect the right to use and enjoy private property free of undue government regulation;

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

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

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

(3) The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, that each person has the right to pursue life's basic necessities, and that each person has a responsibility to contribute to the preservation and enhancement of the environment. The implementation of these rights requires the balancing of the competing interests associated with the rights by the legislature in order to protect the public health, safety, and welfare.

75-1-104. Specific statutory obligations unimpaired. Sections 75-1-103 and 75-1-201 do not affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality;

(2) coordinate or consult with any local government, other state agency, or federal agency; or

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

75-1-105. Policies and goals supplementary. The policies and goals set forth in parts 1 through 3 are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

75-1-106. Private property protection -- ongoing programs of state government. Nothing in 75-1-102, 75-1-103, or 75-1-201 expands or diminishes private property protection afforded in the U.S. or Montana constitutions. Nothing in 75-1-102, 75-1-103, or 75-1-201 may be construed to preclude ongoing programs of state government pending the completion of any statements that may be required by 75-1-102, 75-1-103, or 75-1-201.

75-1-107 through 75-1-109 reserved.

75-1-110. Environmental rehabilitation and response account. (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;

(b) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, 82-4-424, and 82-4-426; and

(c) interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

(b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(c) remediation of sites containing hazardous wastes or hazardous substances for which the department may not recover costs from a legally responsible party; or

(d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature.

Part 2

Environmental Impact Statements

75-1-201. General directions -- environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

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

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the

alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented; and

(G) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when 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 the world environment;

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

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

(ix) assist the **ENVIRONMENTAL QUALITY COUNCIL** established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and with any local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the **ENVIRONMENTAL QUALITY COUNCIL**, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

(5) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(6) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection (6)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(7) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

75-1-202. Agency rules to prescribe fees. 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 75-1-201. An agency must determine within 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 part. The fee assessed under this part shall be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. 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.

75-1-203. Fee schedule -- maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule that may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of \$2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up to \$1 million, plus 1% of any estimated cost over \$1 million and up to \$20 million, plus 1/2 of 1% of any estimated cost over \$20 million and up to \$100 million, plus 1/4 of 1% of any estimated cost over \$100 million and up to \$300 million, plus 1/8 of 1% of any estimated cost in excess of \$300 million.

(3) If an application consists of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities. The estimated cost must be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years.

(5) In calculating fees under this section, the agency may not include in the estimated project cost the project sponsor's property or other interests already owned by the project sponsor at the time the application is submitted. Any fee assessed may be based only on the projected cost of acquiring all of the information and data needed for the environmental impact statement.

75-1-204. Application of administrative procedure act. In adopting rules prescribing fees as authorized by this part, an agency shall comply with the provisions of the Montana Administrative Procedure Act.

75-1-205. Use of fees. All fees collected under this part shall be deposited in the state special revenue fund as provided in 17-2-102. All fees paid pursuant to this part shall be used as herein provided. Upon completion of the necessary work, each agency will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

75-1-206. Multiple applications or combined facility. In cases where a combined facility proposed by an applicant requires action by more than one agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one fee pursuant to this part, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the necessary funds to the other agencies which require funds for the completion of the necessary work.

75-1-207. Major facility siting applications excepted. No fee as prescribed by this part 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 Major Facility Siting Act, chapter 20 of this title.

75-1-208. Environmental review procedure. (1) (a) Except as provided in subsection (1)(b), an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the ENVIRONMENTAL QUALITY COUNCIL at any regularly scheduled meeting to discuss issues

regarding the agency's environmental review of the project. The **ENVIRONMENTAL QUALITY COUNCIL** shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(i) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) is required; and

(iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 75-1-201(1)(b)(iv)(C)(III) or (8) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.

75-1-209 through 75-1-219 reserved.

75-1-220. Definitions. For the purposes of this part, the following definitions apply:

(1) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in 2-15-3402;

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(2) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(3) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(4) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

(5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328).

(6) "Public scoping process" means any process to determine the scope of an environmental review.

Part 3

Environmental Quality Council

75-1-301. Definition of council. In this part "council" means the ENVIRONMENTAL QUALITY COUNCIL provided for in 5-16-101.

75-1-302. 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 is entitled to receive compensation and expenses as provided in 5-2-302. 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.

75-1-303 through 75-1-310 reserved.

75-1-311. Examination of records of government agencies. The 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.

75-1-312. Hearings -- COUNCIL subpoena power -- contempt proceedings. In the discharge of its duties the 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 COUNCIL, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

75-1-313. Consultation with other groups -- utilization of services. In exercising its powers, functions, and duties under parts 1 through 3, the COUNCIL shall:

(1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups

as it deems advisable; and

(2) 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 **COUNCIL'S** activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

75-1-314. Reporting requirements. (1) The departments of environmental quality, agriculture, and natural resources and conservation shall biennially report to the **COUNCIL** the following natural resource and environmental compliance and enforcement information:

(a) the activities and efforts taking place to promote compliance assistance and education;

(b) the size and description of the regulated community and the estimated proportion of that community that is in compliance;

(c) the number, description, method of discovery, and significance of noncompliances, including those noncompliances that are pending; and

(d) a description of how the department has addressed the noncompliances identified in subsection (1)(c) and a list of the noncompliances left unresolved.

(2) When practical, reporting required in subsection (1) should include quantitative trend information.

75-1-315 through 75-1-320 reserved.

75-1-321. Repealed. Sec. 82, Ch. 545, L. 1995.

75-1-322. Repealed. Sec. 82, Ch. 545, L. 1995.

75-1-323. Staff for ENVIRONMENTAL QUALITY COUNCIL. The legislative services division shall provide sufficient and appropriate support to the **ENVIRONMENTAL QUALITY COUNCIL** in order that it may carry out its statutory duties, within the limitations of legislative appropriations. The **ENVIRONMENTAL QUALITY COUNCIL** staff is a principal subdivision within the legislative services division. There is within the legislative services division a legislative environmental analyst. The legislative environmental analyst is the primary staff person for the **ENVIRONMENTAL QUALITY COUNCIL** and shall supervise staff assigned to the **ENVIRONMENTAL QUALITY COUNCIL**. The **ENVIRONMENTAL QUALITY COUNCIL** shall select the legislative environmental analyst with the concurrence of the legislative council.

75-1-324. Duties of ENVIRONMENTAL QUALITY COUNCIL. The **ENVIRONMENTAL QUALITY COUNCIL** shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and

compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature 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;

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

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

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

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

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

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

(10) perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

(a) department of environmental quality;

(b) department of fish, wildlife, and parks; and

(c) department of natural resources and conservation.



Review Solid Waste Management Plans

75-10-111. State solid waste management plan -- hearings and action. (1) A proposed solid waste management plan shall be prepared by the department in conjunction with local governments in the state and any other interested person. After a draft of a proposed solid waste management plan has been prepared, the department shall circulate a copy of the proposed plan to the board of county commissioners in each county in the state, the governing body of every incorporated city or town in the state, any person responsible for the operation of a solid waste management system under the provisions of parts 1 and 2, chapter 10 of this title, the governor, the **ENVIRONMENTAL QUALITY COUNCIL**, and any other interested person for at least 90 days prior to submission of a final proposed

solid waste management plan to the board. During the 90-day period for receipt of comments on the draft plan, the department shall hold at least three public hearings around the state on the draft plan.

(2) A final proposed plan shall be prepared based on the comments and objections received at the public hearings and from the persons who have submitted comments on the draft solid waste management plan. The final plan submitted to the board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected. The board shall consider the final proposed solid waste management plan after giving notice and holding at least one public hearing pursuant to the rulemaking procedures outlined in the Montana Administrative Procedure Act.



Participation in Megalandfill Siting Act Review Process

75-10-913. Annual long-range plan submitted -- contents -- available to public.

(1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the **ENVIRONMENTAL QUALITY COUNCIL**, the department of transportation, the department of fish, wildlife, and parks, and the department of natural resources and conservation. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan.

75-10-918. Application -- filing and contents -- proof of service and notice. (1)

(a) An applicant shall file with the department an application for a certificate under 75-10-916 in a form that the board requires, containing the following information:

- (i) a description of the proposed location and of the facility to be built;
- (ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;
- (iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;
- (iv) baseline data for the primary and reasonable alternate locations;
- (v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and
- (vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

- (a) **ENVIRONMENTAL QUALITY COUNCIL;**
- (b) department of fish, wildlife, and parks;
- (c) department of transportation; and
- (d) department of natural resources and conservation.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application.

75-10-927. Parties to certification proceeding -- waiver -- statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board under 75-10-901 through 75-10-945 may include as active parties:

- (a) the applicant;
- (b) each political entity, unit of local government, and government agency entitled to receive service of a copy of the application under 75-10-918;
- (c) a person entitled to receive service of a copy of the application under 75-10-918;
- (d) a nonprofit organization formed in whole or in part to:
 - (i) promote conservation or natural beauty;
 - (ii) protect the environment, personal health, or other biological values;
 - (iii) preserve historical sites;

- (iv) promote consumer interests;
- (v) represent commercial and industrial groups; or
- (vi) promote the orderly development of the areas in which the facility is to be located; and
- (e) any other interested person who establishes an interest in the proceeding.
- (2) The department must be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.
- (3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsections (1)(b) through (1)(e).
- (4) A party waives the right to be a party if the party does not participate in the hearing before the board.
- (5) Each unit of local government entitled to receive service of a copy of the application under 75-10-918 shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent must be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.



Report to EQC on Land Banking Program

New section: 77-2-366 Land banking process -- time limit -- report to ENVIRONMENTAL QUALITY COUNCIL. (1) State land may not be sold through the land banking process pursuant to 77-2-361 through 77-2-367 after October 1, 2008. Land banking purchases under 77-2-364 may continue after October 1, 2008, until all the proceeds in the state land bank fund are expended or revert to the public school fund or the permanent fund of the respective trust pursuant to 77-2-362(2)(d).

(2) The department shall provide a report to the **ENVIRONMENTAL QUALITY COUNCIL** by July 1, 2008, that describes the results of the land banking program in detail. At a minimum, the report must summarize the sale and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary. The **ENVIRONMENTAL QUALITY COUNCIL** shall make any recommendations that it determines necessary regarding the implementation of the state land banking process, including recommendations for legislation.



Report to EQC on Implementation of Streamside Management Zones Law

77-5-301 et seq.

Part Compiler's Comments:

1991 Statement of Intent: The statement of intent attached to Ch. 608, L.

1991, provided: "It is the intent of the legislature that the streamside management zone be an area of closely managed activity,

but not a zone where timber harvest is excluded. Timber harvest activities must be managed within the zone to achieve objectives relating to water quality, beneficial water uses, management of wildlife habitat, and the long-term stability of the stream system, in addition to timber harvest objectives.

It is the intent of the legislature that the department of state lands [now department of natural resources and conservation] adopt rules to implement the management standards provided for in [section 3] [77-5-303] as enforceable standards for streamside management zones. These standards are to be coordinated with the objectives and guidelines contained in the existing system of voluntary best management practices, which will still guide forest practices outside of the streamside management zone. The department shall adopt rules governing the harvest of timber in streamside management zones to ensure the retention of merchantable and submerchantable timber necessary to maintain the integrity of the streamside management zone. The department shall also adopt rules under which owners and operators may receive approval for alternative practices for the standards provided in [section 3] [77-5-303].

It is the intent of the legislature that the department develop voluntary, nonenforceable guidelines concerning the selection and retention of trees and vegetation, including snags, for wildlife habitat within the streamside management zone.

It is the intent of the legislature that the department establish an interdisciplinary technical committee to assist the department in adopting rules, developing voluntary guidelines for the management of wildlife

habitat, and monitoring the implementation of this bill. The members of the committee should have technical knowledge or expertise in water quality, wildlife management, or forest management and include representatives from the U.S. forest service; U.S. bureau of land management; the Montana departments of health and environmental sciences [now department of natural resources and conservation] and fish, wildlife, and parks; conservation districts; the Montana state university [now Montana state university-Bozeman] extension forestry program; the Montana forest and conservation experiment station; the forest products industry; and the conservation community.

To the extent practical, the department should conduct onsite consultations under [section 4] [77-5-304] in conjunction with consultations or inspections conducted pursuant to Title 76, chapter 13, parts 1 and 4. It is also the intent of the legislature that whenever department personnel in the field notice a probable water quality or 310 permit violation that they notify the appropriate authority.

It is the intent of the legislature that the department, with the assistance of the technical committee, evaluate the implementation of this bill, develop recommendations to address problems, if any, that arise, and report its findings and recommendations to the **ENVIRONMENTAL QUALITY COUNCIL**.

Finally, the legislature recognizes that appropriate limitations on activities in streamside zones, which comprise only a very small percentage of Montana forests, can achieve substantial watershed and wildlife benefits."



Consult on State Water Plan

85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct studies; adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies; perform research or employ other competent agencies to perform research on a contract basis; and hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(3) The department shall submit to the **ENVIRONMENTAL QUALITY COUNCIL** established in 5-16-101 and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(4) The legislature, by joint resolution, may revise the state water plan.

(5) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(6) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(7) In developing and revising the state water plan as provided in this section, the department shall consult with the **ENVIRONMENTAL QUALITY COUNCIL** established in 5-16-101 and solicit the advice of the committee in carrying out its duties under this section.



Receive Biennial Report on Renewable Resource Grant and Loan Program

85-1-621. Report. The department shall prepare a biennial report describing the status of the renewable resource grant and loan program. The report must describe ongoing projects and projects that have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department has received applications. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report must be submitted to the **ENVIRONMENTAL QUALITY COUNCIL** established in 5-16-101.



Water Policy Duties

85-2-105. ENVIRONMENTAL QUALITY COUNCIL -- water policy duties. (1) The **ENVIRONMENTAL QUALITY COUNCIL** shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the **ENVIRONMENTAL QUALITY COUNCIL** shall:

(a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;

(b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state;

(c) assist with interagency coordination related to Montana's water resources; and

(d) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the **ENVIRONMENTAL QUALITY COUNCIL** shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and

(e) report to the legislature as provided in 5-11-210.

(4) The legislative services division shall provide staff assistance to the **ENVIRONMENTAL QUALITY COUNCIL** to carry out its water policy duties.



85-2-436. (Temporary) Water leasing study. (1) The department of fish, wildlife, and parks and the department, in consultation with the **ENVIRONMENTAL QUALITY COUNCIL**,

shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) (a) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection (2). Except as provided in 85-2-439, for purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(b) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the department pursuant to 85-2-437.

(c) Upon receipt of a correct and complete application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(d) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(e) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(f) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term equal to the expected life of the project but to not more than 30 years. Upon receiving notice of a lease

renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(j) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(g) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(j) proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(h) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(i) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(j) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(k) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and **ENVIRONMENTAL QUALITY COUNCIL** an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the department and commission and submitted to the **ENVIRONMENTAL QUALITY COUNCIL**, which shall complete the final report by December 1, 2008.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)



State Energy Policy -- Goal and Development Process

90-4-1001. State energy policy goal statement. (1) It is the policy of the state of Montana to promote energy conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens.

(2) In pursuing this goal, it is the policy of the state of Montana to:

(a) recognize that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets;

(b) maintain a continual process to review this energy policy statement and any future changes so that Montana's energy strategy will provide for a balance between a sustainable environment and a viable economy; and

(c) adopt a state transportation energy policy as provided in 90-4-1010 and an alternative fuels policy and implementing guidelines as provided in 90-4-1011.

Compiler's Comments:

Preamble: The preamble attached to Ch. 311, L. 1995, provided: "WHEREAS, in section 90-4-1003, MCA, the Legislature adopted a process for the incremental development of a comprehensive state energy policy; and

WHEREAS, under the provisions of that statute, the Department of Natural Resources and Conservation recommended to the **ENVIRONMENTAL QUALITY COUNCIL** the development of a transportation energy policy as one component of a comprehensive state energy policy; and

WHEREAS, the **ENVIRONMENTAL QUALITY COUNCIL** assigned a broad-based working group of stakeholders in the issues relating to development of a transportation energy policy to use a collaborative, consensus process to develop that policy; and

WHEREAS, these stakeholders included the Montana Department of Transportation, members of the Montana Highway Commission [now Transportation Commission], the Department of Natural Resources and Conservation, representatives of state and local governments, highway users, railroad interests, utilities, commercial transportation interests, environmental groups, agricultural producers, bicycle and pedestrian interests, transportation planners, and representatives of petroleum producers; and

WHEREAS, the collaborative working group met regularly over an 8-month period to develop the following transportation energy policy goal statement and to recommend a specific component of a transportation energy policy on alternative fuels, along with implementing guidelines."

90-4-1003. Energy policy development process. (1) The department and the council, in cooperation with the consumer counsel and the public service commission, shall maintain a continual process to develop the components of a comprehensive state energy policy.

(2) Because of limited state resources and the need to focus intensive effort on specific issues of importance, the development of a comprehensive state energy policy must occur on an incremental basis. As the need arises, the department, in cooperation with the appropriate state agencies and with extensive public involvement, shall identify and recommend to the council specific components of a state energy policy for development under the consensus process described in subsection (3).

(3) (a) Upon selection of a specific energy policy component, the council shall assign to a working group composed of representatives of the parties with a stake in that specific component the task of developing consensus recommendations for that component of state energy policy.

(b) The working group must include the broadest possible representation of stakeholders in the issues to be included within the specific component of state energy policy.

(c) Whenever possible, the working group shall use a consensus process to develop recommendations for a specific energy policy component to be submitted to the council. Recommendations that are not based upon consensus must be so noted by the working group. Upon consideration of the working group's recommendations, the council shall forward its recommendations to the legislature and to the appropriate state agencies for adoption.

(d) The department shall:

(i) provide staff support to the working group, including policy analysis, data gathering, research, technical analysis, and administrative support;

(ii) provide administrative coordination among the appropriate state agencies in the energy policy development process;

(iii) prepare reports for and make recommendations to the council; and

(iv) consult regularly with the council to coordinate each agency's activities.

(4) In carrying out their responsibilities under this section, the department and the council may contract with experts, consultants, and facilitators and may seek funding from a variety of private and public sources for technical and other assistance necessary to accomplish their responsibilities.



Transportation Energy Policy

90-4-1010. Transportation energy policy. It is the transportation energy policy of the state of Montana to promote actions that encourage the conservation of energy through the environmentally responsible management and planning of efficient transportation systems. This policy further recognizes that energy conservation must be balanced with the state's interest in establishing, preserving, and maintaining a safe, efficient transportation system that equitably meets the mobility needs of Montana's citizens and connects them to the nation's economy.

Compiler's Comments:

Preamble: The preamble attached to Ch. 311, L. 1995, provided: "WHEREAS, in section 90-4-1003, MCA, the Legislature adopted a process for the incremental development of a comprehensive state energy policy; and

WHEREAS, under the provisions of that statute, the Department of Natural Resources and Conservation recommended to the **ENVIRONMENTAL QUALITY COUNCIL** the development of a transportation energy policy as one component of a comprehensive state energy policy; and

WHEREAS, the **ENVIRONMENTAL QUALITY COUNCIL** assigned a broad-based working group of stakeholders in the issues

relating to development of a transportation energy policy to use a collaborative, consensus process to develop that policy; and

WHEREAS, these stakeholders included the Montana Department of Transportation, members of the Montana Highway Commission [now Transportation Commission], the Department of Natural Resources and Conservation, representatives of state and local governments, highway users, railroad interests, utilities, commercial transportation interests, environmental groups, agricultural producers, bicycle and pedestrian interests, transportation planners, and representatives of petroleum producers; and

WHEREAS, the collaborative working group met regularly over an 8-month period to develop the following transportation energy policy goal statement and to recommend a

specific component of a transportation energy policy on alternative fuels, along with implementing guidelines."

90-4-1011. Alternative fuels policy -- implementing guidelines. (1) The state of Montana encourages the use of alternative fuels and fuel blends to the extent that doing so produces environmental and economic benefits to the citizens of Montana.

(2) To implement the policy stated in subsection (1), the legislature recommends the following guidelines:

- (a) All policies and programs should have in-state benefits.
- (b) Policies and programs should be coordinated among the affected agencies.
- (c) The state recognizes incentives as a temporary tool to implement the alternative fuels policy. Recipients of those incentives should develop a plan, including an educational component, to phase out the incentive. In determining incentives, the state should:
 - (i) consider incentives for the producer, retail, and consumer levels;
 - (ii) establish a logical link between revenue sources and incentives; and
 - (iii) encourage the use of self-sufficient markets.
- (d) Any state alternative fuels program should have measurable benefits that are communicated to the public.

(e) State and local governments should be encouraged to set an example with their vehicle fleets in the use of alternative fuels and fuel blends.

(f) Consistent with the guidelines in subsections (2)(a) through (2)(e), the state encourages production of alternative fuels and fuel blends.

Compiler's Comments:

Preamble: The preamble attached to Ch. 311, L. 1995, provided: "WHEREAS, in section 90-4-1003, MCA, the Legislature adopted a process for the incremental development of a comprehensive state energy policy; and

WHEREAS, under the provisions of that statute, the Department of Natural Resources and Conservation recommended to the **ENVIRONMENTAL QUALITY COUNCIL** the development of a transportation energy policy as one component of a comprehensive state energy policy; and

WHEREAS, the **ENVIRONMENTAL QUALITY COUNCIL** assigned a broad-based working group of stakeholders in the issues relating to development of a transportation energy policy to use a collaborative, consensus process to develop that policy; and

WHEREAS, these stakeholders included the Montana Department of Transportation, members of the Montana Highway Commission [now Transportation Commission], the Department of Natural Resources and Conservation, representatives of state and local governments, highway users, railroad interests, utilities, commercial transportation interests, environmental groups, agricultural producers, bicycle and pedestrian interests, transportation planners, and representatives of petroleum producers; and

WHEREAS, the collaborative working group met regularly over an 8-month period to develop the following transportation energy policy goal statement and to recommend a specific component of a transportation energy policy on alternative fuels, along with implementing guidelines."

APPENDIX E: EQC PUBLICATIONS

2003

- Petroleum and Petroleum Products in Montana*
- Montana Environmental Policy Act: Public Participation Guide*

2002

- Montana Index of Environmental Permits*
- Coal Bed Methane and Water Policy in Montana 2002*
- A Guide to the Montana Environmental Policy Act*
- A Guide to Montana Water Quality Regulation*
- Understanding Electricity in Montana*
- Electricity Law Handbook*

2000

- Montana Index of Environmental Permits*
- Public Benefits and Private Rights: Countervailing Principles of Eminent Domain. Volume I*
- Public Benefits and Private Rights: Countervailing Principles of Eminent Domain. Volume II*
- Public Benefits and Private Rights: Countervailing Principles of Eminent Domain. Volume III*
- Improving the Montana Environmental Policy Act (MEPA) Process*
- Water Policy 2000*
- Funding for Growth Policies. Fact Sheet and Briefing Paper for the 57th Legislature of the State of Montana*
- Council Member's Guide to the Environmental Quality Council*
- Eminent Domain in Montana*

- Final Status of Natural Resource Legislation in the 57th Montana Legislature*

1999

- Planning for Growth in Montana*
- Compliance with and Enforcement of Montana's Natural Resource and Environmental Laws*
- Montana's Revised Water Quality Monitoring, Assessment, and Improvement Program (HB 546 and TMDLs in Practice)*

1998

- Montana Index of Environmental Permits*
- A Guide to the Montana Environmental Policy Act*
- Montana Department of Fish, Wildlife and Parks' Water Leasing Study. Environmental Quality Council Final Report to the 56th Legislature*
- Status of and Alternatives for the Management of Waste Tires in Montana*
- Montana's Water Policy -- 1997-1998*

1997

- Our Montana Environment . . . Where Do We Stand?*
- HJR 10 Compliance and Enforcement Study*
- Water Policy Committee Report*
- HJR 10 Compliance and Enforcement Technical Appendix*
- Final Status of Natural Resource Legislation in the 55th Montana Legislature*
- A Guide to Montana Water Quality Regulation*
- Wading into Montana Water Rights*
- A Council Member's Guide to the Environmental Quality Council*

1995

- SJR 29 Water Quality Nondegradation Study*
- SJR 34 Hazardous Waste Management Study*
- Water Policy Committee Report*
- Final Status of Natural Resource Legislation in the 54th Montana Legislature*
- MEPA Handbook*
- Montana Index of Environmental Permits*

1993

- Water Policy Committee Report*
- House Joint Resolution 17: Interim Study of Lakeshore Development*
- House Joint Resolution 31: Energy Policy Study, Montana Energy Data. Final Report to the 53rd Legislature of the State of Montana*
- House Joint Resolution 31: Energy Study, Summary Report*
- MEPA Handbook*
- Montana Index of Environmental Permits*
- Final Status of Natural Resource Legislation in the 53rd Montana Legislature*

1991

- Water Policy Committee Report*
- Senate Joint Resolution 22: Interim Study on Ground Water Quality Protection and Management*
- House Joint Resolution 19: Interim Study of Solid Waste Management*
- Final Status of Natural Resource Legislation in the 52nd Montana Legislature*
- Montana Environmental Quality Council Annual Report, Twelfth Edition: Research Issues*

- Montana Index of Environmental Permits*

1990

- Log Scaling Study: Final Report to the 52nd Legislature*
- Rural Development Study: Final Report to the Governor of the State of Montana and the Montana Legislative Council*

1989

- Final Status of Natural Resource Legislation in the 51st Montana Legislature*
- A Study of Water Resources Research Centers and Graduate Programs in Water Resources in the United States*
- Environmental Quality Council: Annual Report Eleventh Edition. Research Topics*

1988

- Montana Index of Environmental Permits*
- Report of the Water Policy Committee to the 51st Legislature of the State of Montana*
- House Joint Resolution 49: Forest Practices and Watershed Effects*
- Evaluation of Montana's Water Rights Adjudication Process*

1987

- Report to the 50th Montana Legislature on the Renewable Energy and Conservation Program*
- Final Status of Natural Resource Legislation in the 50th Montana Legislature*
- Montana Legislation on Hazardous Substances in the Environment. Status and Legislative Outlook*
- Environmental Quality Council Annual Report: Tenth Edition: Research Topics*
- Montana's Water Policy: Innovations, Realities and Prospects*

- A Montana Water Quality Program Assessment for Oil and Gas Practices, Forest Practices and Subdivisions*

1986

- Report of the Water Policy Committee to the 50th Legislature of the State of Montana*
- Oil and Gas Industry Study*
- Comparison of Environmental Regulation of the Oil and Gas Industry in the Rocky Mountain States and Alberta*
- Montana Environmental Policy Act Review of Oil and Gas Drilling Permits*

1985

- A Guide to the Montana Major Facility Siting Act*
- Summary of the Report of the Select Committee on Water Marketing to the 49th Legislature*
- Report of the Select Committee on Water Marketing to the 49th Legislature*
- Final Status of Natural Resource Legislation in the 49th Montana Legislature*
- Right-To-Know: A Guide to Montana's Employee and Community Hazardous Chemical Information Act*
- Report to the 49th Legislature on the Renewable Energy and Conservation Program*
- Environmental Quality Council: Annual Report Ninth Edition: Montana's Water*

1984

- Montana Index of Environmental Permits*
- Small-Scale Hydro Development in Montana*

1983

- Report to the 48th Montana Legislature on the Socio-Economic Impacts of Large-Scale Hard-Rock Mining*
- Report to the 48th Montana Legislature on the Renewable Energy Grant and Loan Program*
- Environmental Quality Council: Annual Report, 8th Edition and Final Status of Natural Resource Legislation in the 48th Legislature*

1982

- Environmental Regulations and Montana's Economy: A Public Forum, October 4-5, 1982*
- Summary Proceedings: Montana Ground Water Conference: Planning a Ground Water Strategy, April 22-23, 1982*
- Agency Implementation of the Montana Environmental Policy Act*

1981

- Natural Resource Issues in the 47th Legislature*
- Final Status of Natural Resource Legislation in the 47th Montana Legislature*

1980

- HJR 60: Coordination of Permit Procedures*
- Promoting Industrial Growth and Diversification in Montana*
- A Survey of Industry Experiences and Attitudes in Montana: 1980*
- House Joint Resolution 21*
- Final Report on House Joint Resolution 51: The Problems and Benefits of Mining Bentonite in Montana*
- Environmental Quality Council: Annual Report: 1979-1980*
- Citizen Participation in Siting Energy Facilities in Montana: Final Report*

1979

- Providing Science & Technology Resource Capability for the Montana Legislature*
- Environmental and Natural Resource Experts for the 1979 Legislature*

1978

- Environmental Permit Directory*
- Montana Environmental Index*
- Oil and Gas Leasing Program: Department of State Lands*
- Environmental Quality Council: Annual Report*
- Environmental Impact Statements: A Citizens' Brochure*

1977

- Energy and the 45th Legislature*

1976

- The Montana Environmental Policy Act: A Legal Analysis of MEPA's Role*
- EQC Staff Report on Prevention of Significant Deterioration*
- Montana Environmental Policy Planning Process*
- An Ecological Analysis of the Montana Agricultural Experiment Station's Livestock Grazing Demonstration on Reseeded Surface Mine Spoils Near Colstrip, Montana*
- The Transboundary Effect: Safeguarding the Poplar River in Montana*
- Montana's Natural Gas Supply Crisis*
- The Montana Environmental Policy Act: The First Five Years*
- Montana State Legislature, Environmental Quality Council: In the Matter of a Public Hearing Regarding Montana's Natural Gas Supply Crisis: Transcript of Proceedings*

- ❑ *Microflora of the Yellowstone River: III. The Non-Diatom Algae*
- ❑ *A Report on Analyses of Periphyton Collections from the North Fork and the Middle Fork of the Flathead River*
- ❑ *An Algal Survey of Surface Waters in Eastern Montana Suspected to be Influenced by Saline Seep, with Special Emphasis on Salinity Indicators and Potentially Toxic Species*
- ❑ *Montana's Renewable Resources. Today and Tomorrow. Environmental Quality Council: Fifth Annual Report*

1975

- ❑ *Montana Energy Policy Study*
- ❑ *Oversight Hearing on Implementation of the Montana Strip Mining and Reclamation Act*
- ❑ *Montana Environmental Indicators: Fourth Annual Report*

1974

- ❑ *Ponderosa Pines Ranch: A Subdivision Case Study*
- ❑ *The Potential for Solar Energy in Montana*
- ❑ *The Use of Montana's Coal as an Energy Resource*
- ❑ *Montana Energy Policy Study: Draft Staff Report*
- ❑ *Subdivision in the Flathead*
- ❑ *Montana Land Use Policy Study*
- ❑ *Impact of Land Development Associated with Subdivision on Wildlife Habitat Near Lolo*
- ❑ *Environmental Quality Council: Third Annual Report*
- ❑ *Oil and Gas Energy Resources of Montana*
- ❑ *Energy Flow in Montana*

- Geothermal Report*
- The Role of the State in Federal and Indian Land Use Decisions*

1973

- Fundamentals of Energy Conservation in Buildings*
- A Perspective on Subdivision Activity in Montana's Bitterroot Valley*
- The Potential for Energy Conservation in Montana*
- Underground Natural Resources: The Development of National Policy and Strip Mining of Coal: Unsettled Legal Problems in Montana*
- Water and Eastern Montana Coal Development*
- Eastern Montana Water Resources: Annotated Bibliography*
- Impact of Land Development Associated with Subdivision on Wildlife Habitat*
- Environmental Quality Council: Second Annual Report*

1972

- Environmental and Legal Problems of Land Development in Montana*
- Coal Development Potential in Montana*
- Environmental Quality Council: First Annual Report*

1971

- House Bill 66. A Bill for an act entitled: *An act to establish a state policy for the environment and to establish an environmental quality council and setting forth its powers and duties and providing an effective date.* 1971.

APPENDIX F: EQC RULES AND PROCEDURES

The EQC adopts a set of rules and procedures at its first meeting of the interim. The rules and procedures adopted in the 2001-2002 interim are set out below.

I. QUORUMS/PARLIAMENTARY PROCEDURES

A. Regular meetings of the Montana Environmental Quality Council (EQC) must be held in the State Capitol unless otherwise designated by the Chair.

B. Notice of regular meetings must be mailed to the members and the public a minimum of ten (10) days prior to each meeting.

C. Public notice is accomplished by releasing information about the time, location, and agenda of meetings to the EQC mailing list. The EQC shall direct the staff to maintain an updated mailing list that is open to anyone who requests to be included.

D. Special meetings may be scheduled by a majority of members at a previous meeting or may be called by the Chair, with at least 24-hour notice to the members. Special meetings must not include agenda items that would normally require a public hearing and comment.

E. (1) except as provided in subsection (2) and rule 1d, notice must be provided to the public as provided in rule 1b for a conference call meeting of the EQC or an EQC subcommittee that includes agenda items that involve a decision on a document or recommendation or any other item that normally involves public comment.

(2) conference calls between staff and a quorum of EQC members acting as a committee or subcommittee that are solely for the purpose of clarifying staff work assignments may be noticed by posting a description of the time, place, and general subject matter of the call on the Legislative Branch website at least 24 hours prior to the conference call.

F. All meetings of the EQC must be conducted under the established rules of the Senate of the State of Montana as to quorums and parliamentary procedure.

II. PUBLIC PARTICIPATION GUIDELINES

A. The EQC's role is to review and assess the development and implementation of state natural resource policy. Public comment should be designed to assist the committee in its policy role.

B. The EQC is committed to providing an opportunity for effective public involvement in natural resource policy development and review.

C. Public comment will be taken at the discretion of the Chair.

D. Due to the necessity of time management, the Chair may limit individual public comment in order to allow an equal and fair opportunity for public comment generally as well as for other agenda items.

E. Submission of written comments is encouraged.

F. Common courtesy is required of all parties.

G. The Chair has the discretion to recess EQC meetings when deemed appropriate.

H. Recording or videotaping of EQC meetings is permissible in a manner that does not disrupt the meeting.

III. ELECTION OF OFFICERS

A. Nominations for EQC Chair and any other officers must be made from the floor after appointments of new members have been made. If a Chair and Vice Chair are elected, they must not be from the same political party.

B. In order to be elected, a candidate shall obtain a majority of votes of all the members.

C. Members shall vote for the Chair and Vice Chair by voice vote or a roll call vote.

IV. PROXY VOTES

A. Proxies are generally discouraged, especially where a question has not received a prior hearing or where new debate occurs the day of the vote.

B. For the exercise of a proxy to be valid, the deputized member shall hold a written proxy from the absent member that specifies the question to which the proxy applies. Where a written proxy refers generally to a question but does not precisely address the question called to a vote, the Chair shall determine whether the proxy will be allowed.

V. APPOINTMENTS

The Chair may appoint subcommittee Chairs, members of subcommittees, and, as necessary, members of special committees.

VI. **SUBCOMMITTEES**

A. The Chair may establish temporary or standing subcommittees to make investigations or perform other functions as may be delegated by the EQC.

B. Subcommittee Chairs and Vice Chairs, if appointed, shall work closely with the EQC staff in determining research priorities within the topic areas assigned to the subcommittees. Significant conflicts between EQC research and subcommittee research responsibilities may be referred to the Chair for resolution.

C. Subcommittee Chairs shall make periodic reports and recommendations to the EQC.

D. EQC approval of subcommittee findings and recommendations is required before actions may be taken to implement the recommendations.

VII. **STAFF RESEARCH**

A. The Legislative Environmental Analyst is responsible for managing the staff's workload.

B. EQC staff is responsible for assisting individual EQC members and members of the Legislature on request by compiling and analyzing material relating to the EQC's statutory responsibilities as set forth in 2-4-402 through 2-4-412; 2-15-1514; 2-15-1523; 5-5-202 and 5-5-215; 5-16-101 through 5-16-105; 75-1-101, 75-1-201, and 75-1-301 through 75-1-324; 75-10-111; 75-10-913, 75-10-918, and 75-10-927; 77-2-301, 77-5-301; 85-1-203; 85-1-621; 85-2-105; 85-2-436; 90-4-1001 and 90-4-1003; and 90-4-1010 and 90-4-1011, MCA.

C. By the second regular meeting following appointment of new members, the EQC shall establish a work plan for the biennium.

D. Priority must be given to research relating to the EQC's primary study topics each biennium as identified in the approved EQC work plan.

E. Each request for information not included in the work plan shall be addressed in accordance with Chapter 19, Section V, of the Legislative Branch administrative manual. Generally, each request may not exceed 16 hours of work without consulting the Chair and Vice Chair of the Legislative Council. Requests that will exceed 40 hours of work require the approval of the Legislative Council. However, this limitation does not apply to bill drafting services during and immediately preceding a legislative session.

VIII. **REVIEW COMMITTEE**

The Chair and Vice Chair shall review or appoint a review committee for EQC publications prior to distribution.

IX. **TRAVEL AND EXPENSE REIMBURSEMENT**

A. The Chair is responsible for approving travel expenses for other than EQC meetings attended by EQC members and the Legislative Environmental Analyst and staff that will result in requests for reimbursement from the EQC's budget.

B. EQC members shall be reimbursed for food, lodging, mileage, and miscellaneous expenses incurred in traveling to and from EQC meetings as provided by law.

C. EQC members shall be compensated for the day(s) spent in EQC meetings. Compensation for time spent traveling to and from meetings shall be paid as provided by law.

X. **REQUESTS FOR MATERIAL**

A. Right-to-Know Policy:

(1) Records relating to individual privacy are protected from public scrutiny by the Constitution.

(2) All other records are subject to the right-to-know provisions of the Constitution.

(3) It is necessary for the staff to protect records from theft, loss, defacement, or alteration to prevent undue interference with the discharge of EQC functions.

B. The following procedures apply to records that are available for public inspection and copying:

(1) The EQC will make its records available for inspection and copying upon request by any person during regular office hours.

(2) The request may be oral or in writing to the Legislative Environmental Analyst and must reasonably identify the record wanted.

(3) The records may be inspected in Room 171, State Capitol, Helena.

(4) Copies will be made and distributed upon request up to 25 pages. For a greater number of pages, prepayment of costs per page will be required. Requests

for copying that involve excessive staff time may be referred to the Chair. The person making a request may be required to copy the records in the EQC's office.

C. The following records are not available for public inspection and copying:

(1) Personnel records, except general employment information, such as dates and duration of employment, title of position and salary.

(2) Prior to bid opening, information that would give advantage to any person bidding on publications produced by the EQC.

(3) Material prepared in anticipation of litigation that would not be available to a party in litigation with the EQC under the Montana Rules of Civil Procedure on pretrial discovery.

(4) Prior to any testing period, materials used to test job applicants if disclosure would compromise the fairness or objectivity of the testing process.

(5) Proprietary information, including computer programs, which is entrusted to the EQC under exclusive contract.

(6) Any other information that the Legislative Environmental Analyst determines to be not available because the demands of individual privacy clearly exceed the merits of public disclosure.

XI. **TELEPHONES**

Legislative Branch telephones are for the use of Legislative members and staff conducting Legislative Branch business.

