

Unofficial Draft Copy

As of: August 1, 2008 (3:14pm)

LC5017

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act creating the water policy committee; reassigning the water policy duties of the environmental quality council to the water policy committee; amending sections 5-5-202, 75-1-324, 85-1-203, 85-1-621, 85-2-105, 85-2-281, 85-2-350, and 85-2-436, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Water policy interim committee.

(1) For issues concerning water, the water policy committee established in 5-5-202 shall 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.

(2) The water policy committee shall coordinate with the environmental quality council to avoid duplication of efforts and conflicts.

Section 2. Section 5-5-202, MCA, is amended to read:

"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) water policy committee; and
- (h) 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."

{*Internal References to 5-5-202:*
5-11-105x 47-1-105x}

Section 3. Section 75-1-324, MCA, is amended to read:

"75-1-324. Duties of environmental quality council. (1) The environmental quality council shall:

~~(1)~~(a) 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)~~(b) 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)~~(c) develop and recommend to the governor and the legislature state policies to foster and promote the improvement

Unofficial Draft Copy

As of: August 1, 2008 (3:14pm)

LC5017

of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

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

~~(5)~~(e) 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)~~(f) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

~~(7)~~(g) 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)~~(h) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

~~(9)~~(i) 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)~~(j) except as provided for in (2), perform the

Unofficial Draft Copy

As of: August 1, 2008 (3:14pm)

LC5017

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.

(2)(a) For issues concerning water, the water policy committee established in 5-5-202 shall 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.

(b) The water policy committee shall coordinate with the environmental quality council to avoid duplication of efforts and conflicts."

{*Internal References to 75-1-324:*
5-11-105x}

Section 4. Section 85-1-203, MCA, is amended to read:

"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~~ water policy committee

established in 5-5-202 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~~ water policy committee established in 5-5-202 and solicit the advice of the committee in carrying out its duties under this section."

{*Internal References to 85-1-203:*
85-2-105x 85-2-350x 85-2-350x}

Section 5. Section 85-1-621, MCA, is amended to read:

"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 committee established in 5-5-202."

{ Internal References to 85-1-621:
85-2-105x }

Section 6. Section 85-2-105, MCA, is amended to read:

"85-2-105. ~~Environmental quality council -- water policy~~ Water policy committee -- duties. (1) The ~~environmental quality council~~ water policy committee established in 5-5-202 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~~ water policy committee 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~~ water policy 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) 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."~~

{Internal References to 85-2-105: None.}

Section 7. Section 85-2-281, MCA, is amended to read:

"85-2-281. (Temporary) Reporting requirements. The department and the water court shall:

(1) provide reports to the ~~environmental quality council~~ water policy committee established in 5-5-202 at each meeting

during a legislative interim on:

(a) the progress of the adjudication on a basin-by-basin basis; and

(b) the number of basins for which examination was completed during the reporting period;

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session including the number of basins for which examination was completed during the reporting period; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money and state special revenue funds. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005; sec. 11, Ch. 319, L. 2007.)"

{ *Internal References to 85-2-281:*
85-2-270*x }

Section 8. Section 85-2-350, MCA, is amended to read:

"85-2-350. Clark Fork River basin task force -- duties -- water management plan. (1) The governor's office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin. The designated appropriate entity shall:

(a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

(b) provide advice and assistance in selecting

representatives to serve on the task force;

(c) develop, in consultation with the task force, appropriate opportunities for public participation in studies of water management in the Clark Fork River basin; and

(d) ensure that all watershed and viewpoints within the basin are adequately represented on the task force, including a representation from the following:

(i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;

(ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River;

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

(2) Task force members shall serve 2-year terms and may serve more than one term. The Confederated Salish and Kootenai tribal government has the right to appoint a representative to the task force.

(3) The task force shall:

(a) identify short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified;

(b) identify data gaps regarding basin water resources, especially ground water;

(c) coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;

(d) provide a forum for all interests to communicate about water issues;

(e) advise government agencies about water management and permitting activities in the Clark Fork River basin;

(f) consult with local and tribal governments within the Clark Fork River basin;

(g) make recommendations, if recommendations are considered necessary, to the department for consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin; and

(h) report to:

(i) the department on a periodic basis;

(ii) the ~~environmental quality council~~ water policy committee established in 5-5-202 annually; and

(iii) the appropriations subcommittee that deals with natural resources and commerce each legislative session."

{*Internal References to 85-2-350: None.*}

Section 9. Section 85-2-436, MCA, is amended to read:

"85-2-436. Instream flow to protect, maintain, or enhance streamflows to benefit fishery resource -- change in appropriation rights by department of fish, wildlife, and parks

until June 30, 2019. (1) The department of fish, wildlife, and parks may change an appropriation right, which it either holds in fee simple or leases, to an instream flow purpose of use and a defined place of use to protect, maintain, or enhance streamflows to benefit the fishery resource.

(2) The change in purpose of use or place of use must meet all the criteria and process of 85-2-307 through 85-2-309, 85-2-401, and 85-2-402 and the additional criteria and process in subsection (3) of this section to protect the rights of other appropriators from adverse impacts.

(3) (a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource.

(b) Upon receipt of a correct and complete application for a change in purpose of use or place of use 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 change in appropriation right may file an objection as provided in 85-2-308. A change in appropriation right may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a change of an existing appropriation right for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a change in appropriation right authorization must include specific information on the length and location of the stream reach in which the streamflow is to be protected, 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.

(d) The maximum quantity of water that may be changed to instream flow is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the change in appropriation right authorization, may be used to protect, maintain, or enhance streamflows below the point of diversion that existed prior to the change in appropriation right.

(e) A lease for instream flow purposes may be entered for a term of up to 10 years, except that a lease of water made available from the development of a water conservation or storage project may be for a term equal to the expected life of the project but not more than 30 years. All leases may be renewed an indefinite number of times but not for more than 10 years for each term. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A change in appropriation right authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (3)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If

new evidence is submitted, a change in appropriation right authorization must be obtained according to the requirements of 85-2-402.

(f) The department may modify or revoke the change in appropriation right authorization up to 10 years after it is approved if an appropriator other than an appropriator described in subsection (3)(i) submits new evidence not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease or change in appropriation right under this section is the same as the priority of appropriation of the right that is changed to an instream flow purpose.

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

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

(j) 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 required under this section.

(4) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and ~~environmental quality council~~ water policy committee established in 5-5-202 a biennial progress report by December 1 of odd-numbered years. This report must include a summary of all appropriation rights changed to an instream flow purpose in the last 2 years.

(b) For each change in appropriation right to an instream flow purpose, the report must include a copy of the change authorization issued by the department and must address:

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

(ii) critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource;

(iii) the amount of water available for instream flow as a result of the change in appropriation right;

(iv) contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods used to monitor use of water under each change in appropriation right.

(5) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired.

(6) (a) From May 8, 2007, through June 30, 2019, the department of fish, wildlife, and parks may change, pursuant to this section, the appropriation rights that it holds in fee

simple to instream flow purposes on no more than 12 stream reaches.

(b) After June 30, 2019, the department may not change the appropriation rights that it holds in fee simple to instream flow purposes on any stream reaches.

(7) After June 30, 2019, the department may not enter into any new lease agreements pursuant to this section or renew any leases that expire after that date."

{ Internal References to 85-2-436:

| | | | |
|-----------|-----------|------------|-----------|
| 85-2-102x | 85-2-102x | 85-2-308 x | 85-2-402x |
| 85-2-402x | 85-2-402x | 85-2-404x | 85-2-419x |
| 85-2-419x | 85-2-602x | 87-1-257x | |

NEW SECTION. Section 10. {standard} Codification

instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 1].

- END -

{Name : Joe P. Kolman
Title : Research Analyst
Agency: LSD
Phone : 444-9280
E-Mail: jkolman@mt.gov}