

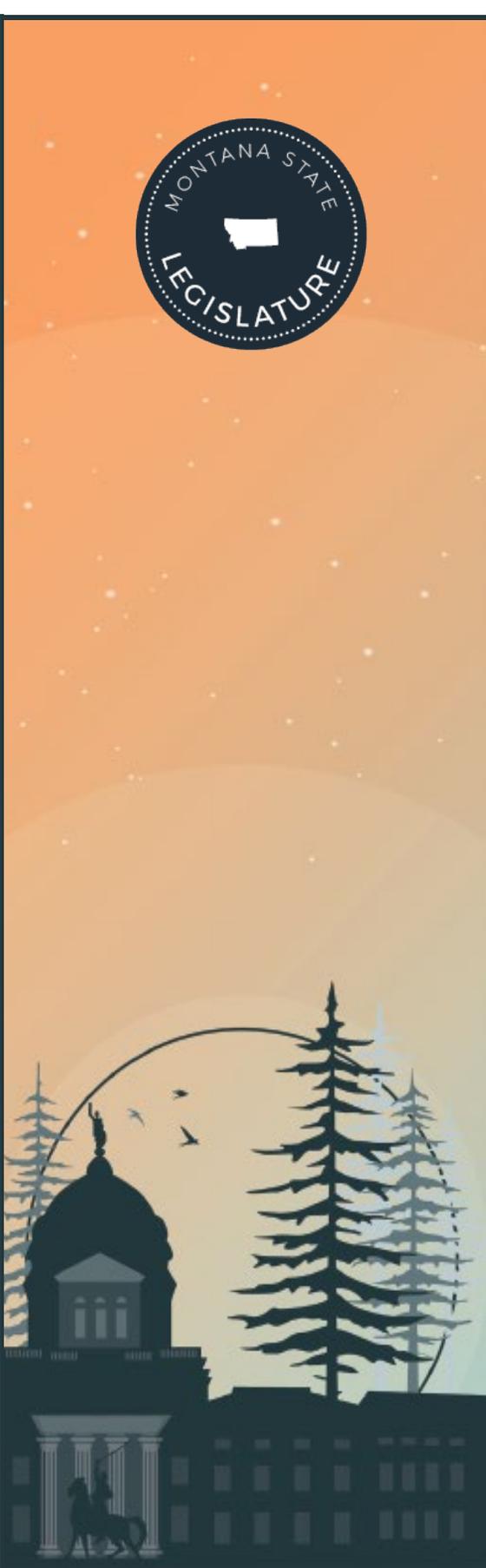


2023-24 WPIC WORK PLAN

Water Policy Interim
Committee

J. Mohr

July 11, 2023



2023-24 WPIC WORK PLAN

INTRODUCTION

This is the work plan for the Water Policy Interim Committee (WPIC) for the 2023-24 interim. This document is meant to be comprehensive, yet flexible. Invariably, topics of interest will rise and fall away during the next 14 months. A work plan approved by the committee is designed to provide direction to staff.¹

The WPIC was created in 2009 to study water policy. During the legislative interim, the WPIC may focus on study topics assigned to it as well as any water policy issue. In 2015, the Montana Legislature expanded and focused WPIC duties to include oversight of issues **"where the primary concern is the quality or quantity of water."**

HOW WPIC PLANS ITS WORK

The WPIC establishes a work plan at the beginning of the interim. This work plan is a road map for the 2023-24 interim. Staff develops detailed plans and timetables for each task. A timeline of interim work, which illustrates the overall schedule that these work plans will fit, is summarized on page 9 and is detailed beginning on page 12 of this document.

The work plan decision matrix (beginning on page 11) are decision-making tools to help the committee set priorities and decide how and where to spend the WPIC's time and resources. The committee's presiding officer, in consultation with the committee, works with staff to determine specific agenda items. (See page 6 for a list of past and current officers.)

The primary constraint limiting the agenda for the interim are the number of issues that can be effectively addressed within the available time and resources of the committee and staff. However, the work plan is constructed with enough flexibility to accommodate emerging topics

What does WPIC do?
Conducts interim studies
Monitors agencies
Reviews administrative rules
Reviews councils, reports
Examines emerging water issues
Proposes, reviews legislation
Reviews ballot initiatives

COMMITTEE COMPOSITION, DUTIES

Certain statutes provide primary guidance for the makeup of interim committees. (See "laws that guide WPIC's work, page 7.)

New for the upcoming interim, Senate Bill 176 (Revise interim and statutory committee membership) alters the makeup of interim committees. The measure, approved by the 2023 Legislature, requires four members appointed from each house, including three from the majority party and one from the minority party. However, the bill also states that additional members may be appointed "in a manner that reflects the majority and minority composition of the Legislature."² This language appears to allow flexibility in the composition of interim committees. The 2023-24 WPIC is comprised of seven majority party members and three minority party members.

¹ See page 15 for a staff list and contact information.

² Furthermore, SB 176 states that an interim committee of more than nine members should reflect "the majority and minority composition of the Legislature (section 5-5-234, MCA)."

All interim committees are expected to review administrative rules, conduct interim studies, monitor assigned executive branch agencies, review advisory councils and reports, review agency legislation and ballot initiatives, and provide any other relevant information.³

As previously described, WPIC is established by law to provide oversight “for issues where the primary concern is the quality or quantity of water”⁴ in certain programs of the Department of Environmental Quality (DEQ); the Department of Fish, Wildlife, and Parks (FWP); and the Department of Natural Resources and Conservation (DNRC). The WPIC may determine what issues it examines and conduct program evaluations of programs under its oversight. The program evaluation process allows for an in-depth and contextual review of a program, including applicable laws, rules, funding, and implementation. And finally, statute provides for additional duties, such as analyzing the state water plan, water-related research, and the water information system.⁵

INTERIM STUDIES

The 2023 Legislature passed one study bill and assigned it to WPIC—House Bill 520 (Interim study of private ponds). The bill also provides the committee with \$50,000 to complete its work.

1 study assigned to WPIC:
HB 520 (Interim study of private ponds)

Statute defines a "private fish pond" as a water body of less than 500 surface acres that does "not pose an unacceptable risk to game fish or fish species of concern in adjacent waters."⁶ The Department of Fish, Wildlife, and Parks must license the pond and may designate the appropriate fish species.

HB 520 also contemplates the water rights implications of private ponds. In many instances, only an exempt water right is needed to create one. Diversion of a natural stream or waterway could require the approval of various entities, including the DNRC, FWP, conservation districts, county commissions, the U.S. Army Corps of Engineers, or others.

HB 520⁷ requires WPIC to examine:

- private pond policies, including permitting and protocols
- impacts of private ponds on aquatic resources as well as water quality and quantity related to drought, high water temperatures, and evaporation and options to mitigate these impacts
- costs of regulating private ponds, including for permitting, enforcement, fines, fees, and restitution
- options to provide in-state certified fish to stock private ponds.

The 2023 Legislature also passed House Joint Resolution 18 (Study remediation of Smurfit-Stone mill site). While the Legislative Council assigned the study to the Environmental Quality Council, WPIC may certainly consider staff and agency updates on the progress of HJ 18.

³ Section 5-5-215, MCA.

⁴ Section 5-5-231, MCA.

⁵ Section 85-2-105, MCA.

⁶ Section 87-4-603.

⁷ See page 16.

ADMINISTRATIVE RULES

The Legislature often authorizes administrative agencies to carry out the Legislature’s intent by adopting administrative rules. These rules have the full force and effect of law. These rules may be adopted and revised throughout the year. Administrative rule functions are governed by the Montana Administrative Procedures Act (MAPA).

During the 20-21-22 interim, WPIC...
...reviewed 4 notices of agency rulemaking
...objected to or delayed 0 notices

MAPA and court opinions govern the procedures and requirements for administrative rulemaking. However, only the Legislature may delegate the authority to an agency to adopt rules.

State law allows WPIC to review and monitor administrative rules promulgated by the DNRC, FWP, and DNRC, where the primary concern is the quality or quantity of water. The committee may participate in the rulemaking process, ranging from offering comments or suggestions to objecting and delaying a rule implementation. (See attached memo beginning on page 18 for a more-thorough explanation of administrative rulemaking and the committee’s role.)

OVERSIGHT OF AGENCIES

As described the previously, WPIC performs oversight of certain state agency functions. The committee reviews administrative rules and draft legislation, conducts program evaluations, and monitors the functions of the Water Resources Division (DNRC) and the Water Quality Division (DEQ). For example, WPIC staff routinely attend meetings of the Nutrient Work Group, which is formulating narrative nutrient standards, and DNRC stakeholder groups, which is developing executive policy and legislation related to final decrees, the Water Court, exempt groundwater wells, and water measurement.

The committee’s oversight duties do not stop with those three agencies, however. State law requires WPIC to

14 reports to WPIC
Appropriation rights changed to instream flow (FWP, 85-2-436, MCA)
Consultation on state water plan (DNRC, 85-1-203)
Economic and environmental feasibility of small-scale hydroelectric power generating facility on a state water project (DEQ, 85-1-501)
Ground Water Investigation Program (MBMG, 85-2-525)
Prioritization of water storage projects (Governor's office, 85-1-704)
Progress of the adjudication of pre-1973 water rights (DNRC and Water Court, 85-2-281)
Status of the Renewable Resource Grant and Loan Program (DNRC, 85-1-621)
Stream gauge network oversight (DNRC, 2-15-3308)
Review of state water reservations by 2026 (DNRC, 85-2-316)
Total maximum daily loads (TMDLs) for impaired and threatened water bodies (DEQ, 75-5-703)
Upper Clark Fork River Basin Steering Committee (85-2-338)
U.S. Forest Service state water reservation applications (DNRC, 85-20-1401)
Weather modification feasibility study (DNRC; uncodified (HB2))
Western Montana Conservation Commission (DNRC, SB 83)

"oversee the policies and activities of...other state executive agencies, and

other state institutions as those policies and activities affect the water resources of the state."⁸ This means the committee retains oversight over and an interest in other water programs, such as the Department of Agriculture's groundwater monitoring program.

Additionally, certain agencies have reporting requirements to the WPIC, which are listed in the table on page 3. For example, the DNRC is required to consult the committee as it updates the state water plan.

REVIEW OF LEGISLATION, INITIATIVES

As stated earlier, the committee's duties include reviewing water-related legislation. The committee produces its own legislation and approves agency legislation for preintroduction.

Unique to other interim committees, the 2021-22 WPIC required 7 votes (of 10) to advance a committee bill to the 2023 legislative session. Because SB 176 distinguishes between "bipartisan" and "partisan" bill drafts,⁹ the committee will need to revisit their "supermajority rule" for the 2023-24 interim.

The committee will also review proposed statewide ballot initiatives within the committee's subject area. In 2022, WPIC

WPIC-sponsored legislation passed in 2023

SB 17 (Revise oversight of stream gauge network)

reviewed I-191, which proposed to declare portions of the Gallatin and Madison rivers as "outstanding resource waters," which is the state's most-stringent water quality designation. After testimony, public comments, and a Montana Supreme Court decision,¹⁰ WPIC voted not to support placement of I-191 on the general election ballot.¹¹

The Legislature enacted SB 93 in 2023 to clarify and revise this review process. The revised law provides that a statewide initiative includes a constitutional initiative, a constitutional convention initiative, or a statutory initiative.

SB 93 requires the interim committee to hold a public hearing on a statewide initiative referred to the committee by the executive director of the Legislative Services Division. The committee then votes to either support or not support the placement of the proposed statewide initiative on the ballot. The petition used to gather signatures to place the statewide initiative on the ballot must include the interim committee vote. SB 93 applies to statewide initiatives submitted to the secretary of state after May 19, 2023.

The initiative review process may result in additional committee meetings because the committee vote must be submitted to the secretary of state no later than 14 days after receipt of the final text of the statewide initiative. Finally, a complaint was filed May 26 in Lewis and Clark County District Court challenging SB 93, which may also alter the committee's work depending on the findings of the court.

⁸ Section 85-2-105, MCA.

⁹ SB 176 allows four committee bill drafts "in which members from only one party vote to request a bill draft." SB 176 allows "an unlimited number of bill drafts on a bipartisan basis." Section 5-5-215, MCA.

¹⁰ Cottonwood Env'tl. Law Ctr. v. Knudsen, 2022 MT 49, 408 Mont. 57, 505 P.3d 837.

¹¹ WPIC letter to Secretary of State, April 5, 2022. I-191 submitters did not gather enough signatures to place the initiative on the 2022 general election ballot.

MEMBER TOPICS, EMERGING ISSUES

Committee member topics and emerging issues drive much of WPIC's work. These usually cover a variety of water topics and may be answered with a single memo or presentation. Other topics may need a more-comprehensive review. The committee may prioritize member topics and emerging issues as the biennium progresses.

Past topics included aquatic invasive species, the CSKT water settlement, and ARPA-funded water projects. ON-going topics identified by staff include:

- Stock water rights on Taylor Grazing Act lands (HJ 29)
- Development of narrative nutrient standards for water quality (SB 358(2019))
- Weather modification
- Water right ownership updates
- Legislative audit of data quality in the Montana Water Rights Information System (2022)
- Water storage and the State Water Plan
- Issues of drought, updated state drought plan
- Court decisions on expanded places of use for a water right
- Pumped hydropower generation (HJ 19)
- Future of final decrees and the Montana Water Court (SB 72)
- Exempt groundwater wells
- Triennial review of DEQ water quality programs
- Selenium in Lake Koocanusa
- Flathead Lake levels

TIME ALLOCATION FOR COMMITTEE WORK

As indicated in the graphic on page 6, WPIC is scheduled to meet 7 times during an interim to work on studies, statutory duties, and member topics. At the end of these meetings, the committee may have developed findings and recommendations for one or more reports. The committee may have also drafted legislation. The detailed timeline of interim work (see page 9) plots out a general idea of the committee's agenda at each meeting. This agenda will change once the committee identifies specific studies and member topics.

WPIC's workload is limited only by the number of meetings and hours of available staff time. There is approximately 0.75 FTE of staff time available to conduct the work identified by the committee. In July 2021, the committee distributed staff workload for the 2021-22 interim as:



This equation is computed by referring to the Work Plan Decision Matrix (page 11). This matrix allows the committee to select an appropriate level of review, analysis, and discussion for studies, member topics, statutory duties, and anything else. Staff hours are subject to any changes in assignments or roles within LSD.

Timeline of interim work

July 24, 2023	October	January, 2024	March	May	July	September
Draft work plan	Finalize work plan	Revise work plan, as necessary	→			
Begin statutory duties	Continue statutory duties	→				
Consider study resolutions	Begin studies	Gather background	Identify options	→		Finalize findings, recommendations
Prioritize member topics	Explore member topics	→				
				Propose draft legislation	Review draft legislation	Approve legislation for preintroduction
						Approve agency legislation for preintroduction

A history of WPIC leadership...

	Presiding officer	Vice presiding officer
2007-08	Sen. Jim Elliott (D)	Sen. Gary Perry (R)
2009-10	Rep. Walt McNutt (R)	Sen. Dave Wanzonried (D)
2011-12	Sen. Brad Hamlett (D)	Rep. Walt McNutt (R)
2013-14	Sen. Chas Vincent (R)	Rep. Kathleen Williams (D)
2015-16	Sen. Brad Hamlett (D)	Rep. Carl Glimm (R)
2017-18	Sen. Pat Connell (R)	Rep. Zach Brown (D)
2019-20	Rep. Zach Brown (D)	Sen. Jeffrey Welborn (R)
2021-22	Sen. Jeffrey Welborn (R)	Rep. Willis Curdy (D)

LAWS THAT GUIDE WPIC'S WORK

HB 176, Section 2. Section 5-5-215, MCA, is amended to read:

"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, if requested by any member of the interim committee, the statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;
 - (e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules;
 - (f) 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; and
 - (g) review proposed ballot initiatives within the interim committee's subject area and vote to either support or not support the placement of the text of an initiative on the ballot in accordance with 13-27-202.
- (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. An interim committee may by vote request four bill drafts on a partisan basis and an unlimited number of bill drafts on a bipartisan basis.
- (3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.
- (4) As used in this section:
- (a) "bipartisan basis" means a vote in which members from more than one party vote to request a bill draft; and
 - (b) "partisan basis" means a vote in which members from only one party vote to request a bill draft."

5-5-231. Water policy interim committee. (1) There is a water policy interim committee. The committee shall:

- (a) determine which water policy issues it examines;
 - (b) conduct interim studies as assigned pursuant to 5-5-217;
 - (c) subject to the provisions of 5-5-202(4), coordinate with the environmental quality council and other interim committees to avoid duplication of efforts;
 - (d) provide recommendations and a report, if one is written, in accordance with 5-5-216 for studies completed by the committee; and
 - (e) in accordance with 5-5-215, for issues where the primary concern is the quality or quantity of water, 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:
 - (i) department of environmental quality;
 - (ii) department of fish, wildlife, and parks; and
 - (iii) department of natural resources and conservation.
- (2) At least two members of the committee must possess experience in agriculture.

85-2-105. Water policy interim committee duties. (1) The water policy interim committee established in 5-5-231 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 water policy interim committee may:

- (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 water policy interim committee 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) provide recommendations and a report, if one is written, in accordance with 5-5-216 for studies completed by the committee.

DETAILED TIMELINE OF INTERIM WORK (DRAFT)

	Tasks and agenda items
July 24, 2023	<ul style="list-style-type: none"> • Elect officers • Review 2023 water legislation • Discuss and adopt draft work plan • Identify committee studies • Identify and prioritize committee member topics • Adopt committee rules • Review budget • Adopt meeting dates • Agency/program overviews - DEQ, DNRC, FWP, Ag, MBMG • Adjudication update (85-2-281, MCA) - DNRC, WC • Update on drought, water supply, wildfires • Update from Nutrient Work Group • Water research (85-2-105, MCA): Montana Water Center, Montana Bureau of Mines and Geology
October	<ul style="list-style-type: none"> • Adoption of final work plan • Committee studies: Receive background information • Finalize list of committee member topics • Adjudication update (85-2-281, MCA) - DNRC, WC • Member topics and emerging issues • Prioritization of water storage projects (85-1-704, MCA) • Agency rulemaking update - LSD staff • Water research (85-2-105, MCA): Water Information System (State Library) • Stream gauge network (DNRC, 2-15-3308)
January, 2024	<ul style="list-style-type: none"> • Committee studies: <ul style="list-style-type: none"> ○ Receive additional background information ○ Identify further issues and options • Member topics and emerging issues • Adjudication update (85-2-281, MCA) - DNRC, WC • Instream leasing report, (85-2-436, MCA) - FWP • U.S. Forest Service water reservations (85-20-1401, MCA) - DNRC, USFS • GWIP report (85-2-525) • Implementation of State Water Plan (85-1-203, MCA) - DNRC • Western Montana Conservation Commission (SB 83) • Agency rulemaking update - LSD staff
March	<ul style="list-style-type: none"> • Committee studies: Identify further issues and options • Committee member topics • Renewable Resource Grant and Loan Program update, (85-1-621, MCA) - DNRC • Agency rulemaking update - LSD staff

Tasks and agenda items

<p>May</p>	<ul style="list-style-type: none"> • Committee studies: <ul style="list-style-type: none"> ○ Discuss options ○ Propose recommendations • Committee member topics • Adjudication update (85-2-281, MCA) - DNRC, WC • Update on drought, water supply - DNRC • Agency rulemaking update - LSD staff
<p>July</p>	<ul style="list-style-type: none"> • Committee studies: <ul style="list-style-type: none"> ○ Draft recommendations, legislation ○ Discuss draft report(s) • Committee member topics • TMDL list update (75-5-703, MCA) - DEQ • Hydroelectric potential report (85-1-501, MCA) • Clark Fork River Basin Steering Committee update (85-2-338, MCA) • Water and Wastewater Operators' Advisory Council (2-15-2105, MCA) • Water Pollution Control Advisory Council (2-15-2107, MCA) • Weather modification pilot (DNRC, HB 2) • Agency rulemaking update - LSD staff
<p>September</p>	<ul style="list-style-type: none"> • Committee studies: <ul style="list-style-type: none"> ○ Review public comment on draft report, committee legislation ○ Revise draft report, committee legislation, if necessary ○ Approve final report(s) • Consider proposed agency legislation - DNRC, DEQ, FWP • Approve other WPIC report(s), if necessary • Adjudication update (85-2-281, MCA) - DNRC, Water Court • Agency rulemaking update - LSD staff • Consider/propose areas of study for 2025-26 interim

2021-22 WPIC WORK PLAN DECISION MATRIX

	Full review	Medium review	Minimum review	Resources Allocated
Sample study	<p>0.3 FTE</p> <ul style="list-style-type: none"> •All components of medium review •In-depth legal analysis of study issues <p>Deliverables:</p> <ul style="list-style-type: none"> •Final report with recommendations •Legislation 	<p>0.2 FTE</p> <ul style="list-style-type: none"> •All components of minimum review •Field trip(s) •Analyze relevant laws, actions, policies, legal decisions, and experiences in other states •Create work group of interested parties to suggest options <p>Deliverables:</p> <ul style="list-style-type: none"> •Report •Legislation 	<p>0.1 FTE</p> <ul style="list-style-type: none"> •Review relevant laws, policies, and legal decisions •Summarize related information in other states •Panel discussion <p>Deliverables:</p> <ul style="list-style-type: none"> •Legislation •Brief report 	<p>0.3 FTE for HJ37, SJ28 studies</p>
Statutory duties	<p>0.25 FTE</p> <ul style="list-style-type: none"> •All components of medium review •Participate in water-related meetings (agencies, outside groups) •Accept reports and select some for WPIC review, analysis, and comment •Background summaries and legal analysis •Review and discuss applicability of statutory responsibilities related to water policy issues <p>Deliverables:</p> <ul style="list-style-type: none"> •Recommendations or WPIC position letters •Legislation to address statutory responsibilities 	<p>0.1 FTE</p> <ul style="list-style-type: none"> •All mandatory duties •Water issues identified during 2019-20 interim •Public involvement through WPIC meetings •Basic involvement and oversight <p>Review reports (see listing on page 3)</p> <p>Deliverables:</p> <ul style="list-style-type: none"> •Recommendations or WPIC position letters •Legislation to address statutory responsibilities 		<p>0.2 FTE for statutory duties, including program evaluation</p>

	Full review	Medium review	Minimum review	Resources Allocated
Program evaluation	<p>0.2+ FTE (per program evaluated)</p> <ul style="list-style-type: none"> • Multiple staff reports on issues within program, including history, overview of applicable laws and rules, and summary of timely issues • Interview with program personnel • Possible multiple staff site visits • Multiple agency presentations • Multiple regulated community panels • Staff summaries on related audits, fiscal analyses, court decisions • Possible presentations from LAD, LFD on issues of interest • Possible legal review of specific issues • Additional staff research in particular areas • Additional information from agency and staff analysis • Possible subcommittees or work groups • One or more field trips <p>Deliverables:</p> <ul style="list-style-type: none"> • Staff report(s) • Recommendations • Legislations 	<p>0.06-0.2 FTE (per program evaluated)</p> <ul style="list-style-type: none"> • Staff report on program, including history, overview of applicable laws and rules, and summary of timely issues within program • Interview with program personnel • Possible staff site visit • Multiple agency presentations • Multiple regulated community panels • Staff summaries on related audits, fiscal analyses, court decisions • Possible presentations from LAD, LFD on issues of interest • Possible legal review of specific issue • Additional staff research in particular areas • Additional information from agency and staff analysis • Possible field trip <p>Deliverables:</p> <ul style="list-style-type: none"> • Staff report • Recommendations • Legislation 	<p>0.02-0.06 FTE (per program evaluated)</p> <ul style="list-style-type: none"> • Staff summary of program. May include interview with program lead • Agency presentation • Regulated community panel • Bibliography or related materials, including audits, fiscal analyses, court decisions • Limited follow up by WPIC staff <p>Deliverables:</p> <ul style="list-style-type: none"> • Recommendations • Legislation 	<p>0.2 FTE for statutory duties, including program evaluation</p>
Member topics (as selected by the committee)		<p>0.1 FTE (per issue selected)</p> <ul style="list-style-type: none"> • All components of minimum review • Review of relevant laws, policies, legal decisions • Panel discussion • Possible field trip <p>Deliverables:</p> <ul style="list-style-type: none"> • Report • Legislation 	<p>0.03 FTE (per issue selected)</p> <ul style="list-style-type: none"> • Agency or expert presentation on member issue <p>Deliverables:</p> <ul style="list-style-type: none"> • Short report or “white paper” • Legislation 	<p>0.2 FTE for member topics and emerging issues</p>

Hourly breakdown of WPIC interim FTE:

- 0.02 FTE = 54 hours
- 0.03 FTE = 82 hours
- 0.05 FTE = 136 hours
- 0.06 FTE = 163 hours
- 0.1 FTE = 272 hours
- 0.2 FTE = 544 hours
- 0.25 FTE = 680 hours
- 0.3 FTE = 816 hours
- 0.75 FTE = 2,040 hours

WPIC STAFF

Jason Mohr, research analyst and lead committee staffer
Room 171D, Capitol building
(406)444-1640
jason.mohr@legmt.gov

Alexis Sandru, committee attorney
(406)444-4026
alexis.sandru@legmt.gov

Jacelyn Sterling, committee secretary
(406)865-0972
jacelyn.sterling@legmt.gov

HB 520 (INTERIM STUDY OF PRIVATE PONDS)

AN ACT REQUIRING A STUDY ON THE EFFECTS OF PRIVATE PONDS ON THE STATE, PERMITTING, WATER RIGHTS, AND OPTIONS TO MITIGATE NEGATIVE IMPACTS, INCLUDING INVASIVE SPECIES AND THREATS TO WILD FISH AND AQUATIC RESOURCES; ASSIGNING THE STUDY TO THE WATER POLICY INTERIM COMMITTEE; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana's world-class fisheries are rooted in a philosophy of wild fish management; and
WHEREAS, high-quality fisheries that rely on self-sustaining wild fish and high-quality aquatic habitat may be negatively impacted by private ponds; and
WHEREAS, often touted to increase property values, more than 10,000 pond permits have been issued-most of which remain active; and
WHEREAS, the department of fish, wildlife, and parks issues about 200 pond permits annually to stock fish, and the permit review is complex and burdensome leading to inconsistent administration statewide; and
WHEREAS, the department cost of managing private pond issues far outweighs the cost of the permit-\$10 for a 10-year permit or \$10 annually for a commercial production pond permit; and
WHEREAS, private ponds can provide optimal environments for invasive species and pathogen introduction and propagation; and
WHEREAS, the number of permitted in-state commercial hatcheries providing fish for private pond stocking declined over the last decade, and four of the remaining five commercial hatcheries are on limited quarantine due to invasive species or pathogen detection; and
WHEREAS, applications for importing stocked fish have increased fivefold because of limited in-state sources, increasing the risk of introducing nontarget species that could damage aquatic resources; and
WHEREAS, stocking private ponds illegally from nonpermitted out-of-state commercial hatcheries is also on the rise due in part to easy access to fish purchased online and from other sources; and
WHEREAS, frequent and severe drought years in southwest Montana harm agriculture and fisheries, yet pond development continues, bringing with it increased water temperature and water loss from evaporation; and
WHEREAS, it is critical to fully understand how the development of ponds may impact constitutionally protected water rights; and
WHEREAS, the prior appropriation doctrine and Montana Water Use Act must be considered when evaluating the cumulative impacts of ponds and the associated consumption of water; and
WHEREAS, the impact of ponds on existing water rights is an important element of determining the level and type of permitting that is necessary for ponds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Study of private ponds. (1) The water policy interim committee, provided for in 5-5-231, shall study issues related to private ponds as defined in 87-4-603.

(2) The study must examine:

- (a) private pond policies, including permitting and protocols;
- (b) impacts of private ponds on aquatic resources as well as water quality and quantity related to drought, high water temperatures, and evaporation and options to mitigate these impacts;
- (c) costs of regulating private ponds, including for permitting, enforcement, fines, fees, and restitution;

and

- (d) options to provide in-state certified fish to stock private ponds.

(3) The water policy interim committee shall complete the study by September 15, 2024, and report its findings and recommendations, including legislation, to the 69th legislature.

Section 2. Appropriation. There is appropriated \$50,000 from the general fund to the legislative services division for the biennium beginning July 1, 2023, to pay for costs associated with the study required by [section 1].

Section 3. Contingent voidness. (1) Pursuant to Joint Rule 40-65, if [this act] does not include an appropriation prior to being transmitted to the governor, then [this act] is void.

(2) If the appropriation in [section 2] is vetoed, then [this act] is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [Section 1] terminates December 31, 2024.

ADMINISTRATIVE RULE REVIEW MEMO