

HJR 31 ENERGY POLICY STUDY MONTANA ENERGY DATA

**Final Report to the
53rd Legislature
of the State of Montana**

January 1993

**Prepared by the Montana Environmental Quality Council
and the
Montana Department of Natural Resources and Conservation**

House Joint Resolution 31
ENERGY POLICY STUDY
MONTANA ENERGY DATA

January 1993

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SUMMARY OF FINAL EQC RECOMMENDATIONS AND PROPOSED LEGISLATION

A summary of the HJR 31 Montana Energy Policy Study recommendations is listed below. The legislation the Environmental Quality Council has requested to implement these recommendations is presented in two bill drafts which appear in Appendix B.

ENERGY POLICY GOAL STATEMENT

Recommendation #1

The EQC recommends that the state adopt the following goal statement for Montana energy policy:

The state should promote energy conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the most long-term benefits to Montana citizens. In pursuing this goal, the state should:

- A. Recognize that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets; and
- B. Maintain a continuing process to review this energy policy statement and any future changes so that Montana's energy strategy will provide a balance between a sustainable environment and a viable economy.

ENERGY POLICY DEVELOPMENT PROCESS

Recommendation #2

The EQC recommends that the legislature create a continuing process modeled in part on the state water planning process for developing and modifying state energy policy.

ENERGY POLICY ANALYSIS METHODOLOGY

Recommendation #3

The EQC recommends that the legislature adopt an energy policy analysis methodology to inform the legislature and others of the cost/benefit implications of proposed energy legislation.

RESIDENTIAL ENERGY POLICY

Recommendation #4

The EQC endorses and recommends that the legislature adopt the following residential energy policy statement developed by a collaborative working group including broad representation of Montana groups and individuals interested in residential energy efficiency:

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

- The housing consumer has access to the information required to make informed choices about structures and energy efficiency measures;
- Energy efficiency measures are safe, reliable, and readily available for use in Montana;
- Investments in energy efficiency measures would be cost effective;
- The impact of the cost of the energy efficiency measures on the combination of downpayments, monthly mortgages payments, and monthly utility bills, will not adversely affect the affordability of housing to prospective homebuyers and renters; and
- The energy efficiency measures will not place an undue or inequitable burden on residential building owners or renters, the residential construction industry, financial institutions, real estate sales persons and appraisers, energy providers, or state and local governments.

RESIDENTIAL ENERGY POLICY IMPLEMENTATION STRATEGIES

Recommendation #5

The EQC recommends that state government in concert with the Montana housing industry, utilities and other interested or affected entities should continue to provide education, training, and technical assessment and demonstration programs regarding residential energy efficiency targeted at consumers and the infrastructure of the housing industry, including builders, building code officials, home inspectors, bankers, realtors, and appraisers.

Recommendation #6

The EQC recommends that the state require a "labeling sticker" describing the energy efficiency components, e.g. heating appliance efficiencies and ceiling, wall, floor, window, and door "R-or U-values", be permanently fixed to the breaker box of all new site built, modular and manufactured homes.

Recommendation #7

The EQC recommends that the state initiate developing and/or selection and testing of a home energy rating system applicable to new and existing residences. Subject to available funding, the system should be developed over the next two years in conjunction with the federal government.

Recommendation #8

The EQC recommends that the state support a petition from the real estate and housing industry to the Federal Home Administration (FHA) to increase the "caps", or upper limits, of FHA home mortgages.

Recommendation #9

The EQC recommends that the legislature appropriate non-general fund dollars, possibly such as federal oil overcharge funds, to establish a loan insurance pool that would allow the Board of Housing Program to increase the affordability of home mortgages to Montanans. The program would raise the mortgage ceiling levels above FHA caps without increasing the downpayment requirements above the 3-5% level. Federal income and other qualifying criteria would remain unaffected. A new requirement would be created to obtain mortgages above the FHA caps. The home would have to be built to higher energy efficiency levels than current building practice. Because utilities would benefit from the increased energy efficiency, they should also contribute dollars to the insurance pool.

Recommendation #10

The EQC recommends that Montana utilities offer incentive programs on a voluntary basis to purchase energy efficiency.

Recommendation #11

The EQC recommends that the legislature provide for enforcement of the energy code provisions of the state building code in single family through four-plex residential buildings located in areas outside of the jurisdictions of local governments adopting the state building code. This enforcement should be accomplished via a self-certification by home builders.

Recommendation #12

The EQC recommends that the energy code provisions of the state building code be reviewed this coming summer and raised to the levels agreed to by the residential energy efficiency working group, (see Appendix F) and that the code not be reviewed again until called for under the normal uniform building code review cycle.

INTRODUCTION

Early in 1991, national public attention became focused on energy security and energy efficiency issues as a result of the United States' entry into war in the Middle East. Concerns over uncertain energy supplies prompted increased legislative interest in the development of an official energy policy at both the national and state levels.

The 1991 Montana legislature responded by approving HJR 31 (see Appendix A), requiring the Environmental Quality Council (EQC) to develop recommendations to the legislature for a comprehensive state energy policy and options for its implementation. HJR 31 instructed the EQC, in cooperation with the Department of Natural Resources and Conservation (DNRC) and the Consumer Counsel, to develop the framework for a proposed state energy policy.¹ The framework was to include specific goals and recommended legislation to guide state programs relating to energy production, consumption, and conservation, and recommend assignments of responsibility to executive branch agencies for the implementation and administration of the proposed policy. HJR 31 also directed the EQC, DNRC, and Consumer Counsel to study: the state's potential for energy conservation; renewable and nonrenewable sources of energy available to the state; and existing energy programs in Montana and other states, the region, and the nation, including the influence of regional and national energy production, consumption, and conservation patterns upon Montana.

This report responds to the mandates of HJR 31. Through a series of consultations with numerous government agencies; energy producers and distributors; organizations and citizens having energy expertise or interest; and, with the able assistance from several task forces or working groups, the EQC has developed recommendations for:

- An energy policy goal statement;
- A continuing process for developing energy policy;
- An energy policy analysis methodology to be used by legislators and others to evaluate the implications of energy-related legislation; and
- A specific policy and implementing strategies for increasing the efficiency of Montana residences.

To provide a context for these recommendations, this report also contains a summary of an inventory of existing state energy-related law and a summary compilation of available data on the production and consumption of energy in Montana by type and end use prepared by the Montana Department of Natural Resources and Conservation.

¹ Because the legislature appropriated no additional moneys to conduct the required study, the EQC, DNRC, and Consumer Counsel's response to HJR 31 was constrained by existing budget and staff.

SECTION I.

ENERGY POLICY GOAL STATEMENT

A. BACKGROUND

The EQC initiated its study of energy policy by creating a Study Design Working Group (Study Group) and charging it with drafting a work plan to guide the effort. The Study Group was chosen to be broadly representative of energy producers, distributors, consumers, state agencies, low-income and environmental groups and others interested in state energy policy. A list of the members of the Study Group is found in Appendix C.

Because of the financial and time constraints on this study, the Study Group did not recommend developing a comprehensive state energy policy. Instead, it proposed a work plan that addressed the following elements: an energy policy goal statement; the design of an ongoing energy policy development process; an energy policy analysis methodology; and selected energy policy development topics including Montana's energy end uses, energy conservation, and motor vehicles/transportation. For any of the selected topics chosen, the Study Group suggested that three questions be addressed: 1) What is the State of Montana doing now? 2) What could the state do? 3) What should the state do?

The EQC approved the portions of the work plan addressing all but the selected energy topics, which were deferred pending identification of necessary funding and staffing resources.²

After receiving and discussing a proposed goal statement from the Study Group, the EQC adopted the following statement for recommendation to the 1993 legislature:

² Later on in the interim, the EQC selected the topic of residential energy efficiency for policy development. (See Section V.)

B. RECOMMENDATION

Recommendation #1:

The state should promote energy conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental and economic costs and the most long-term benefits to Montana citizens. In pursuing this goal, the state should:

A. Recognize that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets; and

B. Maintain a continuing process to review this energy policy statement and any future changes so that Montana's energy strategy will provide a balance between a stable environment and a viable economy.

SECTION II.

ENERGY POLICY DEVELOPMENT PROCESS

A. BACKGROUND

Historically, many of Montana's energy policies, and particularly coal-related policies, have been developed via combat between interested parties. The forum for this policy development has generally been the legislature, although the courts, and executive branch agencies such as the Board of Natural Resources and Conservation and the Public Service Commission have made important decisions as well. Policy has been made primarily in an ad hoc rather than comprehensive mode, and few if any policies have been reviewed for effectiveness and contemporary relevance.

The Study Design Working Group recommended to the EQC that some of these aspects of Montana's energy policy making process should be preserved and some changed. Because the legislature is the constitutional mechanism through which the people of Montana set public policy, the Study Group recommended that it should remain the primary energy policy decision forum. The Study Group also recommended that energy policy development should continue to be ad hoc rather than comprehensive in nature because attempts to create the latter tend to degenerate into disputes over symbols and ideologies at the expense of solving actual problems. Even if the symbolic and ideological disputes were resolved and a "comprehensive" policy proposal developed, it probably would not have sufficient public interest or backing to translate it into comprehensive implementing legislation. Energy policies should continue to be made in response to the identification of specific problems or challenges related to the production, distribution, and consumption of energy.

The major change recommended by the Study Group was the creation of a process modeled on the existing, successful state water planning process through which interested members of the public could work together to develop consensus-based policy proposals for disposition by the legislature. Such a mechanism would have three primary advantages over historic circumstances: first, it would reduce the rancor and conflict which has surrounded many policy initiatives; second, it would produce a more informed consideration by the legislature of policy choices; and third, policy initiatives generated by it would likely be supported by the coalition of interests necessary to obtain both legislative action and implementation of that action. A consensus-based mechanism could make a difference by leading to resolution of real problems.

To achieve these objectives the mechanism must:

- Be open and include participation by all interested parties;
- Allow these parties to work together in a structured process so they can understand each other's motivations, concerns, and goals;

- Allow the parties to influence selection of issues of concern as well as identify and evaluate alternative solutions to them;
- Include participation by legislators who could then advocate the group's recommendations to the legislature; and
- Be supported by state agency expertise capable of providing the information and analysis necessary for the group to identify and analyze policy alternatives.

This process would also provide the opportunity to evaluate the effectiveness of Montana's existing energy policies. Historically, if an existing policy has been reviewed, the review has occurred when a legislative proposal was made to change it. However, it is too much to expect time-pressured legislators to conduct a thorough, informed, and objective look at policy effectiveness. The policy making mechanism should and can also be used to review periodically the effectiveness and relevance of existing energy policies.

B. RECOMMENDED ENERGY POLICY DEVELOPMENT PROCESS

Recommendation #2:

The EQC recommends that the legislature create a continuing process modeled in part on the state water planning process for developing and modifying state energy policy.

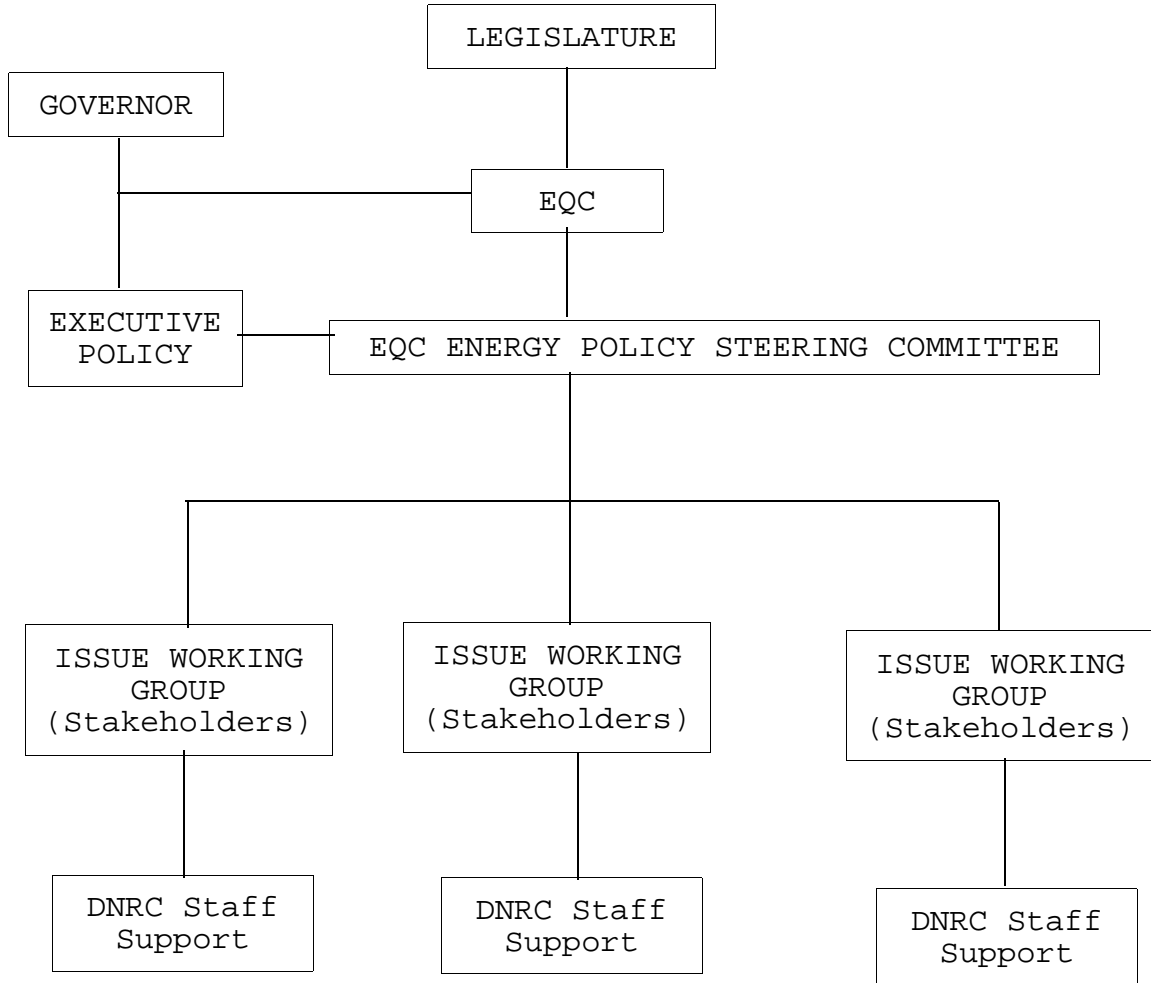
Based on the recommendations of its Study Group and public comments, the EQC recommends that the legislature create the continuing energy policy process shown schematically in Figure 1. This process is modeled on the state water planning process which has successfully involved the interested public, executive and legislative branches in consensus-based water planning and policy making. Draft legislation implementing this recommendation is contained in Appendix B (Draft Bill #1).

Overall responsibility for development of energy policy would reside in the EQC and the Montana Department of Natural Resources and Conservation (DNRC). The EQC, based on the recommendations of the DNRC and the public, would identify specific components of the state's energy policy needing development. Oversight of the development would reside in an energy policy steering committee, a subcommittee of the EQC with possible representation from other entities. The steering committee would then assign an issue Study Group composed of representatives of the parties with a stake in the specific component the task of developing consensus recommendation for that component of energy policy. At its discretion, the EQC would forward energy policy recommendations to the legislature and appropriate executive branch agencies for adoption.

Technical, administrative and logistical support of the issue Study Groups would be supplied by the Energy Division of the DNRC. Since the Energy Division is the state entity in which energy policy and technical expertise now resides, their support of the issue working groups would result in the lowest costs to the state.

Figure 1

Energy Policy Making Organizational Chart



SECTION III.

ENERGY POLICY ANALYSIS METHODOLOGY

A. BACKGROUND

In addition to creating an ongoing energy policy development process that would involve stakeholders and the public in addressing issues of energy policy as they arise, the Study Design Working Group also recommended that the EQC develop an energy policy analysis methodology that would inform legislators and others regarding the implications of energy-related legislation. The analysis would identify the potential costs and benefits of energy proposals to society in a manner similar to fiscal notes used by the legislature to project the fiscal impacts of proposed legislation.

The EQC accepted the Study Design Working Group's recommendation and appointed a separate working group, the EQC Energy Policy Analysis Methodology Working Group (Methodology Working Group) to develop a methodology. Members of the Methodology Working Group were chosen to be broadly representative of Montana energy producers and consumers and are listed in Appendix D. This working group was assisted by the staff of the DNRC.

B. RECOMMENDED ENERGY POLICY ANALYSIS METHODOLOGY

Recommendation #3:

The EQC recommends that the legislature adopt an energy policy analysis methodology to inform the legislature and others of the cost/benefit implications of proposed energy legislation.

At the recommendation of the Methodology Working Group, the EQC proposes that the 1993 and subsequent legislatures conduct cost/benefit analyses of proposed energy-related legislation using the specific methodology explained in Appendix E. The methodology consists of two parts, an Energy Policy Evaluation Worksheet and an Effects Summary Table. The purpose of the Worksheet is to describe all of the potential energy, economic, environmental, social, and fiscal effects of a given legislative proposal in detail. The Summary Table would be used to summarize the effects of the proposal in concise, comprehensive terms.

The methodology itself is not intended to dictate any predetermined conclusions or to make energy policy decisions for the legislators. It is designed to serve a role similar to that of a fiscal note and can be prepared by a variety of people, individuals or groups who are also involved in the preparation of fiscal notes. Different individuals and organizations may come to different conclusions using the methodology. The methodology is not intended for administrative rule making.

SECTION IV.

MONTANA ENERGY LAW SURVEY

A. BACKGROUND

The work plan for the energy policy study proposed to the EQC by the Study Design Working Group also included as a selected energy policy topic the evaluation of the effectiveness of Montana's existing energy efficiency statutes and regulations. Based on this suggestion, the Montana Office of the Northwest Power Planning Council agreed to fund a more general survey of all Montana energy statutes and regulations. The survey was conducted by the law firm of Murphy, Robinson, Heckathorn & Phillips, P.C. of Kalispell, Montana. The report, entitled "Montana Energy Law Survey," which attempted to catalogue and summarize all Montana statutes and regulations addressing energy, is available as Appendix G of this report. The following summary of existing Montana energy policies is based on the "Montana Energy Law Survey".

B. SUMMARY OF MONTANA ENERGY POLICY

No formal, comprehensive state energy policy has been codified in statute. A number of laws addressing energy topics have been adopted which reflect specific energy policies. A summary of these policies, grouped by related topic and comments on their gaps and inconsistencies follows.

1. Non-Renewable Energy Resources and Conversion and Transmission Facilities

Policy: Montana regulates and seeks through taxation to compensate the people of Montana for the development of non-renewable energy resources including coal, oil and natural gas, and uranium.

Regulation of the state's energy resources includes requirements for land reclamation and the prevention of air and water pollution during resource development. Air and water regulations include both emission and ambient standards. For water with existing quality higher than ambient standards, energy development must not degrade the higher quality unless certain conditions are met.

Energy conversion and transmission facilities larger than certain capacities and fueled by or transmitting non-renewable resources, including coal, oil and natural gas, and uranium, are also subject to regulation. This regulation determines whether and how much of Montana's environment will be allocated to their development. Uranium conversion facility regulation is designed to discourage facility construction and operation in the state until specific conditions are met.

In recent years, severance and other taxes on coal, oil and natural gas have been reduced in an attempt to preserve or stimulate development of these resources.

2. Renewable Energy Resources and Cogeneration

Policy: Montana seeks to encourage and regulate the development of renewable energy resources including hydro, solar, geothermal, and wind power and cogeneration.

One method the state uses to encourage and regulate renewable energy resource development is through state statutes. These statutes remove specific barriers to development, e.g. by providing for solar and wind easements and by requiring purchases of the output of small renewable electricity generating resources by utilities. The state also seeks to stimulate development of renewable resources through tax incentives and research and demonstration grants. As is the case for non-renewable resources, Montana statutes also provide for the regulation of renewable resource energy conversion facilities larger than certain capacities by requiring a determination of whether and how much of the state's environment will be allocated to their development.

3. Conservation

Policy: Montana seeks through regulation, investments, grants and loans, and tax incentives to encourage energy conservation.

State statutes require conservation through building codes and direct the Public Service Commission to allow rate treatment for certain utility investments in residential energy conservation. The state Board of Examiners is authorized to sell bonds to finance energy conservation in state-owned buildings, structures, and facilities. Research and demonstration grants and loans are authorized and tax incentives are offered to individuals and corporations in support of energy conservation.

4. Energy Emergency Powers

Policy: In times of emergency, the state is granted powers to reduce or allocate the usage of energy.

State statutes authorize the governor and/or other state agencies to plan for, gather information, and take action to reduce or allocate the usage of energy during specified emergency conditions.

5. Low-Income Energy Assistance Programs

Policy: The state is authorized to assist low-income people with meeting their energy needs.

State statutes authorize expenditure of federal dollars for the low-income home energy assistance program and low-income weatherization program. No state general funds are expended on these programs.

6. Policy Gaps and Inconsistencies

The two most conspicuous gaps related to state energy policy evident from the survey are addressed by the recommendations from this study: creation of a continuing energy policy development process and a methodology for analyzing the costs and benefits of proposed energy policies and statutes. A third gap identified is the lack of analysis of the costs and benefits of existing statutes and programs which provide incentives to achieve specific policy ends, e.g. tax incentives and grant and loan programs.

In addition to gaps in the state's energy policy, the study also identified a policy inconsistency - the use of severance taxes to maintain trust funds to compensate Montanans for the consumption of non-renewable resources or damages caused by their development - and recent actions to reduce those severance taxes to maintain or spur development of the same resources.

While not necessarily a gap or an inconsistency, two policies should be examined for possible unintended consequences. The first involves the regulation of both renewable and non-renewable energy facilities larger than certain sizes via the Major Facility Siting Act to determine whether and how much of Montana's environment will be allocated to the facility development and operation. The size cutoff for regulation may be uneconomically skewing the size of facilities developed, particularly in the case of non-renewable resources. The second policy involves the practice of diverting at least 5% of federal funds from the low-income home energy assistance program (LIHEAP) to low-income weatherization. LIHEAP is a welfare program that makes payments to low-income Montanans to assist them in paying their energy bills. This diversion, particularly in light of the continuing reduction of federal dollars for LIHEAP, may be short changing low-income people's immediate need for utility bill assistance. The state may wish to end this diversion and thereby concentrate its limited fiscal resources (i.e. federal dollars) on the welfare mission of energy bill assistance to maintain access of low-income people to basic levels of heating. The longer term energy efficiency mission could still be met by assigning low-income weatherization to utilities.

Although an environmental policy as opposed to an energy policy, the water quality non-degradation statute is apparently unclear and controversial. The meaning of the conditions under which reductions in water quality are allowable should be clarified so that they can be understood by regulators and potential energy developers.

SECTION V.

RESIDENTIAL ENERGY EFFICIENCY COLLABORATIVE

A. Background

1. Residential Energy Use

Approximately 14% of the energy consumed in Montana is used in the state's residences for space and water heating, lighting, and appliances. Space heating is the largest category of residential energy use accounting for as much as 40-50% of total residential use. The amount of energy used for space heating is a function of the energy efficiency of the building structure, the efficiency of the building heating system, and the temperature at which people maintain the building.

State law now requires that buildings be designed to achieve energy efficiency. Sections 50-60-201, 202 and 203, MCA require the Department of Commerce to adopt a building code with the following specific energy related objectives and standards:

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings, and, **consistent with the conservation of energy, by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings.**

(5) encourage **efficiency of design and insulation which enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of such equipment.**

(6) encourage **efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems which promote the efficient use of energy.** (50-60-201, MCA) (Emphasis added).

While the mandate to address energy efficiency is clear, the specific level of energy efficiency which the building code must achieve is left to the discretion of the Department of Commerce. This level has been controversial, at least since 1983 when the Northwest Power Planning Council promulgated and urged the states of Montana, Idaho, Oregon, and Washington to adopt the Northwest Energy Code for electrically heated homes. The Northwest Energy Code incorporates efficiency levels which substantially exceed the levels of Montana's building codes.

2. Residential Energy Efficiency Collaborative

Early in 1992, Pacific Power & Light (PP&L) and the Montana Power Company (MPC) suggested that the EQC form a collaborative group as a part of the HJR 31 energy policy study to attempt to resolve the controversy surrounding residential energy efficiency and energy codes. Montana's investor-owned utilities³ and the Bonneville Power Administration (BPA) agreed to fund the collaborative, including the hiring of a group facilitator. Using utility and BPA funding only, the EQC established the collaborative and charged it with developing consensus recommendations for policies and implementation strategies to achieve increased residential energy efficiency.

The participants in the collaborative, which became known as the Residential Energy Efficiency Working Group (REEWG), were self-selected. Anyone wishing to participate in the REEWG could do so. Participants, which are listed in Appendix F, represented a broad range of interests including utilities, home builders, home building suppliers, home lenders, architects and engineers, environmental groups, low-income groups, local governments, and state and federal agencies.

As a result of nine meetings held from July through December 1992, the REEWG agreed unanimously to the following residential energy policy statement and a package of recommended strategies to implement it.

³ The investor-owned utilities supplying funding included Montana Power Company, PacifiCorp, Montana Dakota Utilities, and Great Falls Gas Company.

RESIDENTIAL ENERGY POLICY STATEMENT

Recommendation #4:

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

- The housing consumer has access to the information required to make informed choices about structures and energy efficiency measures;
- Energy efficiency measures are safe, reliable, and readily available for use in Montana;
- Investments in energy efficiency measures would be cost effective;
- The impact of the cost of the energy efficiency measures on the combination of downpayments, monthly mortgages payments, and monthly utility bills, will not adversely affect the affordability of housing to prospective homebuyers and renters; and
- The energy efficiency measures will not place an undue or inequitable burden on residential building owners or renters, the residential construction industry, financial institutions, real estate sales persons and appraisers, energy providers, or state and local governments.

IMPLEMENTATION STRATEGIES

Information Strategies

I-1.

Recommendation #5:

The EQC recommends that state government in concert with the Montana housing industry, utilities and other interested or affected entities should continue to provide education, training, and technical assessment and demonstration programs regarding residential energy efficiency targeted at consumers and the infrastructure of the housing industry, including builders, building code officials, home inspectors, bankers, realtors, and appraisers.

I-2.

Recommendation #6:

The EQC recommends that the state require a "labeling sticker" describing the energy efficiency components, e.g. heating appliance efficiencies and ceiling, wall, floor, window, and door "R-or U-values", be permanently fixed to the breaker box of all new site built, modular and manufactured homes.

I-3.

Recommendation #7:

The state should initiate developing and/or selection and testing of a home energy rating system applicable to new and existing residences. Subject to available funding, the system should be developed over the next two years, in conjunction with the federal government.

Financial Strategies

F-1.

Recommendation #8:

The state should support a petition from the real estate and housing industry to the Federal Home Administration (FHA) to increase the "caps", or upper limits, of FHA home mortgages.

F-2.

Recommendation #9:

The Montana Board of Housing should initiate a residential energy efficient mortgage program available to qualifying, first time home buyers which would maintain a low (3-5%) downpayment requirement and raise the mortgage ceiling level above FHA caps. The Board of Housing risk exposure for the loan amount above the FHA cap would be assumed in some manner by utilities, state government, or a non-profit entity.

Energy Provider Strategies

EP-1.

Recommendation #10:

Utilities should, on a voluntary basis, offer incentive programs to purchase energy efficiency.

Building Code Strategies

BC-1.

Recommendation #11:

The state should provide for enforcement of the energy code in single family through four-plex residential buildings located in areas outside of the jurisdictions of local governments adopting the state building code via a self-certification by home builders. The Building Code Bureau of the Department of Commerce should have no role in enforcing the energy code in areas where the self-certification would apply. The recommendation to extend the energy code to areas of the state where it is not now enforced is contingent on establishment of the housing affordability program described in recommendation F-2.

BC-2.

Recommendation #12:

The energy code should be reviewed this coming summer and raised to the following consensus level, and then the code should be reviewed on the normal code review cycle, i.e. every three years.

	Current Code	Proposed Code Prescriptive Path*	Proposed Code Equivalent Path*
Roof	R-38	R-42	R-38
Walls	R-19	R-21	R-19
Doors	R-2	R-5	R-2
Grade			
Basement	R-10	R-11	R-10
Foundation	R-19	R-19	R-19
Floor	R-19	R-19	R-19
Windows	Double Glazing	U-0.5 (Double Glazing)	U-0.4 (Double Glazing)

B. Recommendations

At its January 1993 meeting, the Council discussed and endorsed the REEWG's recommendations concerning residential energy policy and implementing strategies. The Council forwarded these recommendations, as well as a draft bill providing for their statutory authorization (see appendix B, Draft Bill #2), to the current legislature.

SECTION VI.

MONTANA ENERGY DATA

Any study of state energy policy requires an appreciation of Montana energy production and consumption. The Montana Department of Natural Resources and Conservation has compiled a comprehensive report on Montana energy production and consumption by fuel type and end use sector entitled "Montana Energy Data Handbook". State energy production and consumption information will be briefly summarized here via excerpts from chapter 1 of the DNRC report; the full DNRC report is included in Appendix H.

When considering state energy data and policies, it is important to consider that Montana is an integral part of an inter-state and international energy system. Much of the energy produced within the state in the form of oil, natural gas, coal, and electricity is exported out of state. Although a substantial energy exporter, Montana also imports through pipelines and transmission lines much of the fuels consumed within the state.

A. Energy Production

Montana produces coal, natural gas and crude oil fuels which are used directly or are converted into other forms of energy. The 1991 production of these fuels, plus electricity from hydroelectric dams and from plants that burn wood, was equivalent to 890 trillion British thermal units (Btu) of energy. This down from a high of 915 trillion Btu in 1988, but still 1.7 percent higher than 1990. For comparison, Montana's 1990 production was a little over one percent of the United States' 81,151 trillion Btu consumption in the same year.

Coal is the source of most of the energy produced in Montana. In 1991, three-quarters of the energy produced in Montana was in the form of coal. Over the last decade, coal production increased from 28 million tons in 1982 to almost 39 million tons in 1988, before sliding back slightly to less than 38 million tons in 1991. That year, around 90 percent of the coal mined was exported, either by rail or by transmission line after conversion to electricity.

Montana also produces significant amounts of crude oil, natural gas, and hydroelectricity. Crude oil has declined since the peak year of 1968, reaching a thirty year low in 1991 of 19.6 million barrels, 40 percent below peak. Natural gas production has been more varied, but over the past decade has stayed around 51 million cubic feet. Hydroelectric production varies from year to year, depending on the amount of precipitation. Since Libby Dam, the last big dam, was completed in 1975, production has varied between 8,500 million kilowatt hours (kwh) and 12,400 million kwh. Production in 1991 was 11,900 million kwh.

B. Energy Consumption

The industrial and transportation sectors have long been the largest consumers of energy in Montana. In 1990, the industrial sector purchased 41 percent of the total energy sold in Montana, the transportation sector 34 percent, residential 14 percent, and commercial 11 percent.

Industrial consumption climbed until the end of the 1970's, then dropped as the Montana economy was restructured. The winding down of the Anaconda Company operations in Montana a decade ago was particularly significant. Transportation energy use peaked in 1979, the year of the Iran crises, then declined, and has remained more or less stable in recent years. Residential use hasn't changed much in the last ten years. By 1990, it still was less than during the 1970's, in spite of modest growth in population and economic activity. The same generally was true of the commercial sector.

In very broad terms, the residential and the commercial sector rely primarily on natural gas and electricity. The industrial sector relies on petroleum and electricity. The transportation sector uses petroleum almost exclusively.

APPENDIX A

HJR 0031/02

52nd Legislature

HJR 0031/02

HOUSE JOINT RESOLUTION NO. 31
INTRODUCED BY RANEY, DOHERTY, GILBERT,
GRADY, DRISCOLL

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY ENERGY RESOURCES AND ENERGY USE IN MONTANA AND TO DEVELOP A PROPOSED STATE ENERGY POLICY IN COOPERATION WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE CONSUMER COUNSEL; AND DIRECTING THE ENVIRONMENTAL QUALITY COUNCIL TO REPORT ITS FINDINGS TO THE 53RD LEGISLATURE.

WHEREAS, while Montana has an extensive number of laws and programs designed to promote the production, consumption, and conservation of various sources and forms of energy, Montana does not have a comprehensive state energy policy; and

WHEREAS, Montana has substantial renewable and nonrenewable resources that are important for the production of electricity, liquid fuels, heat, and other energy forms for use within and outside of the state; and

WHEREAS, although there is no comprehensive national energy policy, many aspects of energy production, consumption, and conservation in Montana

are determined or strongly influenced by national programs and legislation; regional, national, and international market factors; and national and regional energy production and distribution systems; and

WHEREAS, the nation's independence on imported crude oil and the United States' entry into war in the Middle East have raised substantial public concern about the need for a national energy policy; and

WHEREAS, new electric power generating capacity or new energy conservation, or both, may be needed in the Pacific Northwest region in the near future to meet projected demands for electricity; and

WHEREAS, energy production and consumption have substantial economic value to the state and substantial social and environmental costs; and

WHEREAS, the Legislature and the Executive Branch of state government do not have a comprehensive analysis of the renewable and nonrenewable sources of energy available to the state; the economic, social, and environmental factors influencing production, consumption, and conservation of the various sources and forms of energy in the state; and specific aspects

of energy production, consumption, and conservation that can be significantly influenced by state policies and programs; and

WHEREAS, THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, ENERGY DIVISION, AND THE CONSUMER COUNSEL HAVE CONSIDERABLE EXPERTISE AND INFORMATION RELATED TO ENERGY PRODUCTION, CONSUMPTION, AND CONSERVATION IN MONTANA, AND

WHEREAS, the state should promote energy conservation and the production and consumption of an appropriate mix of energy sources that are reliable and efficient and that represent the least social, environmental, and economic costs and the most benefits to the state and its citizens over the long term.

NOW THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA;

That the Environmental Quality Council, IN COOPERATION WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE CONSUMER COUNSEL, be assigned to:

(1) study the current energy conservation patterns in the state, the forms and amounts of energy conservation available to the state that are not being used, and options for increasing the amount of energy conserved by the state's citizens and all sector's of the state's economy;

(2) study the renewable and nonrenewable sources

of energy available to the state and patterns of energy production and consumption in the state, including but not limited to energy sources and forms such as liquid fuels, natural gas, coal, electricity, biomass, solar, wind, wood, and geothermal;

(3) study existing programs in Montana and programs and legislation in other states, the region, and the nation relating to the production, consumption, and conservation of energy, including the influence of regional and national energy production, consumption, and conservation patterns upon Montana;

(4) develop the framework for a proposed state energy policy that is designed to provide reliable and efficient energy supplies with the least social and environmental cost to the state and its citizens over the long term, including:

(a) specific goals and recommended legislation to guide the development of state programs relating to energy production, consumption, and conservation; and

(b) recommended assignments of responsibility to specific agencies within the Executive Branch of state government for the implementation and administration of the various elements of the proposed policy; and

(5) develop the framework for a proposed state energy policy in consultation and cooperation with state and federal agencies, the Pacific Northwest Electric Power and Conservation Planning Council, the Public Service Commission, Indian tribes, units of local government, energy producers and distributors, and organizations and citizens with energy-related expertise or interests in the study and development of the proposed state energy policy.

BE IT FURTHER RESOLVED, that the Environmental Quality Council report the findings of the study to the 53rd Legislature, including recommendations for a comprehensive state energy policy and options for implementation of the proposed policy by the Legislature.

-END-

APPENDIX B

BILL DRAFT #1

**** Bill No. ***

Introduced By *****

By Request of *****

A Bill for an Act entitled: "An Act adopting a state energy policy goal statement; providing for an ongoing state energy policy development process; and providing for the application of an energy policy analysis methodology for energy related legislation."

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

NEW SECTION. **Section 1. State energy policy goal statement.**

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

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

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

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

NEW SECTION. **Section 2. Definitions.** As used in [sections 3 and 4], the following definitions apply:

(1) "Council" means the environmental quality council established in 5-16-101.

(2)

"Department" means the department of natural resources and conservation established in 2-15-3301.

NEW SECTION. **Section 3. Energy policy development process.**

(1) The department and the council, in cooperation with the consumer counsel, shall maintain a continual process to develop the components of a comprehensive state energy policy.

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

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

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

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

(d) the department shall:

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

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

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

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

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

NEW SECTION. **Section 4. Application of energy policy analysis methodology for energy related bills.** (1) All bills reported out of a committee of the legislature that would affect state energy policy, including the consumption, production, and conservation of the state's energy resources, {shall} {may} include an energy policy analysis that evaluates the costs and benefits of that bill.

(2) The analysis shall include:

(a) an energy policy evaluation worksheet, which consists of:

(i) a description of the bill;

(ii) identification of the problems or issues addressed by the bill;

(iii) an explanation of the intent of the bill; and

(iv) an evaluation of the bill's effects on energy, the environment, and the economy along with information on the fiscal effects, social effects, and the distribution of the potential effects among different income groups, sectors of the economy, and geographic areas; and

(b) an effects summary table that reviews the information provided in the energy policy evaluation worksheet in summary form.

(3) An energy policy analysis may also be requested on a bill, as the joint rules of the house of representatives and the senate may allow, by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

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(c) the sponsor, through the presiding officer.

(4) The department, in cooperation with other appropriate state or local agencies, shall prepare the energy policy analysis, within the limits of available resources, within 6 days or as soon as reasonably practicable.

-END-

{Deborah B. Schmidt

Drafter, 444-3742}

**** Bill No. ****

Introduced By *****

By Request of the Environmental Quality Council

A bill for an Act entitled: "An Act establishing a policy on residential energy efficiency; providing for the applicability of the energy conservation provisions of the state building code to all residential buildings; requiring that the adoption of rules for energy conservation in buildings conform to certain policies; providing for the certification of installation of energy efficiency features by builders; providing for the labeling of energy efficiency features in new homes; and amending sections 50-60-102 and 50-60-203, MCA"

WHEREAS, the Environmental Quality Council, as part of its study of energy policy under the requirements of HJR 31, adopted in the 1991 legislative session, created a Residential Energy Efficiency Working Group (Working Group) to address a long-standing controversy surrounding residential energy efficiency and specifically the energy provisions of the state building code; and

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

WHEREAS, the Working Group met nine times during the 1992 interim and agreed that any final recommendations must be adopted

by consensus and supported by all participants as a package, all elements of which should be adopted, or none at all; and

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

WHEREAS, the implementation strategies include:

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

(2) financial strategies geared toward making energy efficient new homes more affordable, including: (a) petitioning the Federal Home Administration (FHA) to increase the upper limits of FHS home mortgages; (b) initiating a residential mortgage program for energy efficient homes in the Montana Board of Housing that would maintain a low downpayment requirement and raise mortgage ceiling levels above FHA limits; and (c) establishing a loan reserve account in the department of natural resources and conservation that allows the Board of Housing to sell bonds to enable it to offer loans above the FHA limit and that would be funded by homebuyers, utilities and the state of Montana as provided in [HB 10];

(3) energy provider strategies in which utilities would continue to offer on a voluntary basis incentive programs to purchase energy efficiency; and

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

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

WHEREAS, [this act] embodies those consensus recommendations of the Working Group requiring statutory authorization.

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

STATEMENT OF INTENT

A statement of intent is necessary for this bill because it directs the department of commerce, in adopting rules pertaining to energy conservation in buildings under the provisions of 50-60-203, to conform those rules to the policy provided in [section 1] and to the relevant policies that are developed according to provisions of [LC0275].

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

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

It is the intent of the legislature that the department of commerce adhere to the recommendations related to energy efficiency in residential buildings developed under the auspices of HJR 31, adopted by the 1991 legislature.

In accordance with the recommendations resulting from the directive of HJR 31 of the 1991 legislative session, the legislature intends that rules pertaining to energy conservation in residential buildings may not apply to those buildings containing less than five dwelling units and not otherwise subject to the state building code unless an energy efficient affordable housing program is established as provided by [HB 10]. The coordination instruction in [section 7 of this act] reflects this intent.

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

NEW SECTION. Section 1. Statement of policy on residential energy efficiency. The legislature finds that the people of Montana have an interest in energy efficiency in residential buildings for

the purpose of protecting and improving their economic and environmental well-being and energy security, while recognizing the basic need for safe and affordable shelter. It is therefore the policy of the state of Montana to encourage energy efficiency in residential buildings through strategies that ensure that:

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

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

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

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

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

Section 2. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability. (1) ~~The~~ Except as otherwise provided, state building codes do not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, located within the municipality's or county's

jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures; or

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act.

(2) ~~The~~ Except as otherwise provided, the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state building codes applicable to the aforementioned buildings may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to all residential buildings, except for:

(1) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to the residential buildings and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in [section 4] for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code."

{Internal References to 50-60-102:None.}

Section 3. Section 50-60-203, MCA, is amended to read:

"50-60-203. Department to adopt state building code by rule. (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may amend or repeal such rules.

(b) The department, in adopting rules concerning the conservation of energy, shall conform those rules to the policy established in [section 1] and to relevant policies developed under the provisions of [LC0275].

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not

prevent the department from adopting rules more stringent than those contained in such codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances in single-family dwellings."

{Internal References to 50-660-203:

x 50-60-101}

NEW SECTION. Section 4. Enforcement of energy code through builder certification. A person who begins construction on a residential building in Montana after [the effective date of this act], shall certify in writing to the building owner at the conclusion of construction that the residential building has been constructed in compliance with the energy efficient construction standards adopted under the provisions of 50-60-203(1).

NEW SECTION. Section 5. Energy labeling sticker. (1) The department, in consultation with the department of natural resources and conservation, shall prescribe by rule requirements for a labeling sticker to be affixed to a new residential building that describes the energy efficiency components of the home, including but not limited to heating appliance efficiencies and ceiling, wall, floor, window, and door R or U values of new residential buildings.

(2) A person constructing a new residential building shall affix to that residential building in a manner prescribed by the department a labeling sticker as described in subsection (1).

NEW SECTION. **Section 6. {standard} Codification instruction.** [Section 4 and 5] are intended to be codified as an integral part of Title 50, chapter 60, part 2, and the provisions of Title 50, chapter 60, part 2, apply to [sections 3 and 4].

[NEW SECTION]. **Section 7. Coordination instruction.** If an appropriation is not provided to the department of natural resources and conservation to establish a housing loan reserve account for energy efficient homes as provided in House Bill No. 10, then [sections 2 and 4 of this act] are void.

-END-

{Deborah B, Schmidt
Drafter, 444-3742}

APPENDIX C

HJR 31 ENERGY POLICY STUDY DESIGN WORKING GROUP

Senator Steve Doherty, Working Group Chairman/Environmental Quality Council (EQC)

Senator David Rye, EQC

John Fitzpatrick, EQC

Art Wittich, Governor's Office/EQC

Van Jamison, Department of Natural Resources and Conservation

Rep. Joe Quilici (Bob Nelson), Legislative Consumer Committee

Bob Anderson (Dan Elliott), Public Service Commission

Shirley Ball, Ethanol/Agriculture

Jay Downen (Jim Eskridge), Rural Electric Cooperatives

Dave Houser, Electric/Natural Gas Utilities

Ben Havdahl, Montana Motor Carriers Association

John Hines, Northwest Power Planning Council

Tom Marvin, Montana Local Government Energy Office

Jim Morton, District XI Human Resource Council

Gerald Mueller, Regulation/Least Cost Planning Group Coordinator

Jim Nybo, Conservation/Environmental Organizations

Dennis Pierce (Bill Kelldorf), Shell Western Exploration and Production, Inc.

Dave Simpson (Darrel Myran), Westmoreland Resources

Sandy Straehl, Montana Department of Transportation

APPENDIX D

EQC ENERGY POLICY ANALYSIS METHODOLOGY WORKING GROUP MEMBERS

Doug Abelin, Northern Montana Oil & Gas Association

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Art Wittich, Governor's Office/EQC

APPENDIX E

ENERGY POLICY ANALYSIS METHODOLOGY

INTRODUCTION

A. Background:

House Joint Resolution 31 (1991) directed the Environmental Quality Council to develop a framework for a proposed state energy policy. The EQC Energy Policy Analysis Methodology is an element of the framework that was developed by a working group appointed by the EQC and staffed by the Department of Natural Resources and Conservation. The methodology is designed as a tool for evaluating the costs and benefits of energy-related legislation that will result in state energy policies.

B. Purpose:

The purpose of the EQC Energy Policy Analysis Methodology is to inform legislators and others regarding the implications of energy-related legislation. The methodology is to be used 1) to frame debates or focus discussions on proposed and prospective energy legislation facing the state, and 2) to evaluate legislative proposals through an on-going energy policy development process.

The methodology itself is not intended to dictate any predetermined conclusions or to make energy policy decisions for legislators. It is designed to serve a role similar to that of a fiscal note and can be prepared by a variety of people, including agency and legislative staff, lobbyists, and other individuals or groups who are also involved in the preparation of fiscal notes. Different individuals and organizations may come to different conclusions using the methodology. The methodology is not intended for administrative rule making.

C. Focus:

Decisions on energy and how they are implemented affect numerous aspects of society. The identification of potential costs and benefits of energy proposals should include adequate consideration of all related aspects, including potential economic, social, environmental, and fiscal effects. The Energy Policy Analysis Methodology is designed to identify and describe each of the potential effects of energy-related legislation, and the distribution of those effects, in a consistent format.

Types of legislative proposals that are evaluated using this methodology may include tax measures to encourage production or development of various energy sources and technologies, funding allocations for state energy programs, energy conservation incentives, and other mechanisms to influence how energy is produced and consumed in the state.

D. Framework:

The methodology consists of two parts, an Energy Policy Evaluation Worksheet, and an Effects Summary Table. The purpose of the worksheet is to describe all of the potential effects of a given legislative proposal in detail. The Summary Table is used to summarize the effects of a given proposal in concise, comprehensive terms. Legislators can then review the table as a reference in their decision making process.

1. *Energy Policy Evaluation Worksheet --*

The first part of the Energy Policy Evaluation Worksheet requests a description of the legislative proposal being evaluated. Agency staff, legislative staff, and others filling out the worksheet are asked to identify the problems or issues the legislative proposal is attempting to address, to describe the proposal in detail, and to include an explanation of the intent of the proposed legislation.

The second part of the worksheet consists of the guidelines for the evaluation of the given legislative proposal. This section is used to evaluate effects on energy, the environment, and the economy along with fiscal effects, social effects, and the distribution of the potential effects among different income groups, sectors of the economy, and geographic areas.

2. *Effects Summary Table --*

The Effects Summary Table summarizes the potential effects of proposed energy legislation. The table is divided into the same categories as the Policy Evaluation Worksheet. Within each category is a numbered list of the various effects and a space next to each for brief descriptions. Information from each answer on the worksheet is summarized in the appropriate sections of the Summary Table. The purpose of the table is to allow potential effects to be quickly and thoroughly reviewed by legislators and other interested parties.

ENERGY POLICY EVALUATION WORKSHEET

III. PROPOSAL EVALUATION

INSTRUCTIONS

The following section is to be used by agency staff, legislative staff, and others for developing and evaluating information on the potential effects of proposed and prospective energy legislation. The section is divided into six categories: energy effects, environmental effects, economic effects, fiscal effects, social effects, and distribution of effects. Each category comprises a series of questions designed to provide legislators and others with detailed information on all of the potential effects of the proposed legislation.

General Directions:

Answer the questions in each of the following categories as completely and in as much detail as possible. Be sure to list any assumptions used in reaching the answers. Descriptions of the costs and benefits in each category should include quantitative and/or qualitative measures of the potential effects, with specific attention given to detailed descriptions of the effects and an identification of who benefits and who pays in the particular situation. If certain findings require more space than is available on the worksheet, additional pages may be used. If more than one proposal is being evaluated, separate worksheets should be prepared for each.

Certain questions included in the worksheet may not be relevant for evaluation of all proposals. For example, some questions may be applicable only when the proposed legislation involves the evaluation of a project such as a tax credit encouraging the construction of an energy production facility. Unless otherwise indicated in the question, it is up to those filling out the worksheet to identify which items may or may not be relevant for the given proposal. Those filling out the worksheet for a specific legislative proposal *need only complete the items relevant to that proposal* and should indicate which items are not by writing "Not Applicable" or "N.A." in the space provided.

Several questions require that the short-term and long-term effects of the proposed legislation be identified. The inclusion of this time element in the methodology is necessary in order to help identify the durability of the potential effects of proposed legislation. The short-term should identify immediate effects, and the long-term should identify more enduring effects. The definition of short-term and long-term can vary. Where questions ask for identification of short-term and long-term effects, describe in your answer the assumptions made to define this time element. Example: short-term = 1 to 3 years; long-term = over 3 years.

ENERGY POLICY EVALUATION WORKSHEET

Suggestions:

Two types of measures may be used in answering the questions on the worksheet. Responses may include qualitative measures, quantitative measures, or both, depending on the nature of the question and on available information.

Quantitative Measures --

Whenever possible, potential effects should be quantified, using appropriate analytic techniques. Quantification of effects provides information that is reproducible and that may be easily compared with results from the analysis of alternative proposals.

A number of effects in each category may be identified in quantitative terms, either with estimated ranges or in specific figures. This may include measures such as number of jobs created or lost; amount of energy produced or saved (in Btu, MW, Kwh, and other units); gallons or acre feet of water used or saved; micrograms per cubic meter of pollutants increased or reduced; and so on. Other measures may be monetary, including dollar costs of a project or program; changes in the price of energy products; changes in income, etc. It is also possible to measure certain externalities, such as environmental effects, in monetary terms. Generally, cost-benefit analysis is used to identify and evaluate the monetary effects of a given proposal. It may be necessary and appropriate, if time and resources allow, for a cost-benefit analysis to be completed for the proposal being evaluated. Pages 64 and 65 briefly describe the techniques behind cost-benefit analysis and present a simple numeric example.

When using quantitative measures, be sure to list and describe any assumptions used in answering the questions.

Qualitative Measures --

Qualitative analysis relies on detailed descriptions of potential effects rather than on monetary or other figures.

Not all costs and benefits are easily quantified. In certain cases, time constraints or lack of resources or information may limit the ability to measure certain effects. For example, suppose that proposed legislation is promoting research on coal conversion technologies that are expected to greatly improve efficiency. Precise figures on potential energy savings may not be available at the time the proposal is being reviewed. A description of the potential effects, without identifying specific values, may be all that time and resources allow. If legislators desire more detailed information, a cost-benefit analysis or a technical study may be needed before a decision can be made on the proposal.

ENERGY POLICY EVALUATION WORKSHEET

Many potential effects cannot be described in quantitative terms. This does not mean, however, that the effects are not important for consideration in the analysis of a legislative proposal. For example, the magnitude of effects on lifestyles and cultures, environmental effects such as impacts on wildlife, and many other potential effects may not be readily quantified, but their existence may have important implications for the acceptability of the proposal.

Use of qualitative analysis enhances available information by identifying or "flagging" environmental or other potential effects of proposed energy legislation. It can therefore be an important part of the decision making process. When describing potential effects in qualitative terms, be sure to identify that qualitative assessments have been made and describe any assumptions used in answering the questions.

ENERGY POLICY EVALUATION WORKSHEET

EVALUATION CATEGORIES

A. ENERGY EFFECTS

- 1. If the proposed legislation addresses a specific project, identify and describe the total dollar costs for the project, including costs of capital, production and operating costs, maintenance costs, etc. Please include the present value of future streams of costs, when possible (see Appendix).**

- 2. Identify and describe the amount of energy (in Btu, MW, Kwh, or other units) expected to be produced or saved as a result of the proposed legislation.**

- 3. Describe the expected time frame in which the potential energy production or savings will be realized. (Include estimated starting date for energy production or savings and estimated duration of future streams of production or savings.)**

ENERGY POLICY EVALUATION WORKSHEET

7. **Identify and describe any benefits the proposed legislation may have from an energy research, development, and demonstration perspective.**

B. ENVIRONMENTAL EFFECTS

1. **Identify and describe the potential effects of the proposed legislation on air quality.**

2. **Identify and describe the potential effects of the proposed legislation on water quality and quantity, both surface and underground.**

ENERGY POLICY EVALUATION WORKSHEET

- 3. Identify and describe how the proposed legislation may affect existing water rights. Include, if necessary, a description of the amount of water (in acre feet or other units) needed in the given proposal and an identification of potential changes in direct and indirect water use.**

- 4. Identify and describe the potential effects of the proposed legislation on wildlife populations and habitats.**

- 5. Identify and describe the potential effects of the proposed legislation on land use.**

ENERGY POLICY EVALUATION WORKSHEET

6. **Identify and describe any other potential environmental effects of the proposed legislation, such as impacts on noise pollution, public health and safety, etc.**

7. **Identify and describe how the proposed legislation may affect the possible alternative uses for natural resources in the short-term and the long-term. Include a description of resources used and identify the potential alternative uses for those resources.**

C. ECONOMIC EFFECTS

1. **Identify and describe how the proposed legislation may affect local, state, and regional jobs in the short-term and long-term. Specify the number of jobs that may be created or lost as a result of the proposal and the sector or industry where each change will occur.**

ENERGY POLICY EVALUATION WORKSHEET

- 2. Identify and describe how the proposed legislation may affect local, state, and regional income in the short-term and long-term. Specify which groups may experience increases in income as a result of the proposal and which groups may experience decreases.**

- 3. Identify and describe the potential effects of the proposed legislation on energy prices.**

- 4. Identify and describe how changes in the price of the energy product may affect the competitiveness of the energy producer.**

ENERGY POLICY EVALUATION WORKSHEET

- 2. Identify and describe the short-term and long-term implications and the associated costs of the proposed legislation to state and local government services. This may include effects on operating expenses, capital outlay, local assistance/grants, benefits and claims, etc.**

- 3. Identify and describe any potential barriers to the implementation of the proposed legislation, including provisions in existing laws, regulations, or programs.**

- 4. Identify and describe any additional federal, state, and local tax incentives or subsidies that may be needed to implement the proposed legislation. Include, if possible, an indication of how sensitive the proposal might be to changes in future and existing incentives and subsidies.**

E. SOCIAL EFFECTS

1. Identify and describe the potential impact of the proposed legislation on human populations, lifestyles and cultures.

F. DISTRIBUTION OF EFFECTS

1. Identify and describe in detail different income groups, sectors of the economy, and geographic areas that would be affected by the proposed legislation.

COST-BENEFIT ANALYSIS

Some costs and benefits, both direct and indirect, can be measured in monetary terms. The monetary measurement of costs and benefits is one way to evaluate and compare proposals. This section briefly explains the techniques used for a simple cost-benefit analysis. Included is a simple numeric example which illustrates the calculation of results. A more detailed cost-benefit analysis may be needed for a some proposals.

Cost-benefit analysis allows for the potential monetary costs and benefits over different time horizons to be identified. This time element is important for several reasons. A proposed project or program may not generate benefits for several years, although its costs may be realized almost immediately. A benefit received 5 years from now has a lower economic value than a benefit received this year. Similarly, an expenditure incurred this year has a higher economic cost than the same expenditure incurred 5 years from now, because resources involved could be used in the meantime for other purposes. A "discount rate" is used to account for costs and benefits of a project over time.

The basic formula for calculation of the present value of a future stream of costs or revenues is the following:

$$\text{The present value of } R_t = R_t (1 + i)^{-t}.$$

$$\text{The present value of } C_t = C_t (1 + i)^{-t}.$$

Where t = year in which the cost or revenue is realized
(starting with 0 for initial outlay).

R_t = the revenue figure for year t .

C_t = the cost figure for year t .

i = the discount rate of interest.

The total net present value (NPV) of a given proposal is found by summing the present values of costs and revenues over each year in the life of the project or program and subtracting the total present worth of the costs from that of the revenues.

$$\text{NPV} = \sum_t R_t (1 + i)^{-t} - \sum_t C_t (1 + i)^{-t} \quad \text{for each year } t \text{ in the life of the project or program.}$$

The value of the discount rate used in the analysis can vary. Generally, a higher discount rate lowers the present worth of a future stream of costs and benefits. If the rate of discount is 10 percent, for example, the present value of a cost of \$100 which will not be incurred until next year or a benefit of \$100 which will not be received until next year is $\$100(1 + 0.1)^{-1} = \$100/(1.1) = \$90.91$. Similarly, a cost or revenue of \$100 two years from now would have a present value of $\$100(1.1)^{-2} = \$100/(1.21) = \$82.64$. If a discount rate of 4 percent were used, the present value of \$100 one year from now would be $\$100/(1.04) = \96.15 . Lower discount rates are often used if there are potential social costs or benefits

which may be missed by the monetary measurement of the benefit and cost streams. More projects or programs may appear viable given a lower discount rate. The higher discount rate is used primarily to assess a proposal on more stringent terms.

Example of a simple cost-benefit analysis:

(in thousands of dollars)

Year	Costs			Benefits			Present Costs	Worth (10%) Benefits
	(1)	(2)	Total	(1)	(2)	Total		
0	50	0	50	0	0	0	50.00	0
1	75	0	75	0	0	0	68.18	0
2	0	10	10	45	15	60	8.26	49.58
3	0	10	10	40	10	50	7.51	37.56
4	0	10	10	34	6	40	6.83	27.32
5	0	10	10	30	2	32	6.20	19.86
6	0	10	10	25	1	26	5.64	14.68
7	0	10	10	20	0	20	5.13	10.27
Total							157.75	159.27

Net Present Worth = \$1.52 thousand dollars (the difference between the Total Present Worth of Benefits and Costs).

NOTE: These figures were arbitrarily chosen for illustrative purposes.

Results of cost-benefit analysis for the proposed legislation (use additional pages if necessary):

EFFECTS SUMMARY TABLE

DIRECTIONS: Using the information in the Policy Evaluation Worksheet, summarize the potential effects of the proposed legislation as completely as possible in the space provided.

DESCRIPTION OF THE PROPOSAL:

COSTS AND BENEFITS	SUMMARY OF EFFECTS
A. ENERGY EFFECTS	
1. Potential Energy Production Potential Energy Savings	
2. Time Period of Expected Production of Savings	
3. Risks and Uncertainties	
4. Impacts on Energy Reliability	
5. Impacts on Energy Security	
6. Energy Research and Development Benefits	
7. Total Project Dollar Costs	
B. ENVIRONMENTAL EFFECTS	
1. Effects on Air Quality	
2. Effects on Water Quality Effects on Water Quantity	

COSTS AND BENEFITS	SUMMARY OF EFFECTS
B. ENVIRONMENTAL EFFECTS (Continued)	
3. Effects on Existing Water Rights	
4. Effects on Wildlife Populations and Habitats	
5. Effects on Land Use	
6. Other Environmental Effects (Specify):	
7. Effects on Alternative Resources Uses	
C. ECONOMIC EFFECTS	
1. Impacts on Local, State and Regional Jobs Specific Sectors Affected	
2. Effects on Local, State and Regional Income Specific Income Groups Affected	
3. Impacts on Energy Prices	
4. Impacts on Competitiveness of Energy Producers	
5. Impacts on Competitiveness of Non-Residential Users	
6. Effect on Affordability of Energy to Consumers	

COSTS AND BENEFITS	SUMMARY OF EFFECTS
D. FISCAL IMPACTS	
1. Change in Local and State Tax Revenue Change in Local and State Expenditures	
2. Impacts on Government Services	
3. Barriers to Implementation	
4. Additional Federal, State, Local Tax Incentives/Subsidies Needed	
E. SOCIAL EFFECTS	
Effects on Populations, Lifestyles and Cultures	
F. DISTRIBUTION OF EFFECTS	
Who Benefits (Specify)	
Who Pays (Specify):	
ADDITIONAL NOTES OR COMMENTS:	

APPENDIX F

EQC RESIDENTIAL ENERGY EFFICIENCY WORKING GROUP **PARTICIPANTS**

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Duane Broadbent, Central MT Electric Power Co-op

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Gary Mahugh, Flathead Electric Co-op.

Janeth Martin, Co-Chair Montana Banking Association Real Estate Committee

Tom Marvin, Montana Local Government Energy Office

Mack McConnell, Montana Electric Co-op Association

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Denise Peterson, PSC

C. Eugene Phillips, Pacific Power and Light

John Ralph, Montana Power Company

Shiela Rice, Great Falls Gas Company

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APPENDIX G

MONTANA ENERGY LAW SURVEY

INTRODUCTION

The Project

The Montana Energy Law Survey (the "Survey") was prepared for the Montana Environmental Quality Council by the law firm of Murphy, Robinson, Heckathorn & Phillips, P.C. of Kalispell, Montana. The project was funded in part by a grant from the Northwest Power Planning Council and was designed chiefly to assist the Environmental Quality Council in carrying out its mandate of formulating recommendations to the Montana Legislature to assist the Legislature in its task of forging energy policy for Montana's future.

The process of converting Montana's bountiful natural resources into energy is influenced by a multitude of constitutional provisions, statutes, and administrative regulations. Some have a profound and direct influence on energy production, while the impact of others is less immediate. The Montana Energy Law Survey is a compendium of those provisions of the Montana Constitution, statutes, and administrative rules which most directly impact the process of converting the state's resources into energy. Some degree of editorial license has been exercised in determining just where the line was to be drawn between those provisions of Montana law which directly influence energy production (and are thus included in the Survey) and those the impacts of which are tangential (and are thus not included). In exercising that editorial license, particular consideration was given to two other related projects; *viz*: the Environmental Quality Council's Montana Index of Environmental Permits (8th Ed. 1991) and the Montana Environmental Law Handbook prepared by the Billings law firm of Crowley, Haughey, Hanson, Toole & Dietrich. Because of the existence of these two comprehensive works on Montana's environmental laws and regulations, the Montana Energy Law Survey, with certain exceptions (most notably the Major Facility Siting Act), does not include extensive consideration of Montana's major environmental acts and their implementing rules and regulations. Nonetheless, it must be borne in mind in considering Montana's energy-related law that a significant role is played by environmental legislation. The most significant of these environmental enactments is the Montana Environmental Protection Act, discussed in the paragraphs which follow.

Environmental Considerations - MEPA

The Montana Environmental Policy Act, Section 75-1-101, et seq., Montana Code Annotated (MCA), commonly referred to as MEPA, is a legislative mandate that each state agency consider the environmental implications of its actions, and in any case in which the actions of the agency may have an impact on the human environment, the agency must undertake some form of environmental review. In conducting that environmental review, the agencies are required to employ an inter-

disciplinary approach designed to insure the coordinated use of the natural and social sciences and the environmental design arts. Depending on the potential environmental impacts of the proposed action, the involved agency must prepare either an environmental assessment (EA) or a more comprehensive environmental impact statement (EIS).

MEPA's requirements have important consequences for energy development as they apply not only to actions initiated by an agency of state government, but also to any private sector energy project which requires a permit from the state and has the potential to impact the environment. Accordingly, consideration of MEPA must be given with regard to any energy related project in Montana which requires action by the state. To implement MEPA's mandate, those agencies which have substantial regulatory authority with respect to energy and environmental matters have adopted a largely uniform set of model rules for MEPA's implementation and to assure its interdisciplinary application.⁴

Organization of the Survey

The Montana Energy Law Survey is for the most part organized by resource (e.g., coal, oil and gas, etc.), with, in addition, chapters addressed specifically to electric energy, conservation, and Public Service Commission regulation. The resources are broadly grouped as follows: Chapter 1 -- "Non-Renewable Resources" comprised of coal, oil and gas, and uranium; and Chapter 2 -- "Renewable Resources" which include hydroelectric, solar, wind, geothermal, biomass, and cogeneration.

The decision to devote a separate chapter to electric energy was influenced by the notion that energy production from many, if not all, of Montana's natural resources may at some point take the form of electric energy. In many instances, depending upon that phase in the energy production process at which a resource is converted to electric energy, resource distinctions, whether from a technical or legal point of view, are no longer significant. Thus, the subject of electric energy was given separate treatment in its own chapter.

Energy conservation receives its own individual treatment in Chapter 4. The growing significance of conservation as an alternative to the conversion of more and more scarce natural resources into energy seemed to warrant a special chapter for the topic. Finally, the role of the Public Service Commission and its regulatory function as it pertains to energy-producing utilities doing business in this state dictated that at least an overview of the Commission's role in energy production should be included. Thus, it too was given separate treatment in its own chapter; the final chapter of the Survey, Chapter 5.

⁴ Model Rules for Mepa's implementation have been adopted by the following agencies: Department of Agriculture: ARM 4.2.312, et seq.; Department of Fish, Wildlife and Parks: ARM 12.2.428, et seq.; Department of Health and Environmental Sciences: ARM 16.2.601, et seq.; Department of Transportation: ARM 18.2.235, et seq.; Department of State Lands: ARM 26.2.628, et seq.; Department of Natural Resources and Conservation: ARM 36.2.521, et seq.

Using the Survey

Citations to statutes and rules in the Survey are in most instances to the first statute or rule in a series of related provisions. In the case of statutes, generally the citation is to the first statute of a chapter part. In some instances, however, the citation may be to an entire chapter without separation into its parts, or to a specific section. In the case of rules, generally the citation is to the first rule of the relevant sub-chapter. Appropriately, the Latin phrase "et sequitur" (et seq.) or "and following" would appear after each citation. However, for simplicity, the "et seq." reference has been deleted.

The descriptions of the statutory or regulatory provisions are distillations of what in many instances are lengthy and complex legislative enactments and regulatory schemes. The aim of that process of distillation was to highlight the features of the relevant provisions with a particular eye toward their impact on the subject of energy production. In order to assure comprehensive understanding of the statutory or regulatory scheme involved, the Survey is no substitute for resort to the provisions themselves, and consideration of the full text of the provisions should in each case be undertaken before relying on the Survey. As is the case with the Environmental Quality Council's Index of Environmental Permits: "This document summarizes portions of Montana law that deal with the use and development of the State's natural resources. It is not, however, a legal document and should not be relied on exclusively to determine legal responsibilities." Montana's Index of Environmental Permits (8th Ed. 1991), at page vii.

Murphy, Robinson, Heckathorn & Phillips
Donald R. Murray
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CHAPTER 1 - NONRENEWABLE RESOURCES

Part 1 COAL

1.1.1 EXPLORATION

Montana Code Annotated (MCA)

77-3-301 Authorizes the Board of Land Commissioners to lease state lands for the purposes of coal exploration and mining; imposes certain limitations and requirements on coal mining leases and provides for the disposition of royalties and other revenues.

Administrative Rules of Montana (ARM)

26.2.201 General rules for leasing for mineral exploration and development, and for licensing and permitting for other uses of state lands.

26.2.401 Fee schedule for applications for and leases and easements on state lands.

26.3.301 Rules governing issuance of coal leases on state lands.

1.1.2 PRODUCTION, DEVELOPMENT AND ENVIRONMENTAL REGULATION

Constitutional Provisions

Article IX, Section 2

Constitutional provision which requires that all lands which are disturbed by the taking of natural resources be reclaimed. Requires the legislature to provide effective requirements and standards for reclamation of these disturbed lands. Also mandates that the legislature establish the resource indemnity trust, which is to be funded by taxes imposed on the extraction of natural resources. The principal of the resource indemnity trust is required, under this section, to remain inviolate in the amount of one hundred million dollars.

Montana Code Annotated (MCA)

- 7-8-2233 Provisions regulating coal leasing by local governments on lands owned or acquired by political subdivisions. Restricts the duration of leases to a period of 10 years, or so long as coal is being mined in commercial quantities.
- 50-73-101 The "Montana Coal Mining Code"; imposes certain duties regarding safety requirements to be administered by the Department of Labor and Industry. The Department of Labor and Industry is authorized to adopt rules necessary to carry out the provisions of this chapter and to ensure compliance with safety standards for coal mines located within the State of Montana. Imposes requirements on mine operators pertaining to maps, surveys and boundary lines, and provides for inspections of facilities.
- 75-2-101 The "Clean Air Act of Montana"; a permitting process administered primarily by the Department of Health and Environmental Sciences to assure compliance with the ambient air and emission standards which may apply to fossil-fuel burning energy facilities.
- 75-5-101 The "Montana Water Quality Act"; implements a policy of conserving water resources and protecting water quality; establishes a permitting process administered by the Department of Health and Environmental Sciences for discharge of mining and industrial waste water; provides for enforcement, appeals and penalties for violations of standards.
- 75-20-101 The "Montana Major Facility Siting Act"; the policy and purpose of which is to assure a clean and healthful environment and to prevent the unreasonable depletion and degradation of the state's natural resources, implements a certification process, administered primarily by the Departments of Natural Resources and Conservation and Health and Environmental Sciences, for any new construction or modification of an energy conversion facility. "Facilities," with certain exceptions, are defined as any plant, unit or other facility having certain specified minimum capabilities. (In the case of coal, facilities generating in excess of 50 megawatts of electricity or utilizing or converting in excess of 500,000 tons of coal per year, or having an estimated cost in excess of \$10 million, are subject to the provisions of the Act. There is a specific

exemption for facilities subject to the Montana Strip and Underground Mine Reclamation Act in 75-20-104(10)(a).)

- 77-3-301 Authorizes the Board of Land Commissioners to lease state lands for the purposes of coal exploration and mining; imposes certain limitations and requirements on coal mining leases and provides for the disposition of royalties and other receipts.
- 82-4-101 The "Strip and Underground Mine Siting Act"; authorizes the Department of State Lands to review and regulate new strip-mine and underground-mine site location and reclamation plans. Imposes permit requirements for strip and underground mines, and provides for the termination and suspension of permits for noncompliance with this part.
- 82-4-201 The "Montana Strip and Underground Mine Reclamation Act"; creates a permitting process for strip and underground coal mining administered by the Department of State Lands; permit applications must contain comprehensive reclamation plans for all affected lands; investigative and enforcement powers are given to the Department.
- 90-6-201 Establishes a special fund ("local impact account") to provide grants and loans to assist local governments in dealing with the impacts of large-scale development of coal mines and coal burning energy facilities.

Administrative Rules of Montana (ARM)

- 8.101.101 Implements the policy of Section 90-6-201, et seq., MCA, establishing a coal board to assist local governments deal with impacts from the development of large-scale coal mining and coal burning energy facilities.
- 12.5.101 Sets forth Montana Fish & Game Commission statement of policy relative to coal mining.
- 16.2.501 Department of Health and Environmental Sciences rules for administering the "Major Facility Siting Act."
- 16.8.101 Rules and regulations implementing the "Clean Air Act of Montana."
- 16.20.601 Rules and regulations implementing surface and water quality statutes ("Montana Water Quality Act").

26.2.201	General rules for leasing for mineral exploration and development and for licensing and permitting for other uses of state lands.
26.2.401	Fee schedule for applications for and leases and easements on state lands.
26.2.501	Rent and royalty charges for oil and gas, coal and uranium leases on state lands.
26.3.301	Rules governing issuance of coal leases on state lands.
26.4.301	Rules implementing the "Montana Strip and Underground Mine Reclamation Act."
26.4.1801	Rules implementing the "Strip and Underground Mine Siting Act."
36.7.301	DNRC rules for administering the "Major Facility Siting Act."

1.1.3 TAXATION AND FISCAL PROGRAMS

Constitutional Provisions

Article IX, Section 2

See Section 1.1.2, supra.

Article IX, Section 5

Constitutional provision providing for the creation of the coal severance tax trust fund; requires the legislature to dedicate not less than one-fourth of the coal severance tax to the trust, from which interest and income may be appropriated. This provision also requires that the trust principal remain intact unless appropriated by three-fourths of the members of each house of the legislature. One half (50%) of the severance tax has been dedicated to the coal severance tax trust fund since December 31, 1979.

Montana Code Annotated (MCA)

5-18-201 Establishes the coal tax oversight subcommittee of the revenue oversight committee, which may: (1) review programs financed by coal severance tax funds; and, (2) consider any matters relating to coal taxation; and must,

under this section: (1) report and make recommendations to the revenue oversight committee; and (2) prepare a report to the legislature on potential uses of the coal tax trust fund.

- 15-6-208 Provides an exemption from property taxation of one-half the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal per year.
- 15-23-701 The coal gross proceeds tax; provides for a system of reporting by producers and allocation of the tax by the Department of Revenue to local governments; directs county assessors to tax coal gross proceeds at 5% of reported value.⁵
- 15-24-2301 Procedural requirements for obtaining a clean coal technology tax exemption; under this chapter, the buildings, facilities, and equipment installed under a clean coal technology project are eligible for a property tax exemption. Projects must qualify as clean coal technology projects to be eligible for the exemption, and are subject to certain notice and hearing requirements.
- 15-35-101 The coal mine severance tax; imposes a severance tax on coal mine operators which is computed on each quarter year's worth of production as shown on forms provided by the Department of Revenue. Contains the formula by which the tax is to be computed; rates are based on the heating quality of the coal and the amount of coal produced. Also provides incentives in the form of tax credits for new coal production.⁶
- 15-38-101 The "Montana Resource Indemnity Trust Act"; the purpose of which is to indemnify the citizens of Montana for the loss of long term value resulting from the depletion of Montana's mineral resource base and for damage caused by mineral development. This section establishes a permanent resource indemnity trust, funded through revenues generated from a tax levied on mineral extraction. Proceeds from the trust are to be expended for the purpose of protecting and restoring the environment from damages resulting from mineral development, and supporting a variety of economic development programs to benefit Montana and its citizens.

⁵ See Page 124 for the specific rates and details of the coal gross proceeds tax.

⁶ See Page 125 for the specific rates and details of the coal mine severance tax.

Contains provisions which specify the amount of tax to be paid on different types of mineral production.

- 17-6-301 The "Montana In-State Investment Act of 1983"; expresses legislative policy and purposes of the permanent coal tax trust fund, which are to: (1) compensate future generations for the depletion of resources caused by coal development; and (2) to develop a strong economy for Montana. States that the Board of Investments shall endeavor to invest up to 25% of the fund in the Montana economy, with special emphasis on local enterprises. This section also sets forth authorized investments, limitations on investments, and preferences for investments of revenue from the coal tax trust fund.
- 30-14-701 Sets forth prohibitions against certain fraudulent acts in connection with the finances of mining and oil companies, including (1) failure to spend at least 75% of the money raised from the sale of public securities on either the actual operation and development of the oil or mining property, or on the construction of treating plants or payments on state property; (2) failure to apply net earnings to either a reserve fund, the distribution of dividends, the liquidation of bona fide indebtedness, or reasonable development of the properties; or (3) operating holding companies so as to deprive stockholders of the parent company of their interest in its earnings.
- 90-2-101 "Renewable Resource Development Loans, Grants and Bonds"; authorizes the use of revenues from taxation of nonrenewable energy sources for the purpose of investing in an account from which loans and grants may be made to encourage the development of programs utilizing renewable resources and as compensation for the depletion of non-renewable resources.
- 90-2-1101 "Reclamation and Development Grants Program Act"; authorizes the Department of Natural Resources and Conservation to fund projects which will indemnify the people of Montana against the effects of coal and other mineral development, and to repair and mitigate environmental damage resulting from the extraction of non-renewable resources.
- 90-4-901 Creates the "clean coal technology demonstration fund," which is funded by money which would otherwise be deposited in the coal severance tax fund, the principal

received from the repayment of loans made from the fund, and from any other source determined by the legislature. Requires the DNRC to make clean coal technology demonstration loans for qualifying clean coal technology projects authorized by the legislature, and establishes eligibility requirements for obtaining loans.

Administrative Rules of Montana (ARM)

- | | |
|------------|---|
| 36.18.101 | DNRC rules for administering the program of "Renewable Resource Development Loans, Grants and Bonds" established by Part 1 of Chapter 2 of Title 90. |
| 36.19.101 | Rules for administering the "Reclamation and Development Grants Program Act." |
| 42.21.132 | Provides that all machinery and equipment used in the mining process shall be classified as class 8 property for property tax purposes; and establishes a depreciation formula. |
| 42.25.501 | Rules implementing the gross proceeds tax on the production of coal. |
| 42.25.1701 | Rules implementing the credit against the coal severance tax for consumption and production of coal. |
| 42.32.101 | Rules implementing the "Montana Resource Indemnity Trust Act." |

Part 2
OIL and NATURAL GAS

1.2.1 EXPLORATION

Montana Code Annotated (MCA)

- 77-3-401 Authorizes the Board of Land Commissioners to lease state lands for the purposes of oil and gas exploration and production; imposes certain limitations and requirements on oil and gas leases and generally empowers the Board with broad authority over oil and gas leasing and production on state lands.
- 82-1-101 Imposes registration, bonding, and filing requirements on entities engaging in seismic exploration in the state of Montana. Also requires the Board of Oil and Gas Conservation to adopt rules: (1) requiring adequate identification of seismic exploration crews operating within Montana; (2) designating areas where seismic activities will not be allowed; and (3) regulating the plugging and abandonment of seismic shot holes.

Administrative Rules of Montana (ARM)

- 12.5.401 Procedures for oil and gas exploration, leasing and production on lands under the control of the Department of Fish, Wildlife & Parks.
- 26.2.201 General rules for leasing for mineral exploration and development and for licensing and permitting for other uses of state lands.
- 26.2.401 Fee schedule for applications for, and leases and easements on state lands.
- 26.3.201 Rules governing issuance of oil and gas leases on state lands.
- 36.22.101⁷ Chapter 22 of Title 36, ARM, contains the Department of Natural Resources and Conservation rules which govern the

⁷ DNRC rules governing the operation of the Board of Oil and Gas Conservation appear in Chapter 22, Title 36 of the Administrative Rules of Montana. Those rules have recently undergone substantial revision. The most recent rule revisions will be effective July 30, 1992. The rules for the Underground Injection Control program will become final the day after primacy of the UIC program is delegated to the state by the U.S. Environmental Protection Agency.

organization and operation of the Board of Oil and Gas Conservation. Subchapters 1 and 2 contain the Board's organizational and procedural rules; Subchapter 3 sets forth some general and definitional provisions; Subchapter 5 pertains to seismic exploration; Subchapter 6 to drilling permits; Subchapter 7 to well spacing; Subchapter 10 to drilling; Subchapter 11 to safety; Subchapter 12 to production; Subchapter 13 to abandonment and plugging of wells and surface restoration; and Subchapter 16 contains rules for the implementation of the federal "Natural Gas Policy Act of 1978."

- 36.22.501 Rules for the regulation of seismic exploration activities by the Board of Oil and Gas Conservation.
- 36.22.601 Board of Oil and Gas Conservation rules for obtaining permits for test wells.

1.2.2 PRODUCTION, DEVELOPMENT AND ENVIRONMENTAL REGULATION

Constitutional Provisions

Article IX, Section 2

Constitutional provision requiring that all lands which are disturbed by the taking of natural resources be reclaimed. Requires the legislature to provide effective requirements and standards for reclamation of these disturbed lands. Also mandates that the legislature establish the resource indemnity trust, which is to be funded by taxes imposed on the extraction of natural resources. The principal of the resource indemnity trust is required, under this section, to remain inviolate in the amount of one hundred million dollars.

Montana Code Annotated (MCA)

- 30-14-801 Provisions of the "Montana Retail Motor Fuel Marketing Act" setting forth prohibitions against certain unfair trade practices.
- 75-2-101 The "Clean Air Act of Montana"; a permitting process administered primarily by the Department of Health and Environmental Sciences to assure compliance with both ambient air and emission standards which may apply to fossil-fuel burning energy facilities.

- 75-5-101 The "Montana Water Quality Act"; implements a policy of conserving water resources and protecting water quality; establishes a permitting process administered by the Department of Health and Environmental Sciences for discharge of mining, drilling, and industrial waste water; provides for enforcement, appeals and penalties for violations of standards.
- 75-11-301 Establishes a fund administered by the petroleum tank release compensation board for clean up of petroleum tank release sites.
- 75-20-101 The "Montana Major Facility Siting Act"; the policy and purpose of which is to assure for present and future generations a clean and healthful environment and to prevent the unreasonable depletion and degradation of the state's natural resources. Implements a certification process, administered primarily by the Departments of Natural Resources and Conservation and Health and Environmental Sciences, for any new construction or modification of an energy conversion facility. "Facilities," with certain exceptions, are defined as any plant, unit or other facility (including "associated facilities" which include pipelines and storage facilities) having certain specified minimum capabilities. (In the case of oil and gas, a special exception is made in 75-20-104(10)(a), MCA, for crude oil and natural gas refineries.)
- 77-3-401 Authorizes the Board of Land Commissioners to lease state lands for the purposes of oil and gas exploration, drilling and production; imposes certain operational requirements on oil and gas leases and provides for the disposition of royalties and other revenues.
- 82-10-201 Authorizes the lease of local government-owned lands for oil and gas leasing and development, and authorizes local governments to enter into pooling agreements with others.
- 82-10-301 Provides that it is the policy of the state that the conservation of natural gas by means of underground storage, and the creation of reserves of stored natural gas are in the public interest; gives natural gas public utilities the power of eminent domain in order to develop underground reservoirs, and outlines a certification procedure administered by the Board of Oil and Gas Conservation.

- 82-10-401 Requires that notice be given to the surface owner before any oil or gas well can be plugged or abandoned; requires the Board of Oil and Gas Conservation to maintain a record of plugged and abandoned oil and gas wells in the state.
- 82-10-501 Establishes a procedure for the compensation by means of "surface damage disruption payments" to the surface owner of lands disturbed by oil and gas drilling operations; imposes liability on the part of the oil and gas developer or operator for damages to property; provides a procedure for the settlement of surface damage claims.
- 77-3-501 Authorizes the Board of Land Commissioners to enter into leases for the underground storage of natural gas on state lands; requires that bonds be posted by lessees; specifies a maximum lease term of twenty years and establishes a procedure for cancellation or termination of leases.
- 82-11-101 Provides for the regulation of oil and gas development by the Board of Oil and Gas Conservation; sets forth the powers and duties of the Board; establishes requirements for oil and gas operations; authorizes the Board of Oil and Gas Conservation to establish well spacing units and plans for unit operations. Directs the State of Montana to become a member of the Interstate Compact to Conserve Oil and Gas, and sets forth provisions of the Compact.
- 82-15-101 Provides for the regulation of dealers of petroleum products by the Department of Commerce; establishes license requirements and inspection procedures, and proscribes certain acts, including price discrimination, in connection with the sale of petroleum products.
- 85-2-303 Water right permit requirements for conversion of nonproductive oil and gas wells.

Administrative Rules of Montana (ARM)

- 12.5.102 Sets forth Montana Fish & Game Commission statement of policy relative to natural resource development.
- 12.5.401 Procedures for oil and gas exploration, leasing and production on lands under the control of the Department of Fish, Wildlife & Parks.
- 16.2.501 Department of Health and Environmental Sciences rules for administering the "Major Facility Siting Act."

16.8.101	Rules and regulations implementing the "Clean Air Act of Montana."
16.20.601	Rules and regulations implementing surface and ground water quality statutes under the "Montana Water Quality Act."
26.2.201	General rules for leasing for mineral exploration and development and for licensing and permitting for other uses of state lands.
26.2.401	Fee schedule for applications for and leases and easements on state lands.
26.2.501	Rent and royalty charges for oil and gas, coal and uranium leases on state lands.
26.2.502	Minimum fees for pipeline and electric transmission line easements on state lands.
26.3.201	Rules governing issuance of oil and gas leases on state lands.
36.7.901	DNRC rules for administering the "Major Facility Siting Act."
36.22.101	General provisions establishing the Board of Oil and Gas Conservation and implementing its regulatory purposes.
36.22.601	Requirements for permits for oil and gas test or producing wells.
36.22.701	Regulation of well spacing in drilling units.
36.22.1001	Rules regulating method of drilling oil and gas wells and disposal of solid drilling waste; and imposing reporting requirements.
36.22.1201	Rules regulating production of oil and gas by the Board of Oil and Gas Conservation; reporting and producer certification requirements.
36.22.1301	Regulations for the abandonment and plugging of wells, and surface reclamation.
36.22.1601	Regulations implementing the Natural Gas Policy Act of 1978.

1.2.3 TAXATION AND FISCAL PROGRAMS

Constitutional Provisions

Article IX, Section 2

Constitutional provision which requires that all lands which are disturbed by the taking of natural resources be reclaimed. Requires the legislature to provide effective requirements and standards for reclamation of these disturbed lands. Also mandates that the legislature establish the resource indemnity trust, which is to be funded by taxes imposed on the extraction of natural resources. The principal of the resource indemnity trust is required, under this section, to remain inviolate in the amount of one hundred million dollars.

Montana Code Annotated (MCA)

- | | |
|-----------|---|
| 7-12-4102 | Authorizes cities and towns to create special improvement districts to aid in the construction of natural gas and electric distribution lines. |
| 7-13-2101 | Authorizes counties to permit use of highway right of way for natural gas transmission lines. |
| 15-23-601 | The oil and gas net proceeds tax; provides for a tax on the net proceeds from the sale of oil and gas produced from any well during the preceding calendar year. Section 15-23-612 provides for an exemption from the tax for certain "new production," which means the production of natural gas, petroleum, or other crude or mineral oil from any well drilled after June 30, 1985, or that has not produced natural gas, petroleum, or other crude or mineral oil during the five years immediately preceding the first month of qualified new production. ⁸ |
| 15-36-101 | The oil and natural gas severance taxes; provides for state and local government severance taxes on the gross value of petroleum and other mineral crude oil and natural gas. Also provides for the allocation of tax revenue to state and local |

⁸ See Page 126 for the specific rates and details of the oil and gas net proceeds tax.

governments with certain exemptions and incentives for new production.⁹

- 15-38-101 The "Montana Resource Indemnity Trust Act"; the purpose of which is to indemnify the citizens of Montana for the loss of long term value resulting from the depletion of Montana's mineral resource base and for damage caused by mineral development. This section establishes a permanent resource indemnity trust, funded through revenues generated from a tax levied on mineral extraction. Proceeds from the trust are to be expended for the purpose of protecting and restoring the environment from damages resulting from mineral development, and supporting a variety of economic development programs to benefit Montana and its citizens. Contains provisions which specify the amount of tax to be paid on different types of mineral production.
- 15-70-101 Gasoline license and special fuels tax; general provisions relating to gasoline and vehicle fuels taxes. Provides for a basic gasoline license tax with a rate of 1 cent per gallon for each gallon of aviation fuel and 20 cents per gallon for each gallon of other types of fuel. This Part also imposes a tax on the use of diesel and other special fuels, and establishes licensing requirements for special fuels dealers. Under this Part, diesel fuel is taxed at a rate of 20 cents per gallon, and compressed natural gas is taxed at a rate of 7 cents per 120 cubic feet. This Part also contains the "Alcohol Tax Incentive and Administration Act of 1983."
- 15-71-101 Provides for a tax on motor vehicles propelled by liquefied petroleum gas.
- 30-14-701 Sets forth prohibitions against certain fraudulent acts in connection with the finances of mining and oil companies, including (1) failure to spend at least 75% of the money raised from the sale of public securities on either the actual operation and development of the oil or mining property, or on the construction of treating plants or payments on state property; (2) failure to apply net earnings to either a reserve fund, the distribution of dividends, the liquidation of bona fide indebtedness, or reasonable development of the properties; or (3) operating holding companies so as to deprive stockholders of the parent company of their interest in its earnings.

⁹ See Pages 135 and 137 for the specific rates and details of the state oil and gas severance tax, and Page 139 for the local government severance tax.

- 77-3-401 Authorizes the Board of Land Commissioners to lease state lands for the purposes of oil and gas exploration and production; imposes certain limitations and requirements on oil and gas leases and generally empowers the Board with broad authority over oil and gas leasing and production on state lands.
- 82-10-101 Regulates the payment of royalties of oil and gas lessees and producers to the owners of oil and gas royalty interests; gives owners of royalty interests certain remedies, including the right to an accounting, and requires that certain information be provided by the oil and gas producer upon making royalty payments.
- 82-11-101 Provides for the regulation of the industry by the Board of Oil and Gas Conservation. The Board of Oil and Gas Conservation is given broad regulatory authority with respect to such matters as rule making, operations, well spacing, pooling and unit operations, and is the state agency designated to participate on behalf of the State of Montana in the implementation of the Natural Gas Policy Act of 1978.
- 82-11-131 The oil and gas privilege and license tax; authorizes the imposition of a privilege and license tax for the purpose of funding the operations of the Board of Oil and Gas Conservation. The tax is to be collected by the Department of Revenue in the same manner as the Department collects the oil and gas severance tax under Chapter 36 of Title 15. The tax may not exceed 2/10th of 1% of the market value of each barrel of crude petroleum or each 10,000 cubic feet of natural gas produced.¹⁰
- 82-11-161 Establishes the oil and gas production damage mitigation account within the state special revenue fund. Interest income from the resource indemnity trust fund is used to fund the oil and gas production damage mitigation account, which is administered by the Board of Oil and Gas Conservation. The funds may be used to, among other things, reclaim and restore land which is damaged or disturbed by operations in connection with the production of oil and natural gas.
- 82-15-201 Proscribes price discrimination in connection with the sale of standard petroleum products, including fuel oil, by any

¹⁰ See Pages 135 and 137 for the specific rates and details of the oil and gas privilege and license tax.

person, firm, company, association or corporation doing business in Montana and engaged in the selling of or dealing in standard petroleum products. Requires such persons, associations, companies or corporations to treat a customer in one part of the state on an equal basis with customers in other parts of the state; creates civil and criminal penalties for violations.

- 90-2-101 "Renewable Resource Development Loans, Grants and Bonds"; authorizes the use of revenues from taxation of nonrenewable energy sources for the purpose of investing in an account from which loans and grants may be made to encourage the development of programs utilizing renewable resources and as compensation for the depletion of non-renewable resources.
- 90-2-1101 "Reclamation and Development Grants Program Act"; authorizes the Department of Natural Resources and Conservation to fund projects which will indemnify the people of Montana against the effects of oil and gas and other mineral development, and to repair and mitigate environmental damage resulting from the extraction of non-renewable resources.

Administrative Rules of Montana (ARM)

- 18.9.101 Rules implementing the gasoline distributors license tax.
- 18.9.201 Rules implementing certain exemptions from the gasoline distributors license tax (for intrastate and other deliveries).
- 18.9.301 Rules implementing a procedure for obtaining refunds of the gasoline license tax for certain activities other than propelling motor vehicles on public roads.
- 18.9.401 Provides for tax treatment of gasohol (but not ethanol) as gasoline.
- 18.10.101 Rules implementing the special fuels use tax.
- 18.10.201 Provides for certain exemptions from special fuels use tax.
- 18.10.301 Rules implementing a permitting procedure for special fuel use on public highways; imposes certain record keeping requirements on users.

- 18.10.401 License and reporting requirements for special fuel dealers; regulation of dispensation by means of "cardtrol" and "keylock" systems.
- 18.10.501 Definition of and payment of license tax on vehicles propelled by liquefied petroleum gas.
- 36.19.101 Rules for administration of the "Reclamation and Development Grants Program Act."
- 42.21.137 Rules for the valuation of seismograph units and allied equipment and establishing a trended depreciation schedule for such equipment.
- 42.21.138 Rules for the valuation of oil and gas field machinery and equipment and establishing a trended depreciation schedule for such equipment.
- 42.21.139 Rules for the valuation of oil and gas workover and service rigs and establishing a trended depreciation schedule for such equipment.
- 42.21.140 Rules for the valuation of oil drilling rigs and establishing a trended depreciation schedule for such equipment.
- 42.25.1001 Rules implementing the net proceeds tax on oil and gas.
- 42.25.1201 Rules implementing the state and local severance tax on oil and gas production and providing for certain incentives for stripper well and new well production.
- 42.25.1303 Rules implementing the severance tax on oil produced from a tertiary recovery project.
- 42.25.1401 Rules for allocating oil and gas severance taxes to local governments.
- 42.32.101 Rules implementing the "Montana Resource Indemnity Trust Act."

**Part 3
URANIUM**

1.3.1 EXPLORATION

Montana Code Annotated (MCA)

77-3-101 Authorizes the Board of Land Commissioners to issue prospecting permits and enter into mining leases for the exploration for and extraction of uranium, uraninite, pitchblend, and other uranium containing substances on state lands.

Administrative Rules of Montana (ARM)

26.2.201 General rules for permitting for mineral exploration and leasing for mineral extraction and development on state lands.

1.3.2 PRODUCTION, DEVELOPMENT AND ENVIRONMENTAL REGULATION

Constitutional Provisions

Article IX, Section 2

Constitutional provision which requires that all lands which are disturbed by the taking of natural resources be reclaimed. Requires the legislature to provide effective requirements and standards for reclamation of these disturbed lands. Also mandates that the legislature establish the resource indemnity trust, which is to be funded by taxes imposed on the extraction of natural resources. The principal of the resource indemnity trust is required, under this section, to remain inviolate in the amount of one hundred million dollars.

Montana Code Annotated (MCA)

75-2-101 The "Clean Air Act of Montana"; a permitting process administered primarily by the Department of Health and Environmental Sciences to assure compliance with both ambient air and emission standards which may apply to any uranium mining operation.

75-3-301 Prohibits any individual, corporation or other entity (including governmental entities) from disposing of large quantities of

radioactive material in the state of Montana; expresses a legislative policy of the state to protect the public health and safety by means of prohibiting the disposal of certain radioactive materials within the state.

- 75-5-101 The "Montana Water Quality Act"; implements a policy of conserving water resources and protecting water quality; establishes a permitting process administered by the Department of Health and Environmental Sciences for discharge of mining and industrial waste water; provides for enforcement, appeals and penalties for violations of standards.
- 75-20-101 The "Montana Major Facility Siting Act"; the policy and purpose of which is to assure for present and future generations a clean and healthful environment and to prevent the unreasonable depletion and degradation of the state's natural resources. Implements a certification process, administered primarily by the Departments of Natural Resources and Conservation and Health and Environmental Sciences, for any new construction or modification of an energy conversion facility. "Facilities," with certain exceptions, are defined as any plant, unit or other facility having certain specified minimum capabilities. (In the case of uranium, any facility for the enriching of uranium minerals having an estimated cost in excess of \$10 million are subject to the provisions of the Act. There is a specific exemption for facilities subject to the Montana Strip and Underground Mine Reclamation Act in 75-20-104(10)(a).)
- 77-3-101 Authorizes the Board of Land Commissioners to issue prospecting permits and enter into mining leases for the exploration for and extraction of uranium, uraninite, pitchblend, and other uranium containing substances on state lands.
- 82-4-101 The "Strip and Underground Mine Siting Act"; authorizes the Department of State Lands to review and regulate new strip-mine and underground-mine site location and reclamation plans. Imposes permit requirements for strip and underground mines, and provides for the termination and suspension of permits for noncompliance with this part.
- 82-4-201 The "Montana Strip and Underground Mine Reclamation Act"; creates a permitting process for strip and underground mining (including uranium mining) administered by the Department of State Lands; permit applications must contain

comprehensive reclamation plans for all affected land; investigative and enforcement powers are given to the Department.

Administrative Rules of Montana (ARM)

12.5.102	Sets forth Montana Fish & Game Commission statement of policy relative to natural resource development.
16.2.501	Department of Health and Environmental Sciences rules for administering the "Major Facility Siting Act."
16.20.1101	Rules implementing a permit system to control ground water pollution related to in-situ solution uranium mining.
26.2.201	General rules for permitting for mineral exploration and leasing for mineral extraction and development on state lands.
26.2.401	Fee schedule for applications for and leases and easements on state lands.
26.2.501	Rent and royalty charges for oil and gas, coal and uranium leases on state lands.
26.3.501	Rules governing uranium leasing on state lands.
26.4.301	Rules implementing the "Montana Strip and Underground Mine Reclamation Act."
26.4.1801	Rules implementing the "Strip and Underground Mine Siting Act."
36.7.301	DNRC rules for administering the "Major Facility Siting Act."

1.3.3 TAXATION AND FISCAL PROGRAMS

Constitutional Provisions

Article IX, Section 2

Constitutional provision which requires that all lands which are disturbed by the taking of natural resources be reclaimed. Requires the legislature to provide effective requirements and standards for reclamation of these disturbed lands. Also mandates that the legislature establish

the resource indemnity trust, which is to be funded by taxes imposed on the extraction of natural resources. The principal of the resource indemnity trust is required, under this section, to remain inviolate in the amount of one hundred million dollars.

Montana Code Annotated (MCA)

- 15-23-801 The metal mines gross proceeds tax; imposes upon each person, corporation or other entity engaged in the mining or extracting of uranium and other metals a tax on the gross metal yield from each mining property owned or worked during the preceding calendar year. The tax is based upon the merchantable value of all metal production from the previous calendar year.¹¹
- 15-37-101 The metalliferous mines license tax; imposes a license tax on the gross value of product of uranium and other metalliferous metals extracted and sold by any person, corporation or other entity engaged in the business of working or mining property in this state.¹²
- 15-38-101 The "Montana Resource Indemnity Trust Act"; the purpose of which is to indemnify the citizens of Montana for the loss of long term value resulting from the depletion of Montana's mineral resource base and for damage caused by mineral development. This section establishes a permanent resource indemnity trust, funded through revenues generated from a tax levied on mineral extraction. Proceeds from the trust are to be expended for the purpose of protecting and restoring the environment from damages resulting from mineral development, and supporting a variety of economic development programs to benefit Montana and its citizens. Contains provisions which specify the amount of tax to be paid on different types of mineral production.

Administrative Rules of Montana (ARM)

- 36.19.101 Rules for administering the "Reclamation and Development Grants Program Act."
- 42.21.132 Provides that all machinery and equipment used in the mining process shall be classified as class 8 property for

¹¹ See Page 141 for the specific rates and details of the metal mines gross proceeds tax.

¹² See Page 142 for the specific rates and details of the metalliferous mines license tax.

property tax purposes; and establishes a depreciation formula.

42.32.101

Rules implementing the "Montana Resource Indemnity Trust Act."

CHAPTER 2 - RENEWABLE RESOURCES

Part 1 HYDROELECTRIC

2.1.1 PRODUCTION, DEVELOPMENT AND ENVIRONMENTAL REGULATION

Montana Code Annotated (MCA)

- 75-5-101 The "Montana Water Quality Act"; implements a policy of conserving water resources and protecting water quality; establishes a permitting process administered by the Department of Health and Environmental Sciences; and providing for enforcement, appeals and penalties for violations of standards.
- 75-7-101 The "Natural Streambed and Land Preservation Act of 1975"; implements a legislative policy that the natural rivers and streams of this state and their riparian areas be protected and preserved in their natural or existing state; establishes a permitting process administered by the Department of Fish, Wildlife & Parks applicable to projects which contemplate a physical alteration or modification of a river or stream.
- 75-20-101 The "Montana Major Facility Siting Act"; the policy and purpose of which is to assure for present and future generations a clean and healthful environment and to prevent the unreasonable depletion and degradation of the state's natural resources. Implements a certification process, administered primarily by the Departments of Natural Resources and Conservation and Health and Environmental Sciences, for any new construction or modification of an energy conversion facility. "Facilities," with certain exceptions, are defined as any plant, unit or other facility having certain specified minimum capabilities. (In the case of hydroelectric power generation, any dam or other facility generating 50 megawatts of electricity or more, or any addition thereto having an estimated cost in excess of \$10 million, are subject to the provisions of the Act. For dams and other facilities subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC), the Department of Natural Resources and Conservation is required, on behalf

of the State of Montana, to file with FERC a recommendation on the project.)¹³

- 77-4-201 Provisions relating to the development of hydroelectric resources on state lands. Authorizes the Board of Land Commissioners to lease state lands or issue licenses for the development of "power sites" for the generation of hydroelectric energy.
- 85-1-501 Requires the Department of Natural Resources and Conservation to assess the economic and environmental feasibility of constructing and operating small scale hydroelectric power generating facilities on each of the existing water projects currently under its control. Requires that these studies be periodically updated to provide for the rising cost of electrical energy. This section also sets forth requirements for lease applications and requires the board to publish availability notices for lease sites which have been determined to be feasible locations for hydroelectric power generation.
- 85-2-301 Provisions of the "Montana Water Use Act" establishing an application and permitting process administered by the Department of Natural Resources and Conservation for the appropriation of surface water for storage in reservoirs and for hydroelectric power generation.
- 85-15-101 The "Montana Dam Safety Act"; implements a permitting process administered by the Department of Natural Resources and Conservation to identify "high hazard dams"; implements a procedure for construction monitoring and periodic inspection of high hazard dams; imposes liability upon dam owners and operators for damage incident to leakage or overflow, and prescribes penalties for violation of the Act.

Administrative Rules of Montana (ARM)

- 12.5.102 Sets forth Montana Fish & Game Commission statement of policy relative to natural resource development.
- 16.20.101 Department of Health and Environmental Sciences rules for implementing and administering the "Montana Water Quality Act." Subchapter 6 sets forth the specific water quality

¹³ See the Federal Power Act, 16 USC 791a, et seq.

standards, and Subchapter 7 contains the "non-degradation" requirements.

- 26.2.201 General rules for leasing, licensing and permitting for uses of state lands, including hydroelectric energy generation.
- 26.2.401 Fee schedule for applications for and leases and easements on state lands.
- 36.2.401 DNRC rules establishing minimum standards and guidelines for the implementation of the "Natural Streambed and Land Preservation Act of 1975."
- 36.12.101 DNRC rules for the administration of the "Montana Water Use Act" and its permitting procedures for appropriations of water.
- 36.14.101 DNRC rules for implementing the "Montana Dam Safety Act."

2.1.2 TAXATION AND FISCAL PROGRAMS

Montana Code Annotated (MCA)

- 85-1-220 Mandates that all revenues derived from hydro-electric power generation at state water conservation projects be paid into the state water project hydroelectric power generation special revenue account established under 17-2-102, MCA; authorizes the Department of Natural Resources and Conservation to transfer funds from that account to service the debt incurred in connection with state water project bonds.
- 90-2-101 "Renewable Resource Development Loans, Grants and Bonds"; authorizes the taxation of nonrenewable energy sources for the purpose of investing the revenues generated in an account from which loans and grants are made to encourage the replacement of nonrenewable resources with renewable resource development programs, including hydroelectric projects.
- 90-2-1101 The "Reclamation and Development Grants Program Act"; implements a legislative policy of funding projects designed to indemnify Montana citizens for the impact of mineral development. Section 90-2-1112(2)(a) authorizes, under certain circumstances, grants for projects that "enhance

Montana's economy through the development of natural resources," which could include a qualifying hydroelectric project.

90-4-101 Implements a program administered by DNRC designed to promote research and development of energy conservation and renewable energy sources, and provides funding to meet this objective. Establishes the alternative energy and energy conservation research development and demonstration account funded by repayments of grants and loans which have been awarded from the account. DNRC must allocate the funds to five statutory loan and grant categories, but has the discretion to reallocate to insure that the program offers the greatest possible benefits during a particular fiscal year.

Administrative Rules of Montana (ARM)

36.8.101 Rules for administering the "Renewable Energy Grant and Loan Program" aimed at effectuating the statement of legislative policy in 90-4-101, MCA; establishing the renewable energy advisory council.

36.18.101 DNRC rules for the implementation of the "Renewable Resource Development Loan, Grant and Bond Program" (90-2-101, et seq., MCA).

36.19.101 DNRC rules for the implementation of the "Reclamation and Development Grants Program" (90-2-1101, et seq., MCA).

**Part 2
SOLAR**

2.2.1 PRODUCTION, DEVELOPMENT AND ENVIRONMENTAL REGULATION

Montana Code Annotated (MCA)

70-17-301 Imposes certain conditions on easements created for the purpose of insuring the unencumbered exposure of solar energy devices across real property in connection with the generation of solar energy. Solar energy easements are required to be in writing and must include, among other things, the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the servient tenement, and any terms or conditions under which the solar easement is granted or may be terminated.

Administrative Rules of Montana (ARM)

Not Applicable.

2.2.2 TAXATION AND FISCAL PROGRAMS

Montana Code Annotated (MCA)

15-6-201 Provides a property tax exemption, based on the value of the system, for a "recognized non-fossil" energy generation system installed in any type of building after January 1, 1979.

15-32-103 Specific provision allowing a deduction from gross corporate income for computation of net income for expenditures for capital investments in buildings for energy conservation purposes in accordance with a specific schedule set forth in the statute.

15-32-109 This section provides a resident individual taxpayer with a credit against state income tax for expenditures for capital investments in a building for energy conservation purposes in accordance with a specific schedule set forth in the statute.

15-32-201 Provides an income tax credit for individual taxpayers who install in the taxpayer's principle dwelling an energy system using a recognized non-fossil form of energy generation. A ceiling on the credit is fixed at 10% of the first \$1,000 and

5% of the next \$3,000 of the cost of the system, and provides for carry-overs of unused credit to succeeding tax years.

90-2-101 "Renewable Resource Development Loans, Grants and Bonds"; authorizes the taxation of nonrenewable energy sources for the purpose of investing the revenues generated in an account from which loans and grants are made to encourage the replacement of nonrenewable resources with renewable resource development programs.

90-2-1101 The "Reclamation and Development Grants Program Act"; implements a legislative policy of funding projects designed to indemnify Montana citizens for the impact of mineral development. Section 90-2-1112(2)(a) authorizes, under certain circumstances, grants for projects that "enhance Montana's economy through the development of natural resources," which could include a qualifying solar energy project.

90-4-101 Implements a program administered by DNRC designed to promote research and development of energy conservation and renewable energy sources, and provides funding to meet this objective. Establishes the alternative energy and energy conservation research development and demonstration account funded by repayments of grants and loans which have been awarded from the account. DNRC must allocate the funds to five statutory loan and grant categories, but has the discretion to reallocate to insure that the program offers the greatest possible benefits during a particular fiscal year.

Administrative Rules of Montana (ARM)

36.8.101 Rules for administering the "Renewable Energy Grant and Loan Program" aimed at effectuating the statement of legislative policy in 90-4-101, MCA; establishing the renewable energy advisory council.

36.18.101 DNRC rules for the implementation of the "Renewable Resource Development Loan, Grant and Bond Program" (90-2-101, et seq., MCA).

36.19.101 DNRC rules for the implementation of the "Reclamation and Development Grants Program" (90-2-1101, et seq., MCA).

42.4.101

Department of Revenue rules implementing tax credits for non-fossil fuel energy generation systems.

**Part 3
WIND**

2.3.1 PRODUCTION, DEVELOPMENT AND ENVIRONMENTAL REGULATION

Montana Code Annotated (MCA)

- 70-17-303 Imposes certain conditions on easements created for the purpose of insuring the flow of wind across real property in connection with the generation of wind energy. Wind energy easements are required to be in writing and must include, among other things, a description of both the servient and dominant tenements, a description of the dimensions of the easement, both horizontally and vertically, specify the restrictions imposed on the servient tenement, and specify the terms, if any, under which the easement may be modified or terminated.
- 75-20-101 The "Montana Major Facility Siting Act"; the policy and purpose of which is to assure for present and future generations a clean and healthful environment and to prevent the unreasonable depletion and degradation of the state's natural resources. Implements a certification process, administered primarily by the Departments of Natural Resources and Conservation and Health and Environmental Sciences, for any new construction or modification of an energy conversion facility. "Facilities," with certain exceptions, are defined as any plant, unit or other facility having certain specified minimum capabilities. (In the case of wind energy generation projects, facilities generating 50 megawatts or more of electricity or additions thereto having an estimated cost in excess of \$10 million are subject to the provisions of the Act.)

Administrative Rules of Montana (ARM)

- 16.2.501 Department of Health and Environmental Sciences rules for administering the "Major Facility Siting Act."
- 16.20.101 Department of Health and Environmental Sciences rules for implementing and administering the "Montana Water Quality Act." Subchapter 6 sets forth the specific water quality standards, and Subchapter 7 contains the "non-degradation" requirements.

- 26.2.201 General rules for leasing, licensing and permitting for uses of states lands (which ostensibly could include large-scale wind energy development).
- 26.2.401 Fee schedule for applications for and leases and easements on state lands.
- 36.6.301 DNRC rules for administering the "Major Facility Siting Act."

2.3.2 TAXATION AND FISCAL PROGRAMS

Montana Code Annotated (MCA)

- 15-32-201 Provides an income tax credit for individual taxpayers who install in the taxpayer's principle dwelling an energy system using a recognized non-fossil form of energy generation. A ceiling on the credit is fixed at 10% of the first \$1,000 and 5% of the next \$3,000 of the cost of the system, and provides for carry-overs of unused credit to succeeding tax years.
- 15-32-401 Contains a statement of legislative policy to encourage the development of a wind energy industry in Montana. Provides for an investment tax credit to any individual, corporation, partnership, or small business corporation that makes an investment of \$5,000 or more for a commercial system which generates electricity by means of wind power. With certain limitations, a credit against individual or corporate income tax of up to 35% of the eligible costs of the system may be taken as a credit against taxes on taxable net income produced by certain specified activities related to wind energy.
- 90-2-101 "Renewable Resource Development Loans, Grants and Bonds"; authorizes the taxation of nonrenewable energy sources for the purpose of investing the revenues generated in an account from which loans and grants are made to encourage the replacement of nonrenewable resources with renewable resource development programs.
- 90-2-1101 The "Reclamation and Development Grants Program Act"; implements a legislative policy of funding projects designed to indemnify Montana citizens for the impact of mineral development. Section 90-2-1112(2)(a) authorizes, under certain circumstances, grants for projects that "enhance Montana's economy through the development of natural

resources," which could include a qualifying wind energy project.

90-4-101 Implements a program administered by DNRC designed to promote research and development of energy conservation and renewable energy sources, and provides funding to meet this objective. Establishes the alternative energy and energy conservation research development and demonstration account funded by repayments of grants and loans which have been awarded from the account. DNRC must allocate the funds to five statutory loan and grant categories, but has the discretion to reallocate to insure that the program offers the greatest possible benefits during a particular fiscal year.

Administrative Rules of Montana (ARM)

36.8.101 Rules for administering the "Renewable Energy Grant and Loan Program" aimed at effectuating the statement of legislative policy in 90-4-101, MCA; establishing the renewable energy advisory council.

36.18.101 DNRC rules for the implementation of the "Renewable Resource Development Loan, Grant and Bond Program" (90-2-101, et seq., MCA).

36.19.101 DNRC rules for the implementation of the "Reclamation and Development Grants Program" (90-2-1101, et seq., MCA).

42.4.101 Department of Revenue rules implementing tax credits for non-fossil fuel energy generation systems.

**Part 4
GEOTHERMAL**

2.4.1 PRODUCTION, DEVELOPMENT AND ENVIRONMENTAL REGULATION

Montana Code Annotated (MCA)

- 75-20-101 The "Montana Major Facility Siting Act"; the policy and purpose of which is to assure for present and future generations a clean and healthful environment and to prevent the unreasonable depletion and degradation of the state's natural resources. Implements a certification process, administered primarily by the Departments of Natural Resources and Conservation and Health and Environmental Sciences, for any new construction or modification of an energy conversion facility. "Facilities," with certain exceptions, are defined as any plant, unit or other facility having certain specified minimum capabilities. (In the case of geothermal power generation, any dam or other facility generating 50 megawatts of electricity or more, or any addition thereto having an estimated cost in excess of \$10 million, is subject to the provisions of the Act. For dams and other facilities subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC), the Department of Natural Resources and Conservation is required, on behalf of the State of Montana, to file with FERC a recommendation on the project.)
- 75-20-1001 Directs the Board of Natural Resources and Conservation to regulate geothermal exploration.
- 77-4-101 Provisions relating to the development of geothermal resources located on state lands. This section authorizes the Board of Land Commissioners to lease state lands for prospecting, exploration, well construction, and production of geothermal resources.
- 85-2-301 Provisions of the "Montana Water Use Act" establishing an application and permitting process administered by the Department of Natural Resources and Conservation for the appropriation of surface water for storage in reservoirs and for hydroelectric power generation.

Administrative Rules of Montana (ARM)

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| 16.2.501 | Department of Health and Environmental Sciences rules for administering the "Major Facility Siting Act." |
| 26.2.201 | General rules for leasing, licensing and permitting for uses of state lands (including geothermal exploration and development.) |
| 26.2.401 | Fee schedule for applications for and leases and easements on state lands. |
| 36.6.301 | DNRC rules for administering the "Major Facility Siting Act." |
| 36.12.101 | DNRC rules for the administration of the "Montana Water Use Act" and its permitting procedures for appropriations of water. |
| 26.3.401 | Specific Department of State Lands rules governing leases of state lands relative to geothermal resources. |

2.4.2 TAXATION AND FISCAL PROGRAMS

Montana Code Annotated (MCA)

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| 15-32-115 | Provides for a credit against individual income tax liability for taxpayers who install in their principal residence a geothermal energy generation system. A credit of up to \$250 per year for four years against the taxpayer's income tax liability is authorized. |
| 15-32-201 | Provides an income tax credit for individual taxpayers who install in the taxpayer's principle dwelling an energy system using a recognized non-fossil form of energy generation. A ceiling on the credit is fixed at 10% of the first \$1,000 and 5% of the next \$3,000 of the cost of the system, and provides for carry-overs of unused credit to succeeding tax years. |
| 90-2-101 | "Renewable Resource Development Loans, Grants and Bonds"; authorizes the taxation of nonrenewable energy sources for the purpose of investing the revenues generated in an account from which loans and grants are made to encourage the replacement of nonrenewable resources with renewable resource development programs. |

- 90-2-1101 The "Reclamation and Development Grants Program Act"; implements a legislative policy of funding projects designed to indemnify Montana citizens for the impact of mineral development. Section 90-2-1112(2)(a) authorizes, under certain circumstances, grants for projects that "enhance Montana's economy through the development of natural resources," which could include a qualifying geothermal energy project.
- 90-4-101 Implements a program administered by DNRC designed to promote research and development of energy conservation and renewable energy sources, and provides funding to meet this objective. Establishes the "alternative energy and energy conservation research development and demonstration account" funded by repayments of grants and loans which have been awarded from the account. DNRC must allocate the funds to five statutory loan and grant categories, but has the discretion to reallocate to insure that the program offers the greatest possible benefits during a particular fiscal year.

Administrative Rules of Montana (ARM)

- 36.8.101 Rules for administering the "Renewable Energy Grant and Loan Program" aimed at effectuating the statement of legislative policy in 90-4-101, MCA; establishing the renewable energy advisory council.
- 36.18.101 DNRC rules for the implementation of the "Renewable Resource Development Loan, Grant and Bond Program" (90-2-101, et seq., MCA).
- 36.19.101 DNRC rules for the implementation of the "Reclamation and Development Grants Program" (90-2-1101, et seq., MCA).

**Part 5
BIOMASS**

2.5.1 PRODUCTION, DEVELOPMENT AND ENVIRONMENTAL REGULATION

Montana Code Annotated (MCA)

See **2.5.2 TAXATION AND FISCAL PROGRAMS** below.

Administrative Rules of Montana (ARM)

See **2.5.2 TAXATION AND FISCAL PROGRAMS** below.

2.5.2 TAXATION AND FISCAL PROGRAMS

Montana Code Annotated (MCA)

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| 15-6-135 | Provides for the classification of gasohol production facilities, during construction and for the first three years of operation, as class 5 property, taxable at 3% of market value. |
| 15-6-201 | Provides a property tax exemption, based on the value of the system, for a "recognized non-fossil" energy generation system installed in any type of building after January 1, 1979. |
| 15-32-201 | Provides an income tax credit for individual taxpayers who install in the taxpayer's principle dwelling an energy system using a recognized non-fossil form of energy generation. A ceiling on the credit is fixed at 10% of the first \$1,000 and 5% of the next \$3,000 of the cost of the system, and provides for carry-overs of unused credit to succeeding tax years. Section 15-32-102(6) defines qualifying "low emission wood or biomass combustion device;" Section 15-32-203 directs the Department of Revenue to adopt rules establishing certification standards for such devices. |
| 15-70-501 | The "Alcohol Tax Incentive and Administration Act of 1983"; establishes various tax incentives for the production of alcohol to be blended for gasohol and provides for a system of record keeping. |
| 90-2-101 | "Renewable Resource Development Loans, Grants and Bonds"; authorizes the taxation of nonrenewable energy |

sources for the purpose of investing the revenues generated in an account from which loans and grants are made to encourage the replacement of nonrenewable resources with renewable resource development programs, including biomass projects.

- 90-2-1101 The "Reclamation and Development Grants Program Act"; implements a legislative policy of funding projects designed to indemnify Montana citizens for the impact of mineral development. Section 90-2-1112(2)(a) authorizes, under certain circumstances, grants for projects that "enhance Montana's economy through the development of natural resources," which could include a qualifying biomass project.
- 90-4-101 Implements a program administered by DNRC designed to promote research and development of energy conservation and renewable energy sources, and provides funding to meet this objective. Establishes the alternative energy and energy conservation research development and demonstration account funded by repayments of grants and loans which have been awarded from the account. DNRC must allocate the funds to five statutory loan and grant categories, but has the discretion to reallocate to insure that the program offers the greatest possible benefits during a particular fiscal year.

Administrative Rules of Montana (ARM)

- 18.9.401 Rules providing for tax treatment of gasohol (but not ethanol) as gasoline.
- 18.9.501 Rules imposing on alcohol distributors responsibility for collection and remittance of the tax on alcohol imposed under 15-70-204, MCA.
- 18.9.601 Rules implementing the "Alcohol Tax Incentive and Administration Act."
- 36.8.101 DNRC rules for the implementation of the "Renewable Energy Grant and Loan Program" (90-4-101, et seq., MCA).
- 36.18.101 DNRC rules for the implementation of the "Renewable Resource Development Loan, Grant and Bond Program" (90-2-101, et seq., MCA).

- 36.19.101 DNRC rules for administering the "Reclamation and Development Grants Program" established under 90-2-1101, et seq., MCA.
- 42.4.101 Department of Revenue rules implementing tax credits for non-fossil fuel energy generation systems.
- 42.19.1102 Provides that gasohol production facilities do not receive the property tax exemption provided by Section 15-6-201, MCA, but may be classified under Section 15-6-135, MCA, as class 5 property. Also provides that anhydrous ethanol production facilities which produce ethanol from solid or organic wastes may receive the property tax exemption provided for in Section 15-6-135, MCA, as well as classification as class 5 property. Anhydrous ethanol production facilities utilizing grain to produce ethanol are not entitled to the property tax exemption provided for in Section 15-6-201, MCA, but may be classified as class 5 property.
- 42.27.401 Rules implementing provisions of 15-70-201, et seq., MCA, requiring the taxation of gasohol at the statutory rate for gasoline (by definition, pursuant to ARM 42.27.403, 100% anhydrous ethanol is not considered to be gasohol).
- 42.27.501 Rule imposing upon alcohol distributors responsibility to collect and remit to the Department of Revenue the tax on alcohol pursuant to 15-70-204, MCA.
- 42.27.601 Rules implementing the "Alcohol Tax Incentive and Administration Act of 1983."

**Part 6
COGENERATION**

2.6.1 PRODUCTION, DEVELOPMENT AND ENVIRONMENTAL REGULATION

Montana Code Annotated (MCA)

69-3-601 Public Service Commission regulation of "qualifying small power production facilities;" authorizes cogeneration by qualifying small power production facilities and the sale of such electricity under rates and conditions prescribed by the Commission.

Administrative Rules of Montana (ARM)

38.5.1901 Public Service Commission rule adopting and incorporating by reference certain rules from Title 18 of the Code of Federal Regulations promulgated pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617; and establishing rules for the participation by qualifying small power production facilities and arrangements for purchases and sales of electric power with electric utilities under the regulation of the Public Service Commission.

2.6.2 TAXATION AND FISCAL PROGRAMS

Montana Code Annotated (MCA)

69-3-601 See Section 2.6.1, supra.

Administrative Rules of Montana (ARM)

38.5.1901 See Section 2.6.1, supra.

CHAPTER 3 - ELECTRIC ENERGY

Part 1 TRANSMISSION

3.1.1 LOCATION, DEVELOPMENT, AND ENVIRONMENTAL REGULATION

Montana Code Annotated (MCA)

- 75-20-101 The "Montana Major Facility Siting Act"; the policy and purpose of which is to assure for present and future generations a clean and healthful environment and to prevent the unreasonable depletion and degradation of the state's natural resources. Implements a certification process, administered primarily by the Departments of Natural Resources and Conservation and Health and Environmental Sciences, for any new construction or modification of an energy conversion facility. "Facilities," with certain exceptions, are defined as any plant, unit or other facility having certain specified minimum capabilities. (In the case of electric energy transmission facilities, with certain exceptions, facilities having a design capacity of more than 69 kilovolts are subject to the provisions of the Act.)
- 77-2-101 Authorizes the Board of Land Commissioners to grant easements on state lands and requires the Board to fix the fees and charges therefor.

Administrative Rules of Montana (ARM)

- 16.2.501 Department of Health and Environmental Sciences rules for administering the "Major Facility Siting Act."
- 26.2.201 General rules for leasing, licensing and permitting for uses of state lands.
- 26-2-502 Sets forth minimum fees for right of way easements for electric transmission lines.
- 36.6.301 DNRC rules for administering the "Major Facility Siting Act."

3.1.2 TAXATION AND FISCAL PROGRAMS

Montana Code Annotated (MCA)

- 7-12-4102 Authorization for cities and towns to create special improvement districts to aid in the construction of natural gas and electric distribution lines.
- 15-24-1203 The "Beneficial Use Tax," imposing a use or privilege tax upon the beneficial use of certain high-voltage electric transmission lines and associated facilities (having a design capacity of 500 kilovolts or more) owned by the United States but beneficially used by any private individual, association, or corporation.
- 15-51-101 Electric energy producer's license tax; imposes a tax on electric energy producers. Imposes the tax on each entity engaged in the generation, manufacture or production of electricity and electrical energy in the state of Montana. The amount of tax assessed is dependent upon the gross amount of energy produced, with an exception for the actual amount of energy which is necessary for plant service. The tax imposed under this chapter is \$.0002 per kilowatt hour on all electricity and electrical energy generated, manufactured or produced, as measured at the place of production.
- 90-4-401 Legislative expression of agreement to participate in the Pacific Northwest Electric Power Planning and Conservation Act, and the Pacific Northwest Electric Power and Conservation Planning Council. Authorizes the governor to appoint two members to the council. Mandates that the Council conduct public hearings in connection with any "major" resource acquisition as defined in 16 U.S.C. § 839a.

Administrative Rules of Montana (ARM)

- 42.22.107 Rules imposing reporting requirements on qualifying companies subject to the "beneficial use tax" (15-24-1203, MCA) by virtue of their possession or other beneficial use of federally owned high-voltage transmission lines.
- 42.25.1601 Provides for deduction of kilowatt hours used for station service requirements from electric energy producer's license tax. Precludes deduction for line losses.

CHAPTER 4 - CONSERVATION

Part 1 PRIVATE SECTOR

4.1.1 TAXATION, INCENTIVES AND FISCAL PROGRAMS

Constitutional Provisions

Article IX, Section 5

Constitutional provision providing for the creation of the coal severance tax trust fund, from which funding is provided for certain grant and loan programs to promote conservation. This provision requires the legislature to dedicate not less than one-fourth of the coal severance tax proceeds to the trust, from which interest and income may be appropriated. This provision also requires that the trust principal remain intact unless appropriated by three-fourths of the members of each house of the legislature. One half (50%) of the severance tax has been dedicated to the coal severance tax trust fund since December 31, 1979.

Montana Code Annotated (MCA)

- 15-30-125 Offers an individual income tax credit for energy conserving investments, as provided for in 15-32-109, under which an "energy conservation purpose" is determined as follows:
- (a) in the case of an expenditure for residential building, the lesser of:
 - (i) \$150; or,
 - (ii) 5% of the expenditure; and
 - (b) in the case of an expenditure for a building not used as a residence, the lesser of:
 - (i) \$300; or,
 - (ii) 5% of the expenditure.
- The credit or sum of the credits under subsection (i):
- (a) may not exceed the taxpayer's tax liability; and
 - (b) is subject to the provisions of 15-32-104.
- There is no carry-back or carry-forward of the credit permitted under this section, and the credit must be applied in the year the expenditure is incurred, as determined by the taxpayer's accounting method.
- 15-32-101 This section allows a tax deduction for individual taxpayers (in addition to all other deductions from gross corporate

income in computing net income), which allows the taxpayer to deduct a portion of his expenditure for a capital investment in a building for an energy conservation purpose. Imposes certain limitations on deductions and credits under this section. Also provides tax credits for energy-conserving expenditures.

- 15-32-103 Specific provision allowing a deduction from gross corporate income for computation of net income for expenditures for capital investments in buildings for energy conservation purposes in accordance with a specific schedule set forth in the statute.
- 15-32-109 This section provides a resident individual taxpayer with a credit against state income tax for expenditures for capital investments in a building for energy conservation purposes in accordance with a specific schedule set forth in the statute.
- 15-32-603 This section allows: (1) a credit equal to 25% of an investment in depreciable property used to collect or process reclaimable material, or to manufacture a product from reclaimable material; and (2) an additional deduction equal to 5% of the expenditures for recycled material otherwise deductible as a business-related expense. The credit and the deduction provided for in this chapter may be applied either to individual income or corporate license taxes.
- 17-6-301 The "Montana In-State Investment Act of 1983"; expresses legislative policy and purpose of the permanent coal tax trust fund, which are to: (1) compensate future generations for the depletion of resources caused by coal development; and (2) to develop a strong economy for Montana. States that the Board of Investments shall endeavor to invest up to 25% of the fund in the Montana economy, with special emphasis on local enterprises. This section also sets forth authorized investments, limitations on investments, and preferences for investments of revenue from the coal tax trust fund, which, under Section 17-6-309(4), expressly includes energy efficiency investments.
- 50-60-201 Provisions of the "Montana State Building Code." This Part is designed to accomplish several objectives, including the following: encouraging, to the fullest extent feasible, the use of modern technical methods, devices, and improvements for the purpose of reducing the cost of construction, consistent with the conservation of energy and the efficient

utilization of energy; to encourage efficient design and installation which will result in consumption of the least possible quantities of energy and to reduce the need for heating in the winter and air conditioning in the summer; to encourage efficient design of building envelopes with high thermal resistance and low air leakage, and to require design and selection practices which will promote the efficient use of energy. The Department of Commerce is responsible for adopting rules relating to the construction of, installation of equipment in, and standards for materials to be used in all buildings which are subject to the requirements of this Part.

- 69-3-701 Authorizes utilities to purchase conservation or directly engage in conservation investments which have been approved by the Public Service Commission, with the cost-effective conservation measures to be at the customer's discretion, installed by either a private firm, the customer himself, or the utility. Also authorizes the Commission to make on-site audits to insure compliance with the criteria set out in this section. Prohibits a utility which has placed the conservation in its rate base to claim a conservation tax credit.
- 90-2-101 "Renewable Resource Development Loans, Grants and Bonds"; authorizes the taxation of nonrenewable energy sources for the purpose of investing the revenues generated in an account from which loans and grants are made to encourage the replacement of nonrenewable resources with renewable resource development programs.
- 90-2-1101 The "Reclamation and Development Grants Program Act"; implements a legislative policy of funding projects designed to indemnify Montana citizens for the impacts of mineral development.
- 90-4-101 Implements a program administered by DNRC designed to promote research and development of energy conservation and renewable energy sources, and authorizes the receipt of money from repayment of grants and loans "previously awarded" by the Department of Natural Resources. Establishes the "alternative energy and energy conservation research development and demonstration account," funded by repayments of grants and loans which have been awarded from the account. DNRC must allocate the funds to five statutory loan and grant categories, but has the

discretion to reallocate to insure that the program offers the greatest possible benefits during a particular fiscal year.

- 90-4-201 Appropriates to the Department of Social and Rehabilitative Services all federal funds and grants available under the U.S. Department of Energy low-income weatherization assistance programs, U.S. Department of Health and Human Services low-income home energy assistance program, or any similar federal program designed to increase the energy efficiency of dwellings inhabited by low-income individuals. Directs the Department of Social and Rehabilitative Services to allocate at least 5% of funds received from the U.S. Department of Health and Human Services low-income home energy assistance program, if federal law allows. Provides an allocation formula for funds which are to be allocated under these provisions. Sets forth the state policy for the use of oil overcharge payments received from the federal government. Also sets forth acceptable uses for funds from the energy conservation and energy assistance account.
- 90-4-301 "Energy Supply Emergency Powers." Establishes the necessary planning, information gathering, and energy emergency powers for the governor and defines the conditions under which these powers are to be exercised. Also provides for the regular monitoring of energy supplies and demand. This section is intended to enable the governor and other state agencies to deal with possible energy shortage emergency situations. Grants to the governor emergency powers which are intended to enable the governor's office to gather information, to regularly monitor energy supplies and demand, to formulate plans, and to institute appropriate emergency measures designed to reduce or allocate the usage of energy. Section 90-4-303 establishes the legislative energy policy committee.
- 90-4-401 Legislative expression of agreement to participate in the Pacific Northwest Electric Power Planning and Conservation Act, and the Pacific Northwest Electric Power and Conservation Planning Council. Authorizes the governor to appoint two members to the council. Mandates that the Council conduct public hearings in connection with any "major" resource acquisition as defined in 16 U.S.C. § 839a.
- 90-4-501 Provides for state administration of the residential conservation program, mandated by the National Energy Conservation Policy Act of 1978. Establishes a residential

conservation service, to be administered by the Montana Department of Natural Resources and Conservation.

Administrative Rules of Montana (ARM)

- 8.70.101 Adopts by reference the Uniform Building Code; Appendix 53 to the Uniform Building Code adopts the CABO model energy code, also by reference.
- 36.8.101 Rules for administering the "Renewable Energy Grant and Loan Program" aimed at effectuating the statement of legislative policy in 90-4-101, MCA; establishing the renewable energy advisory council.
- 36.18.101 DNRC rules for the implementation of the "Renewable Resource Development Loan, Grant and Bond Program" (90-2-101, et seq., MCA).
- 42.23.421 Rules implementing deduction from taxable income for corporations for expenditures for energy conservation measures in buildings, both residential and non-residential, used in the taxpayer's business.
- 46.14.201 Rules for the administration and implementation of the Low-Income Weatherization Assistance Program. Requires the designated local contractor to provide a staff member to interview all applicants or persons acting on behalf of applicants who contact the offices of the local contractor for the purpose of applying for low-income weatherization assistance. Provides procedures for applications for benefits, investigations of eligibility, and procedures in processing applications.

Part 2
PUBLIC SECTOR

4.2.1 TAXATION, INCENTIVES AND FISCAL PROGRAMS

Montana Code Annotated (MCA)

- 90-4-101 Implements a program administered by DNRC designed to promote research and development of energy conservation and renewable energy sources, and authorizes the receipt of money from repayment of grants and loans "previously awarded" by the Department of Natural Resources. Establishes the "alternative energy and energy conservation research development and demonstration account," funded by repayments of grants and loans which have been awarded from the account. DNRC must allocate the funds to five statutory loan and grant categories, but has the discretion to reallocate to insure that the program offers the greatest possible benefits during a particular fiscal year.
- 90-4-301 "Energy Supply Emergency Powers." Establishes the necessary planning, information gathering, and energy emergency powers for the governor and defines the conditions under which these powers are to be exercised. Also provides for the regular monitoring of energy supplies and demand. This section is intended to enable the governor and other state agencies to deal with possible energy shortage emergency situations. Grants to the governor emergency powers which are intended to enable the governor's office to gather information, to regularly monitor energy supplies and demand, to formulate plans, and to institute appropriate emergency measures designed to reduce or allocate the usage of energy. Section 90-4-303 establishes the legislative energy policy committee.
- 90-4-401 Legislative expression of agreement to participate in the Pacific Northwest Electric Power Planning and Conservation Act, and the Pacific Northwest Electric Power and Conservation Planning Council. Authorizes the governor to appoint two members to the council. Mandates that the Council conduct public hearings in connection with any "major" resource acquisition as defined in 16 U.S.C. § 839a.
- 90-4-601 The "State Building Energy Conservation Act"; requires state agencies to submit lists of facilities which have a potential for energy saving. These plans must be submitted to the DNRC

by June 30th of each odd-numbered year. The DNRC then analyzes the lists submitted by the agencies and provides the governor with a prioritized list of recommended projects for funding under the energy conservation program. The governor is then required to submit a list of proposed projects to the legislature within the first week of the legislative session. This chapter also authorizes the Board of Examiners to issue and sell bonds to finance energy conservation programs, when the Board has been authorized to do so by a two-thirds vote of the legislature.

Administrative Rules of Montana (ARM)

- 36.8.101 Rules for administering the "Renewable Energy Grant and Loan Program" aimed at effectuating the statement of legislative policy in 90-4-101, MCA; establishing the renewable energy advisory council.

- 36.18.101 DNRC rules for the implementation of the "Renewable Resource Development Loan, Grant and Bond Program" (90-2-101, et seq., MCA).

CHAPTER 5 - PUBLIC SERVICE COMMISSION REGULATION

Part 1 STATUTES and RULES

Constitutional Provisions

Article XIII, Section 2

Requires the legislature to establish and fund an Office of Consumer Counsel to represent the interests of consumers before the Public Service Commission.

Montana Code Annotated (MCA)

- 69-1-101 Provisions relating to the definition, creation and operation of the Public Service Commission, the Consumer Committee and the Consumer Counsel. This chapter also provides for the funding of the Department of Public Service Regulation. The duty of the Public Service Commission is to supervise and regulate the operations of, among other things, public utilities which, in Montana, includes both gas and electric utilities. Funding of the Department of Public Service Regulation, under this part, is accomplished through funds generated from fees collected by all regulated companies affected by this chapter.
- 69-1-201 This part describes the duties and responsibilities of the Consumer Counsel and Consumer Committee. Requires the Committee to meet at least once per quarter to advise the Consumer Counsel. Authorizes members of the Committee to receive compensation and to appoint necessary employees and consultants. Also requires the Counsel to prepare and submit a yearly report, recommending remedial legislation to the Committee. Contains funding provisions for the office of the Consumer Counsel, as well as provisions governing the determination of fees to be paid by regulated companies.
- 69-1-401 Provisions providing for funding of the Department of Public Service Regulation. Also contains provisions providing for the determination of fees to be collected from regulated companies. Fees provided for under this Part are determined in the manner set forth in Section 69-1-224, MCA, except that gross revenues from sales to other regulated companies for resale are excluded from the determination of the total

gross operating revenue. Requires the Legislative Finance Committee to annually review the Department of Public Service Regulation's budget as well as calculations made by the Department of Revenue.

- 69-2-101 General regulatory provisions defining the role of the Public Service Commission and the role of the Consumer Counsel.
- 69-2-201 Defines the role of the Consumer Counsel; authorizes them to appear at public hearings conducted by the Public Service Commission as a representative of the consuming public. Also authorizes the Counsel to institute proceedings against regulated companies before the Commission and to participate in proceedings in state and federal courts, as well as administrative agencies, where the consuming public has such an interest in the outcome of the proceedings that representation by the Counsel in such a proceeding is appropriate. Grants the Counsel necessary investigatory authority and provides penalties for violations of this chapter.
- 69-3-101 Defines the term "public utility" within the meaning of this chapter; also defines the role of the Public Service Commission. Specifically grants to the Commission the power to: (1) adopt rules regarding inspections, tests, audits and investigations; (2) adopt rules governing the proceedings of the Commission; and, (3) regulate all investigations of hearings of public utilities. Also authorizes the Commission to inquire into the management of public utilities, and grants to its agents the right to inspect the books, accounts, papers, records and memoranda of any public utility and to examine under oath any officer, agent or employee of a public utility in relation to its business affairs.
- 69-3-201 Establishes requirements which are to be imposed upon all public utilities, including a duty to furnish service at a reasonable cost to the consumer, to keep and submit records to the Commission, to make an annual report to the Commission, and to pay the necessary fees to the Commission. This section also provides penalties for noncompliance and for failure of a utility to cooperate with the Commission.
- 69-3-301 Establishes the ratemaking procedures to be adhered to by public utilities. Requires each public utility to file schedules showing rates, tolls and charges with the Commission. These reports are to be open to the public and are to include all rules adopted by the utility which will affect the rates

charged. Also provides a mechanism through which consumers can lodge complaints against a public utilities provider.

- 69-3-401 This part sets forth the procedure through which an interested party may seek review of an order of the Commission fixing any rate, charge, classification, or any order fixing any regulation, practice or service. Also sets forth the procedure through which an aggrieved party may seek injunctive relief from an order of the Commission.
- 69-3-501 Provides for the issuance of security and creation of liens by public utilities that furnish electric or gas service in the State of Montana and have revenues which are derived from sources in Montana in excess of \$5 million or 5% of the utility's gross revenue. The utility has the authority, when authorized by order of the Commission, to issue stocks and stock certificates or other securities payable at periods of more than 12 months for the following purposes: (1) the acquisition of property; (2) the construction, completion, extension, or improvement of its facilities; (3) the improvement or maintenance of its service; (4) the discharge or lawful refunding of its obligation; (5) the reimbursement of money actually expended for said purposes from income or any other money; or (6) any other purpose approved by the Commission. The utility must make application to the Commission for an order authorizing a proposed issue, assumption or guarantee of securities and the application of proceeds from the issuance for the purposes specified, by written petition. All securities issued, assumed, or guaranteed after July 1, 1961, without approval by the Commission, are void.
- 69-3-601 Provides for regulation of small power production facilities, which include all facilities that produce electricity by the use, as a primary source, of biomass, waste, water, wind, or any combination thereof, produces electricity and thermal energy through cogeneration, has a power production capacity of not greater than 80 megawatts, and is owned by a person who is not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility. Regulates the generation and sale of electricity by small power production facilities and requires that all sales be under the rates and conditions set by the Public Service Commission.

- 69-3-701 Authorizes utilities to purchase conservation or directly engage in conservation investments which have been approved by the Commission, with the cost-effective conservation measures to be, at the customer's discretion, installed by either a private firm, the customer himself, or the utility. Also authorizes the Commission to make on-site audits to insure compliance with the criteria set out in this section. Prohibits a utility which has placed the conservation in its rate base to claim a conservation tax credit.
- 69-4-101 Authorizes an electric light or electric power line corporation, or any person or public body owning or operating such an electric light or electric power line corporation, to install its plants and appliances which are necessary for service along any public roads, streets, or highways in the state. Any firm, agency, or person exercising the public right of way for utility lines and facilities, must install underground lines for electricity distribution in new service areas where it is technically and economically feasible.
- 69-4-201 Requires compliance with the National Electrical Safety Code standards in all future construction which involves wires for power, heat, light, telephone and telegraph. Also requires that electrical construction of overhead and underground electrical supply and communication lines in Montana be in conformity with the rules set forth in the National Electrical Safety Code, approved by the American National Standards Institute, as published by the Institute of Electrical and Electronic Engineers. The standards imposed by the National Electric Safety Code are to be enforced by the Public Service Commission. This section also states that all violations of this section are considered misdemeanors.
- 69-4-301 The "Underground Conversion of Utilities Law"; provides a procedure through which conversion of existing overhead electric and communications facilities to underground locations can be accomplished through the creation of special improvement districts. This section does not include within its definition of electric facilities those which are used or intended to be used for transmission of electric energy at nominal voltages in excess of 25,000 volts. This section authorizes the governing body of every county to create special improvement districts within the unincorporated portions of those counties and also authorizes the governing body of every city and town to create special improvement districts within its territorial boundaries. Requires the public utility to submit a cost and feasibility report to the

Commission and to make a determination of conversion costs. Also imposes certain notice and hearing requirements prior to the passage of a resolution of intent to create such a district.

- 69-4-401 Establishes a petition process through which an owner of agricultural land across which overhead utility lines have been constructed may make a request of the district court for an order for relocation of the line for the purpose of installing an agricultural improvement; the cost of the relocation is to be borne 50% by the utility and 50% by the landowner, unless the landowner fails to complete the agricultural improvement within 2 years from the date of the relocation, in which case the petitioner must reimburse the owner of the line for the entire cost of relocation.
- 69-4-501 Requires all persons who wish to excavate in any public street, alley, or right of way dedicated to public use, or utility easement, to obtain information about the possible location of an underground facility from every public utility, municipal corporation, or other person or entity having the right to install underground facilities in such an area. Also requires that all persons or entities having the right to install such facilities file with the county clerk and recorder the name and address, and telephone number of persons possessing the necessary information, with an exception for areas with one-call notification centers. This Part also has provisions which set forth liability for damages to underground facilities caused by excavations by persons who have either failed to obtain or receive the necessary information or have failed to carry out the excavation in a careful and prudent manner.
- 69-7-101 Grants to municipalities the authority and power to regulate, establish and change rates, charges, and classifications imposed for municipal utility systems, as long as the rates, charges and classifications are reasonable and just and are not raised to yield more than a 12% increase in total annual revenues or, in the case of mandated federal and state capital improvements, the increase may not exceed the amount necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of mandated improvements; all increases in excess of these amounts must be approved by the Public Service Commission. This Part also imposes notice and hearing requirements for municipal rate hearings.

Part 2
NON-STATUTORY REGULATORY CONCEPTS

INTRODUCTION

That which follows is a summary of some of the more significant non-statutory regulatory concepts which have been implemented by the Commission in carrying out its rate-making functions.

Interim Rate Relief - The Commission has frequently authorized interim rate increases in major rate cases, which in most recent cases have approximated the Commission's final rate awards. Interim rate hikes have usually been authorized by the Commission within two to four months after the date of filing. The Commission's interim rules state that a utility's rates be updated to reflect current economic realities while avoiding rates that may reflect controversial claims.

Return on Equity - The Commission has generally authorized below-industry-average returns on common equity. In a July 19, 1991 rate decision for Montana Power (MPCo), the Commission authorized a 12.1% equity return for both the electric and gas operations.

Rate Base and Test Period - The Commission relies on a 12-month average depreciated original cost rate base for a historical test period, adjusted for known and measurable changes. Test periods utilized by the Commission have generally been historical at filing and more than one year old by the time of final decision.

Accounting and CWIP - The Commission generally flows through those tax benefits not required to be normalized by law. The Commission generally does not permit construction work in progress (CWIP) to be included in rate base.

Integrated Resource Planning - In October 1990, the Commission opened a generic investigation into integrated resource planning (IRP). The Commission sought comments from "interested parties" on the merits of IRP and competitive resource acquisition, and recommendations as to the scope, policy and implementation of such programs. Guidelines that provide incentives for utility conservation efforts are also to be considered. In March 1991, the Commission issued for comment proposed guidelines which would: 1) require utilities to acquire marginal conservation measures at up to 115% of the price of avoided costs with recovery in rates; 2) begin competitive bidding programs for utilities to acquire 20-25 MW of power; and 3) allow utilities up to a 2% return premium for conservation expenditures. Hearings were held in October 1991 with final guidelines to be promulgated in early 1992.

Fuel Adjustment Clauses - Electric fuel adjustment clauses are not permitted in Montana; however, the state's electric utilities rely primarily on hydro and captive coal sources for generation. MDU and MPCo are permitted to use a tariff to track changes in the costs of purchased gas and other gas costs. The companies defer gas expenses which are in excess of, or less than, the costs recovered through current rate levels.

These expenses are deferred until the discrepancy can be determined in a subsequent rate case. Over and under recoveries are reconciled on a six to twelve month basis.

Rate Structure - In August 1988, the Commission gave final approval for an electric economic incentive (EEI) rate proposed by MPCo for large industrial customers who use 5 MW or more of power. The EEI rate is designed to "provide electric services to Montana industry which, without the lower rate, would not be able to begin, or expand operations." The tariff does not contain a sunset date or termination provision. However, the MPCo contract stated that the EEI rate would be available "only for so long as MPCo determines that it has existing resources available to serve the additional load."

On October 3, 1991, the Commission approved a MPCo proposal to restructure its natural gas operations. Major non-core customers (other utilities and large industrial and commercial customers) are free to obtain their own natural gas supply, with MPCo to provide transportation services at Commission-regulated rates. Rates to core customers are to increase to the extent the Commission reallocates fixed costs, but less than would be the case if the non-core customers were to bypass the company's natural gas system. The plan anticipates redeployment or disposal of certain assets which would not be required to maintain reliable service to core customers.

Integrated Resource Planning - Recent PSC rulings allow the Department of Administration to work in conjunction with the Montana Power Company to improve energy conservation in the initial design of new construction projects. The Department of Administration is currently in the process of applying for \$76 million from the Montana Power Company programs for assistance and for new construction projects.

Interruptible Gas Supply and Co-generation on College Campuses - The Department of Administration is currently analyzing and, where appropriate, integrating alternative fuel systems to natural gas systems to realize savings associated with interruptible rates. The Department has installed a co-generation fuel system at Montana State University and is currently researching the possibility of installing a similar co-generation fuel system at the University of Montana.

Recent Developments - In 1990, the Commission initiated an informal investigation into possible changes to the current regulatory framework in the state. MPCo filed data showing that the state's electric and gas utilities have been largely unable to earn their authorized rates of return. A committee comprised of representatives from MPCo, MDU, USW, the Commission, and the Consumer Counsel was formed to examine regulatory reform issues. In December 1991, the Commission adopted new rules for electric and gas rate filings on an optional experimental basis. The new rules are to be effective through December 31, 2000. A utility that is filing for a general rate increase may elect to file subject to these rules any time within the next 24 months, with such election to be binding for a period of 71 months (roughly six years) after the date of filing. A utility opting to operate under the new rules would be required to submit biennial cost-of-service filings which are to: 1) take into account "changes known with certainty and measurable with reasonable accuracy prior to the Commission's hearing on the utility's application for increased rates" provided they do not occur more than 13 months from

the close of the test year; 2) utilize a rate base "computed on an end of test year basis"; and 3) state known revenue changes on an annualized basis. Utilities proceeding under the new rules shall be permitted to make limited issue filings in the event that cost increases exceed 3% of the utility's allowed overall return in dollars. No return on equity adjustments would be permitted while operating under the new rules. Utilities may choose to operate under these experimental procedures as early as 1992.

COAL GROSS PROCEEDS TAX
(DOR's Notice to Operators; Edited)

Each person engaged in the mining of coal must, on or before March 31 each year, file a statement with the Department of Revenue of the gross yield from each coal mine owned or worked in the preceding calendar year. The value of the gross yield is an amount equal to the contract sales price (f.o.b. mine price less production taxes included by the producer in the sales price) or a price imputed by the Department of Revenue when the operator of the mine is using coal produced in an energy conversion, the operator sells the coal under a contract which is not an arm's-length agreement and the price is less than market value, or the operator neglects or refuses to file the requisite statement, plus any exempt revenue from production.

On or before July 1 each year, the Department will transmit to the assessor of the county in which the mine is located notice of the value of the gross yield for taxation. The assessor will levy a 5% tax against the value of the reported gross proceeds. The county treasurer will proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided. One-half of the tax is due on or before 5 o'clock p.m. on November 30, or within 30 days after the notice is postmarked, whichever is later, and one-half is due on or before 5 o'clock p.m. on May 31.

COAL MINE SEVERANCE TAX
(DOR's Notice to Operators; Edited)

As of June 30, 1991, a severance tax is imposed on each ton of coal produced in Montana in accordance with the following:

Heating quality BTUs per pound Underground of coal) Mining	Surface	
	Mining	
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

The value of coal is derived from the contract sales price; which means either the price of coal extracted and prepared for shipment f.o.b. mine (excluding the amount charged to the seller as taxes on production), or a price imputed by the Department in the following situations:

- (a) the operator of the coal mine refines the coal by using the produced coal in an energy-conversion or other manufacturing process;
- (b) the operator of a coal mine refines the coal by drying, cleaning, or other processing designed to improve the quality of the coal;
- (c) a person sells coal under a contract which is not an arm's-length agreement; or
- (d) a person neglects or refuses to file a statement and tax return under the coal gross proceeds statutes and rules.

A person is not liable for any severance tax on 50,000 tons of coal produced in a calendar year, except that if production exceeds 50,000 tons the severance tax will be imposed upon all coal in excess of 20,000 tons.

The tax is due 30 days following the end of each quarter.

OIL AND GAS NET PROCEEDS TAX
(DOR's Notice to Operators)

A well must not have had any production during the five years immediately preceding the first month of qualified production; or began production after June 30, 1985.

A separate return must be filed for each lease. The operator of record at the end of the calendar quarter must report the entire quarter's sales.

Reporting Requirements for Oil and Gas Net Proceeds Tax:

FILING: Quarterly

DUE DATE: On or before last day of the months of October, January, April and July of each year

PAYMENT: Tax billed and collected quarterly by county treasurer where property is located. PAYMENT SHOULD NOT BE MADE TO THE OFFICE OF THE DEPARTMENT OF REVENUE WITH FILINGS.

TAX RATE: Oil - 7% of the total gross value
Gas - 12% of the total gross value

EXEMPTION: After notification to the Department, new production is exempt from tax for 12 months from date of first production.

FORMS: Net Proceeds No. 10 (pink)
Return and Statement of Net Proceeds
For taxable net proceeds only

Net Proceeds No. 10A (amber)
New Exempt and Taxable Production
Complete for each well even if you pay no tax for quarter

Net Proceeds No. 8 (yellow)
Schedule of Royalty Interests
Set forth names, addresses, and amount paid or yielded as royalty every fourth quarter each year

**STATE OIL SEVERANCE TAX,
OIL PRIVILEGE AND LICENSE TAX, and
OIL RESOURCE INDEMNITY TRUST TAX**

(DOR's Notice to Operators; Edited)

Form 0-1 (white) is used to show the oil tax computation for all three taxes. Additional schedules available from DOR assist in determining taxable values for the Oil Severance Tax, Privilege and License Tax, and the Resource Indemnity Trust Tax.

Reporting Requirements for Oil Severance Tax:

FILING: Quarterly

DUE DATE RETURN
AND PAYMENT: On or before 60th day following end of calendar year quarter

EXEMPTION: Effective August 8, 1990, this exemption has been terminated. On this date, the governor certified that the price of West Texas intermediate crude oil reached \$25 per barrel and that § 15-36-121, MCA, provided for the termination of this exemption for both oil and gas.

TAX RATE: Regular production 5% (.05)
(Lease or unit produces 10 barrels or more per day)

Montana Code Annotated, Title 15, Chapter 36, Section 121, defines a "stripper well" as being a well that produces less than 10 barrels of oil per day determined by dividing the amount of production from the lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and dividing the resultant quotient by 365. Therefore, under this definition, an entire lease or unit either will qualify or will not qualify as stripper production. A lease or unit cannot have some wells being reported as stripper wells and other wells being reported as regular production.

Effective September 1, 1990, this tax incentive for stripper oil has been terminated on the State Oil Severance Tax. On this date, the governor certified that the price of West Texas intermediate crude oil reached \$30 per barrel and that §§ 15-36-101 and 15-36-121, MCA, provided for the termination of this tax incentive.

FORMS: Form 0-1 (white)
Summary page for all three taxes

Form O-P (blue)
For production taxed at regular rate

Form Amended O-P (pink)
Use for amending prior quarter's returns

Reporting Requirements for Oil Privilege and License Tax:

FILING: Quarterly

DUE DATE RETURN
AND PAYMENT: On or before 60th day following end of calendar year quarter

EXEMPTION: None

TAX RATE: .2% (.002)

FORMS: Form 0-1 (white) Same form as oil severance tax
See the Privilege and License Tax Computation section for instructions

Reporting Requirements for Oil Resource Indemnity Trust Tax:

FILING: Annually

DUE DATE RETURN
AND PAYMENT: On or before 60th day following end of calendar year

EXEMPTION: None

TAX RATE: .5% (.005)

FORMS: Form 0-1 (white) same form as oil severance tax
See Resource Indemnity Trust Tax section for instructions

**STATE GAS SEVERANCE TAX,
GAS PRIVILEGE AND LICENSE TAX, and
GAS RESOURCE INDEMNITY TRUST TAX**

(DOR's Notice to Operators; Edited)

Form NG-1 (yellow) is used to show the gas tax computation for all three taxes. Additional schedules available from DOR assist in determining taxable values for the Gas Severance Tax, Privilege and License Tax, and the Resource Indemnity Trust Tax.

Reporting Requirements for Gas Severance Tax:

FILING: Quarterly

DUE DATE RETURN
AND PAYMENT: On or before 60th day following end of calendar year quarter

EXEMPTION: Effective August 8, 1990, this exemption has been terminated. On this date, the governor certified that the price of West Texas intermediate crude oil reached \$25 per barrel and that § 15-36-121, MCA, provided for the termination of this exemption for both oil and gas.

TAX RATE: Regular production 2.65% (.0265)
(Lease or unit produces over 60 MCFs per day)

Stripper production 1.59% (.0159)
(Lease or unit produces 60 MCFs or less per day)

Montana Code Annotated, Title 15, Chapter 36, Section 121, defines a "stripper well" as being a well that produces 60,000 cubic feet of natural gas or less per day determined by dividing the amount of production from the lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and dividing the resultant quotient by 365. Therefore, under this definition, an entire lease or unit either will qualify or will not qualify as stripper production. A lease or unit cannot have some wells being reported as stripper wells and other wells being reported as regular production.

If a well qualifies for the "stripper" category, the first 30 MCFs produced per day are exempt from tax. All MCFs produced above 30 MCFs per day are taxed at the "stripper" rate.

FORMS: Form NG-1 (yellow)
Summary page for all three taxes

Form NG-P (yellow)
For production taxed at regular rate

Form NG-S (blue)
For production taxed at stripper rate

Form Amended NG-P (white)
Use for amending prior quarter's returns

Reporting Requirements for Gas Privilege and License Tax:

FILING: Quarterly

DUE DATE RETURN AND PAYMENT: On or before 60th day following end of calendar year quarter

EXEMPTION: None

TAX RATE: .2% (.002)

FORMS: Form NG-1 (yellow) same form as gas severance tax
See the Privilege and License Tax Computation section for instructions

Reporting Requirements for Gas Resource Indemnity Trust Tax:

FILING: Annually

DUE DATE RETURN AND PAYMENT: On or before 60th day following end of calendar year

EXEMPTION: None

TAX RATE: .5% (.005)

FORMS: Form NG-1 (yellow) same form as gas severance tax
See Resource Indemnity Trust Tax section for instructions

LOCAL GOVERNMENT SEVERANCE TAX
(DOR's Notice to Operator)

L.G.S.T. production includes any well which began production before July 1, 1985.

Reporting Requirements for L.G.S.T.:

FILING: Quarterly

DUE DATE: On or before 60th day following end of calendar year quarter

PAYMENT: The L.G.S.T. tax is paid in quarterly installments one year after the end of each quarter for which a statement is completed as required. PAYMENT SHOULD NOT BE MADE TO THE OFFICE OF THE DEPARTMENT OF REVENUE WITH FILINGS.

TAX RATE: Oil: 5% of total gross value of incremental production from qualified tertiary recovery projects

5% of the total gross value of all production from qualified "stripper" production

8.4% of the total gross value of all other production

12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil

Gas: 10% of the total gross value of all production from qualified "stripper" production

15.25% of the total gross value of all other production

15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas

Definition: "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

EXEMPTION: None

FORMS:

LGST No. 1 (green)
Tax Return Page

LGST No. 2 (gold)
Regular Oil Production

LGST No. 2A (pink)
Stripper and Tertiary Oil Production

LGST No. 3 (blue)
Regular Gas Production

LGST No. 3A (yellow)
Gas Stripper Production

LGST No. 4 (white)
Stripper Production Calculation

LGST No. 5 (white)
Schedule of Royalty Interests

METAL MINES GROSS PROCEEDS

(DOR's Notice to Operators)

Each person engaged in mining or extracting gold, silver, copper, lead, or other metals from any mine or mining property within this state must, on or before March 31 each year, file with the Department of Revenue a statement of gross metal yield from each mine property owned or worked in the preceding calendar year. The gross metal yield is the revenue realized from the extraction of metals, which is determined by multiplying the quantity produced by the average of the exchange value of all property produced or extracted over a twelve-month period. After the Department determines the merchantable value of all metal production from the previous calendar year, it will transfer this value on or before July 1 to its agent in each county where metals have produced the merchantable value. The Department's agent will transmit a tax roll, from the reported valuation, to the county treasurer on or before September 15 each year. The county treasurer will then give full notice to each metal producer and collect the taxes due. One-half of the taxes are payable on or before 5 o'clock p.m. on November 30 each year, or within thirty days after the tax notice is postmarked, whichever is later, and one-half on or before 5 o'clock p.m. on May 31 each year.

METALLIFEROUS MINES LICENSE TAX

(DOR's Notice to Operators)

The annual license tax is to be paid by a person engaged in or carrying on the business of working or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced, at the following rates:

- (1) Concentrate shipped to a smelter, mill or reduction work is taxed the following rate:

<u>Gross Value of Product</u>	<u>Rate of Tax (% of Gross Value)</u>
First \$250,000	0%
More than \$250,000	1.81% of increment

- (2) Gold, silver, or any platinum-group metal that is dore, bullion or matte and that is shipped to a refinery is taxed at the following rate:

<u>Gross Value of Product</u>	<u>Rate of Tax (% of Gross Value)</u>
First \$250,000	0%
More than \$250,000	1.6% of increment

The gross value of the product means the receipts realized from the extraction and sale of metals or concentrate containing metals. The receipts received is the monetary payment or refined metal received by the mining company from the metal trader, smelter, roaster, or refinery, determined by multiplying the quantity of metal received by the metal trader, etc., by the quoted price for the metal and then subtracting basic treatment and refinery charges, quantity deductions, price deductions, interest, and penalty metal, impurity, and moisture deductions as specified by contract. Deductions are not allowed either directly or indirectly for the cost of anything related to transportation from the mine or mill to the smelter, roaster, or refinery.

The return and tax due must be submitted to the Department by March 31.

RESOURCE INDEMNITY TRUST TAX

(DOR's Notice to Operators)

Any person, except if that person has paid the metalliferous mines tax, engaged in or carrying on the business of mining, extracting, or producing a mineral is assessed a \$25 tax, plus an additional amount computed on gross value of the product that was derived from the business work or operation within this state at the rate of $\frac{1}{2}$ of 1% of the amount of gross value at the time of extracting from the ground, which means after loading but before hauling, if in excess of \$5,000. If mining, extracting, or producing talc, the rate would be 4% of the gross value. If mining, extracting, or producing vermiculite, the rate would be 2% of the gross value.

The tax due on coal is computed at the rate of 0.4% of the "contract sales price" as defined in the Coal Severance statutes (§ 15-35-102, Montana Code Annotated, effective for coal produced on or after January 1, 1992).

For all producers other than metal mines, the return and tax are due on or before March 1 on the value of product in the year preceding January 1, of the year in which the tax was paid. For metal producers, the returns are due on March 31.