

## Summary of Natural Resource Legislation 2009 Legislative Session

The 2009 Legislature acted on a number of bills involving environmental policy, water quantity and quality, wildfire mitigation and suppression, fish and wildlife, and state lands. This summary provides an overview of major legislation, excluding the budget provisions of House Bill 2 and Senate Bill 645, in the following areas:

EQC Bills and Responsibilities  
Agency Bills  
Water Bills  
Fire Bills

Fish, Wildlife & State Land Bills  
Mining and Permitting Bills  
Conservation and Remediation Bills  
Oil and Gas Bills

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

### EQC Bills and Responsibilities

During the 2007-2008 Interim, the Environmental Quality Council approved the drafting of 12 pieces of legislation, five of which were subsequently approved by the 2009 Legislature. Nine bills also were approved that alter the EQC's statutory responsibilities. The bills, and the topics they addressed, were:

#### EQC Committee Bills Approved

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

**HB 21** Eliminates the sunsets on certain tax incentives for recycling. This included the recycled materials tax deduction (Dec. 2011 sunset) and the credit against air permitting fees for certain uses of post-consumer glass (Dec. 2009 sunset). It also included the tax credit for investments in property or equipment used to collect or process reclaimable materials. (Dec. 2011 sunset).

**HJ 1** Requests an interim study to evaluate the feasibility of expanded use of biomass feedstocks for energy use in Montana.

**SB 22** Creates a new, permanent Water Policy Interim Committee. The eight-member, bipartisan committee is required to coordinate with the EQC and other interim committees to avoid a duplication of efforts. Agency oversight and water-related duties remain with the EQC. This was also a WPIC bill.

**SB 25** Eliminates certain contingencies related to violations, penalties, and waivers under the coal and uranium mine and reclamation laws. This was clean-up legislation requested by the Code Commissioner.

EQC Committee Bills Failed

**SB 4** Created a water policy subcommittee of the EQC and eliminated restrictions on EQC term limits.

**HB 20** Provided additional funding for weatherization programs, by dedicating a portion of oil and gas revenues realized in Montana to weatherization programs administered by the Department of Public Health and Human Resources.

**HB 22** Increased the allocation to the Montana Manufacturing Extension Center from \$200,000 to \$300,000 (through extension of the Coal Severance allocation). The draft required that 35% (\$105,000) of the Montana Manufacturing Extension Center funding be used in collaboration with the Department of Environmental Quality to encourage manufacturers and commercial business owners to recycle. (Ultimately the allocation of coal severance was extended through June 2019, with the current \$200,000 going to the Montana Manufacturing Extension Center.)

**HB 29** Increased the percentage of motor vehicle revenue directed to the senior citizen and persons with disabilities transportation services account.

**HB 35** Created a loan program to assist political subdivisions of the state, including local and tribal governments, and private entities in developing recycling technologies and equipment at local landfills. The bill created a \$1 million recycling equipment revolving loan account to the credit of the DEQ. The money was a one-time transfer from the junk vehicle disposal fund into the new account. Loans of up to \$50,000 could have been offered.

**SB 27** Required the Department of Transportation to biennially report to the Revenue and Transportation Interim Committee on conservation measures in the transportation sector.

**SB 37** Expanded tax credits to create incentives for low-income property owners, landlords and/or renters to weatherize.

EQC Responsibilities

**SB 95** Establishes temporary nutrient criteria for discharge permits. Allows DEQ, in consultation with a nutrient work group, to consider economic and technological impacts of nutrient standards on a case-by-case basis. The DEQ must provide a summary of the status of the development of temporary nutrient criteria to the EQC.

**SB 303** Requires that sections of the state water plan must be completed for the Missouri, Yellowstone, and Clark Fork river basins and submitted to the 2015 legislature. Water plan requirements, which must be submitted to the EQC for review, are altered.

**SB 22** See EQC Bills.

**HB 52** Adds a member of the development community to the Ground Water Assessment Steering Committee.

**SB 451** Repeals the Megalandfill Siting Act. The EQC previously was required to participate in the act's review process.

**SB 131** Requires the DNRC to designate the wildland-urban interface parcels in each county, create and maintain maps of the wildland-urban interface, and report its progress to EQC or another appropriate interim committee.

**HB 402** Extends the existing reporting requirements that DNRC report on the land banking program to the EQC by July 1 of even-numbered years.

**SB 297** Requires the Montana Bureau of Mines and Geology to report to the EQC and the Education and Local Government Interim Committee on its investigation of the state's sand and gravel deposits within one year of starting its investigations.

**SB 164** Requires the DFWP to provide an annual report regarding deposits into and withdrawals from the Good Neighbor Policy state water and land maintenance account to the EQC agency oversight subcommittee.

## Agency Bills

Under 75-1-324, MCA, the EQC has broad statutory oversight authority. That oversight authority includes draft legislation review, administrative rule review, program evaluation, and monitoring the functions of the DEQ, DNRC, and the DFWP.

### Department of Environmental Quality

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

**HB 75** Revises provisions of the Environmental Rehabilitation and Response Account. The bill allows money in the account to be spent for cleanup at solid waste sites.

**HB 153** Revises the Voluntary Cleanup and Redevelopment Act, making it easier for parties responsible for hazardous waste contamination to apply to do a voluntary cleanup.

**SB 68** Creates an exception to the unlawful disposition of roadkill for licensed composting facilities.

**SB 71** Improves the financial reimbursement process for state superfund sites that have gone through an allocation of liability under the Controlled Allocation of Liability Act. Under that process, a party conducting a cleanup can be reimbursed for the "orphan share," or the share of cleanup costs that a defunct or insolvent party should have funded.

**SB 95** See EQC Bills.

**SB 97** Aimed at improving the solvency of the petroleum tank release compensation fund. Establishes incentives for the use of private insurance to help pay costs related to tank releases, prohibits "double dipping" between an insurance policy and the compensation fund, offers monetary incentives to those reporting a release by October 2009, and expands circumstances under which a fuel tax may be collected.

**SB 102** Allows the adoption of rules for corrective action by public water supply systems or public sewage systems to prevent or correct contamination of drinking water.

Department of Natural Resources and Conservation

**HB 6** Implements the Renewable Resource Grant and Loan program. The bill appropriates money to the DNRC for the grants and establishes conditions and priorities. Primarily for the conservation, management, development and preservation of Montana's renewable resources, largely irrigation, water and wastewater projects.

**HB 7** Appropriates money to the DNRC for grants and designated projects under the Reclamation and Development Grants program and establishes conditions and priorities. Primarily for the reclamation or mitigation of damage to land, water, or other resources caused by mining and exploration.

**HB 8** Approves Renewable Resource projects, authorizes loans and authorizes the issuance of coal severance tax bonds. Primarily for large dam rehabilitation and irrigation projects.

**HB 78** Increases the board feet of salvage timber from 200,000 to 500,000 board feet that may be sold without advertisement.

**HB 11** Provides for the Treasure State Endowment appropriations -- also requested by Department of Commerce and the Office of Budget and Program Planning. DNRC's interest is in the appropriation from the Regional Water System State Special Revenue account to the DNRC for financial assistance to Regional Water Authorities for regional water projects.

**HB 129** Authorizes the adoption of rules for corrective action by public water supply systems or public sewage systems to prevent or correct contamination of drinking water.

**SB 65** Revises, and is meant to simplify, the way in which DNRC calculates and pays for administrative costs associated with the management of state trust lands (i.e. a timber sale) for the benefit of public schools. Reduces the number of special revenue accounts kept for these purposes. Requires accounting practices to ensure that no trust (i.e. K-12 schools) is charged for the administrative costs of another trust (i.e. the university system). Authorizes the use of general fund loans to cover up front costs (timber sales have significant startup costs) before the expected revenue is collected.

**SB 120** Revises controlled ground water laws; granting rulemaking authority; allowing petitions from local entities and water right holders; allowing consideration of funding and studies; revising criteria for designating or modifying a controlled ground water area; expanding control provisions; removing preferences for domestic and livestock withdrawals.

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

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

Department of Fish, Wildlife & Parks

**HB 74** Grants the Fish, Wildlife, and Parks Commission the discretion to include mountain lion, bear, and wolf among the species for which the commission can designate archery and archery-only seasons.

**HB 137** Revises license benefits for landowners enrolled in the Hunter Management program and allows employees of landowners to receive the free big game combination license allotted to a landowner. The bill also removes the requirement that the cost of a free license received by a landowner be deducted from compensation paid.

**Water Bills**

During the 2007-08 Interim, a temporary Water Policy Interim Committee was directed to conduct a detailed analysis and study of issues related to water quantity, water quality, and water use in Montana. In 2009, the Legislature created a permanent WPIC to study water policy issues. The water policy committee is to coordinate with the EQC to avoid duplication of work. The legislation did not take water policy duties away from the EQC, however some of those duties are no longer mandatory.

WPIC bills

**HB 39** Revises water right enforcement laws. When requested by a district court and approved by the chief water judge, Water Court water masters may serve as special masters in certain water disputes and when enforcing water law, priority should be given to protecting the rights of senior users. The DNRC also may attempt to obtain voluntary compliance, but the Attorney General and the county attorney do not need to attempt compliance.

**HB 41** Revises water quality laws for aquifer recharge or mitigation, clarifying that any discharge of pollutants into state waters requires a discharge permit. The bill does not affect septic or instream changes.

**HB 40** Changes the DNRC permitting process. Changes include defining "correct and complete" to mean the time that the DNRC starts evaluating an application, not when it's complete and requiring the DNRC to publish notice of applications in its website. Timeframes are established allowing an applicant to know earlier in the process which way the agency is leaning on an application.

**SB 22** See EQC Bills.

**HB 52** Creates a ground water investigation program, and provides \$4.2 million for the program at the Montana Bureau of Mines and Geology. The bill also provides for the prioritization of subbasins for investigation based on current and anticipated growth in agriculture, industry, housing, and commercial activity.

General water policy

**SB 8** Allows establishment of regional resource authorities to provide for collaboration and coordination in the conservation of water resources or in the management of water resources for agricultural and recreational uses.

**HB 285** Authorizes use of gray water in commercial and multifamily structures.

**SB 39** Extends the duration of the reserved water rights compact commission to 2013.

**SB 129** See Agency Bills.

**SB 120** See Agency Bills.

**SB 201** Revises the Crow Tribe water compact to allow change in use of the escrow account.

**SB 262** Allows county water and sewer districts to assess the cost of services and improvements by dwelling unit.

**HB 161** Ratifies the water rights compact entered into by the Blackfeet Tribe, Montana and the federal government, transfers \$4 million from the general fund to the Blackfeet Tribe water rights compact infrastructure account and appropriates funds for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian Reservation.

**SB 95** See EQC Bills.

**SB 102** See Agency Bills.

**SB 200** Bans the sale after July 1, 2010 of phosphorus-containing household cleaning products in certain counties for water quality reasons.

**SB 426** Adopts the National Bison Range Water Compact.

**Fire Bills**

Legislation enacted during a September 2007 special legislative session created the Fire Suppression Committee and assigned it to study various aspects of wildland fire, including suppression costs and resources and state and federal management policies. This interim the EQC expects to track and study wildland fire matters as outlined in HJ 30.

FSC Bills Enacted

**HB 42** Requires FWP to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement for certain lands under department jurisdiction.

**HB 44** Revises the requirements for DNRC's participation in federal forest management planning.

**HB 139** Allows the DNRC to intervene in litigation or appeals on federal forest management projects if the department determines there is a significant threat to public health and safety.

**HB 140** Increases the amount by which the DNRC may exceed the annual sustained harvest level from 5% to 10% using contract harvesting if the department is addressing forest health concerns.

**HJR 4** Requests that governors be given the authority to declare a crisis when the severity of fire danger from fuels on identified federal lands within the state poses a significant threat to public health and safety or there would be a probable loss of homes and property if wildfires occur.

**HJR 7** Requests the federal government to immediately modify federal land management and wildfire policies to ensure that there is safe and aggressive initial attack on wildfires on all federal lands if there is a potential for the fire to move to state or private land; state and local governments may actively engage in land and wildfire management operations on federal land in order to protect the public health, safety, and welfare; and federal forest road closures that may restrict access to areas for wildland fire suppression should be minimized.

**SB 98** Allows certain forest or grassland hazardous fuels reduction projects as an allowed purpose for imposing a property tax levy.

**SB 111** Clarifies that the DNRC may engage in wildfire initial attack.

**SB 113** Establishes a pilot program for mechanized equipment fuels reduction on state lands within the wildland-urban interface and for fire suppression purposes.

**SB 131** See EQC Bills.

**SB 143** Establishes a minimum amount of assessment for fire protection for people who own a share of property and an individual unit on the property (condominiums).

Other Fire Policy Bills Enacted

**HB 154** Makes the fire suppression account permanent and appropriates up to \$30 million to DNRC for the 2011 biennium to be used for paying expenses for fire prevention, including fuel mitigation, grants for the purchase of fire suppression equipment for county cooperatives, and fire suppression costs. (OBPP request)

**Fish, Wildlife, and State Land Bills**

Licensing

**HB 221** Revises the time at which youth reaching 12 years of age during a license year are eligible to hunt.

**HB 317** Guarantees a member of the Armed Forces who forfeited a special hunting license or permit issued by drawing as a result of deployment outside of the continental United States in

support of a contingency operation the same special license or permit, without additional fee, upon application in the year of the member's return from military service or in the first year that the license or permit is next available.

**HB 366** allows FWP to enter into agreements with adjoining states regarding reciprocal fishing privileges in Montana rivers and streams if the bordering state grants the same or similar privileges.

**HB 383** Provides for the issuance of a certain number of free hunting licenses to certain youths with life-threatening illnesses.

**HB 480** Authorizes nonresident youth to hunt upland game birds and migratory birds with the purchase of a Class B-1 nonresident upland game bird license at a discounted price.

**HB 585** Creates nonresident combination hunting licenses that may be used by adult nonresident family members who wish to return to Montana to hunt with a sponsor or family member. Terms and conditions of licensure and sponsorship are also established.

**SB 32** Provides that certification of a person as disabled for the purposes of obtaining a permit to hunt from a vehicle may be endorsed by a licensed chiropractor in addition to certain other medical care providers.

**SB 184** Revises license application restrictions on licenses for bear, mountain lion, and wild buffalo or bison.

**SB 185** Creates a nonresident college student big game combination license.

**SB 188** Provides that in a hunting district or portion of a district where the holder of a general elk license is allowed to hunt antlerless elk during certain times, the holder of a special elk permit to hunt antlerless elk in that district or portion of a district may also hunt any elk authorized under the regulations for a general elk license during those same times.

#### *Fish and Wildlife*

**HB 203** Requires FWP to notify the public when introducing or transplanting wolves, bears, and mountain lions on private or public property. The transplantation of any animal onto private property without prior permission from the landowner is also prohibited.

**HB 499** Revises the Upland Game Bird Enhancement program by establishing a citizens' advisory council, authorizing development of a strategic program plan, and revising reporting requirements.

**SB 202** Prohibits the feeding of certain wildlife, including ungulates and mountain lions.

**HB 90** Includes llamas as animals for which Montana livestock producers are eligible for coverage for losses caused by wolves.



**SB 228** Revises laws related to wolf management by placing priority on the protection of humans, livestock, and pets, allowing the removal of problem wolves for livestock depredation, and providing that following delisting special kill permits may be issued.

**SB 404** Revises laws related to the location of shooting preserves.

**SB 425** Revises laws related to the funding and operation of the Fort Peck Multispecies Fish Hatchery.

*Hunting and Penalties*

**HB 172** Creates a provisional hunter safety and education certificate for persons with certain developmental disabilities and establishes conditions of licensure for persons who use a provisional certificate when obtaining a hunting license.

**HB 443** Clarifies the authority of the FWP to manage certain species.

**HB 218** Clarifies prohibitions on the use of projected, artificial light to hunt and on the waste of fur-bearing animals.

**HB 222** Requires that a person who is convicted of a hunting, fishing, or trapping criminal violation and whose privileges to hunt, fish, or trap have been revoked is not eligible to purchase a license to hunt, fish, or trap until all sentencing terms are met.

**HB 223** Authorizes the revocation of the privilege to hunt, fish, or trap if a person commits criminal mischief or trespass on property owned or administered by FWP or commits criminal trespass while hunting, fishing, or trapping.

**HB 296** Includes tribal fish and game wardens as ex officio wardens when a cooperative agreement exists.

**SB 343** Creates the Montana Aquatic Invasive Species Act, which establishes a mechanism to detect, control, and manage invasive species, including preventing further introduction, importation, and infestation, by educating the public about the threat of these species, coordinating public and private efforts and expertise to combat these species, and authorizing the use of check stations to prevent the intrastate movement of invasive species from infested areas to uninfested areas.

*State Land*

**HB 42** See Fire Bills.

**HB 137** See Agency Bills.

**SB 164** See EQC Bills.

**SB 65** See Agency Bills.

**HB 78** See Agency Bills.

**HB 140** See Fire Bills.

**HB 402** See EQC Bills.

**HB 623** Clarifies the authority of a county, city, or town to donate real property or sell real property at a reduced price to a corporation for low-income housing.

**HB 674** Authorizes the creation of state debt through the issuance of general obligation bonds for purchase and management of real property and appurtenances for sustainable forest management, recreational use, and income-generating potential.

**SB 113** See Fire Bills.

**SB 507** Revises and clarifies laws related to the treatment of property consisting of the bed of navigable rivers, including requiring authorization from the Board of Land Commissioners for uses on the beds of navigable rivers and requiring the land commissioners to adopt rules for providing easements, leases, or licenses for uses on the beds of navigable rivers.

## Mining and Permitting Bills

### Mining

**HB 678** Revises laws related to openpit mining, including establishing an openpit fund and annual fee and exempting certain operations from the Resource Indemnity and Ground Water Assessment Tax.

**SB 297** Requires the Montana Bureau of Mines and Geology to establish a sand and gravel deposit program for the purpose of investigating sand and gravel deposits in areas of the state where conflicts between development and sand and gravel operations are high.

**SB 5** See Fish, Wildlife, and State Land Bills.

**SB 25** See EQC Bills.

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

### Permitting

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

**HB 483** Revises environmental laws related to energy development projects. The revisions modify the request procedures for a hearing before the Board of Environmental Review, require a written undertaking to be given by certain parties requesting a hearing or a stay before the BER or a court, and clarify remand procedures. The bill also modifies the expiration date

requirements for a permit or license under Montana's air quality laws and requires that the BER issue a final decision within 150 days under air quality laws and the Major Facility Siting Act. The use of Best Available Control Technologies (BACT) regulations is also clarified.

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

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

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

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

## Remediation and Conservation Bills

### Remediation

**SB 464** Prohibits a person conducting a remedial action from including a covenant not to sue in a contract with a property owner.

**HB 593** Establishes requirements for mine and smelter waste remediation projects and provides penalties for noncompliance.

**SB 62** Clarifies funding for the environmental contingency account.

**HB 153** See Agency Bills.

**SB 5** Requires approval by the board of land commissioners for the gift or purchase of land for the purpose of reclamation of mines.

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

*Conservation*

**SB 424** Establishes the Mercury-added Thermostat Collection Act. The bill also bans the sale and installation of mercury-added thermostats and requires the collection and recycling of mercury-added thermostats.

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

**HB 285** See Water Bills.

**SB 49** See EQC Bills.

**HB 21** See EQC Bills.

**Oil and Gas Bills**

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

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

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

**SB 97** See DEQ Bills.

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