

Summary of Natural Resource Legislation 2011 Legislative Session

The 2011 Legislature acted on a number of bills involving environmental policy, water quantity and quality, fish and wildlife, and state lands. This summary provides an overview of major legislation, excluding the budget provisions of House Bill 2 in the following areas:

EQC Bills and Responsibilities
Agency Bills
Water Bills
Fire and Forestry Bills

Fish, Wildlife & State Land Bills
Mining and Permitting Bills
Land Use Bills

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

* Transmitted to the Governor

** Vetoed by the Governor. Veto override vote mail poll expected.

EQC Bills and Responsibilities

During the 2009-2010 Interim, the Environmental Quality Council approved the drafting of four pieces of council legislation, of which all* were subsequently approved by the 2011 Legislature. *Seven bills also were approved that alter the EQC's statutory responsibilities. The bills, and the topics they address, include:

EQC Committee Bills Approved

SB 9 establishes petroleum mixing zones to assist in remediation at petroleum release sites.

SB 47 outlines the powers of the Board of Environmental Review related to air quality permitting and rulemaking for forestry equipment and excludes most equipment from permitting requirements.

***SB 35** clarifies laws related to the beds of navigable rivers and defines a "navigable river." Provides rulemaking authority to the Board of Land Commissioners to provide for leases, license, or easements to use the beds of navigable rivers and requires authorizations from the Board of Land Commissioners to use the beds of navigable rivers.

HJ 1 urges the federal government to enact legislation to remove the gray wolf from the Endangered Species Act list in Montana.

EQC Responsibilities

HB 142 requires the EQC to review the statutorily established advisory councils and required reports of DEQ, DNRC, and DFWP to make recommendations to the next legislature on retention or elimination of any advisory council or required reports.

SB 367 slightly changes requirements that the DEQ, in consultation with the nutrient work group, provide a summary of the status of nutrient standards variances and implementation of the variances.

***HB 613** requires DEQ to report on benchmarks related to remediation at petroleum storage tank release sites.

SJ 26 recommends and requests that the EQC conduct interim monitoring of:

(a) DFWP's goals and objectives for the migratory bird and upland game bird programs and the study of brucellosis in elk; and

(b) DEQ and, on at least an annual basis, the cleanup progress at the KRY site and the progress toward petroleum tank site closures.

***SB 307** requires EQC to solicit public input on terminating or privatizing programs administered by DEQ, DNRC, and DFWP.

***HB 642** establishes a select committee charged with determining areas of efficiency and effectiveness in regulatory processes related to natural resource development and looking at technologies and taxation related to natural resources. If the committee chooses to review MEPA this will overlap with EQC duties.

***HB 533** Pending outcome of Governor's amendments. Requires report to EQC on jobs created by changes to coal leasing laws.

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 37 amends the Montana Strip and Underground Mine Reclamation Act to make it consistent with the federal Surface Mining Control and Reclamation Act (SMCRA). The 2009 Legislature passed HB 278, exempting water management and other support facilities from the revegetation responsibility period for coal mining reclamation. The exempted facilities included, but were not limited to, sedimentation ponds, diversions, other water management structures, soils stockpiles, access roads, segments of haul roads and electrical substations. HB 37 removes elements of the 2009 legislation that were not approved by the Office of Surface Mining, such as use of the term "not limited to" and haul roads.

HB 51 aligns the procedures for collection and use of energy savings from general obligation bond projects (the financing method prior to 2007) with those of the 2009 revolving fund program for energy conservation in the State Building Energy Conservation bond program.

HB 52 authorizes municipal wastewater reuse. Provides rulemaking authority to the board of environmental review to regulate reclaimed wastewater from public sewage systems.

SB 30 changes cash management and cost recovery controls under the Comprehensive Environmental Cleanup Responsibility Act, or state superfund law by requiring liable persons to pay invoices within 30 days when the invoice covers a 30-day invoicing period.

Department of Natural Resources and Conservation

HB 49 authorizes the sale of bonds to fund Blackfeet water compact. Issue and sell \$16 million in general obligation bonds to pay the state's costs for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation.

HB 58 revises Fort Belknap People's Creek account. Designates the Peoples Creek minimum flow account within the Fort Belknap-Montana compact as a state special revenue account.

HB 76 eliminates floodway obstruction removal fee assessed by DNRC. Relieves the agency of the power to remove obstructions in floodways and eliminates the obstruction permit fee and the floodway obstruction removal fund.

HB 79 authorizes spending authority for Blackfeet mitigation account interest payments. Establishes a statutory appropriation for certain interest and income in the Blackfeet tribe. water rights compact mitigation account to implement the water rights compact.

HB 93 allows revenue from forfeited hazard reduction agreement performance bonds for timber slash removal to be deposited in a state special revenue fund and provides the DNRC with state special revenue fund spending authority for the completion of timber harvest clean-up activities.

HB 101 changes public finance laws to deal with administrative problems encountered by smaller sewer and water districts and Regional Water Authorities and allows a district's operator to serve as its general manager. It clarifies that the areas regional water authorities serve and establishes a clear process for allowing regional water authorities to provide water service within the boundaries of other jurisdictions that provide water service.

HB 107 clarifies that royalties must be paid to the state under coal lease contracts and requires the payment of royalties on a coal lease be of the essence in a lease contract. Interest also must be paid on delinquent coal royalty payments.

SB 38 revises laws related to state trust land interest and income revenue. The term "state trust land" is also defined.

Department of Fish, Wildlife & Parks

HB 47 authorizes fishing on Father's Day weekend without a license so long as anglers abide by any other law or regulation in effect.

HB 98 directs money received from sale or lease of state parks properties be deposited in the state special revenue fund for the operation and maintenance of state parks.

SB 43 revises laws related to primitive parks, including the list of which parks are designated as primitive and the kinds of development that is authorized in these parks.

Water Bills

In 2009, the Legislature created a permanent WPIC to study water policy issues. The water policy committee coordinates with the EQC to avoid duplication of work. Agency oversight duties remain with the EQC.

WPIC bills

HB 24 revises aquifer recharge and mitigation laws. Allows a water right holder to change a water right to aquifer recharge or mitigation or marketing for those purposes without a specific new project that needs offset water. May have up to 20 years to complete the change. May continue current uses while completing change.

HB 28 revises requirements for proposed septic mixing zones. In new subdivisions, the mixing zone for the septic system drain field must be contained within the subdivision or an easement for the mixing zone be obtained to allow it outside the boundaries of the subdivision.

SB 35 See EQC bills.

SB 36 revises court costs and attorney fees in water cases

General Water Policy

HB 49 See DNRC bills.

HB 52 See DEQ bills.

HB 58 See DNRC bills.

HB 76 See DNRC bills.

HB 79 See DNRC bills.

HB 101 See DNRC bills.

SB 103 provides exemption for maximum appropriation of 350 gallons a minute or less for use in nonconsumptive geothermal heating or cooling exchange applications.

***HB 165** deposits certain trust land and river bed income to guarantee account. Provides that income received from certain islands, abandoned riverbeds, riverbeds, and power sites be

deposited in the guarantee account and the school facility and technology account for distribution to public schools.

HB 352 revises laws relating to water quality standards and provide alternatives. DEQ may grant 5-years variance for a public water system to use bottled water to achieve compliance with a maximum contaminant level for nitrate provided that the owner of the public water system warns the public that tap water is not potable and could pose a health risk.

HB 380 revises establishment of salary for board member of a county water and sewer district, provides criteria for determining a vacancy on a water and sewer district board, repeals procedures for challenging municipal sewer system rates by filing a complaint with the public service commission, and eliminates public service commission regulation of municipal sewer and water systems and rates.

HB 481 designates regional water authorities as public entities for the purpose of acquiring rights-of-way on certain state lands.

HB 497 removes the prohibition on permits to appropriate and consume more than 4,000 acre-feet of water annually.

HB 568 directs the DNRC to attempt to dispose of the Cataract Dam project.

HB 587 creates an associate water judge position and grants an associate water judge statewide jurisdiction.

HB 602 requires the Water Policy Interim Committee to study issues related to ground water wells exempt from permitting. Temporarily prohibits rulemaking for wells exempt from permitting.

SB 9 See EQC bills.

SB 87 authorizes forgiveness of loan principal and expenditure of funds to meet other federal incentives, conditions, and requirements in the Water Pollution Control and Drinking Water state revolving funds.

SB 128 exempts fire department emergency wells from permitting. Ground water appropriations by local governmental fire agencies for fire protection exempt from DNRC permitting process.

***SB 265** provides a 10-year tax abatement for certain residential gray water systems.

SB 267 eliminates the requirement that the DEQ complete certain total maximum daily loads by 2012 for threatened or impaired water bodies and requires reporting of TMDL progress to the EQC.

****SB 299** provides that a former stream channel is owned by the adjacent landowner and the land under the new channel is owned by the state.

SB 327 requires DNRC to assess each dam owned or controlled for hydroelectric potential.

***SB 356** defines "good cause shown" as a written statement showing that a person has an ownership interest in water or its use an existing water right, permit, certificate, or state water reservation under 85-2-316 that has been affected by the decree.

SB 367 establishes nutrient standards variances. Allows the DEQ to use individual, general, and alternative nutrient standards variances to establish permit limits for point source discharges to surface water while providing that information related to base numeric nutrient standards or nutrient standards variances may be kept confidential.

***SB 410** expends PPL v. MT proceeds on higher producing land to benefit public schools. Requires that money received by Montana from PPL Montana as a result of riverbed use litigation must be used to purchase higher-producing state lands while selling lower-producing state lands.

SJ 7 expresses opposition to federal legislation that would redefine which waters are subject to the federal water pollution control act.

Fire and Forestry Bills

HB 93 See DNRC bills.

HB 411 allows the Department of Administration to authorize the actual cost of meals for certain wildland firefighters if the costs exceed the prescribed maximum standard rate per meal.

***HB 619** See State Lands bills.

HJ 6 establishes an annual forestry products industry week beginning the third Sunday of October of each year.

SB 47 See EQC bills.

SB 298 Prohibits a governing body from denying a proposed subdivision based solely on a certain wildland-urban interface designation.

SB 340 allows a person or entity that has entered into a fire hazard reduction agreement and is complying with that agreement to conduct open burning between October 1 and April 30 without obtaining a written permit or permission to set a fire. The person or entity has to obtain air quality and ventilation forecasts and notify the county of the location of the burn area.

SB 128 See General Water Policy bills.

Fish, Wildlife, and State Land Bills

Licensing and Hunting

HB 47 See DFWP bills.

HB 172 revises laws related to the hunting of grizzly bears, establishing criteria for quotas and revising the price of licenses.

HB 176 provides a guaranteed antelope tag to certain persons with terminal illnesses.

HB 339 eliminates the cap on the number of Class B-13 youth nonresident big game combination licenses that may be sold.

***HB 372** establishes a preference point system for distributing Class B-10 and Class B-11 nonresident hunting licenses.

***HB 458** revises laws related to outfitting by eliminating net client hunter use expansion, revising the Board of Outfitters duties regarding net client hunter use, and eliminating certain fees.

HB 566 requires bonus points to be squared for determining distribution of licenses and permits.

HB 607 revises the procedure for the sale of Class B-10 nonresident big game combination licenses by allowing applicants to purchase only the B-7 (deer tag) portion of the license if the applicant doesn't draw a special elk permit. Authorizes the resale of the elk tag portion of the license.

SB 92 allows nonresidents to capture raptors for falconry and captive breeding purposes.

SB 99 authorizes a \$0.50 commission to license agents for sale of each super tag ticket.

SB 118 clarifies that outfitters may contract for equipment to meet licensing requirements.

SB 135 authorizes the use of controlled dogs to track wounded game animals.

***SB 136** allows certain nonresident relatives of residents to purchase nonresident licenses at a reduced cost.

SB 184 allows the use of bow and arrow to hunt wild buffalo or bison.

****SB 402** authorizes spring wolf hunts under certain conditions.

Fish and Wildlife Management

HB 287 authorizes DFWP to provide wolf carcasses to the Livestock Loss Board for sale or auction to benefit the board's programs.

***HB 363** authorizes the use of revenue from wolf license money for the collaring of wolves and lethal action against problem wolves.

***HB 621** revises the Montana Aquatic Invasive Species Act in which DFWP is a participating agency. Provides an appropriation and authorizes the establishment of quarantine measures through rulemaking, including mandatory inspections of interior portions of boats that contain water.

HJ 1 see EQC bills.

***SB 143** revises the state grizzly bear policy.

***SB 212** clarifies DFWP's authority to manage wild buffalo or bison and requires a management plan before wild buffalo or bison may be released or transplanted.

***SB 348** clarifies the funding of wolf management, authorizes the use of state funds for collaring and control of wolves, and provides an appropriation.

SJ 26 See EQC Bills and Responsibilities.

Penalties

HB 336 revises penalties for waste of game.

HB 337 adds definitions of "conviction" and "possession" to definitions used in DFWP criminal statutes.

HB 449 revises penalties for unlawful introduction of fish.

SB 124 reorganizes and recodifies the criminal statutes of Title 87.

State Land

***HB 619** requires the FWP Commission to adopt a forest management plan based on an annual sustainable yield.

HB 297 extends the time for applying for a historic right-of-way on state lands until 2015.

***HB 165** See General Water Policy bills.

***SB 100** provides for disposition of compensatory damages and interest from any future litigation resulting from the wrongful use or occupation of state lands. It also clarifies the Legislature's appropriation authority.

***SB 409** revises state land cabin site lease laws by allowing for an alternative rental market valuation competitive bid process.

***SB 410** See General Water Policy bills.

State Parks

HB 98 See DFWP bills.

HJ 32 requests an interim study of the management of state parks and recreation and heritage programs.

***HB 370** increases the optional motor vehicle registration fee for operations and maintenance at state parks and Virginia and Nevada Cities.

SB 43 See DFWP bills.

SB 160 allows use of OHVs on designated roads/trails in state parks and fishing access sites.

Agency Administration

***HB 159** restricts the authority of DFWP to regulation ammunition and firearms used for hunting.

HB 225 provides a qualified exemption from MEPA when DFWP acts as a snowmobile area operator or awards funding to snowmobile area operators if the action or award as been previously subject to MEPA.

****HB 375** reduces general fund transfers from motor vehicle revenue to boating, OHV, and snowmobile programs administered by DFWP.

HB 536 repeals the requirement that grizzly bear parts be registered with DFWP before sale.

HB 541 See Land Use bills.

***SB 108** requires consultation and coordination with certain county and tribal governments in proposed state and federal policy decisions regarding large predators and large game species.

SB 115 prohibits disclosure of information identifying any person who's lawfully taken a large predator without the person's written consent.

Mining and Permitting Bills

Mining

***SB 312** revises metal mine reclamation laws to require draft permits be issued for complete and compliant applications. The time lines for reviews under MEPA for mining permits also are changed.

SB 285 requires the monitoring of carbon dioxide injection wells for 50 years unless an alternative timeframe is approved by the Board of Oil and Gas Conservation. An operator is required to continue to accept liability for a carbon dioxide storage reservoir and the stored carbon for a minimum of 30 years.

***SB 292** defines "in situ coal gasification" and directs the Board of Environmental Review to adopt rules for in situ coal gasification.

***SB 297** defines a "coal beneficiation plant" and excludes coal beneficiation plants from permitting and regulation under the Montana Strip and Underground Mining Reclamation Act.

***SB 286** establishes a new permitting process for coal prospecting.

HB 422 allows permit contractors under the metal mine reclamation laws to directly invoice the permit applicant.

HB 479 grants the Board of Oil and Gas Conservation rulemaking authority to regulate wells injections to restore or enhance the microbial conversion of hydrocarbon substrates to methane gas as Class II injection wells.

***HB 533** revises state land mine leasing laws to clarify limits on leasing and to establish leasing procedures for coal. It allows more discretion by the Board of Land Commissioners in determining the value of a lease and requirements for a surety bond. The duration of leases, if permits are challenged, also are established.

***SB 266** Revises the local abatement of the coal gross proceeds tax on coal produced by a new or expanding underground coal mine and allows that the tax abatement may be 50% or less.

Permitting

SB 47 See EQC bills.

SB 89 reduces the time for review of subdivision applications for public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal by five days by the DEQ and local departments or boards of health. Clarifies procedures for providing evidence of systems compliance and requires the DEQ to notify applicants under certain circumstances if an application does not include evidence of certification from the local health department or approval from the local governing body.

***SB 233** revises the intent of environmental impact analysis and an environmental assessments under MEPA and clarifies that alternatives included in an alternatives analysis are discretionary. Outlines requirements for state-sponsored and private projects in an environmental review. Requires that the scope of an environmental review is only within Montana's borders and limits the procedures for legal challenges under MEPA to remand, with additional legal contingencies.

***SB 206** revises the Major Facility Siting Act to require the Department of Environmental Quality to examine a 1-mile-wide facility siting corridor along the facility route when conducting a review in accordance with MEPA. Exempts siting modifications within the facility siting corridor from

MEPA and requires facilities to be sited in federally designated energy corridors when compatible with other siting and reliability requirements.

***SB 312** See Mining bills.

SB 320 encourages the upgrading of transmission lines within existing rights-of-way to avoid the proliferation of new transmission corridors and clarifies legislative findings and certain definitions under the Montana Major Facility Siting Act.

HB 225 See Agency Administration bills.

SJ 10 urges Congress to prevent the Environmental Protection Agency from using the Clean Air Act to regulate greenhouse gases.

Land Use

HB 196 allows the Department of Commerce to review, analyze, and comment on behalf of local governments regarding significant federal land management proposals and establishes advocacy on behalf of local governments as a function of the Department of Commerce regarding federal land management proposals

HB 198 clarifies that utilities possess the power of eminent domain and facilities granted a MFSA certificate possess the power of eminent domain.

HB 295 revises and establishes parameters for wind easements and wind energy rights. Wind energy rights are defined as property rights and are appurtenant to the surface estate.

HB 541 prohibits DFWP from regulating domestic livestock trailing as a commercial activity and exempts domestic livestock trailing from MEPA. Authorizes domestic livestock trailing on wildlife management areas and authorizes rulemaking for the use of those areas.

SJ 6 urges Congress and the President to expedite the federal land use decision processes in Montana, to recognize the importance of traditional multiple resource uses on federal lands, not to impose restrictions on additional federal land or minerals that would preclude development, and to support federal legislation placing checks and balances on the president's powers to declare national monuments.