

HOUSE BILL 866

Introduced by D. Brown, et al.

2/14	Introduced
2/14	Referred to Natural Resources
2/15	First Reading
2/15	Fiscal Note Requested
2/22	Fiscal Note Received
2/22	Fiscal Note Printed
3/08	Hearing
3/21	Committee Report--Bill Passed as Amended
3/27	2nd Reading Passed
3/28	3rd Reading Passed
	Transmitted to Senate
3/28	First Reading
3/28	Referred to State Administration
4/09	Hearing
4/10	Committee Report--Bill Concurred as Amended
4/11	2nd Reading Concur Motion Failed
4/11	2nd Reading Indefinitely Postponed

1 (g) adoption of standards for measuring the efficiency
 2 of wood stoves under 15-32-102 and 15-32-203;

3 (h) relating to certification of water and wastewater
 4 treatment plant operators under Title 37, chapter 42;

5 (i) relating to environmental protection under Title
 6 75;

7 (j) relating to the regulation of subdivisions under
 8 Title 76, chapters 3 and 4;

9 (k) compliance with the department of state lands'
 10 schedules for onsite consultation for timber sales under
 11 76-13-132;

12 (l) consultation with the board of land commissioners
 13 for the purpose of accepting grants of federal land under
 14 77-1-211;

15 (m) consultation with the board of land commissioners
 16 for the purpose of disposing of institutional property under
 17 77-2-302;

18 (n) relating to the regulation of pesticides under
 19 Title 80, chapter 8;

20 (o) relating to the regulation of agricultural
 21 chemicals under Title 80, chapter 15;

22 (p) approval of the means of disposal of wastewater,
 23 sewage, and air pollutants before the construction or
 24 remodeling of a dairy products manufacturing plant under
 25 81-22-403;

1 (q) investigation of the obstruction of streams by
 2 beaver dams under 87-1-224;

3 (r) approval of rules governing the use of lands and
 4 waters under 87-1-303; and

5 (s) relating to the natural resources information
 6 system under Title 90, chapter 15.

7 (2) All references to the "board of health and
 8 environmental sciences" or "board" (of health and
 9 environmental sciences), "department of health and
 10 environmental sciences" or "department" (of health and
 11 environmental sciences), or "director of health and
 12 environmental sciences" or "director" (of health and
 13 environmental sciences) in those titles, chapters, parts,
 14 and sections referred to in subsection (1) are changed to
 15 "board of natural resources and environment" or "board" (of
 16 natural resources and environment), "department of natural
 17 resources and environment" or "department" (of natural
 18 resources and environment), or "director of natural
 19 resources and environment" or "director" (of natural
 20 resources and environment), as appropriate. The code
 21 commissioner shall conform internal references and grammar
 22 to these changes.

23 (3) The governor may by executive order assign to the
 24 board of natural resources and environment or to the
 25 department of natural resources and environment in a manner

1 consistent with [sections 1 through 71] functions allocated
 2 to the board or department of natural resources and
 3 conservation by the 52nd legislature and not transferred by
 4 [sections 1 through 71].

5 NEW SECTION. **Section 2. Functions of board of land**
 6 **commissioners and department and commissioner of state lands**
 7 **transferred to board, department, or director of natural**
 8 **resources and environment.** (1) Except as otherwise provided
 9 in [sections 1 through 71], the following functions of the
 10 board of land commissioners, the department of state lands,
 11 and the commissioner of state lands are transferred to the
 12 board of natural resources and environment, the department
 13 of natural resources and environment, or the director of
 14 natural resources and environment, as appropriate, as
 15 established in sections 2-15-3302 and 2-15-3301,
 16 respectively:

17 (a) relating to reclamation of mined lands under Title
 18 82, chapter 4;

19 (b) relating to coal mining impacts under Title 90,
 20 chapter 6, part 2; and

21 (c) relating to hard-rock mining impacts under Title
 22 90, chapter 6, part 3.

23 (2) Except as otherwise provided in [sections 1 through
 24 71], any references to the "board of land commissioners" or
 25 "board" (of land commissioners), "department of state lands"

1 or "department" (of state lands), or "commissioner of state
 2 lands" or "commissioner" (of state lands) in those titles,
 3 chapters, parts, and sections referred to in subsection (1)
 4 are changed to "board of natural resources and environment"
 5 or "board" (of natural resources and environment),
 6 "department of natural resources and environment" or
 7 "department" (of natural resources and environment) or
 8 "director of natural resources and environment" or
 9 "director" (of natural resources and environment), as
 10 appropriate. The code commissioner shall conform internal
 11 references and grammar to these changes.

12 (3) (a) All functions of the state board of land
 13 commissioners relating to the reclamation of mined lands
 14 under Title 82, chapter 4, except the adoption of
 15 administrative rules, are transferred to the department of
 16 natural resources and environment.

17 (b) All references to the "board of land commissioners"
 18 or "board" (of land commissioners) in Title 82, chapter 4,
 19 except with respect to the adoption of administrative rules,
 20 are changed to the "department of natural resources and
 21 environment" or "department" (of natural resources and
 22 environment), as appropriate. The code commissioner shall
 23 conform internal references and grammar to these changes.

24 (c) The governor may by executive order assign to the
 25 department of natural resources and environment in a manner

1 consistent with [sections 1 through 71] functions of the
2 board of land commissioners, other than the adoption of
3 administrative rules, relating to the reclamation of mined
4 lands allocated to the board of land commissioners and not
5 transferred by [sections 1 through 71].

6 (4) The governor may by executive order assign to the
7 board or department of natural resources and environment in
8 a manner consistent with [sections 1 through 71] functions
9 allocated to the board of land commissioners or to the
10 department or commissioner of state lands and not
11 transferred by [sections 1 through 71].

12 **NEW SECTION. Section 3. Functions of board,**
13 **department, and director of natural resources and**
14 **conservation transferred to board of land commissioners or**
15 **commissioner or department of state lands. (1) Except as**
16 **otherwise provided in [sections 1 through 71], the following**
17 **functions of the board, department, and director of natural**
18 **resources and conservation are transferred to the board of**
19 **land commissioners, the department of state lands, or the**
20 **commissioner of state lands, as appropriate, as established**
21 **in Article X, section 4, of the Montana constitution and**
22 **2-15-3201 and 2-15-3202, respectively:**

23 (a) appointment of a soil survey advisory council under
24 2-15-3306;

25 (b) exemption from payment of property taxes under

1 15-6-205;

2 (c) relating to the wastewater treatment program and
3 revolving fund under Title 75, chapter 5, part 11;

4 (d) relating to conservation districts under Title 76,
5 chapter 15;

6 (e) relating to state-owned water projects and the
7 water development program under 85-1-102 and Title 85,
8 chapter 1, parts 2 through 6;

9 (f) relating to water users' associations under
10 85-6-109; and

11 (g) relating to resource development and reclamation
12 under Title 90, chapter 2.

13 (2) Except as otherwise provided in [sections 1 through
14 71], any references to the "board of natural resources and
15 conservation" or "board" (of natural resources and
16 conservation), "department of natural resources and
17 conservation" or "department" (of natural resources and
18 conservation), or "director of natural resources and
19 conservation" or "director" (of natural resources and
20 conservation) in those titles, chapters, parts, and sections
21 referred to in subsection (1) are changed to "board of land
22 commissioners" or "board" (of land commissioners),
23 "department of state lands" or "department" (of state
24 lands), or "commissioner of state lands" or "commissioner"
25 (of state lands), as appropriate. The code commissioner

1 shall conform internal references and grammar to these
2 changes.

3 (3) The governor may by executive order assign to the
4 board of land commissioners and to the department of state
5 lands in a manner consistent with [sections 1 through 71]
6 any functions allocated to the department or board of
7 natural resources and conservation by the 52nd legislature
8 and not transferred by [sections 1 through 71].

9 NEW SECTION. **Section 4. Department, director, and**
10 **board changed -- instructions to code commissioner.** (1) The
11 names of the department and the director of health and
12 environmental sciences are changed to the department and
13 director of public health, respectively. Unless inconsistent
14 with [sections 1 through 71], wherever the terms "department
15 of health and environmental sciences" or "department" (of
16 health and environmental sciences) or "director of health
17 and environmental sciences" or "director" (of health and
18 environmental sciences) appears in the Montana Code
19 Annotated, the code commissioner shall change the name to
20 the "department of public health" or "department" (of public
21 health) or to the "director of public health" or "director"
22 (of public health), as appropriate, and conform internal
23 references and grammar to these changes.

24 (2) The name of the board of health and environmental
25 sciences is changed to the board of public health. Unless

1 inconsistent with [sections 1 through 71], wherever the term
2 "board of health and environmental sciences" or "board" (of
3 health and environmental sciences) appears in the Montana
4 Code Annotated, the code commissioner shall change the name
5 to the "board of public health" or "board" (of public
6 health) and conform internal references and grammar to these
7 changes.

8 (3) The names of the department and the director of
9 natural resources and conservation are changed to the
10 department and director of natural resources and
11 environment, respectively. Unless inconsistent with
12 [sections 1 through 71], wherever the terms "department of
13 natural resources and conservation" or "department" (of
14 natural resources and conservation) or "director of natural
15 resources and conservation" or "director" (of natural
16 resources and conservation) appear in the Montana Code
17 Annotated, the code commissioner shall change the names to
18 the "department of natural resources and environment" or
19 "department" (of natural resources and environment) or
20 "director of natural resources and environment" or
21 "director" (of natural resources and environment), as
22 appropriate, and conform internal references and grammar to
23 these changes.

24 (4) The name of the board of natural resources and
25 conservation is changed to the board of natural resources

1 and environmen^t. Unless inconsistent with [sections 1
2 through 71], wherever the terms "board of natural resources
3 and conservation" or "board" (of natural resources and
4 conservation) appear in the Montana Code Annotated, the code
5 commissioner shall change the names to the "board of natural
6 resources and environment" or "board" (of natural resources
7 and environment) and conform internal references and grammar
8 to these changes.

9 **Section 5.** Section 2-15-2107, MCA, is amended to read:

10 "2-15-2107. Water pollution control advisory council.

11 (1) There is a water pollution control advisory council.

12 (2) The council consists of eleven members. The members
13 are:

14 (a) the director of fish, wildlife, and parks;

15 (b) the ~~administrator--of-the-water-resources-division~~
16 director of the department of natural resources and
17 conservation environment;

18 (c) the director of agriculture;

19 (d) eight members appointed by the governor as follows:

20 (i) a representative of industry concerned with the
21 disposal of inorganic waste;

22 (ii) a representative of industry concerned with the
23 disposal of organic waste;

24 (iii) a livestock feeder;

25 (iv) a representative of municipal government;

1 (v) a representative of an organization concerned with
2 fishing for sport;

3 (vi) a representative from labor;

4 (vii) a supervisor of a soil and water conservation
5 district;

6 (viii) a representative of an organization concerned
7 with water recreation.

8 (3) The appointed council members serve at the pleasure
9 of the governor.

10 (4) Subsections (5) through (8) of 2-15-122 apply to
11 the council and members."

12 **Section 6.** Section 2-15-3302, MCA, is amended to read:

13 "2-15-3302. Board of natural resources and conservation
14 environment -- composition -- quasi-judicial. (1) There is a
15 board of natural resources and conservation environment.

16 (2) The board is composed of seven members, appointed
17 by the governor as prescribed in 2-15-124, informed and
18 experienced in the subjects of natural resources and
19 conservation environment.

20 (3) The board is designated as a quasi-judicial board
21 for purposes of 2-15-124.

22 (4) The board is allocated to the department for
23 administrative purposes only as prescribed in 2-15-121.

24 (5) In addition to carrying out its functions as
25 provided by law, the board shall act in an advisory capacity

1 to the department in all other matters."

2 **Section 7.** Section 17-5-101, MCA, is amended to read:

3 "17-5-101. **Definitions.** The following terms as used in
4 this part have the following meanings:

5 (1) "Bonds" include bonds, notes, warrants, debentures,
6 certificates of indebtedness, temporary bonds, temporary
7 notes, interim receipts, interim certificates, and all
8 instruments or obligations evidencing or representing
9 indebtedness or evidencing or representing the borrowing of
10 money or evidencing or representing a charge, lien, or
11 encumbrance on specific revenues, special assessments,
12 income, or property of a political subdivision, including
13 all instruments or obligations payable from a special fund.

14 (2) "Political subdivision" includes a county, city,
15 town, school district, irrigation district, drainage
16 district, special improvement district, or any other
17 governmental subdivision of the state but shall not include
18 the state of Montana, ~~the board of examiners, the division~~
19 ~~of water resources of the department of natural resources~~
20 ~~and conservation, the state highway commission,~~ or any other
21 board, agency, or commission of the state.

22 (3) "Governing body" means the board, council,
23 commission, or other body charged with the general control
24 of the issuance of bonds of a political subdivision."

25 **Section 8.** Section 17-5-202, MCA, is amended to read:

1 "17-5-202. **Definitions.** The following terms, wherever
2 used or referred to in this part, have the following
3 meanings:

4 (1) "Public body" includes a county, city, town, school
5 district, irrigation district, drainage district, special
6 improvement district, or any other political or governmental
7 subdivision of the state or any commission, authority, or
8 agency of a political or governmental subdivision, and also
9 includes the board of public education, the board of regents
10 of higher education, the board of examiners, the board of
11 natural resources and conservation environment, the board of
12 land commissioners, the state highway commission, or any
13 other governmental agency of this state.

14 (2) "Bonds" includes bonds, notes, warrants,
15 debentures, certificates of indebtedness, temporary bonds,
16 temporary notes, interim receipts, interim certificates, and
17 all instruments or obligations evidencing or representing
18 indebtedness or evidencing or representing the borrowing of
19 money or evidencing or representing a charge, lien, or
20 encumbrance on specific revenues, income, or property of a
21 public body, including all instruments or obligations
22 payable from a special fund."

23 **Section 9.** Section 40-6-128, MCA, is amended to read:

24 "40-6-128. Proceeding to determine father's identity
25 and terminate rights. (1) If a child is born out of wedlock

1 and the mother executes or proposes to execute a release
 2 terminating her rights to the child or if the child
 3 otherwise becomes the subject of an adoption proceeding, the
 4 agency or person to whom the child has been or is to be
 5 relinquished or the mother or person having custody of the
 6 child shall file a petition in the district court to
 7 terminate the parental rights of the father, unless the
 8 father's relationship to the child has been previously
 9 terminated or determined not to exist by the court. The
 10 court shall hold a hearing as soon as practical to determine
 11 the identity of the father and to determine or terminate the
 12 rights of the father as provided in this section and in
 13 40-6-129 and 40-6-130. This section is not applicable if the
 14 father is a person whose consent to adoption is not required
 15 under 40-8-111.

16 (2) Proof of service of a notice of intent to release
 17 or the putative father's verified acknowledgment of notice
 18 of intent to release shall be filed with the court, if such
 19 notice was given to the putative father. The court shall
 20 request the records ~~and-statistics~~ bureau of the department
 21 of public health and-environmental-sciences to send to the
 22 court a copy of any notice of intent to claim paternity of
 23 the particular child which the bureau has received.

24 (3) If the mother has failed to name a putative father
 25 or has failed to file a notice of intent to release, the

1 court shall cause inquiry to be made of the mother in an
 2 effort to identify the natural father. The inquiry shall
 3 include the following:

4 (a) whether the mother was married at the time of
 5 conception of the child or at any time thereafter;

6 (b) whether the mother was cohabiting with a man at the
 7 time of conception or birth of the child;

8 (c) whether the mother has received support payments or
 9 promises of support payments with respect to the child or in
 10 connection with her pregnancy; or

11 (d) whether any man has formally or informally
 12 acknowledged or declared his possible paternity of the
 13 child.

14 (4) Notwithstanding this section or any other
 15 provisions of law and in consideration of her right to
 16 privacy, no mother of a child who is the subject of
 17 proceedings under this part may be compelled to testify
 18 concerning or to divulge the identity of the father or
 19 possible father of that child.

20 (5) Notice of the hearing shall be served upon the
 21 following persons in the manner appropriate under the
 22 Montana Rules of Civil Procedure or any manner which the
 23 court shall direct:

24 (a) a putative father who has timely filed a notice of
 25 intent to claim paternity as provided in 40-6-126 or

1 40-6-127;

2 (b) a putative father who has not been served with a
3 notice of intent to release at least 30 days before the
4 expected date of delivery specified in the notice of intent
5 to release;

6 (c) any other male who was not served pursuant to
7 40-6-127(2) with a notice of intent to release and who the
8 court, after inquiry of the mother or any other appropriate
9 person, has reason to believe may be the father of the
10 child.

11 (6) The notice of hearing shall inform the putative
12 father that his failure to appear at the hearing constitutes
13 a denial of his interest in custody of the child, which
14 denial will result in the court's termination of his rights
15 to the child.

16 (7) Proof of service of the notice of hearing required
17 by subsection (5) shall be filed with the court. A verified
18 acknowledgment of service by the party to be served is proof
19 of personal service. Notice of hearing need not be required
20 if the putative father is present at the hearing. A waiver
21 of notice of hearing by a person entitled to receive it is
22 sufficient. If no person has been identified as the natural
23 father or possible father, the court, on the basis of all
24 information available, shall determine whether publication
25 or public posting of notice of the proceeding is likely to

1 lead to identification and if so shall order publication or
2 public posting at the times and places and in the manner it
3 considers appropriate. The name of the natural mother may be
4 included in such publication only with her written consent.

5 (8) At the hearing, the court shall receive evidence as
6 to the identity of the father of the child. Based upon the
7 evidence received and the court's inquiry, the court shall
8 enter a finding identifying the father or declaring that the
9 identity of the father cannot be determined.

10 (9) If the court finds that the father of the child is
11 a person who did not receive either a timely notice of
12 intent to release pursuant to 40-6-127 or a notice required
13 pursuant to subsection (5) of this section and who has not
14 waived his right to notice of hearing and is not present at
15 the hearing, the court shall adjourn further proceedings
16 until that person is served with a notice of hearing."

17 **Section 10.** Section 75-10-103, MCA, is amended to read:
18 "75-10-103. Definitions. Unless the context clearly
19 requires otherwise, in this part the following definitions
20 apply:

21 (1) "Board" means the board of ~~health-and-environmental~~
22 sciences natural resources and environment provided for in
23 ~~2-15-2104~~ 2-15-3302.

24 (2) "Department" means the department of ~~health--and~~
25 environmental--sciences natural resources and environment

1 provided for in Title 2, chapter 15, part 21 33.

2 (3) "Front-end organizational funds" means the money to
3 be loaned to local governments for initial operating
4 capital, site evaluation and negotiation, final design
5 engineering and cost estimates, construction contract
6 documents, final contract negotiations with energy users,
7 material markets, and waste suppliers, contract negotiations
8 with private operational managers, and financial and legal
9 consultations.

10 (4) "Front-end planning funds" means the money granted
11 to local governments for contract negotiations between local
12 governments, predesign engineering and cost estimates,
13 administrative costs, preliminary contract negotiations with
14 energy users and waste suppliers, financial feasibility
15 analysis by a financial consultant, legal consultations,
16 opinions, and review of contracts.

17 (5) "Front-end implementation funds" means the money
18 granted to local governments for purchase of capital
19 equipment to be used for a solid waste management system.

20 (6) "Local government" means a county, incorporated
21 city or town, or refuse disposal district organized under
22 the laws of this state.

23 (7) "Person" means any individual, firm, partnership,
24 company, association, corporation, city, town, local
25 governmental entity, or any other state, federal, or private

1 entity, whether organized for profit or not.

2 (8) "Resource recovery facility" means any facility at
3 which solid waste is processed for the purpose of
4 extracting, converting to energy, or otherwise separating
5 and preparing solid waste for reuse.

6 (9) "Solid waste" means all putrescible and
7 nonputrescible wastes, including but not limited to garbage,
8 rubbish, refuse, hazardous wastes, ashes, sludge from sewage
9 treatment plants, water supply treatment plants, or air
10 pollution control facilities; septic tank and cesspool
11 pumpings; construction and demolition wastes; dead animals,
12 including offal; discarded home and industrial appliances;
13 wood wastes and inert materials; but does not include
14 municipal sewage, industrial wastewater effluents, or mining
15 wastes as regulated under the mining and reclamation laws
16 administered by the department of state-lands.

17 (10) "Solid waste management system" means any system
18 which controls the storage, treatment, recycling, recovery,
19 or disposal of solid waste.

20 (11) "State solid waste plan" means the statewide plan
21 formulated by the department as authorized by this part."

22 **Section 11.** Section 75-10-203, MCA, is amended to read:
23 *75-10-203. Definitions. Unless the context requires
24 otherwise, in this part the following definitions apply:

25 (1) "Board" means the board of health-and-environmental

1 ~~sciences~~ natural resources and environment provided for in
2 ~~2-15-2104~~ 2-15-3302.

3 (2) "Department" means the department of ~~health--and~~
4 ~~environmental--~~sciences natural resources and environment
5 provided for in Title 2, chapter 15, part ~~21~~ 33.

6 (3) "Dispose" or "disposal" means the discharge,
7 injection, deposit, dumping, spilling, leaking, or placing
8 of any solid waste into or onto the land so that the solid
9 waste or any constituent of it may enter the environment or
10 be emitted into the air or discharged into any waters,
11 including ground water.

12 (4) "Household waste" means any solid waste derived
13 from households, including single and multiple residences,
14 hotels, and motels, crew quarters, and campgrounds and other
15 public recreation and public land management facilities.

16 (5) "Municipal solid waste landfill" means any publicly
17 or privately owned landfill or landfill unit that receives
18 household waste or other types of waste, including
19 commercial waste, nonhazardous sludge, and industrial solid
20 waste. The term does not include land application units,
21 surface impoundments, injection wells, or waste piles.

22 (6) "Person" means an individual, firm, partnership,
23 company, association, corporation, city, town, local
24 governmental entity, or any other governmental or private
25 entity, whether organized for profit or not.

1 (7) "Resource recovery" means the recovery of material
2 or energy from solid waste.

3 (8) "Resource recovery facility" means a facility at
4 which solid waste is processed for the purpose of
5 extracting, converting to energy, or otherwise separating
6 and preparing solid waste for reuse.

7 (9) "Resource recovery system" means a solid waste
8 management system which provides for the collection,
9 separation, recycling, or recovery of solid wastes,
10 including disposal of nonrecoverable waste residues.

11 (10) "Solid waste" means all putrescible and
12 nonputrescible wastes, including but not limited to garbage;
13 rubbish; refuse; ashes; sludge from sewage treatment plants,
14 water supply treatment plants, or air pollution control
15 facilities; construction and demolition wastes; dead
16 animals, including offal; discarded home and industrial
17 appliances; and wood products or wood byproducts and inert
18 materials. "Solid waste" does not mean municipal sewage,
19 industrial wastewater effluents, mining wastes regulated
20 under the mining and reclamation laws administered by the
21 department ~~of state lands~~, slash and forest debris regulated
22 under laws administered by the department of state lands, or
23 marketable byproducts.

24 (11) "Solid waste management system" means a system
25 which controls the storage, treatment, recycling, recovery,

1 or disposal of solid waste.

2 (12) "Storage" means the actual or intended containment
3 of wastes, either on a temporary basis or for a period of
4 years.

5 (13) "Transport" means the movement of wastes from the
6 point of generation to any intermediate points and finally
7 to the point of ultimate storage or disposal.

8 (14) "Treatment" means a method, technique, or process,
9 including neutralization, designed to change the physical,
10 chemical, or biological character or composition of any
11 solid waste so as to neutralize the waste or so as to render
12 it safer for transport, amenable for recovery, amenable for
13 storage, or reduced in volume."

14 **Section 12.** Section 75-10-404, MCA, is amended to read:

15 "75-10-404. Powers of department. (1) The department
16 may:

17 (a) administer and enforce the provisions of this part,
18 rules implementing this part, and orders and permits issued
19 pursuant to this part;

20 (b) conduct and publish studies on hazardous wastes and
21 hazardous waste management;

22 (c) initiate, conduct, and support research,
23 demonstration projects, and investigation, as its resources
24 may allow, and coordinate state agency research programs
25 pertaining to hazardous waste management;

1 (d) accept and administer grants from the federal
2 government and from other sources, public and private; and

3 (e) abate public nuisances that affect the public
4 health and welfare or the environment and that arise from or
5 in connection with the past or present handling or disposal
6 of any hazardous waste or regulated substance.

7 (2) The department shall integrate all provisions of
8 this part with other laws administered by the department to
9 avoid unnecessary duplication. Furthermore, the department
10 shall coordinate its activities under this part with the
11 program administered by the department of agriculture under
12 the Montana Pesticides Act, ~~the programs administered by the~~
13 ~~department of state lands related to mining and mine~~
14 ~~reclamation, and~~ the program administered by the department
15 of public service regulation related to hazardous material
16 transportation, ~~and provisions of the Montana Major Facility~~
17 ~~Siting Act administered by the department of natural~~
18 ~~resources and conservation. The integration and coordination~~
19 shall be effected only to the extent that it can be done in
20 a manner consistent with the goals and policies of this part
21 and the other laws referred to in this section."

22 **Section 13.** Section 75-20-104, MCA, is amended to read:

23 "75-20-104. Definitions. In this chapter, unless the
24 context requires otherwise, the following definitions apply:

25 (1) "Addition thereto" means the installation of new

1 machinery and equipment which would significantly change the
2 conditions under which the facility is operated.

3 (2) "Application" means an application for a
4 certificate submitted in accordance with this chapter and
5 the rules adopted hereunder.

6 (3) "Associated facilities" includes but is not limited
7 to transportation links of any kind, aqueducts, diversion
8 dams, pipelines, transmission substations, storage ponds,
9 reservoirs, and any other device or equipment associated
10 with the production or delivery of the energy form or
11 product produced by a facility, except that the term does
12 not include a facility or a natural gas or crude oil
13 gathering line 17 inches or less in inside diameter.

14 (4) "Board" means the board of natural resources and
15 conservation environment provided for in 2-15-3302.

16 ~~{5}--"Board--of--health"--means--the--board--of--health--and~~
17 ~~environmental--sciences--provided--for--in--2-15-2104;~~

18 ~~{6}{5}~~ "Certificate" means the certificate of
19 environmental compatibility and public need issued by the
20 board under this chapter that is required for the
21 construction or operation of a facility.

22 ~~{7}{6}~~ "Commence to construct" means:

23 (a) any clearing of land, excavation, construction, or
24 other action that would affect the environment of the site
25 or route of a facility but does not mean changes needed for

1 temporary use of sites or routes for nonutility purposes or
2 uses in securing geological data, including necessary
3 borings to ascertain foundation conditions;

4 (b) the fracturing of underground formations by any
5 means if such activity is related to the possible future
6 development of a gasification facility or a facility
7 employing geothermal resources but does not include the
8 gathering of geological data by boring of test holes or
9 other underground exploration, investigation, or
10 experimentation;

11 (c) the commencement of eminent domain proceedings
12 under Title 70, chapter 30, for land or rights-of-way upon
13 or over which a facility may be constructed;

14 (d) the relocation or upgrading of an existing facility
15 defined by (b) or (c) of subsection ~~{10}~~ (8), including
16 upgrading to a design capacity covered by subsection ~~{10}{b}~~
17 (8)(b), except that the term does not include normal
18 maintenance or repair of an existing facility.

19 ~~{8}{7}~~ "Department" means the department of natural
20 resources and conservation environment provided for in Title
21 2, chapter 15, part 33.

22 ~~{9}--"Department--of--health"--means--the--department--of~~
23 ~~health--and--environmental--sciences--provided--for--in--Title--2,~~
24 ~~chapter--15--part--21;~~

25 ~~{10}{8}~~ "Facility" means:

1 (a) except for crude oil and natural gas refineries and
2 those facilities subject to The Montana Strip and
3 Underground Mine Reclamation Act, each plant, unit, or other
4 facility and associated facilities designed for or capable
5 of:

6 (i) generating 50 megawatts of electricity or more or
7 any addition thereto (except pollution control facilities
8 approved by the department of ~~health--and--environmental~~
9 sciences natural resources and environment added to an
10 existing plant) having an estimated cost in excess of \$10
11 million;

12 (ii) producing 25 million cubic feet or more of gas
13 derived from coal per day or any addition thereto having an
14 estimated cost in excess of \$10 million;

15 (iii) producing 25,000 barrels of liquid hydrocarbon
16 products per day or more or any addition thereto having an
17 estimated cost in excess of \$10 million;

18 (iv) enriching uranium minerals or any addition thereto
19 having an estimated cost in excess of \$10 million; or

20 (v) utilizing or converting 500,000 tons of coal per
21 year or more or any addition thereto having an estimated
22 cost in excess of \$10 million;

23 (b) each electric transmission line and associated
24 facilities of a design capacity of more than 69 kilovolts,
25 except that the term:

1 (i) does not include an electric transmission line and
2 associated facilities of a design capacity of 230 kilovolts
3 or less and 10 miles or less in length; and

4 (ii) does not include an electric transmission line with
5 a design capacity of more than 69 kilovolts and up to and
6 including 115 kilovolts for which the person planning to
7 construct the line has obtained right-of-way agreements or
8 options for a right-of-way from more than 75% of the owners
9 who collectively own more than 75% of the property along the
10 centerline;

11 (c) each pipeline, whether partially or wholly within
12 the state, greater than 17 inches in inside diameter and 30
13 miles in length, and associated facilities;

14 (d) any use of geothermal resources, including the use
15 of underground space in existence or to be created, for the
16 creation, use, or conversion of energy, designed for or
17 capable of producing geothermally derived power equivalent
18 to 25 million Btu per hour or more or any addition thereto
19 having an estimated cost in excess of \$750,000;

20 (e) any underground in situ gasification of coal.

21 ~~(1)~~(9) "Person" means any individual, group, firm,
22 partnership, corporation, cooperative, association,
23 government subdivision, government agency, local government,
24 or other organization or entity.

25 ~~(2)~~(10) "Transmission substation" means any structure,

1 device, or equipment assemblage, commonly located and
2 designed for voltage regulation, circuit protection, or
3 switching necessary for the construction or operation of a
4 proposed transmission line.

5 ~~(1)~~(11) "Utility" means any person engaged in any
6 aspect of the production, storage, sale, delivery, or
7 furnishing of heat, electricity, gas, hydrocarbon products,
8 or energy in any form for ultimate public use."

9 **Section 14.** Section 75-20-202, MCA, is amended to read:

10 **"75-20-202. Exemptions.** (1) A certificate is not
11 required under this chapter for a facility under diligent
12 onsite physical construction or in operation on January 1,
13 1973.

14 (2) The board may adopt reasonable rules establishing
15 exemptions from this chapter for the relocation,
16 reconstruction, or upgrading of a facility that:

17 (a) would otherwise be covered by this chapter; and

18 (b) (i) is unlikely to have a significant environmental
19 impact by reason of length, size, location, available space
20 or right-of-way, or construction methods; or

21 (ii) utilizes coal, wood, biomass, grain, wind, or sun
22 as a fuel source and the technology of which will result in
23 greater efficiency, promote energy conservation, and promote
24 greater system reliability than the existing facility.

25 (3) A person proposing to construct an exempt facility

1 shall pay to the department reasonable costs, if any,
2 incurred by the department in processing the exemption.

3 (4) This chapter does not apply to a facility defined
4 in 75-20-104~~(a)~~(~~(8)~~(c) that has been designated by the
5 governor for environmental review by an executive agency of
6 the state for the purpose of complying with Title 75,
7 chapter 1, pursuant to Executive Order 4-81 and prior to
8 July 1, 1985."

9 **Section 15.** Section 75-20-205, MCA, is amended to read:

10 **"75-20-205. Centerline location.** (1) For all facilities
11 defined in 75-20-104~~(a)~~(~~(b)~~(8)(b) and ~~(a)~~(~~(8)~~(c) and
12 associated facilities certified under this chapter, the
13 board shall condition the certificate upon board approval of
14 a final centerline location.

15 (2) The final centerline location must be determined in
16 a noncontested case proceeding before the board after the
17 submission of a centerline location report by the
18 department. Within 60 days after the commencement of a
19 noncontested case proceeding, the board shall render and
20 record a decision approving a centerline location.

21 (3) The department shall consult with the certificate
22 holder and the affected landowners prior to making its
23 report.

24 (4) The department's report must be prepared
25 considering the criteria set forth in 75-20-301 and

1 75-20-503 and the findings of fact and conclusions of law
2 set out in the board decision.

3 (5) The department report may be completed on segments
4 of a certified facility as is convenient to the certificate
5 holder.

6 (6) The certificate holder shall initiate the final
7 centerline location approval process by submitting a
8 proposed centerline location plan to the department. The
9 certificate holder shall pay to the department the actual
10 costs incurred in processing a final centerline location not
11 to exceed 25% of the filing fee paid under 75-20-215."

12 **Section 16.** Section 75-20-208, MCA, is amended to read:

13 "75-20-208. Certain electric transmission lines --
14 verification of requirements. (1) Prior to constructing a
15 transmission line under 75-20-104(i)(b)(ii), the
16 person planning to construct the line must provide to the
17 department within 36 months of the date of the public notice
18 provided under 75-20-207, unless extended by the board for
19 good cause:

20 (a) copies of the right-of-way agreements or options
21 for a right-of-way containing sufficient information to
22 establish landowner consent to construct the line; and

23 (b) sufficient information for the department to verify
24 to the board that the requirements of
25 75-20-104(i)(b)(ii) are satisfied.

1 (2) The provisions of 75-20-104(i)(b)(ii) do
2 not apply to any facility for which public notice under
3 75-20-207 has been given but for which the requirements of
4 subsection (1) have not been complied with."

5 **Section 17.** Section 75-20-211, MCA, is amended to read:

6 "75-20-211. Application -- filing and contents -- proof
7 of service and notice. (1) (a) An applicant shall file with
8 the department and--department--of--health--a---joint an
9 application for a certificate under this chapter and for the
10 permits required under the laws administered by the
11 department of health and the board of health in such form as
12 the board requires under applicable rules, containing the
13 following information:

14 (i) a description of the proposed location and of the
15 facility to be built thereon;

16 (ii) a summary of any studies which have been made of
17 the environmental impact of the facility;

18 (iii) a statement explaining the need for the facility;

19 (iv) for facilities defined in 75-20-104(i)(b) (8)(b)
20 and (i)(c) (8)(c), a description of reasonable alternate
21 locations for the facility, a general description of the
22 comparative merits and detriments of each location
23 submitted, and a statement of the reasons why the proposed
24 location is best suited for the facility;

25 (v) (A) for facilities as defined in 75-20-104(i)(b)

1 ~~(8)(b)~~ and ~~(10)(c)~~ (8)(c), baseline data for the primary and
2 reasonable alternate locations; or

3 (B) for facilities as defined in 75-20-104~~(10)(a)~~
4 (8)(a), ~~(10)(d)~~ (8)(d), and ~~(10)(e)~~ (8)(e), baseline data
5 for the proposed location and, at the applicant's option,
6 any alternative locations acceptable to the applicant for
7 siting the facility;

8 (vi) at the applicant's option, an environmental study
9 plan to satisfy the requirements of this chapter; and

10 (vii) such other information as the applicant considers
11 relevant or as the board ~~and-board-of-health-by-order-or~~
12 ~~rule~~ or the department ~~and-department-of-health~~ by order or
13 rule may require.

14 (b) A copy or copies of the studies referred to in
15 subsection (1)(a)(ii) above shall be filed with the
16 department, if ordered, and shall be available for public
17 inspection.

18 (2) An application may consist of an application for
19 two or more facilities in combination which are physically
20 and directly attached to each other and are operationally a
21 single operating entity.

22 (3) An application shall be accompanied by proof of
23 service of a copy of the application on the chief executive
24 officer of each unit of local government, county
25 commissioner, city or county planning boards, and federal

1 agencies charged with the duty of protecting the environment
2 or of planning land use in the area in which any portion of
3 the proposed facility is proposed or is alternatively
4 proposed to be located and on the following state government
5 agencies:

- 6 (a) environmental quality council;
- 7 (b) department of public service regulation;
- 8 (c) department of fish, wildlife, and parks;
- 9 (d) department of state lands;
- 10 (e) department of commerce;
- 11 (f) department of highways;
- 12 (g) department of public health;
- 13 ~~(g)(h)~~ department of revenue.

14 (4) The copy of the application shall be accompanied by
15 a notice specifying the date on or about which the
16 application is to be filed.

17 (5) An application shall also be accompanied by proof
18 that public notice thereof was given to persons residing in
19 the area in which any portion of the proposed facility is
20 proposed or is alternatively proposed to be located, by
21 publication of a summary of the application in those
22 newspapers that will substantially inform those persons of
23 the application."

24 **Section 18.** Section 75-20-213, MCA, is amended to read:
25 "75-20-213. Supplemental material -- amendments. (1) An

1 application for an amendment of an application or a
 2 certificate shall be in such form and contain such
 3 information as the board by rule or the department by order
 4 prescribes. Notice of such an application shall be given as
 5 set forth in (3), (4), and (5) of 75-20-211.

6 (2) An application may be amended by an applicant any
 7 time prior to the department's recommendation. If the
 8 proposed amendment is such that it prevents the department,
 9 ~~the department of health,~~ or the agencies listed in
 10 75-20-216(5) from carrying out their duties and
 11 responsibilities under this chapter, the department may
 12 require such additional filing fees as the department
 13 determines necessary, or the department may require a new
 14 application and filing fee.

15 (3) The applicant shall submit supplemental material in
 16 a timely manner as requested by the department or as offered
 17 by the applicant to explain, support, or provide the detail
 18 with respect to an item described in the original
 19 application, without filing an application for an amendment.
 20 The department's determination as to whether information is
 21 supplemental or whether an application for amendment is
 22 required shall be conclusive."

23 **Section 19.** Section 75-20-215, MCA, is amended to read:

24 "75-20-215. Filing fee -- accountability -- refund --
 25 use. (1) (a) A filing fee shall be deposited in the state

1 special revenue fund for the use of the department in
 2 administering this chapter. The applicant shall pay to the
 3 department a filing fee as provided in this section based
 4 upon the department's estimated costs of processing the
 5 application under this chapter, but which shall not exceed
 6 the following scale based upon the estimated cost of the
 7 facility:

- 8 (i) 4% of any estimated cost up to \$1 million; plus
 9 (ii) 1% of any estimated cost over \$1 million and up to
 10 \$20 million; plus
 11 (iii) 0.5% of any estimated cost over \$20 million and up
 12 to \$100 million; plus
 13 (iv) 0.25% of any amount of estimated cost over \$100
 14 million and up to \$300 million; plus
 15 (v) 0.125% of any amount of estimated cost over \$300
 16 million and up to \$1 billion; plus
 17 (vi) 0.05% of any amount of estimated cost over \$1
 18 billion.

19 (b) The department may allow in its discretion a credit
 20 against the fee payable under this section for the
 21 development of information or providing of services required
 22 hereunder or required for preparation of an environmental
 23 impact statement under the Montana or national environmental
 24 policy acts. The applicant may submit the information to the
 25 department together with an accounting of the expenses

1 incurred in preparing the information. The department shall
 2 evaluate the applicability, validity, and usefulness of the
 3 data and determine the amount which may be credited against
 4 the filing fee payable under this section. Upon 30 days'
 5 notice to the applicant, this credit may at any time be
 6 reduced if the department determines that it is necessary to
 7 carry out its responsibilities under this chapter.

8 (2) (a) The department may contract with an applicant
 9 for the development of information, provision of services
 10 and payment of fees required under this chapter. The
 11 contract may continue an agreement entered into pursuant to
 12 75-20-106. Payments made to the department under such a
 13 contract shall be credited against the fee payable
 14 hereunder. Notwithstanding the provisions of this section,
 15 the revenue derived from the filing fee must be sufficient
 16 to enable the department, ~~the--department-of-health,~~ the
 17 board, ~~the-board-of--health,~~ and the agencies listed in
 18 75-20-216(5) to carry out their responsibilities under this
 19 chapter. The department may amend a contract to require
 20 additional payments for necessary expenses up to the limits
 21 set forth in subsection (1)(a) above upon 30 days' notice to
 22 the applicant. The department and applicant may enter into a
 23 contract which exceeds the scale provided in subsection
 24 (1)(a).

25 (b) If a contract is not entered into, the applicant

1 shall pay the filing fee in installments in accordance with
 2 a schedule of installments developed by the department,
 3 provided that no one installment may exceed 20% of the total
 4 filing fee provided for in subsection (1).

5 (3) The estimated cost of upgrading an existing
 6 transmission substation may not be included in the estimated
 7 cost of a proposed facility for the purpose of calculating a
 8 filing fee.

9 (4) If an application consists of a combination of two
 10 or more facilities, the filing fee shall be based on the
 11 total estimated cost of the combined facilities.

12 (5) The applicant is entitled to an accounting of
 13 moneys expended and to a refund with interest at the rate of
 14 6% a year of that portion of the filing fee not expended by
 15 the department in carrying out its responsibilities under
 16 this chapter. A refund shall be made after all
 17 administrative and judicial remedies have been exhausted by
 18 all parties to the certification proceedings.

19 (6) The revenues derived from filing fees shall be used
 20 by the department in compiling the information required for
 21 rendering a decision on a certificate and for carrying out
 22 its and the board's other responsibilities under this
 23 chapter."

24 **Section 20.** Section 75-20-216, MCA, is amended to read:
 25 "75-20-216. Study, evaluation, and report on proposed

1 facility -- assistance by other agencies. (1) After receipt
2 of an application, the department ~~and department of health~~
3 shall within 90 days notify the applicant in writing that:

4 (a) the application is in compliance and is accepted as
5 complete; or

6 (b) the application is not in compliance and list the
7 deficiencies therein; and upon correction of these
8 deficiencies and resubmission by the applicant, the
9 department ~~and department of health~~ shall within 30 days
10 notify the applicant in writing that the application is in
11 compliance and is accepted as complete.

12 (2) Upon receipt of an application complying with
13 75-20-211 through 75-20-213, 75-20-215, and this section,
14 the department shall commence an intensive study and
15 evaluation of the proposed facility and its effects,
16 considering all applicable criteria listed in 75-20-301 and
17 75-20-503, ~~and the department of health shall commence~~ a
18 study to enable it or the board ~~of health~~ to issue a
19 decision, opinion, order, certification, or permit as
20 provided in subsection (3). The department ~~and department of~~
21 ~~health~~ shall use, to the extent ~~they consider it considers~~
22 applicable, valid and useful existing studies and reports
23 submitted by the applicant or compiled by a state or federal
24 agency.

25 (3) The department ~~of health~~ shall within 1 year

1 following the date of acceptance of an application and the
2 board ~~of health or department of health~~, if applicable,
3 within an additional 6 months, issue any decision, opinion,
4 order, certification, or permit required under the laws
5 administered by the department ~~of health~~ or the board ~~of~~
6 ~~health~~ and this chapter. The department ~~of health~~ and the
7 board ~~of health~~ shall determine compliance with all
8 standards, permit requirements, and implementation plans
9 under their jurisdiction for the proposed location or any
10 proposed alternate location in their decision, opinion,
11 order, certification, or permit. The decision, opinion,
12 order, certification, or permit, with or without conditions,
13 is conclusive on all matters that the department ~~of health~~
14 and board ~~of health~~ administer, and any of the criteria
15 specified in subsections (2) through (7) of 75-20-503 that
16 are a part of the determinations made under the laws
17 administered by the department ~~of health~~ and the board ~~of~~
18 ~~health~~. Although the decision, opinion, order,
19 certification, or permit issued under this subsection is
20 conclusive, the board retains authority to make the
21 determination required under 75-20-301(2)(c). The decision,
22 opinion, order, certification, or permit of the department
23 ~~of health~~ or the board ~~of health~~ satisfies the review
24 requirements by those agencies and shall be acceptable in
25 lieu of an environmental impact statement under the Montana

1 Environmental Policy Act. A copy of the decision, opinion,
 2 order, certification, or permit shall be served upon the
 3 department and the board and shall be utilized as part of
 4 their final site selection process. Prior to the issuance of
 5 a preliminary decision by the department ~~of--health~~ and
 6 pursuant to rules adopted by the board ~~of--health~~, the
 7 department ~~of--health~~ shall provide an opportunity for public
 8 review and comment.

9 (4) Within 22 months following acceptance of an
 10 application for a facility as defined in (a) and (d) of
 11 75-20-104~~(10)~~(8) and for a facility as defined in (b) and
 12 (c) of 75-20-104~~(10)~~(8) which is more than 30 miles in
 13 length, and within 1 year for a facility as defined in (b)
 14 and (c) of 75-20-104~~(10)~~(8) which is 30 miles or less in
 15 length, the department shall make a report to the board
 16 which shall contain the department's studies, evaluations,
 17 recommendations, other pertinent documents resulting from
 18 its study and evaluation, and an environmental impact
 19 statement or analysis prepared pursuant to the Montana
 20 Environmental Policy Act, if any. If the application is for
 21 a combination of two or more facilities, the department
 22 shall make its report to the board within the greater of the
 23 lengths of time provided for in this subsection for either
 24 of the facilities.

25 (5) The departments of highways; commerce; fish,

1 wildlife, and parks; state lands; revenue; public health;
 2 and public service regulation shall report to the department
 3 information relating to the impact of the proposed site on
 4 each department's area of expertise. The report may include
 5 opinions as to the advisability of granting, denying, or
 6 modifying the certificate. The department shall allocate
 7 funds obtained from filing fees to the departments making
 8 reports to reimburse them for the costs of compiling
 9 information and issuing the required report."

10 **Section 21.** Section 75-20-218, MCA, is amended to read:

11 "75-20-218. Hearing date -- location -- department to
 12 act as staff -- hearings to be held jointly. (1) Upon
 13 receipt of the department's report submitted under
 14 75-20-216, the board shall set a date for a hearing to begin
 15 not more than 120 days after the receipt. Certification
 16 hearings shall be conducted by the board in the county seat
 17 of Lewis and Clark County or the county in which the
 18 facility or the greater portion thereof is to be located.

19 (2) Except as provided in 75-20-221(2), the department
 20 shall act as the staff for the board throughout the
 21 decisionmaking process and the board may request the
 22 department to present testimony or cross-examine witnesses
 23 as the board considers necessary and appropriate.

24 (3) At the request of the applicant, the department of
 25 ~~health~~ and the board ~~of--health~~ shall hold any required

1 permit hearings required under other laws administered by
 2 those agencies in conjunction with the board certification
 3 hearing. In such a conjunctive hearing the time periods
 4 established for reviewing an application and for issuing a
 5 decision on certification of a proposed facility under this
 6 chapter supersede the time periods specified in other laws
 7 administered by the department of ~~health~~ and the board of
 8 ~~health~~."

9 **Section 22.** Section 75-20-219, MCA, is amended to read:

10 "75-20-219. **Amendments to a certificate.** (1) Within 30
 11 days after notice of an amendment to a certificate is given
 12 as set forth in 75-20-213(1), including notice to all active
 13 parties to the original proceeding, the department shall
 14 determine whether the proposed change in the facility would
 15 result in a material increase in any environmental impact of
 16 the facility or a substantial change in the location of all
 17 or a portion of the facility as set forth in the
 18 certificate. If the department determines that the proposed
 19 change would result in a material increase in any
 20 environmental impact of the facility or a substantial change
 21 in the location of all or a portion of the facility, the
 22 board shall hold a hearing in the same manner as a hearing
 23 is held on an application for a certificate. After hearing,
 24 the board shall grant, deny, or modify the amendment with
 25 such conditions as it deems appropriate.

1 (2) In those cases where the department determines that
 2 the proposed change in the facility would not result in a
 3 material increase in any environmental impact or would not
 4 be a substantial change in the location of all or a portion
 5 of the facility, the board shall automatically grant the
 6 amendment either as applied for or upon such terms or
 7 conditions as the board considers appropriate unless the
 8 department's determination is appealed to the board within
 9 15 days after notice of the department's determination is
 10 given.

11 (3) If the department or the board, under subsection
 12 (4), determines that a hearing is required because the
 13 proposed change would result in a material increase in any
 14 environmental impact of the facility or a substantial change
 15 in the location of all or a portion of the facility, the
 16 applicant has the burden of showing by clear and convincing
 17 evidence that the amendment should be granted.

18 (4) If the department determines that the proposed
 19 change in the facility would not result in a material
 20 increase in any environmental impact or would not be a
 21 substantial change in the location of all or a portion of
 22 the facility and a hearing is required because the
 23 department's determination is appealed to the board as
 24 provided in subsection (2), the appellant has the burden of
 25 showing by clear and convincing evidence that the proposed

1 change in the facility would result in a material increase
 2 in any environmental impact of the facility or a substantial
 3 change in the location of all or a portion of the facility
 4 as set forth in the certificate.

5 (5) If an amendment is required to a certificate which
 6 would affect, amend, alter or modify a decision, opinion,
 7 order, certification, or permit issued by the department of
 8 health or board of health, such amendment must be processed
 9 under the applicable statutes administered by the department
 10 of health or board of health."

11 **Section 23.** Section 75-20-220, MCA, is amended to read:

12 ***75-20-220. Hearing examiner -- restrictions -- duties.**

13 (1) If the board appoints a hearing examiner to conduct any
 14 certification proceedings under this chapter, the hearing
 15 examiner may not be a member of the board, or an employee of
 16 the department, ~~or a member or employee of the department of~~
 17 ~~health or board of health.~~ A hearing examiner, if any, shall
 18 be appointed by the board within 20 days after the
 19 department's report has been filed with the board. ~~If a~~
 20 ~~hearing is held before the board of health or the department~~
 21 ~~of health, the board and the board of health or the~~
 22 ~~department of health shall mutually agree on the appointment~~
 23 ~~of a hearing examiner to preside at both hearings.~~

24 (2) A prehearing conference shall be held following
 25 notice within 60 days after the department's report has been

1 filed with the board.

2 (3) The prehearing conference shall be organized and
 3 supervised by the hearing examiner.

4 (4) The prehearing conference shall be directed toward
 5 a determination of the issues presented by the application,
 6 the department's report, and an identification of the
 7 witnesses and documentary exhibits to be presented by the
 8 active parties who intend to participate in the hearing.

9 (5) The hearing examiner shall require the active
 10 parties to submit, in writing, and serve upon the other
 11 active parties, all direct testimony which they propose and
 12 any studies, investigations, reports, or other exhibits that
 13 any active party wishes the board to consider. These written
 14 exhibits and any documents that the board itself wishes to
 15 use or rely on shall be submitted and served in like manner,
 16 at least 20 days prior to the date set for the hearing. For
 17 good cause shown, the hearing examiner may allow the
 18 introduction of new evidence at any time.

19 (6) The hearing examiner shall allow discovery which
 20 shall be completed before the commencement of the hearing,
 21 upon good cause shown and under such other conditions as the
 22 hearing examiner shall prescribe.

23 (7) Public witnesses and other interested public
 24 parties may appear and present oral testimony at the hearing
 25 or submit written testimony to the hearing examiner at the

1 time of their appearance. These witnesses are subject to
2 cross-examination.

3 (8) The hearing examiner shall issue a prehearing order
4 specifying the issues of fact and of law, identifying the
5 witnesses of the active parties, naming the public witnesses
6 and other interested parties who have submitted written
7 testimony in lieu of appearance, outlining the order in
8 which the hearing shall proceed, setting forth those section
9 75-20-301 criteria as to which no issue of fact or law has
10 been raised which are to be conclusively presumed and are
11 not subject to further proof except for good cause shown,
12 and any other special rules to expedite the hearing which
13 the hearing examiner shall adopt with the approval of the
14 board.

15 (9) At the conclusion of the hearing, the hearing
16 examiner shall declare the hearing closed and shall, within
17 60 days of that date, prepare and submit to the board ~~and in~~
18 ~~the case of a conjunctive hearing, within 90 days to the~~
19 ~~board and the board of health or department of health~~
20 proposed findings of fact, conclusions of law, and a
21 recommended decision.

22 (10) The hearing examiner appointed to conduct a
23 certification proceeding under this chapter shall insure
24 that the time of the proceeding, from the date the
25 department's report is filed with the board until the

1 recommended report and order of the examiner is filed with
2 the board, does not exceed 9 calendar months unless extended
3 by the board for good cause.

4 (11) The board or hearing examiner may waive all or a
5 portion of the procedures set forth in subsections (2)
6 through (8) of this section to expedite the hearing for a
7 facility when the department has recommended approval of a
8 facility and no objections have been filed."

9 **Section 24.** Section 75-20-221, MCA, is amended to read:
10 "75-20-221. Parties to certification proceeding --
11 waiver -- statement of intent to participate. (1) The
12 parties to a certification proceeding or to a proceeding
13 involving the issuance of a decision, opinion, order,
14 certification, or permit by the ~~board of health~~ department
15 under this chapter may include as active parties:

16 (a) the applicant;

17 (b) each political entity, unit of local government,
18 and government agency, including the department ~~of health~~,
19 entitled to receive service of a copy of the application
20 under 75-20-211(3);

21 (c) any person entitled to receive service of a copy of
22 the application under 75-20-211(5);

23 (d) any nonprofit organization formed in whole or in
24 part to promote conservation or natural beauty; to protect
25 the environment, personal health, or other biological

1 values; to preserve historical sites; to promote consumer
2 interests; to represent commercial and industrial groups; or
3 to promote the orderly development of the areas in which the
4 facility is to be located;

5 (e) any other interested person who establishes an
6 interest in the proceeding.

7 (2) The department shall be an active party in any
8 certification proceeding in which the department recommends
9 denial of all or a portion of a facility.

10 (3) The parties to a certification proceeding may also
11 include, as public parties, any Montana citizen and any
12 party referred to in (b), (c), (d), or (e) of subsection
13 (1).

14 (4) Any party waives the right to be a party if the
15 party does not participate in the hearing before the board
16 ~~er-the-board-of-health.~~

17 (5) Each unit of local government entitled to receive
18 service of a copy of the application under 75-20-211(3)
19 shall file with the board a statement showing whether the
20 unit of local government intends to participate in the
21 certification proceeding. If the unit of local government
22 does not intend to participate, it shall list in this
23 statement its reasons for failing to do so. This statement
24 of intent shall be published before the proceeding begins in
25 a newspaper of general circulation within the jurisdiction

1 of the applicable unit of local government."

2 **Section 25.** Section 75-20-225, MCA, is amended to read:

3 "75-20-225. Certificate renewal -- application --
4 contents -- filing fee. (1) Any certificate holder for a
5 facility as defined in 75-20-104~~(1)(a)(i)~~(8)(a)(i) may
6 apply for renewal of a certificate prior to the certificate
7 lapsing.

8 (2) An applicant for a renewal of a certificate shall
9 file with the department ~~and-department-of-health-a-joint~~ an
10 application in such form as the board requires by rule.

11 (3) An application for renewal of a certificate must
12 include updated information on the matters listed in
13 75-20-211(1)(a) that have changed since the original
14 application and such other information as the board requires
15 by rule for certification. The matters listed in
16 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate
17 locations must be updated only if the board determines that
18 within the certified location significant changes have
19 occurred to warrant a review of alternate locations.

20 (4) An application filed under subsection (1) must
21 comply with the provisions of 75-20-211(3) through (5).

22 (5) Except as provided in this subsection, the
23 applicant shall pay a filing fee to the department in
24 accordance with 75-20-215(2). The fee is in addition to any
25 previous filing fee paid for processing the original

1 application for a certificate pursuant to 75-20-215. The fee
2 may not exceed the following scale:

3 (a) 0.125% of any estimated cost up to \$300 million;
4 plus

5 (b) 0.063% of any estimated cost over \$300 million."

6 **Section 26.** Section 75-20-226, MCA, is amended to read:

7 "75-20-226. **Renewal study.** (1) Upon receipt of a
8 completed application for renewal of a certificate, the
9 department shall evaluate the updated information and any
10 significant changes in need, alternatives, technology,
11 baseline environment, and the environmental impacts of a
12 facility that have taken place since the original study
13 performed in granting the certificate, considering the
14 applicable criteria listed in 75-20-301 and 75-20-503 and
15 the original board findings and certificate conditions.

16 (2) The department ~~of health~~ and the board ~~of health~~,
17 within 10 months of acceptance of a complete renewal
18 application, shall complete the statutory duties established
19 in 75-20-216(3). A copy of any decision, opinion, order,
20 certification, or permit must be served on the department
21 and the board and must be used as part of their
22 decisionmaking process.

23 (3) Within 12 months following acceptance of a complete
24 application for renewal of a certificate, the department
25 shall make a report to the board. This report must contain

1 the department's studies, evaluations, recommendations, and
2 other pertinent documents resulting from its study and
3 evaluation and an updated environmental impact statement or
4 analysis pursuant to the Montana Environmental Policy Act.
5 The department's report must be directed to the question of
6 whether the original board findings and conditions have been
7 or need to be altered as a result of any significant changes
8 in need, alternatives, technology, baseline environment, or
9 environmental impact since issuance of the certificate,
10 considering the applicable criteria listed in 75-20-301 and
11 75-20-503.

12 (4) The departments of highways; commerce; fish,
13 wildlife, and parks; state lands; revenue; public health;
14 and public service regulation shall report to the department
15 information relating to the impact of the proposed site on
16 each department's area of responsibility. The report may
17 include opinions as to the advisability of renewing the
18 certificate. The department shall allocate funds obtained
19 from filing fees to the departments making reports to
20 reimburse them for the cost of compiling information and
21 issuing the required reports."

22 **Section 27.** Section 75-20-301, MCA, is amended to read:

23 "75-20-301. **Decision of board -- findings necessary for**
24 **certification.** (1) Within 60 days after submission of the
25 recommended decision by the hearing examiner, the board

1 shall make complete findings, issue an opinion, and render a
 2 decision upon the record, either granting or denying the
 3 application as filed or granting it upon such terms,
 4 conditions, or modifications of the construction, operation,
 5 or maintenance of the facility as the board considers
 6 appropriate.

7 (2) The board may not grant a certificate either as
 8 proposed by the applicant or as modified by the board unless
 9 it shall find and determine:

10 (a) the basis of the need for the facility;

11 (b) the nature of the probable environmental impact;

12 (c) that the facility minimizes adverse environmental
 13 impact, considering the state of available technology and
 14 the nature and economics of the various alternatives;

15 (d) each of the criteria listed in 75-20-503;

16 (e) in the case of an electric, gas, or liquid
 17 transmission line or aqueduct:

18 (i) what part, if any, of the line or aqueduct shall be
 19 located underground;

20 (ii) that the facility is consistent with regional plans
 21 for expansion of the appropriate grid of the utility systems
 22 serving the state and interconnected utility systems; and

23 (iii) that the facility will serve the interests of
 24 utility system economy and reliability;

25 (f) that the location of the facility as proposed

1 conforms to applicable state and local laws and regulations
 2 issued thereunder, except that the board may refuse to apply
 3 any local law or regulation if it finds that, as applied to
 4 the proposed facility, the law or regulation is unreasonably
 5 restrictive in view of the existing technology, of factors
 6 of cost or economics, or of the needs of consumers, whether
 7 located inside or outside of the directly affected
 8 government subdivisions;

9 (g) that the facility will serve the public interest,
 10 convenience, and necessity;

11 (h) that the department ~~of health~~ or board ~~of health~~
 12 ~~have has~~ issued a decision, opinion, order, certification,
 13 or permit as required by 75-20-216(3); and

14 (i) that the use of public lands for location of the
 15 facility was evaluated and public lands were selected
 16 whenever their use is as economically practicable as the use
 17 of private lands and compatible with the environmental
 18 criteria listed in 75-20-503.

19 (3) In determining that the facility will serve the
 20 public interest, convenience, and necessity under subsection
 21 (2)(g) of this section, the board shall consider:

22 (a) the items listed in subsections (2)(a) and (2)(b)
 23 of this section;

24 (b) the benefits to the applicant and the state
 25 resulting from the proposed facility;

1 (c) the effects of the economic activity resulting from
2 the proposed facility;

3 (d) the effects of the proposed facility on the public
4 health, welfare, and safety;

5 (e) any other factors that it considers relevant.

6 (4) Considerations of need, public need, or public
7 convenience and necessity and demonstration thereof by the
8 applicant shall apply only to utility facilities."

9 **Section 28.** Section 75-20-302, MCA, is amended to read:

10 "75-20-302. Conditions imposed. (1) If the board
11 determines that the location of all or a part of the
12 proposed facility should be modified, it may condition its
13 certificate upon such modification, provided that the
14 persons residing in the area affected by the modification
15 have been given reasonable notice of the modification.

16 (2) In making its findings under 75-20-301(2)(a) for a
17 facility defined in 75-20-104~~(10)(a)(1)~~(8)(a)(i), the board
18 may condition a certificate upon actual load growth reaching
19 a specified level or on availability of other planned energy
20 resources."

21 **Section 29.** Section 75-20-303, MCA, is amended to read:

22 "75-20-303. Opinion issued with decision -- contents.
23 (1) In rendering a decision on an application for a
24 certificate, the board shall issue an opinion stating its
25 reasons for the action taken.

1 (2) If the board has found that any regional or local
2 law or regulation which would be otherwise applicable is
3 unreasonably restrictive pursuant to 75-20-301(2)(f), it
4 shall state in its opinion the reasons therefor.

5 (3) Any certificate issued by the board shall include
6 the following:

7 (a) an environmental evaluation statement related to
8 the facility being certified. The statement shall include
9 but not be limited to analysis of the following information:

10 (i) the environmental impact of the proposed facility;

11 (ii) any adverse environmental effects which cannot be
12 avoided by issuance of the certificate;

13 (iii) problems and objections raised by other federal
14 and state agencies and interested groups; and

15 (iv) alternatives to the proposed facility;

16 (b) a plan for monitoring environmental effects of the
17 proposed facility;

18 (c) a plan for monitoring the certified facility site
19 between the time of certification and completion of
20 construction;

21 (d) a time limit as provided in subsection (4); and

22 (e) a statement signed by the applicant showing
23 agreement to comply with the requirements of this chapter
24 and the conditions of the certificate.

25 (4) (a) The board shall issue as part of the

1 certificate the following time limits:

2 (i) For a facility as defined in ~~(b)~~ ~~or~~ ~~(c)~~ of
3 75-20-104~~(10)~~(8)(b) or (8)(c) that is more than 30 miles in
4 length, construction must be completed within 10 years.

5 (ii) For a facility as defined in ~~(b)~~ ~~or~~ ~~(c)~~ of
6 75-20-104~~(10)~~(8)(b) that is 30 miles or less in length,
7 construction must be completed within 5 years.

8 (iii) For a facility as defined in ~~(a)~~ ~~or~~ ~~(b)~~ of
9 75-20-104~~(10)~~(8)(a), construction must begin within 5 years
10 and continue with due diligence in accordance with
11 preliminary construction plans established in the
12 certificate.

13 (b) Unless extended or renewed in accordance with
14 subsection (4)(c) or 75-20-225 through 75-20-227, a
15 certificate lapses and is void if the facility is not
16 constructed or if construction of the facility is not
17 commenced within the time limits provided in this section.

18 (c) The time limit may be extended for a reasonable
19 period upon a showing by the applicant to the board that a
20 good faith effort is being undertaken to complete
21 construction under subsections (4)(a)(i) and (4)(a)(ii) or
22 to begin construction under subsection (4)(a)(iii). Under
23 this subsection, a good faith effort includes the process of
24 acquiring any necessary state or federal permit or
25 certificate for the facility and the process of judicial

1 review of any such permit or certificate.

2 (5) The provisions of subsection (4) apply to any
3 facility for which a certificate has not been issued or for
4 which construction is yet to be commenced."

5 **Section 30.** Section 75-20-304, MCA, is amended to read:

6 "75-20-304. Waiver of provisions of certification
7 proceedings. (1) The board may waive compliance with any of
8 the provisions of 75-20-216 through 75-20-222, 75-20-501,
9 and this part if the applicant makes a clear and convincing
10 showing to the board at a public hearing that an immediate,
11 urgent need for a facility exists and that the applicant did
12 not have knowledge that the need for the facility existed
13 sufficiently in advance to fully comply with the provisions
14 of 75-20-216 through 75-20-222, 75-20-501, and this part.

15 (2) The board may waive compliance with any of the
16 provisions of this chapter upon receipt of notice by a
17 person subject to this chapter that a facility or associated
18 facility has been damaged or destroyed as a result of fire,
19 flood, or other natural disaster or as the result of
20 insurrection, war, or other civil disorder and there exists
21 an immediate need for construction of a new facility or
22 associated facility or the relocation of a previously
23 existing facility or associated facility in order to promote
24 the public welfare.

25 (3) The board shall waive compliance with the

1 requirements of subsections (2)(c), (3)(b), and (3)(c) of
 2 75-20-301 and 75-20-501(5) and the requirements of
 3 subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),
 4 and 75-20-303(3)(a)(iv) relating to consideration of
 5 alternative sites if the applicant makes a clear and
 6 convincing showing to the board at a public hearing that:

7 (a) a proposed facility will be constructed in a county
 8 where a single employer within the county has permanently
 9 curtailed or ceased operations causing a loss of 250 or more
 10 permanent jobs within 2 years at the employer's operations
 11 within the preceding 10-year period;

12 (b) the county and municipal governing bodies in whose
 13 jurisdiction the facility is proposed to be located support
 14 by resolution such a waiver;

15 (c) the proposed facility will be constructed within a
 16 15-mile radius of the operations that have ceased or been
 17 curtailed; and

18 (d) the proposed facility will have a beneficial effect
 19 on the economy of the county in which the facility is
 20 proposed to be located.

21 (4) The waiver provided for in subsection (3) applies
 22 only to permanent job losses by a single employer. The
 23 waiver provided for in subsection (3) does not apply to jobs
 24 of a temporary or seasonal nature, including but not limited
 25 to construction jobs or job losses during labor disputes.

1 (5) The waiver provided for in subsection (3) does not
 2 apply to consideration of alternatives or minimum adverse
 3 environmental impact for a facility defined in subsections
 4 ~~(1)(b)~~ (8)(b), (c), (d), or (e) of 75-20-104, for an
 5 associated facility defined in 75-20-104(3), or for any
 6 portion of or process in a facility defined in subsection
 7 ~~(1)(a)~~ (8)(a) of 75-20-104 to the extent that the process
 8 or portion of the facility is not subject to a permit issued
 9 by the department ~~of health~~ or board ~~of health~~.

10 (6) The applicant shall pay all expenses required to
 11 process and conduct a hearing on a waiver request under
 12 subsection (3). However, any payments made under this
 13 subsection shall be credited toward the fee paid under
 14 75-20-215 to the extent the data or evidence presented at
 15 the hearing or the decision of the board under subsection
 16 (3) can be used in making a certification decision under
 17 this chapter.

18 (7) The board may grant only one waiver under
 19 subsections (3) and (4) for each permanent loss of jobs as
 20 defined in subsection (3)(a)."

21 **Section 31.** Section 75-20-402, MCA, is amended to read:
 22 "**75-20-402. Monitoring.** The board and the department,
 23 ~~the department of health, and the board of health~~ shall
 24 monitor the operations of all certificated facilities for
 25 assuring continuing compliance with this chapter and

1 certificates issued hereunder and for discovering and
 2 preventing noncompliance with this chapter and the
 3 certificates. The applicant shall pay all expenses related
 4 to the monitoring plan established in subsection (3)(b) or
 5 (3)(c) of 75-20-303 to the extent federal funds available
 6 for the facility, as determined by the department of-health,
 7 have not been provided for such purposes."

8 **Section 32.** Section 75-20-406, MCA, is amended to read:

9 **"75-20-406. Judicial review of board~~-board-of--health~~**
 10 **and department of-health decisions.** (1) Any active party as
 11 defined in 75-20-221 aggrieved by the final decision of the
 12 board on an application for a certificate may obtain
 13 judicial review of that decision by the filing of a petition
 14 in a state district court of competent jurisdiction.

15 (2) The judicial review procedure shall be the same as
 16 that for contested cases under the Montana Administrative
 17 Procedure Act.

18 (3) When the board of-health or department of-health
 19 conducts hearings pursuant to 75-20-216(3) and 75-20-218 and
 20 the applicant is granted a permit or certification, with or
 21 without conditions, pursuant to the other laws administered
 22 by the department, of-health-and the board, of--health--and
 23 this chapter, the decision may only be appealed only in
 24 conjunction with the final decision of the board as provided
 25 in subsections (1) and (2). If a permit or certification is

1 denied by the department of-health or the board of-health,
 2 the applicant may:

3 (a) appeal the denial under the appellate review
 4 procedures provided in the other laws administered by the
 5 department of-health and the board of-health; or

6 (b) reserve the right to appeal the denial by the
 7 department of-health or the board of-health until after the
 8 board has issued a final decision under 75-20-301.

9 (4) Nothing in this section may be construed to
 10 prohibit the board from holding a hearing as herein provided
 11 on all matters that are not the subject of a pending appeal
 12 by the applicant under subsection (3)(a)."

13 **Section 33.** Section 75-20-501, MCA, is amended to read:

14 **"75-20-501. Annual long-range plan submitted --**
 15 **contents -- available to public.** (1) Each utility and each
 16 person contemplating the construction of a facility within
 17 this state in the ensuing 10 years shall furnish annually to
 18 the department for its review a long-range plan for the
 19 construction and operation of facilities.

20 (2) The plan shall be submitted by July 1 of each year
 21 and must include the following:

22 (a) the general location, size, and type of all
 23 facilities to be owned and operated by the utility or person
 24 whose construction is projected to commence during the
 25 ensuing 10 years, as well as those facilities to be removed

1 from service during the planning period;

2 (b) in the case of utility facilities, a description of
3 efforts by the utility or person to coordinate the plan with
4 other utilities or persons so as to provide a coordinated
5 regional plan for meeting the energy needs of the region;

6 (c) a description of the efforts to involve
7 environmental protection and land use planning agencies in
8 the planning process, as well as other efforts to identify
9 and minimize environmental problems at the earliest possible
10 stage in the planning process;

11 (d) projections of the demand for the service rendered
12 by the utility or person and explanation of the basis for
13 those projections and a description of the manner and extent
14 to which the proposed facilities will meet the projected
15 demand; and

16 (e) additional information that the board by rule or
17 the department on its own initiative or upon the advice of
18 interested state agencies might request in order to carry
19 out the purposes of this chapter.

20 (3) The plan shall be furnished to the governing body
21 of each county in which any facility included in the plan
22 under (2)(a) of this section is proposed to be located and
23 made available to the public by the department. The utility
24 or person shall give public notice throughout the state of
25 its plan by filing the plan with the environmental quality

1 council, the department of public health and--environmental
2 sciences, the department of highways, the department of
3 public service regulation, the department of state lands,
4 the department of fish, wildlife, and parks, and the
5 department of commerce. Citizen environmental protection and
6 resource planning groups and other interested persons may
7 obtain a plan by written request and payment therefor to the
8 department.

9 (4) A rural electric cooperative may furnish the
10 department with a copy of the long-range plan and 2-year
11 work plan required to be completed under federal rural
12 electrification requirements in lieu of the long-range plan
13 required in subsection (1).

14 (5) No person may file an application for a facility
15 unless the facility had been adequately identified in a
16 long-range plan at least 2 years prior to acceptance of an
17 application by the department, except for electric
18 transmission lines of a design capacity of 230 kilovolts or
19 less."

20 **Section 34.** Section 75-20-1202, MCA, is amended to
21 read:

22 "75-20-1202. **Definitions.** As used in this part and
23 75-20-201 through 75-20-203, the following definitions
24 apply:

25 (1) (a) "Nuclear facility" means each plant, unit, or

1 other facility designed for or capable of:

2 (i) generating 50 megawatts of electricity or more by
3 means of nuclear fission;

4 (ii) converting, enriching, fabricating, or reprocessing
5 uranium minerals or nuclear fuels; or

6 (iii) storing or disposing of radioactive wastes or
7 materials from a nuclear facility.

8 (b) "Nuclear facility" does not include any small-scale
9 facility used solely for educational, research, or medical
10 purposes not connected with the commercial generation of
11 energy.

12 (2) "Facility", as defined in 75-20-104~~(10)~~(8), is
13 further defined to include any nuclear facility as defined
14 in subsection (1)(a) of this section."

15 **Section 35.** Section 76-15-103, MCA, is amended to read:

16 "76-15-103. Definitions. Unless the context requires
17 otherwise, in this chapter the following definitions apply:

18 (1) "Agency of this state" includes the government of
19 this state and any subdivision, agency, or instrumentality,
20 corporate or otherwise, of the government of this state.

21 (2) "Board" means the board of ~~natural--resources--and~~
22 ~~conservation land commissioners~~ provided for in 2-15-3302
23 Article X, section 4, of the Montana constitution.

24 (3) "Department" means the department of ~~natural~~
25 ~~resources-and-conservation state lands~~ provided for in Title

1 2, chapter 15, part ~~33~~ 32.

2 (4) "District" or "conservation district" means a
3 governmental subdivision of this state and a public body
4 corporate and politic organized in accordance with this
5 chapter, for the purposes, with the powers, and subject to
6 the restrictions hereinafter set forth.

7 (5) "Due notice" means notice published at least twice,
8 with an interval of at least 14 days between the two
9 publication dates, in a newspaper or other publication of
10 general circulation within the proposed area or by posting
11 at a reasonable number of conspicuous places within the
12 appropriate area, the posting to include, where possible,
13 posting at public places where it may be customary to post
14 notices concerning county or municipal affairs generally.

15 (6) "Government" or "governmental" includes the
16 government of this state, the government of the United
17 States, and any subdivision, agency, or instrumentality,
18 corporate or otherwise, of either of them.

19 (7) "Land occupier" or "occupier of land" includes a
20 person, firm, corporation, municipality, or other entity who
21 holds title to or is in possession of lands lying within a
22 district organized under this chapter, whether as owner,
23 lessee, renter, tenant, or otherwise.

24 (8) "Petition" means a petition filed under 76-15-201
25 for the creation of a district.

1 (9) "Qualified elector" means an elector as defined in
2 Title 13.

3 (10) "Supervisor" means one of the members of the
4 governing body of a district, elected or appointed in
5 accordance with this chapter.

6 (11) "United States" or "agencies of the United States"
7 includes the United States of America, the soil conservation
8 service of the United States department of agriculture, and
9 any other agency or instrumentality, corporate or otherwise,
10 of the United States of America."

11 **Section 36.** Section 80-8-110, MCA, is amended to read:

12 **"80-8-110. Cooperation with other agencies.** (1) The
13 department of agriculture may cooperate with agencies of
14 this state or its subdivisions or with any agency of any
15 other state or the federal government for the purpose of
16 carrying out the provisions of this chapter, securing
17 uniformity of rules, and entering into reciprocal licensing
18 and certification agreements with other states.

19 (2) The department of agriculture and the department of
20 ~~health-and--environmental--sciences~~ natural resources and
21 environment shall enter into a memorandum of agreement
22 concerning the inspection, regulation, and responsibilities
23 of persons or activities that may be involved in the
24 management, disposal, storage, transportation, treatment,
25 recycling, or recovery of hazardous wastes and the disposal

1 of solid wastes.

2 (3) For the purpose of this section, "solid waste"
3 means all putrescible and nonputrescible wastes including
4 but not limited to garbage; rubbish; refuse; hazardous
5 wastes; ashes; sludge from sewage treatment plants, water
6 supply treatment plants, or air pollution control
7 facilities; construction and demolition wastes; dead
8 animals, including offal; discarded home and industrial
9 appliances; and wood products or wood byproducts and inert
10 materials. Solid waste does not mean municipal sewage,
11 industrial wastewater ~~effluents~~ effluents, mining wastes
12 regulated under the mining and reclamation laws administered
13 by the department of ~~state--lands~~ natural resources and
14 environment, slash and forest debris regulated under laws
15 administered by the department of state lands, or marketable
16 wood byproducts.

17 (4) For the purpose of this section, "hazardous waste"
18 means any waste or combination of wastes of a solid, liquid,
19 contained gaseous, or semisolid form which may cause or
20 contribute to an increase in mortality or an increase in
21 serious illness, taking into account the toxicity of the
22 waste, its persistence and degradability in nature, its
23 potential for assimilation or concentration in tissue, and
24 other factors that may otherwise cause or contribute to
25 adverse acute or chronic effects on the health of persons or

1 other living organisms. Hazardous wastes include but are not
 2 limited to those which are toxic, radioactive, corrosive,
 3 flammable, irritants, strong sensitizers, or which generate
 4 pressure through decomposition, heat, or other means,
 5 excluding wood chips and wood used for manufacturing or fuel
 6 purposes."

7 **Section 37.** Section 81-23-103, MCA, is amended to read:

8 "81-23-103. General powers of the department. (1) The
 9 department shall supervise, regulate, and control the milk
 10 industry of this state, including the production,
 11 processing, storage, distribution, and sale of milk sold for
 12 consumption in this state. Nothing in this chapter abrogates
 13 or affects the status, force, or operation of any provision
 14 of public health laws or the law under which the department
 15 of livestock is constituted together with the department of
 16 livestock rules, county board of health rules, or municipal
 17 ordinances for the promotion or protection of the public
 18 health. The department may cooperate with the department of
 19 public health and--environmental--sciences, the board of
 20 livestock, any county or city board of health, or the
 21 department of agriculture in enforcing this chapter.

22 (2) The department shall investigate all matters
 23 pertaining to the production, processing, storage,
 24 distribution, and sale of milk in this state and conduct
 25 hearings upon any subject pertinent to the administration of

1 this chapter. The department may subpoena milk dealers,
 2 their records, books, and accounts, and any other person
 3 from whom information may be desired or considered necessary
 4 to carry out the purposes and intent of this chapter and may
 5 take depositions of witnesses who are sick or absent from
 6 the state or who cannot otherwise appear in person before
 7 the department at its offices. The department shall give at
 8 least 10 days' notice to the proposed witness."

9 **Section 38.** Section 82-4-103, MCA, is amended to read:

10 "82-4-103. Definitions. When used in this part, unless
 11 a different meaning clearly appears from the context, the
 12 following definitions apply:

13 (1) "Board" means the board of ~~land--commissioners~~
 14 natural resources and environment as provided for in ~~Article~~
 15 ~~7-section-47-of-the-constitution-of--this--state~~ Title 2,
 16 chapter 15, part 33.

17 (2) "Department" means the department of ~~state-lands~~
 18 natural resources and environment provided for in Title 2,
 19 chapter 15, part ~~32~~ 33.

20 (3) "Mineral" means mineral as defined in 82-4-203.

21 (4) "New mine" means a strip- or underground-mining
 22 operation proposed for an area of land which the department
 23 determines, because of distance from an existing strip-mine
 24 or underground-mine operation or their respective facilities
 25 or because of important differences in topography, soils,

1 wildlife, geologic structure, aquifers, or vegetation from
2 an existing strip-mine or underground-mine operation, does
3 not constitute an expansion of an existing operation.

4 (5) "Operation" means all of the premises, facilities,
5 railroad loops, roads, power lines, and equipment used in
6 the process of producing and removing mineral from a
7 designated strip-mine or underground-mine area.

8 (6) "Operator" means a person who intends to operate a
9 new strip mine or new underground mine involving the removal
10 of more than 10,000 cubic yards of mineral or overburden.

11 (7) "Person" means a person, partnership, corporation,
12 association, or other legal entity or any political
13 subdivision or agency of the state.

14 (8) "Preparatory work" means all on-site disturbances,
15 excluding prospecting, associated with the initiation of a
16 new strip mine or underground mine, including but not
17 limited to the construction of railroad spurs or loops,
18 buildings to house mining operations, roads, storage and
19 train load-out facilities, transmission lines, erection of
20 draglines and loading shovels, and other associated
21 facilities.

22 (9) "Strip mining" means any part of the process
23 followed in the production of mineral by the opencut method,
24 including mining by the auger method or any similar method
25 which penetrates a mineral deposit and removes mineral

1 directly through a series of openings made by a machine
2 which enters the deposit from a surface excavation or any
3 other method or process in which the strata or overburden is
4 removed or displaced in order to recover the mineral.

5 (10) "Underground mining" means any part of the process
6 followed in the production of a mineral such that vertical
7 or horizontal shafts, slopes, drifts, or incline planes
8 connected with excavations penetrating the mineral stratum
9 or strata are utilized."

10 **Section 39.** Section 82-4-111, MCA, is amended to read:

11 "~~82-4-111. Orders-and-rules~~ Rules of board ---hearings.
12 The board shall:

13 ~~(1) issue, after an opportunity for a hearing, orders~~
14 ~~requiring an operator to adopt the remedial measures~~
15 ~~necessary to comply with this part and rules adopted under~~
16 ~~this part;~~

17 ~~(2) issue, after an opportunity for a hearing, a final~~
18 ~~order directing the department to revoke a permit when the~~
19 ~~requirements set forth by the notice of noncompliance, order~~
20 ~~of suspension, or an order of the board requiring remedial~~
21 ~~measures have not been complied with according to the terms~~
22 ~~herein;~~

23 (3) adopt, after an opportunity for a hearing, general
24 rules pertaining to new strip mines and to new underground
25 mines and preparatory work to accomplish the purposes of

1 this part;

2 ~~{4}--conduct--hearings--under--provisions--of--this--part--or~~
3 ~~rules--adopted--by--the--board."~~

4 **Section 40.** Section 82-4-112, MCA, is amended to read:

5 "82-4-112. Administration. The department shall:

6 (1) exercise general supervision, administration, and
7 enforcement of this part and all rules and orders adopted
8 under this part;

9 (2) order the suspension of any permit for failure to
10 comply with this part, any rule adopted under this part, or
11 permit issued pursuant to this part;

12 (3) order the halting of any operation that is started
13 without first having secured a permit as required by this
14 part;

15 (4) make investigations and inspections necessary to
16 insure compliance with this part;

17 (5) encourage and conduct investigations, research,
18 experiments, and demonstrations and collect and disseminate
19 information relating to new strip mines, new underground
20 mines, and reclamation of lands and waters affected by
21 preparatory work;

22 (6) issue, after an opportunity for a hearing, orders
23 requiring an operator to adopt the remedial measures
24 necessary to comply with this part and rules adopted under
25 this part;

1 (7) issue, after an opportunity for a hearing, a final
2 order revoking a permit when the requirements set forth by
3 the notice of noncompliance, order of suspension, or an
4 order of the board requiring remedial measures have not been
5 complied with according to the terms contained in this part;

6 (8) conduct hearings under the provisions of this part
7 or rules adopted by the board;

8 ~~{6}{9}~~ adopt rules with respect to the filing of
9 reports, the issuance of permits, and other matters of
10 procedure and administration."

11 **Section 41.** Section 82-4-123, MCA, is amended to read:

12 "82-4-123. Permit fee and surety bond. A fee of \$50
13 shall be paid before the mine-site location permit required
14 in this part may be issued. The operator shall also file
15 with the department a bond payable to the state of Montana
16 with surety satisfactory to the department in the penal sum
17 to be determined by the board ~~on-the-recommendation-of-the~~
18 ~~commissioner~~ of not less than \$200 or more than \$10,000 for
19 each acre or fraction thereof of the area of land to be
20 disturbed by preparatory work, with a minimum bond of
21 \$5,000, conditioned upon the faithful performance of the
22 requirements set forth in this part and of the rules of the
23 board. In determining the amount of the bond within the
24 above limits, the board shall take into consideration the
25 character and nature of the surface and subsurface

1 disturbances, the future suitable use of the land involved,
 2 and the cost of removing or burying facilities, subsidence
 3 stabilization, water controls, backfilling, grading,
 4 topsoiling, and reclamation to be required. Notwithstanding
 5 the above limits, the bond may not be less than the total
 6 estimated cost to the state of completing the work described
 7 in the reclamation plan."

8 **Section 42.** Section 82-4-129, MCA, is amended to read:

9 **"82-4-129. Noncompliance -- suspension of permits.** (1)

10 If any of the requirements of this part or rules or orders
 11 of the department ~~and the board~~ have not been complied with
 12 within the time limits set by the department ~~or the board~~ or
 13 by this part, the department shall serve a notice of
 14 noncompliance on the operator or, where found necessary, the
 15 ~~commissioner~~ department shall order the suspension of a
 16 permit. The notice or order shall be handed to the operator
 17 in person or served by certified ~~or--registered~~ mail
 18 addressed to the permanent address shown on the application
 19 for a permit. The notice of noncompliance or order of
 20 suspension shall specify in what respects the operator has
 21 failed to comply with this part or the rules or orders of
 22 the department and the board. If the operator has not
 23 complied with the requirement set forth in the notice of
 24 noncompliance or order of suspension within time limits set
 25 therein, the permit may be revoked by order of the board and

1 the performance bond forfeited to the department.

2 (2) Any additional strip-mining or underground-mining
 3 or mine-site location permits held by an operator whose
 4 mine-site location permit has been revoked shall be
 5 suspended and the operator is not eligible to receive
 6 another permit or to have the suspended permits reinstated
 7 until he has complied with all the requirements of this part
 8 in respect to former permits issued him. An operator who has
 9 forfeited a bond is not eligible to receive another permit
 10 unless the land for which the bond was forfeited has been
 11 reclaimed without cost to the state or the operator has paid
 12 into the reclamation account a sum together with the value
 13 of the bond the board finds adequate to reclaim the lands.
 14 The department may not issue any additional permits to an
 15 operator who has repeatedly been in noncompliance or
 16 violation of this part."

17 **Section 43.** Section 82-4-203, MCA, is amended to read:

18 **"82-4-203. Definitions.** Unless the context requires
 19 otherwise, in this part the following definitions apply:

20 (1) "Abandoned" means an operation where no mineral is
 21 being produced and where the department determines that the
 22 operation will not continue or resume.

23 (2) "Alluvial valley floor" means the unconsolidated
 24 stream-laid deposits holding streams where water
 25 availability is sufficient for subirrigation or flood

1 irrigation agricultural activities; but the term does not
2 include upland areas which are generally overlain by a thin
3 veneer of colluvial deposits composed chiefly of debris from
4 sheet erosion, deposits by unconcentrated runoff or slope
5 wash, together with talus, other mass movement accumulation,
6 and windblown deposits.

7 (3) "Aquifer" means any geologic formation or natural
8 zone beneath the earth's surface that contains or stores
9 water and transmits it from one point to another in
10 quantities which permit or have the potential to permit
11 economic development as a water source.

12 (4) "Area of land affected" means the area of land from
13 which overburden is to be or has been removed and upon which
14 the overburden is to be or has been deposited and includes
15 all land overlying any tunnels, shafts, or other excavations
16 used to extract the mineral, lands affected by the
17 construction of new railroad loops and roads or the
18 improvement or use of existing railroad loops and roads to
19 gain access and to haul the mineral, processing facilities
20 at or near the mine site or other mine associated
21 facilities, waste deposition areas, treatment ponds, and any
22 other surface or subsurface disturbance associated with
23 strip mining or underground mining, and all activities
24 necessary and incident to the reclamation of such
25 operations.

1 (5) "Bench" means the ledge, shelf, table, or terrace
2 formed in the contour method of strip mining.

3 (6) "Board" means the board of ~~land--commissioners~~
4 natural resources and environment provided for in ~~Article #7~~
5 section 47 of the constitution of this state Title 2,
6 chapter 15, part 33.

7 (7) "Coal conservation plan" means the planned course
8 of conduct of a strip- or underground-mining operation to
9 include plans for the removal and utilization of minable and
10 marketable coal located within the area planned to be mined.

11 (8) "Coal preparation" means the chemical or physical
12 processing of coal and its cleaning, concentrating, or other
13 processing or preparation. The term does not mean the
14 conversion of coal to another energy form or to a gaseous or
15 liquid hydrocarbon, except for incidental amounts that do
16 not leave the plant, nor does the term mean processing for
17 other than commercial purposes.

18 (9) "Coal preparation plant" means a commercial
19 facility where coal is subject to coal preparation. The term
20 includes commercial facilities associated with coal
21 preparation activities but is not limited to loading
22 buildings, water treatment facilities, water storage
23 facilities, settling basins and impoundments, and coal
24 processing and other waste disposal areas.

25 (10) "~~Commissioner~~" means ~~the commissioner of state~~

~~lands-provided-for-in-2-15-3202.~~

(10) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(11) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(12) "Department" means the department of ~~state~~ lands natural resources and environment provided for in Title 2, chapter 15, part 32 ~~33~~.

(13) "Director" means the director of the department.

(14) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established by the department shall not be considered failure to conserve coal.

(15) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(16) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(17) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(18) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(19) "Minaable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

1 (20) "Mineral" means coal and uranium.

2 (21) "Operation" means all of the premises, facilities,
3 railroad loops, roads, and equipment used in the process of
4 producing and removing mineral from and reclaiming a
5 designated strip-mine or underground-mine area, including
6 coal preparation plants, and all activities, including
7 excavation incident thereto, or prospecting for the purpose
8 of determining the location, quality, or quantity of a
9 natural mineral deposit.

10 (22) "Operator" means a person engaged in strip mining
11 or underground mining who removes or intends to remove more
12 than 10,000 cubic yards of mineral or overburden or a person
13 engaged in coal mining who removes or intends to remove more
14 than 250 tons of coal from the earth by mining within 12
15 consecutive calendar months in any one location or a person
16 engaged in operating a coal preparation plant.

17 (23) "Overburden" means all of the earth and other
18 materials which lie above a natural mineral deposit and also
19 means such earth and other material after removal from their
20 natural state in the process of mining.

21 (24) "Person" means a person, partnership, corporation,
22 association, or other legal entity or any political
23 subdivision or agency of the state or federal government.

24 (25) "Prime farmland" means that land previously
25 prescribed by the United States secretary of agriculture on

1 the basis of such factors as moisture availability,
2 temperature regime, chemical balance, permeability,
3 surface-layer composition, susceptibility to flooding, and
4 erosion characteristics and which historically has been used
5 for intensive agricultural purposes and as defined in the
6 Federal Register.

7 (26) "Prospecting" means the removal of overburden, core
8 drilling, construction of roads, or any other disturbance of
9 the surface for the purpose of determining the location,
10 quantity, or quality of a natural mineral deposit.

11 (27) "Reclamation" means backfilling, subsidence
12 stabilization, water control, grading, highwall reduction,
13 topsoiling, planting, revegetation, and other work to
14 restore an area of land affected by strip mining or
15 underground mining under a plan approved by the department.

16 (28) "Remining" means conducting surface coal mining and
17 reclamation operations that affect previously mined areas
18 (for example, the recovery of additional mineral from
19 existing gob or tailings piles).

20 (29) "Strip mining" means any part of the process
21 followed in the production of mineral by the opencut method,
22 including mining by the auger method or any similar method
23 which penetrates a mineral deposit and removes mineral
24 directly through a series of openings made by a machine
25 which enters the deposit from a surface excavation or any

1 other mining method or process in which the strata or
 2 overburden is removed or displaced in order to recover the
 3 mineral. For the purposes of this part only, strip mining
 4 also includes remining and coal preparation. The terms
 5 "remining" and "coal preparation" are not included in the
 6 definition of "strip mining" for purposes of Title 15,
 7 chapter 35, part 1.

8 (30) "Subsidence" means a vertically downward movement
 9 of overburden materials resulting from the actual mining of
 10 an underlying mineral deposit or associated underground
 11 excavations.

12 (31) "Surface owner" means a person who holds legal or
 13 equitable title to the land surface and whose principal
 14 place of residence is on the land or who personally conducts
 15 farming or ranching operations upon a farm or ranch unit to
 16 be directly affected by strip-mining operations or who
 17 receives directly a significant portion of his income, if
 18 any, from such farming or ranching operations or the state
 19 of Montana where the state owns the surface.

20 (32) "Topsoil" means the unconsolidated mineral matter
 21 naturally present on the surface of the earth that has been
 22 subjected to and influenced by genetic and environmental
 23 factors of parent material, climate, macro- and
 24 microorganisms, and topography, all acting over a period of
 25 time, and that is necessary for the growth and regeneration

1 of vegetation on the surface of the earth.

2 (33) "Underground mining" means any part of the process
 3 followed in the production of a mineral such that vertical
 4 or horizontal shafts, slopes, drifts, or incline planes
 5 connected with excavations penetrating the mineral stratum
 6 or strata are utilized and includes mining by in situ
 7 methods.

8 (34) "Unwarranted failure to comply" means the failure
 9 of a permittee to prevent the occurrence of any violation of
 10 his permit or any requirement of this part due to
 11 indifference, lack of diligence, or lack of reasonable care,
 12 or the failure to abate any violation of such permit or this
 13 part due to indifference, lack of diligence, or lack of
 14 reasonable care.

15 (35) "Waiver" means any document which demonstrates the
 16 clear intention to release rights in the surface estate for
 17 the purpose of permitting the extraction of subsurface
 18 minerals by strip-mining methods.

19 (36) "Written consent" means such written statement as
 20 is executed by the owner of the surface estate, upon a form
 21 approved by the department, demonstrating that such owner
 22 consents to entry of an operator for the purpose of
 23 conducting strip-mining operations and that such consent is
 24 given only to such strip-mining and reclamation operations
 25 which fully comply with the terms and requirements of this

1 part."

2 **Section 44.** Section 82-4-204, MCA, is amended to read:

3 "82-4-204. Board orders, rules, and hearings. The board
4 shall:

5 ~~(1) issue orders requiring an operator to adopt the
6 remedial measures necessary to comply with this part and
7 rules adopted under this part;~~

8 ~~(2) issue, after an opportunity for a hearing, a final
9 order directing the department to revoke a permit when the
10 requirements set forth by the notice of noncompliance, order
11 of suspension, or an order of the board requiring remedial
12 measures have not been complied with according to the terms
13 herein;~~

14 (3) adopt, after an opportunity for a hearing, general
15 rules pertaining to strip mining and to underground mining
16 to accomplish the purposes of this part;

17 ~~(4) conduct hearings under provisions of this part or
18 rules adopted by the board."~~

19 **Section 45.** Section 82-4-205, MCA, is amended to read:

20 "82-4-205. Administration by department of state ~~lands~~
21 natural resources and environment. The department:

22 (1) shall exercise general supervision, administration,
23 and enforcement of this part and all rules and orders
24 adopted under this part;

25 (2) shall examine and pass upon all plans and

1 specifications submitted by the operator for the method of
2 operation, subsidence stabilization, water control,
3 backfilling, grading, highwall reduction, topsoiling, and
4 for the reclamation of the area of land affected by his
5 operation;

6 (3) shall order the suspension of any permit for
7 failure to comply with this part or any rule adopted under
8 this part;

9 (4) shall order the halting of any operation that is
10 started without first having secured a permit as required by
11 this part or order the cessation of operations not in
12 compliance with this part in accordance with 82-4-251;

13 (5) shall make investigations and inspections necessary
14 to insure compliance with this part;

15 (6) may encourage and conduct investigations, research,
16 experiments, and demonstrations and collect and disseminate
17 information relating to strip mining and to underground
18 mining and reclamation of lands and waters affected by strip
19 mining and underground mining;

20 (7) may adopt rules with respect to the filing of
21 reports, the issuance of permits, monitoring, and other
22 matters of procedure and administration;

23 (8) shall issue orders requiring an operator to adopt
24 the remedial measures necessary to comply with this part and
25 rules adopted under this part;

1 (9) shall issue, after an opportunity for a hearing, a
 2 final order revoking a permit when the requirements set
 3 forth by the notice of noncompliance, order of suspension,
 4 or an order of the board requiring remedial measures have
 5 not been complied with according to the terms contained in
 6 this part;

7 ~~†8~~(10) may shall conduct hearings under the provisions
 8 of this part or rules adopted by the board."

9 **Section 46.** Section 82-4-223, MCA, is amended to read:

10 **"82-4-223. Permit fee and surety bond.** (1) An
 11 application fee of \$100 shall be paid before the permit
 12 required in this part shall be issued.

13 (2) Before a permit may be issued, the operator shall
 14 file with the department a bond payable to the state of
 15 Montana with surety satisfactory to the department in the
 16 penal sum to be determined by the board, ~~---on---~~the
 17 ~~recommendation--of--the--commissioner,~~ of not less than \$200
 18 for each acre or fraction thereof of the area of land
 19 affected, with a minimum bond of \$10,000, conditioned upon
 20 the faithful performance of the requirements set forth in
 21 this part and of the rules of the board. The operator may
 22 elect to deposit cash, negotiable bonds, or negotiable
 23 certificates of deposit of any bank organized or transacting
 24 business in the United States. The cash deposit or market
 25 value of such securities shall be equal to or greater than

1 the amount of the bond required for the bonded area. The
 2 level of bonding shall be relative to the degree of
 3 disturbance projected by the original permit and the annual
 4 report. A political subdivision or agency of the state need
 5 not file a bond unless required to do so by the board. The
 6 board shall adjust the amount of bond required if the cost
 7 of reclamation changes.

8 (3) In determining the amount of the bond, the board
 9 shall take into consideration the character and nature of
 10 the overburden, the future suitable use of the land
 11 involved, and the cost of backfilling, grading, highwall
 12 reduction, subsidence stabilization, water control,
 13 topsoiling, and reclamation to be required, but in no event
 14 shall the bond be less than the total estimated cost to the
 15 state of completing the work described in the reclamation
 16 plan."

17 **Section 47.** Section 82-4-227, MCA, is amended to read:

18 **"82-4-227. Refusal of permit.** (1) An application for a
 19 prospecting, strip-mining, or underground-mining permit or
 20 major revision shall not be approved by the department
 21 unless, on the basis of the information set forth in the
 22 application, an on-site inspection, and an evaluation of the
 23 operation by the department, the applicant has affirmatively
 24 demonstrated that the requirements of this part and rules
 25 will be observed and that the proposed method of operation,

1 backfilling, grading, subsidence stabilization, water
 2 control, highwall reduction, topsoiling, revegetation, or
 3 reclamation of the affected area can be carried out
 4 consistently with the purpose of this part. The applicant
 5 for a permit or major revision has the burden of
 6 establishing that his application is in compliance with this
 7 part and the rules adopted under it.

8 (2) The department shall not approve the application
 9 for a prospecting, strip-mining, or underground-mining
 10 permit where the area of land described in the application
 11 includes land having special, exceptional, critical, or
 12 unique characteristics or that mining or prospecting on that
 13 area would adversely affect the use, enjoyment, or
 14 fundamental character of neighboring land having special,
 15 exceptional, critical, or unique characteristics. For the
 16 purposes of this part, land is defined as having such
 17 characteristics if it possesses special, exceptional,
 18 critical, or unique:

19 (a) biological productivity, the loss of which would
 20 jeopardize certain species of wildlife or domestic stock;

21 (b) ecological fragility, in the sense that the land,
 22 once adversely affected, could not return to its former
 23 ecological role in the reasonable foreseeable future;

24 (c) ecological importance, in the sense that the
 25 particular land has such a strong influence on the total

1 ecosystem of which it is a part that even temporary effects
 2 felt by it could precipitate a system-wide reaction of
 3 unpredictable scope or dimensions; or

4 (d) scenic, historic, archaeologic, topographic,
 5 geologic, ethnologic, scientific, cultural, or recreational
 6 significance. (In applying this subsection, particular
 7 attention should be paid to the inadequate preservation
 8 previously accorded Plains Indian history and culture.)

9 (3) The department may not approve an application for a
 10 strip- or underground-coal-mining permit or major revision
 11 unless the application affirmatively demonstrates that:

12 (a) the assessment of the probable cumulative impact of
 13 all anticipated mining in the area on the hydrologic balance
 14 has been made by the department and the proposed operation
 15 thereof has been designed to prevent material damage to the
 16 hydrologic balance outside the permit area; and

17 (b) the proposed strip- or underground-coal-mining
 18 operation would not:

19 (i) interrupt, discontinue, or preclude farming on
 20 alluvial valley floors that are irrigated or naturally
 21 subirrigated, excluding undeveloped rangelands that are not
 22 significant to farming on alluvial valley floors and those
 23 lands as to which the regulatory-authority department finds
 24 that if the farming that will be interrupted, discontinued,
 25 or precluded is of such small acreage as to be of negligible

1 impact on the farm's agricultural production; or

2 (ii) materially damage the quantity or quality of water
3 in surface water or underground water systems that supply
4 these valley floors in subsection (3)(b)(i).

5 (4) Subsection (3)(b) does not affect those strip- or
6 underground-coal-mining operations that in the year
7 preceding the enactment of Public Law 95-87 produced coal in
8 commercial quantities and were located within or adjacent to
9 alluvial valley floors or had obtained specific permit
10 approval by the department to conduct strip- or
11 underground-coal-mining operations within alluvial valley
12 floors. If coal deposits are precluded from being mined
13 under this subsection, the commissioner director shall
14 certify to the secretary of interior that the mineral owner
15 or lessee may be eligible for participation in coal exchange
16 programs pursuant to section 510(5) of Public Law 95-87.

17 (5) If the area proposed to be mined contains prime
18 farmland, the department may not grant a permit to mine coal
19 on the prime farmland unless it finds in writing that the
20 applicant has the technological capability to restore the
21 mined area, within a reasonable time, to equivalent or
22 higher levels of yield as nonmined prime farmland in the
23 surrounding area under equivalent levels of management and
24 can meet the soil reconstruction standards of 82-4-232(3).
25 Nothing in this subsection applies to any permit issued

1 prior to August 3, 1977, or to any revisions or renewals
2 thereof, or to any existing strip- or underground-mining
3 operations for which a permit was issued prior to August 3,
4 1977.

5 (6) If the department finds that the overburden on any
6 part of the area of land described in the application for a
7 prospecting, strip-mining, or underground-mining permit is
8 such that experience in the state with a similar type of
9 operation upon land with similar overburden shows that
10 substantial deposition of sediment in streambeds,
11 subsidence, landslides, or water pollution cannot feasibly
12 be prevented, the department shall delete that part of the
13 land described in the application upon which the overburden
14 exists. The burden is on the applicant to demonstrate that
15 any area should not be deleted under this subsection.

16 (7) If the department finds that the operation will
17 constitute a hazard to a dwelling house, public building,
18 school, church, cemetery, commercial or institutional
19 building, public road, stream, lake, or other public
20 property, the department shall delete those areas from the
21 prospecting, strip-mining, or underground-mining permit
22 application before it can be approved. In no case may
23 strip- or underground-coal-mining be allowed within 300 feet
24 of any occupied dwelling, unless waived by the owner, nor
25 within 300 feet of any public building, school, church,

1 community, or institutional building, or public park; nor
 2 within 100 feet of a cemetery; nor within 100 feet of the
 3 outside right-of-way line of any public road, except where
 4 mine access roads or haulage roads join such right-of-way
 5 line. The department may permit such roads to be relocated
 6 or the area affected to lie within 100 feet of the road if,
 7 after public notice and opportunity for public hearing in
 8 the locality, a written finding is made that the interests
 9 of the public and the landowners affected will be protected.

10 (8) No strip- or underground-mining may be conducted
 11 within 500 feet of active or abandoned underground mines in
 12 order to prevent breakthroughs and to protect health or
 13 safety of miners. The department shall permit an operator to
 14 mine near, through, or partially through an abandoned
 15 underground mine or closer to an active underground mine if:

16 (a) the nature, timing, and sequencing of specific
 17 strip-mine activities and specific underground-mine
 18 activities are jointly approved by the department and the
 19 regulatory authority concerned with the health and safety of
 20 underground miners; and

21 (b) such operations will result in improved resource
 22 recovery, abatement of water pollution, or elimination of
 23 hazards to the health and safety of the public.

24 (9) The department may not approve an application for a
 25 strip- or underground-coal-mining operation if the area

1 proposed to be mined is included within an area designated
 2 unsuitable for strip or underground coal mining or within an
 3 area under review for this designation under an
 4 administrative proceeding, unless in such an area as to
 5 which an administrative proceeding has commenced pursuant to
 6 this part, the operator making the permit application
 7 demonstrates that prior to January 1, 1977, he made
 8 substantial legal and financial commitments in relation to
 9 the operation for which he is applying for a permit.

10 (10) No permit or major permit revision for a strip- or
 11 underground-coal-mining operation may be issued unless the
 12 applicant has affirmatively demonstrated by its coal
 13 conservation plan that no failure to conserve coal will
 14 occur. The department may require the applicant to submit
 15 any information it considers necessary for review of the
 16 coal conservation plan.

17 (11) Whenever information available to the department
 18 indicates that any strip- or underground-coal-mining
 19 operation owned or controlled by the applicant is currently
 20 in violation of Public Law 95-87, as amended, or any state
 21 law required by Public Law 95-87, as amended, or any law,
 22 rule, or regulation of the United States or of any
 23 department or agency in the United States pertaining to air
 24 or water environmental protection, the department shall not
 25 issue a strip- or underground-coal-mining permit or major

1 revision until the applicant submits proof that the
2 violation has been corrected or is in the process of being
3 corrected to the satisfaction of the administering agency.

4 (12) The department may not issue a strip- or
5 underground-coal-mining permit or major revision to any
6 applicant which it finds, after an opportunity for hearing,
7 owns or controls any strip- or underground-coal-mining
8 operation which has demonstrated a pattern of willful
9 violations of Public Law 95-87, as amended, or any state law
10 required by Public Law 95-87, as amended, of such a nature
11 and duration and with such resulting irreparable damage to
12 the environment to indicate an intent not to comply with the
13 provisions of this part.

14 (13) Subject to valid existing rights, no strip- or
15 underground-coal-mining operations except those which
16 existed as of August 3, 1977, may be conducted on private
17 lands within the boundaries of units of the national park
18 system, the national wildlife refuge systems, the national
19 wilderness preservation system, the wild and scenic rivers
20 system, including study rivers designated under section 5(a)
21 of the Wild and Scenic Rivers Act, or national recreation
22 areas designated by act of congress."

23 **Section 48.** Section 82-4-321, MCA, is amended to read:

24 "82-4-321. Administration. Board rulemaking. ~~The board~~
25 ~~is charged with the responsibility of administering this~~

1 ~~part. In order to~~ To implement its the terms and provisions
2 of this part, the board shall from time to time promulgate
3 ~~such rules as the board shall deem~~ considers necessary. ~~The~~
4 ~~board may delegate such powers, duties, and functions to the~~
5 ~~department as it deems necessary for the performance of its~~
6 ~~duties as administrator of this part. The board shall employ~~
7 ~~experienced, qualified persons in the field of mined land~~
8 ~~reclamation who, for the purpose of this part, are referred~~
9 ~~to as supervisors."~~

10 **Section 49.** Section 82-4-337, MCA, is amended to read:

11 "82-4-337. Inspection -- issuance of operating permit
12 -- modification. (1) (a) The board shall cause all
13 applications for operating permits to be reviewed for
14 completeness within 30 days of receipt. The board shall
15 notify the applicant concerning completeness as soon as
16 possible. An application is considered complete unless the
17 applicant is notified of any deficiencies within 30 days of
18 receipt.

19 (b) Unless the review period is extended as provided in
20 this section, the board shall review the adequacy of the
21 proposed reclamation plan and plan of operation within 30
22 days of the determination that the application is complete
23 or within 60 days of receipt of the application if the board
24 does not notify the applicant of any deficiencies in the
25 application. If the applicant is not notified of

1 deficiencies or inadequacies in the proposed reclamation
 2 plan and plan of operation within such time period, the
 3 operating permit shall be issued upon receipt of the bond as
 4 required in 82-4-338. The department shall promptly notify
 5 the applicant of the form and amount of bond which will be
 6 required. No permit may be issued until sufficient bond has
 7 been submitted pursuant to 82-4-338.

8 (c) (i) Prior to issuance of a permit, the department
 9 shall inspect the site unless the department has failed to
 10 act on the application within the time prescribed in
 11 subsection (1)(b). If the site is not accessible due to
 12 extended adverse weather conditions, the department may
 13 extend the time period prescribed in subsection (1)(b) by
 14 not more than 180 days to allow inspection of the site and
 15 reasonable review. The department must serve written notice
 16 of extension upon the applicant in person or by certified
 17 mail, and any such extension is subject to appeal to the
 18 board in accordance with the Montana Administrative
 19 Procedure Act.

20 (ii) If the department determines that additional time
 21 is needed to review the application and reclamation plan for
 22 a major operation, the department and the applicant shall
 23 negotiate to extend the period prescribed in subsection
 24 (1)(b) by not more than 365 days in order to permit
 25 reasonable review.

1 (iii) Failure of the board to act upon a complete
 2 application within the extension period constitutes approval
 3 of the application, and the permit shall be issued promptly
 4 upon receipt of the bond as required in 82-4-338.

5 (2) The operating permit shall be granted for the
 6 period required to complete the operation and shall be valid
 7 until the operation authorized by the permit is completed or
 8 abandoned unless the permit is suspended or revoked by the
 9 board as provided in this part.

10 (3) The operating permit shall provide that the
 11 reclamation plan may be modified by the board department,
 12 upon its own motion or upon proper application of the
 13 permittee ~~or-department~~, after timely notice and opportunity
 14 for hearing, at any time during the term of the permit and
 15 for any of the following reasons:

16 (a) to modify the requirements so they will not
 17 conflict with existing laws;

18 (b) when the previously adopted reclamation plan is
 19 impossible or impracticable to implement and maintain;

20 (c) when significant environmental problem situations
 21 are revealed by field inspection."

22 **Section 50.** Section 82-4-362, MCA, is amended to read:

23 "82-4-362. Suspension of permits -- hearing. (1) If any
 24 of the requirements of this part, the rules adopted under
 25 this part, or the reclamation plan have not been complied

1 with within the time limits set by the department ~~or--board~~
 2 or by this part, the department shall serve a notice of
 3 noncompliance on the licensee or permittee or, if necessary,
 4 the commissioner shall order the suspension of the permit.
 5 The notice or order must be handed to the licensee or
 6 permittee in person or served by certified ~~or--registered~~
 7 mail addressed to the permanent address shown on the
 8 application for a permit. The notice of noncompliance must
 9 specify in what respects the operator has failed to comply
 10 with this part, the rules adopted under this part, or the
 11 reclamation plan.

12 (2) If the licensee or permittee has not complied with
 13 the requirements set forth in the notice of noncompliance or
 14 order of suspension within the time limits set therein, the
 15 permit may be revoked by order of the board and the
 16 performance bond forfeited to the department. The licensee
 17 or permittee is entitled to a hearing before the department
 18 on the revocation of a permit or license or the forfeiture
 19 of a performance bond if a hearing is requested within 30
 20 days after service of notice as provided in subsection (1).
 21 The notice must state when those measures may be undertaken
 22 and must give notice of opportunity for a hearing. If a
 23 hearing is requested within the 30-day period, the permit or
 24 license may not be revoked and the bond may not be forfeited
 25 until a final decision is made by the department.

1 (3) If a permittee fails to pay the fee or file the
 2 report required under 82-4-339, the department shall serve
 3 notice of this failure, by certified mail or personal
 4 delivery, on the permittee. If the permittee does not comply
 5 within 30 days of receipt of the notice, the commissioner
 6 shall suspend the permit. The commissioner shall reinstate
 7 the permit upon compliance."

8 **Section 51.** Section 82-4-421, MCA, is amended to read:

9 ~~"82-4-421. Administration ---delegation-of-functions.~~
 10 The board is and the department are the administrator
 11 administrators of this part, and ~~it-has~~ they have all the
 12 power necessary to implement and enforce it. ~~The--board--may~~
 13 ~~delegate--to--the--commissioner--of-state-lands-such-powers,~~
 14 ~~duties,-and-functions--under--this--part--as--it--considers~~
 15 ~~necessary-for-the-performance-of-its-duties,-"~~

16 **Section 52.** Section 82-4-422, MCA, is amended to read:

17 ~~"82-4-422. Powers,-duties,-and-functions-of-board~~ Board
 18 to prepare and adopt rules. ~~The board has-the-following~~
 19 ~~powers,-duties,-and-functions-to: shall~~

20 ~~(1)--enter-into-contracts-where-it-is-found-on-the-basis~~
 21 ~~of-the-information-set--forth--in--the--application--and--an~~
 22 ~~evaluation---of---the---operation--by--the--board--that--the~~
 23 ~~requirements-of-the-part-or-rules-will-be-observed-and--that~~
 24 ~~the--operation--and-the-reclamation-of-the-affected-area-can~~
 25 ~~be-carried-out-consistently-with-the-purpose-of-the-part,~~

1 (2) prepare and adopt rules pertaining to opencut
2 mining to accomplish the purposes of this part;

3 (3) ~~conduct hearings and for the purposes of~~
4 ~~conducting such hearings, administer oaths and affirmations,~~
5 ~~subpoena witnesses, compel attendance of witnesses, hear~~
6 ~~evidence, and require the production of any books, papers,~~
7 ~~correspondence, memoranda, agreements, documents, or other~~
8 ~~records relevant or material to the inquiry;~~

9 (4) ~~adopt uniform procedures for the filing of~~
10 ~~necessary records, the issuance of contracts, and for any~~
11 ~~other matters of administration not specifically enumerated~~
12 ~~in this part;~~

13 (5) ~~reclaim any affected land with respect to which a~~
14 ~~bond has been forfeited, and~~

15 (6) ~~make investigations or inspections which are~~
16 ~~considered necessary to insure compliance with any provision~~
17 ~~of this part."~~

18 **Section 53.** Section 82-4-425, MCA, is amended to read:

19 "82-4-425. Inspection of opencut mining by board. The
20 board or its accredited representatives may enter upon lands
21 subjected to opencut mining at all reasonable times for the
22 purpose of inspection to determine whether the provisions of
23 this part have been complied with."

24 **Section 54.** Section 82-4-427, MCA, is amended to read:

25 "82-4-427. Board Department hearing. (1) A person who

1 is aggrieved by a final decision of the ~~commissioner of~~
2 ~~state lands department on an application for a contract or a~~
3 ~~contract amendment~~ is entitled to a hearing ~~before the board~~
4 ~~on that decision.~~

5 (2) The Montana Administrative Procedure Act governs
6 hearings before the board department and judicial review of
7 decisions of the board department under this part."

8 NEW SECTION. Section 55. Duties of department. The
9 department shall:

10 (1) enter into contracts where it is found on the basis
11 of the information set forth in the application and an
12 evaluation of the operation by the board that the
13 requirements of this part or rules adopted under this part
14 will be observed and that the operation and the reclamation
15 of the affected area can be carried out consistently with
16 the purpose of this part;

17 (2) conduct hearings and, for the purposes of
18 conducting the hearings, administer oaths and affirmations,
19 subpoena witnesses, compel attendance of witnesses, hear
20 evidence, and require the production of any books, papers,
21 correspondence, memoranda, agreements, documents, or other
22 records relevant or material to the inquiry;

23 (3) adopt uniform procedures for the filing of
24 necessary records, the issuance of contracts, and any other
25 matters of administration not specifically enumerated in

1 this part;

2 (4) reclaim affected land with respect to which a bond
3 has been forfeited; and

4 (5) conduct investigations or inspections that are
5 considered necessary to ensure compliance with a provision
6 of this part.

7 **Section 56.** Section 85-1-102, MCA, is amended to read:

8 **"85-1-102. Definitions.** Unless the context requires
9 otherwise, in this chapter the following definitions apply:

10 (1) "Administrative costs" means costs incurred by the
11 department:

12 (a) for the purpose of protecting the department's
13 properties and assets;

14 (b) to oversee the operation and maintenance of the
15 projects;

16 (c) to administer contracts and receivables;

17 (d) to maintain project financial records;

18 (e) to provide technical assistance for operating,
19 maintaining, and rehabilitating the projects; and

20 (f) to assist in securing funds for operating,
21 maintaining, and rehabilitating the projects.

22 (2) "Board" means the board of ~~natural-resources-and~~
23 conservation land commissioners provided for in ~~2-15-3302~~
24 Article X, section 4, of the Montana constitution.

25 (3) "Cost of operation and maintenance" means the costs

1 of operation, maintenance, and routine repairs and the costs
2 incurred by the water users' association or the department
3 in the distribution of water from the project, excluding the
4 department's administrative costs.

5 (4) "Cost of works" means the cost of construction,
6 including any rehabilitation or alteration of the project;
7 the cost of all lands, property, rights, easements, and
8 franchises acquired which are deemed necessary for the
9 construction; the cost of all water rights acquired or
10 exercised by the department in connection with those works;
11 the cost of all machinery and equipment, financing charges,
12 interest prior to and during construction and for a period
13 not exceeding 3 years after the completion of construction;
14 cost of engineering and legal expenses, plans,
15 specifications, surveys, estimates of cost, and other
16 expenses necessary or incident to determining the
17 feasibility or practicability of any project; administrative
18 expense; and other expenses as may be necessary or incident
19 to the financing authorized in this part and the
20 construction of the works and the placing of the works in
21 operation.

22 (5) "Department" means the department of ~~natural~~
23 resources-and-conservation state lands provided for in Title
24 2, chapter 15, part 33 32.

25 (6) "Owner" means all individuals, irrigation

1 districts, drainage districts, flood control districts,
2 incorporated companies, societies, or associations having
3 any title or interest in any properties, rights, easements,
4 or franchises to be acquired.

5 (7) "Private person" means any individual, association,
6 partnership, corporation, or other nongovernmental entity
7 not eligible for loans and grants under 85-1-605 but does
8 not include a governmental entity such as an agency, local
9 government, or political subdivision of the state, the
10 United States, or any agency thereof, or any other
11 governmental entity.

12 (8) "Project" means any one of the works defined in
13 this section or any combination of works which are
14 physically connected or jointly managed and operated as a
15 single unit.

16 (9) "Public benefits" means those benefits that accrue
17 from a water development project or activity to persons
18 other than the private grant or loan recipient and that
19 enhance the common well-being of the people of Montana.
20 Public benefits include but are not limited to recreation,
21 flood control, erosion reduction, agricultural flood damage
22 reduction, water quality enhancement, sediment reduction,
23 access to recreation opportunities, and wildlife
24 conservation.

25 (10) "Water development account" means a separate

1 account created by 85-1-617 within the state special revenue
2 fund of the state treasury to finance loans under the
3 provisions of the water development program to agencies,
4 local governments, and political subdivisions of the state,
5 private persons, and any other eligible recipients and to
6 purchase liens and operate property, as provided in
7 85-1-615, from proceeds of bonds issued under part 6 of this
8 chapter.

9 (11) "Water development activity" means an action or
10 program to protect and enhance water-based recreation or to
11 protect or enhance water resources for the benefit of
12 agriculture, flood control, or other uses, including but not
13 limited to the promotion of efficient use of water in
14 agriculture, the improvement of water quality in agriculture
15 and other nonpoint source uses, the protection and
16 enhancement of water-based recreation, the control of
17 erosion of streambanks and control of sedimentation of
18 rivers and streams, and providing greater local and state
19 control of Montana water resources. Water development
20 activities may provide any combination of marketable and
21 nonmarketable benefits.

22 (12) "Water development state special revenue account"
23 means a separate account created by 85-1-604 within the
24 state special revenue fund of the state treasury for the
25 purposes of the water development program as set forth in

1 85-1-604.

2 (13) "Water development project" means a project as
3 defined in subsection (8), except that water development
4 projects are not limited to projects owned or operated by
5 the department.

6 (14) "Water development debt service fund" means a
7 separate fund created by 85-1-603 within the debt service
8 fund type of the state treasury to be used as provided in
9 85-1-619.

10 (15) "Works" means all property and rights, easements,
11 and franchises relating to property and considered necessary
12 or convenient for the operation of the works and all water
13 rights acquired or exercised by the department in connection
14 with those works and includes all means of conserving and
15 distributing water, including, without limiting the
16 generality of the foregoing, reservoirs, dams, diversion
17 canals, distributing canals, waste canals, drainage canals,
18 dikes, lateral ditches and pumping units, mains, pipelines,
19 and waterworks systems and includes all works for the
20 conservation, development, storage, distribution, and
21 utilization of water, including without limiting the
22 generality of the foregoing, works for the purpose of
23 irrigation, flood prevention, drainage, fish and wildlife,
24 recreation, development of power, watering of stock,
25 supplying of water for public, domestic, industrial, or

1 other uses and for fire protection."

2 **Section 57.** Section 85-1-203, MCA, is amended to read:

3 "85-1-203. State water plan. (1) The department of of
4 natural resources and environment shall gather from any
5 source reliable information relating to Montana's water
6 resources and prepare from the information a continuing
7 comprehensive inventory of the water resources of the state.
8 In preparing this inventory, the department may conduct
9 studies; adopt studies made by other competent water
10 resource groups, including federal, regional, state, or
11 private agencies; perform research or employ other competent
12 agencies to perform research on a contract basis; and hold
13 public hearings in affected areas at which all interested
14 parties must be given an opportunity to appear.

15 (2) The department of of natural resources and environment
16 shall formulate and, with the approval of the board of of
17 natural resources and environment, adopt and amend, extend,
18 or add to a comprehensive, coordinated multiple-use water
19 resources plan known as the "state water plan". The state
20 water plan may be formulated and adopted in sections, these
21 sections corresponding with hydrologic divisions of the
22 state. The state water plan must set out a progressive
23 program for the conservation, development, and utilization
24 of the state's water resources and propose the most
25 effective means by which these water resources may be

1 applied for the benefit of the people, with due
 2 consideration of alternative uses and combinations of uses.
 3 Before adopting the state water plan or any section of the
 4 plan, the department shall hold public hearings in the state
 5 or in an area of the state encompassed by a section of the
 6 plan if adoption of a section is proposed. Notice of the
 7 hearing or hearings must be published for 2 consecutive
 8 weeks in a newspaper of general county circulation in each
 9 county encompassed by the proposed plan or section of the
 10 plan at least 30 days prior to the hearing.

11 (3) The department of natural resources and environment
 12 shall submit to the water policy committee established in
 13 85-2-105 and to the legislature at the beginning of each
 14 regular session the state water plan or any section of the
 15 plan or amendments, additions, or revisions to the plan that
 16 the department has formulated and adopted.

17 (4) The legislature, by joint resolution, may revise
 18 the state water plan.

19 (5) The department of natural resources and environment
 20 shall prepare a continuing inventory of the ground water
 21 resources of the state. The ground water inventory must be
 22 included in the comprehensive water resources inventory
 23 described in subsection (1) but must be a separate component
 24 of the inventory.

25 (6) The department of natural resources and environment

1 shall publish the comprehensive inventory, the state water
 2 plan, the ground water inventory, or any part of each, and
 3 the department may assess and collect a reasonable charge
 4 for these publications.

5 (7) In developing and revising the state water plan as
 6 provided in this section, the department of natural
 7 resources and environment shall consult with the water
 8 policy committee established in 85-2-105 and solicit the
 9 advice of the committee in carrying out its duties under
 10 this section."

11 **Section 58.** Section 85-1-205, MCA, is amended to read:

12 **"85-1-205. Acquisition of water in federal reservoirs.**
 13 The department of natural resources and environment may
 14 acquire water or water storage by purchase option or
 15 agreement with the federal government from any federal
 16 reservoir for the purpose of sale, rent, or distribution for
 17 any beneficial use. In such cases, the department is not
 18 required to construct any diversion or appropriation
 19 facilities or works, and it may sell, rent, or distribute
 20 such water at such rates and under such terms and conditions
 21 as it considers appropriate."

22 **Section 59.** Section 85-1-223, MCA, is amended to read:

23 **"85-1-223. Negotiations with other states by the**
 24 **department.** The department of natural resources and
 25 environment may negotiate with the duly constituted

1 authorities or agencies of other states and of the United
 2 States in the preparation of interstate compacts or
 3 agreements governing the use, distribution, and allocation
 4 of the water of any stream or streams flowing from Montana
 5 into such other states or flowing from such other states
 6 into Montana. It shall cooperate with other states and with
 7 the United States in making the necessary studies and
 8 obtaining the data necessary to the preparation of the
 9 compacts. This authority and the duties hereby imposed are
 10 limited to the preparation and proposal of the compact and
 11 the compact or agreement is not binding upon the state of
 12 Montana until approved by the legislature of Montana and the
 13 legislatures of the other state or states involved in the
 14 compact."

15 **Section 60.** Section 85-2-512, MCA, is amended to read:

16 "85-2-512. Investigations. (1) The department shall
 17 compile information for the purpose of enabling it to comply
 18 with this part. In compiling this information, the
 19 department shall make use of investigations, technical
 20 personnel, surveys, and information available from the
 21 Montana bureau of mines and geology, the United States
 22 geological survey, the board of oil and gas conservation,
 23 ~~the department of health and environmental sciences,~~ and any
 24 other private, state, or governmental agency.

25 (2) In addition to the foregoing, the department may

1 request specific investigations by the preceding public
 2 agencies where desired information is not otherwise
 3 available."

4 **Section 61.** Section 85-2-514, MCA, is amended to read:

5 "85-2-514. Inspection of wells. The department, or the
 6 state bureau of mines and geology, ~~or the department of~~
 7 ~~health and environmental sciences~~ may enter on the property
 8 of any appropriator where a well is situated, at any
 9 reasonable hour of the day, for the purpose of investigating
 10 any matters in connection with this part."

11 **Section 62.** Section 85-9-104, MCA, is amended to read:

12 "85-9-104. Limitations. (1) Nothing in this chapter
 13 shall be construed to grant to the district the power to
 14 generate, distribute, or sell electric energy.

15 (2) The provisions of this chapter do not abrogate or
 16 limit in any manner the rights, powers, duties, and
 17 functions of the department, conservation districts,
 18 ~~department of health and environmental sciences,~~ or the
 19 department of fish, wildlife, and parks but are
 20 supplementary thereto and in aid thereof."

21 **Section 63.** Section 85-9-202, MCA, is amended to read:

22 "85-9-202. Action by department of natural resources
 23 upon receipt of request. (1) Sooner than 11 days after the
 24 request is received, the department shall acknowledge the
 25 request.

1 (2) The department shall itself, through cooperating
2 agencies, or together with cooperating agencies:

3 (a) consult with the board of supervisors and all
4 persons who may participate in the proposed project;

5 (b) conduct a preliminary survey of the proposed
6 district;

7 (c) estimate costs of works, maintenance, and
8 operation;

9 (d) determine sources of financing;

10 (e) reach a tentative decision on the feasibility,
11 desirability, and compatibility with the state water plan of
12 the proposed district;

13 (f) adjust the boundaries of the proposed district to
14 improve the feasibility, desirability, or consistency with
15 the state water plan;

16 (g) sooner than 1 year after receipt of the request,
17 send a report of the preliminary survey to the applicants,
18 the board of supervisors, department of fish, wildlife, and
19 parks, ~~department-of-health-and-environmental-sciences,~~ and
20 other affected state and federal resource agencies for their
21 comments."

22 **Section 64.** Section 85-9-204, MCA, is amended to read:

23 "85-9-204. Feasibility study and report -- adjustment
24 of proposed boundaries. After the hearing, the applicants or
25 any one of them may request the department to prepare a

1 detailed feasibility study of the proposed district. If the
2 department concludes that the proposed district is feasible,
3 desirable, and consistent with the state water plan, it
4 shall prepare a feasibility report and sooner than 1 year
5 after receipt of the request send copies to the applicants,
6 if any, the department of fish, wildlife, and parks,
7 ~~department--of--health-and-environmental-sciences,~~ and other
8 affected state and federal water resource agencies. For good
9 cause shown, based upon the actual technical problems in
10 completing the report, the department may use necessary
11 additional time to complete and distribute the report. The
12 detailed feasibility report shall describe the proposed
13 works and contain an estimate of the cost of the works, the
14 means of financing, and the estimated costs of operation and
15 maintenance. The department may adjust the boundaries of the
16 proposed district to improve the feasibility, desirability,
17 and consistency with the state water plan and to exclude
18 land which would receive no direct or indirect benefits from
19 the proposed district."

20 **Section 65.** Section 90-15-102, MCA, is amended to read:

21 "90-15-102. Definitions. As used in this chapter, the
22 following definitions apply:

23 (1) "Committee" means the natural resource data system
24 advisory committee created by 2-15-1514.

25 (2) "Library" means the state library provided for in

1 22-1-201.

2 (3) "Natural heritage program" means a program of
3 information acquisition, storage, and retrieval for data
4 relating to the flora, fauna, and biological community types
5 of Montana.

6 (4) "Principal data source agencies" means any of the
7 following state agencies: the department of natural
8 resources and conservation environment; the department of
9 fish, wildlife, and parks; the department of state lands;
10 ~~the department of health and environmental sciences~~; the
11 department of agriculture; the department of highways; the
12 state historical society; and the Montana university
13 system."

14 NEW SECTION. Section 66. Legal interest in facilities
15 transferred. (1) The legal interest of the department of
16 fish, wildlife, and parks in those facilities and structures
17 listed in subsection (2) is transferred to the department of
18 state lands and must be managed for fish and wildlife
19 purposes in consultation with the department of fish,
20 wildlife, and parks. The present uses of the facilities and
21 structures listed in subsection (2) must continue.

22 (2) Facilities and structures transferred pursuant to
23 subsection (1) are as follows:

- 24 (a) South Sandstone reservoir, Fallon County;
25 (b) Bearpaw Lake, Hill County;

1 (c) Clearwater fish barrier, Missoula County;

2 (d) Whitetail reservoir, Daniels County;

3 (e) Gartside reservoir, Richland County; and

4 (f) Rainy Lake fish barrier, Missoula County.

5 NEW SECTION. Section 67. Codification instruction.

6 [Section 55] is intended to be codified as an integral part
7 of Title 82, chapter 4, part 4, and the provisions of Title
8 82, chapter 4, part 4, apply to [section 55].

9 NEW SECTION. Section 68. Saving clause. [This act]

10 does not affect rights and duties that matured, penalties
11 that were incurred, or proceedings that were begun before
12 [the effective date of this act].

13 NEW SECTION. Section 69. Severability. If a part of

14 [this act] is invalid, all valid parts that are severable
15 from the invalid part remain in effect. If a part of [this
16 act] is invalid in one or more of its applications, the part
17 remains in effect in all valid applications that are
18 severable from the invalid applications.

19 NEW SECTION. Section 70. Implementation according to

20 executive order. The implementation of [sections 1 through
21 66] must begin July 1, 1991, and concluded January 1, 1992,
22 according to a schedule in an executive order signed by the
23 governor. The governor may execute and implement an
24 executive order necessary to carry out the purposes of this
25 section.

1 NEW SECTION. **Section 71.** Effective dates. (1)
2 [Sections 67 through 70] and this section are effective upon
3 passage and approval.
4 (2) [Sections 1 through 66] are effective according to
5 the schedule provided in [section 70].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0866, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill reorganizes the natural resource and environmental functions of: 1) the board, director and Department of Health and Environmental Sciences; 2) the board, director and Department of Natural Resources and Conservation; and 3) the Board of State Land Commissioners, and the commissioner and the Department of State Lands. The bill also renames the board, director and the Department of Health and Environmental Sciences and the board, director and Department of Natural Resource and Conservation.

The current and proposed organizational charts for the Department of Health and Environmental Sciences, Department of Natural Resources and Conservation, and Department of State Lands are on pages 3 and 4.

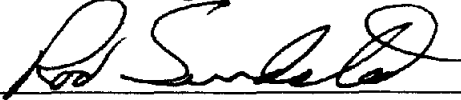
ASSUMPTIONS:

1. Between July 1, 1991, and January 1, 1992, the Department of State Lands, Reclamation Division and the Department of Natural Resources and Conservation, Conservation and Resource Development Division and Engineering Bureau will switch physical locations.
2. The majority of Department of Health and Environmental Sciences environmental program positions will not be physically moved.
3. The reorganization of the Department of State Lands, Reclamation Division and the Department of Natural Resources and Conservation, Conservation and Resource Development Division (CARDD) and Engineering Bureau will have one-time costs of \$219,600 in FY92, and increased costs of \$38,200 per year. The one-time costs include:
 - a. \$88,700 for DSL to replace Reclamation Division computer equipment;
 - b. \$81,600 for CARDD and Engineering Bureau for moving expenses and new equipment;
 - c. \$34,300 for the Reclamation Division for moving expenses and new equipment; and
 - d. \$15,000 to move DHES environmental program administrative staff to the DNRC building.

The increase in net costs include:

- a. \$40,400 per year for additional operating expenses and equipment for CARDD and Engineering Bureau;
- b. \$8,000 per year increase for an accounting position in DSL to be upgraded for new bonding and grant and loan monitoring responsibilities;
- c. \$33,600 per year for a new engineering position to administer the Department of Fish, Wildlife and Parks 19 dams;
- d. \$78,000 per year increase in rent for DSL;
- e. (\$127,500) per year reduction in rent and federal indirect charges in the Reclamation Division;
- f. \$5,700 per year increase in DNRE centralized computer costs.

(continued on next page)

 2-21-91
 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 2/22/91
 DAVE BROWN, PRIMARY SPONSOR DATE

Fiscal Note for HB0866, as introduced

HB 866

4. 5.00 FTE existing and 3.00 FTE modified positions from DHES Centralized Services and Director's Office will be transferred to DNRE. The positions provide administrative support to the environmental programs. In FY92, \$194,568 is transferred to DNRE and in FY93, \$194,387.
5. 1.00 FTE clerical position will be transferred from Department of State Lands, Central Management Division to the DNRE Reclamation Division.
6. DNRE will charge the federal agencies to collect indirect costs which DHES under or over-collected in the 1991 biennium and in FY92. If DHES over collects then OBPP, via an executive order, will transfer the over-collected amount to DNRE. If DHES under collects then OBPP will transfer the funds necessary from DNRE to compensate for the under collection.
7. The previous assumptions are based upon the Executive Budget.
8. OBPP has the legal authority to use executive orders to transfer appropriation authority between the two departments to accomplish the reorganization.
9. The Reclamation Division federal indirect charges will be collected by the DNRE. However, when they are collected the funds will be deposited to the general fund and never go through the appropriation process. This is consistent with current law for DNRD as adopted by the 1989 Legislature and projected at \$91,886 each year of the 1993 biennium.

FISCAL IMPACT:

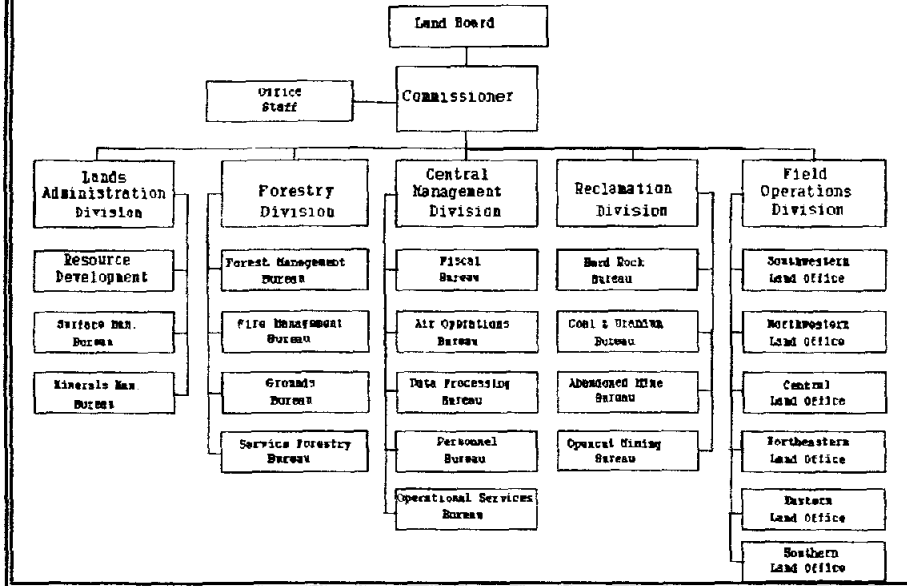
	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
F.T.E.	0.00	1.00	1.00	0.00	1.00	1.00
DFWP Dam Position	0	33,600	33,600	0	33,600	33,600
DSL One-time Costs	0	88,700	88,700	0	0	0
CARDD and EB Costs	0	81,600	81,600	0	0	0
Rcl Div Costs	0	34,300	34,300	0	0	0
Other Agency Move Costs	0	15,000	15,000	0	0	0
CARDD & EB Annual Cts	0	40,400	40,400	0	40,400	40,400
DSL Upgrade	0	8,000	8,000	0	8,000	8,000
DSL Rent Inc.	0	78,000	78,000	0	78,000	78,000
Rcl Div. Rent & Ind Red.	0	(127,500)	(127,500)	0	(127,500)	(127,500)
DNRE Computer	0	5,700	5,700	0	5,700	5,700
Total	0	257,800	257,800	0	38,200	38,200
<u>Funding:</u>						
General Fund	0	209,700	209,700	0	41,000	41,000
State Special	0	88,300	88,300	0	64,200	64,200
Federal Funds	0	(40,200)	(40,200)	0	(67,000)	(67,000)
Total	0	257,800	257,800	0	38,200	38,200

Net General Fund Impact
 (from expenditures & assumption 9) (117,814) 50,886

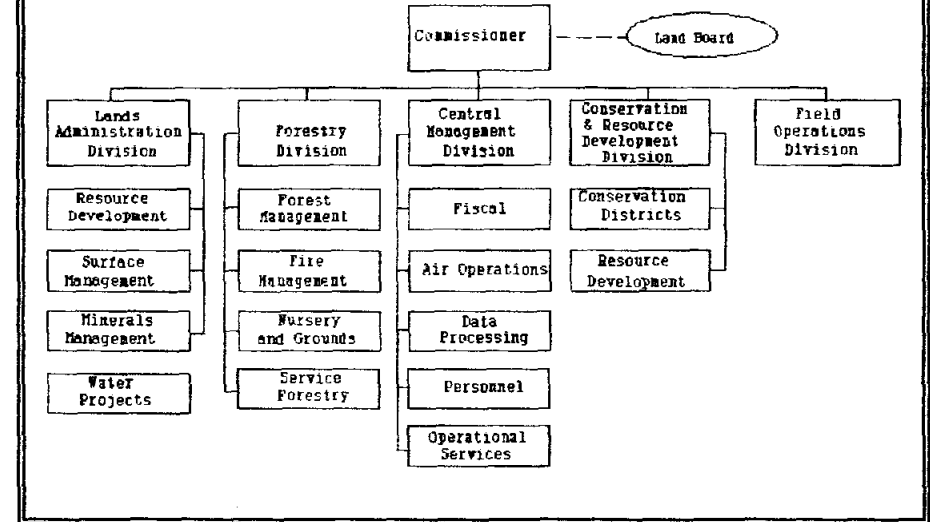
ATTACHMENTS: (2)

HB 866

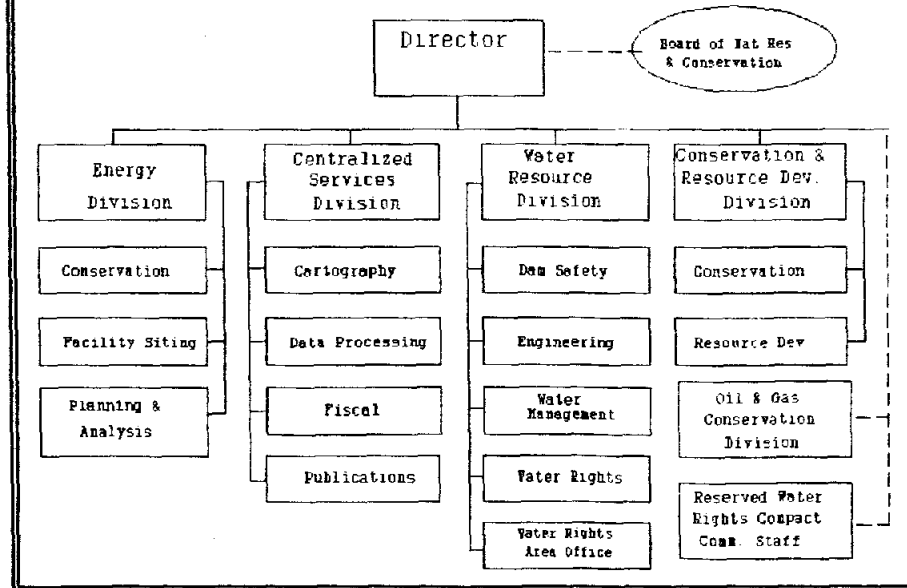
Current Organization



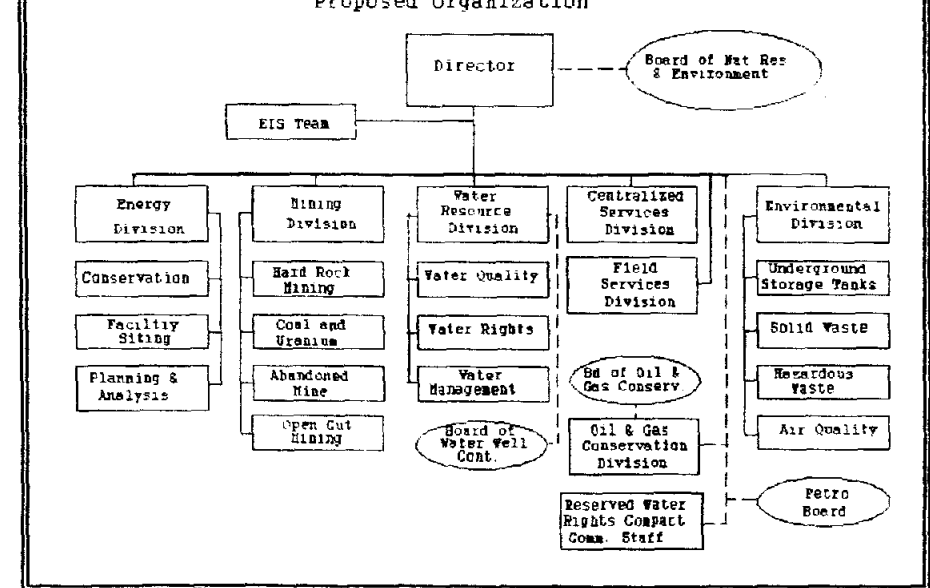
Department of State Lands
Proposed Organization



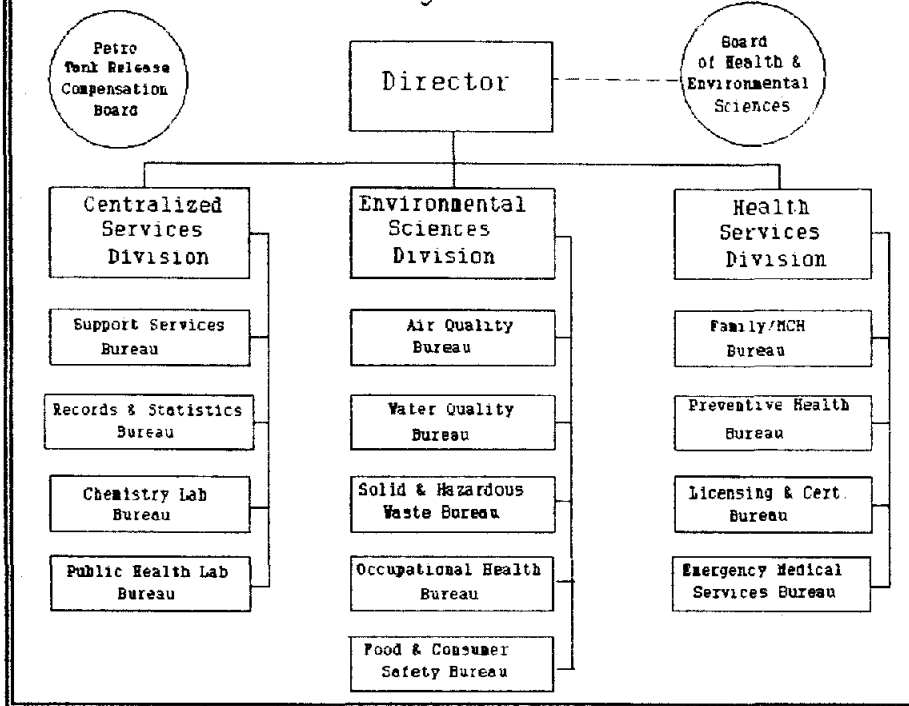
Department of Natural Resources and Conservation
Current Organization



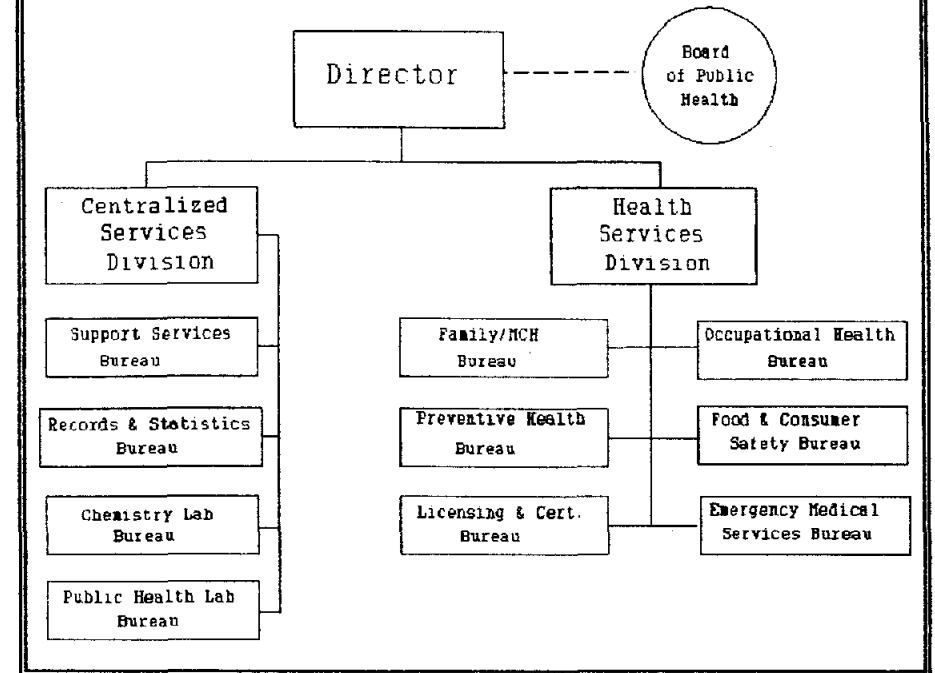
Department of Natural Resources and Environment
Proposed Organization



Department of Health and Environmental Sciences
Current Organization



Department of Public Health
Proposed Organization



APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 866

INTRODUCED BY D. BROWN, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT REORGANIZING--THE
 NATURAL--RESOURCE--AND--ENVIRONMENTAL--FUNCTIONS--OF--THE--BOARD,
 DIRECTOR,
 AND--DEPARTMENT--OF--HEALTH--AND--ENVIRONMENTAL
 SCIENCES,
 THE--BOARD,
 DIRECTOR,
 AND--DEPARTMENT--OF--NATURAL
 RESOURCES--AND--CONSERVATION,
 AND TRANSFERRING THE FUNCTIONS
OF THE BOARD OF STATE LAND COMMISSIONERS AND THE
COMMISSIONER AND DEPARTMENT OF STATE LANDS,
 RENAMING RELATED
TO RECLAMATION OF MINED LANDS, COAL MINING IMPACTS, AND
HARD-ROCK MINING IMPACTS TO THE BOARD, DIRECTOR, AND
 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND--THE
 BOARD,
 DIRECTOR,
 AND--DEPARTMENT--OF--NATURAL--RESOURCES--AND
 CONSERVATION,
 PROVIDING--FOR--THE--POWERS,
 DUTIES,
 AND
 FUNCTIONS--OF--THESE--AGENCIES; AMENDING SECTIONS 2-15-2107,
 2-15-3302, 17-5-101, 17-5-202, 40-6-1207, 75-10-103,
 75-10-203, 75-10-404, 75-20-104, 75-20-202, 75-20-205,
 75-20-208, 75-20-211, 75-20-213, 75-20-215, 75-20-216,
 75-20-218, 75-20-219, 75-20-220, 75-20-221, 75-20-225,
 75-20-226, 75-20-301, 75-20-302, 75-20-303, 75-20-304,
 75-20-402, 75-20-406, 75-20-501, 75-20-1202, 76-15-103,
 80-8-110, 81-23-103, 82-4-103, 82-4-111, 82-4-112, 82-4-123,
 82-4-129, 82-4-203, 82-4-204, 82-4-205, 82-4-223, 82-4-227,
 82-4-321, 82-4-337, 82-4-362, 82-4-421, 82-4-422, 82-4-425,

82-4-427, 85-1-102, 85-1-203, 85-1-205, 85-1-223, 85-2-512,
 85-2-514, 85-9-104, 85-9-202, 85-9-204, AND 90-15-102, MCA;
 AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION: Section 1, Functions of board, director,
 and department of health and environmental sciences
 transferred to board, director, or department of natural
 resources and environment; (1) The following functions of
 the board, department, and director of health and
 environmental sciences are transferred to the board,
 department, or director of natural resources and
 environment, as appropriate, as established in 2-15-3302 and
 2-15-3301, respectively:

- (a) relating to jurisdiction over lands within the
state under 2-1-202 and 2-1-209;
- (b) membership on the Flathead basin commission under
2-15-213;
- (c) relating to issuance of certificates to members of
the water and wastewater operators' advisory council under
2-15-2105;
- (d) membership on the petroleum tank release
compensation board under 2-15-2108;
- (e) relating to the enforcement of department rules by
the board of a refuse disposal district under 7-13-215;



1 (f) relating to determinations concerning the use of
 2 air pollution control equipment under 15-6-135;
 3 (g) adoption of standards for measuring the efficiency
 4 of wood stoves under 15-32-102 and 15-32-203;
 5 (h) relating to certification of water and wastewater
 6 treatment plant operators under Title 37, chapter 42;
 7 (i) relating to environmental protection under Title
 8 75;
 9 (j) relating to the regulation of subdivisions under
 10 Title 76, chapters 3 and 4;
 11 (k) compliance with the department of state lands
 12 schedules for onsite consultation for timber sales under
 13 76-13-132;
 14 (l) consultation with the board of land commissioners
 15 for the purpose of accepting grants of federal land under
 16 77-1-211;
 17 (m) consultation with the board of land commissioners
 18 for the purpose of disposing of institutional property under
 19 77-2-302;
 20 (n) relating to the regulation of pesticides under
 21 Title 08, chapter 8;
 22 (o) relating to the regulation of agricultural
 23 chemicals under Title 08, chapter 15;
 24 (p) approval of the means of disposal of wastewater,
 25 sewage, and air pollutants before the construction or

1 remodeling of a dairy products manufacturing plant under
 2 01-22-403;
 3 (q) investigation of the obstruction of streams by
 4 beaver dams under 07-1-224;
 5 (r) approval of rules governing the use of lands and
 6 waters under 07-1-303; and
 7 (s) relating to the natural resources information
 8 system under Title 90, chapter 15;
 9 (2) All references to the "board of health and
 10 environmental sciences" or "board" (of health and
 11 environmental sciences); "department of health and
 12 environmental sciences" or "department" (of health and
 13 environmental sciences); "director of health and
 14 environmental sciences" or "director" (of health and
 15 environmental sciences) in those titles, chapters, parts,
 16 and sections referred to in subsection (1) are changed to
 17 "board of natural resources and environment" or "board" (of
 18 natural resources and environment); "department of natural
 19 resources and environment" or "department" (of natural
 20 resources and environment); "director of natural
 21 resources and environment" or "director" (of natural
 22 resources and environment); as appropriate, the code
 23 commissioner shall conform internal references and grammar
 24 to these changes;
 25 (3) The governor may by executive order assign to the

1 ~~board--of--natural--resources--and--environment--or--to--the~~
 2 ~~department--of--natural--resources--and--environment--in--a--manner~~
 3 ~~consistent--with--{sections--1--through--7}--functions--allocated~~
 4 ~~to--the--board--or--department--of--natural--resources--and~~
 5 ~~conservation--by--the--52nd--legislature--and--not--transferred--by~~
 6 ~~{sections--1--through--7}~~

7 NEW SECTION. Section 1. Functions of board of land
 8 commissioners and department and commissioner of state lands
 9 transferred to board, department, or director of natural
 10 resources and environment HEALTH AND ENVIRONMENTAL SCIENCES.

11 (1) Except as otherwise provided in [sections 1 through 7
 12 29], the following functions of the board of land
 13 commissioners, the department of state lands, and the
 14 commissioner of state lands are transferred to the board of
 15 natural--resources--and--environment HEALTH AND ENVIRONMENTAL
 16 SCIENCES, the department of ~~natural--resources--and~~
 17 environment HEALTH AND ENVIRONMENTAL SCIENCES, or the
 18 director of ~~natural--resources--and--environment HEALTH AND~~
 19 ENVIRONMENTAL SCIENCES, as appropriate, as established in
 20 ~~sections--2--15--3302 2-15-2101 and 2-15-3302 2-15-2104,~~
 21 respectively:

22 (a) relating to reclamation of mined lands under Title
 23 82, chapter 4;

24 (b) relating to coal mining impacts under Title 90,
 25 chapter 6, part 2; and

1 (c) relating to hard-rock mining impacts under Title
 2 90, chapter 6, part 3.

3 (2) Except as otherwise provided in [sections 1 through
 4 7 29], any references to the "board of land commissioners"
 5 or "board" (of land commissioners), "department of state
 6 lands" or "department" (of state lands), or "commissioner of
 7 state lands" or "commissioner" (of state lands) in those
 8 titles, chapters, parts, and sections referred to in
 9 subsection (1) are changed to "board of ~~natural--resources~~
 10 and--environment HEALTH AND ENVIRONMENTAL SCIENCES" or
 11 "board" (of ~~natural--resources--and--environment HEALTH AND~~
 12 ENVIRONMENTAL SCIENCES), "department of ~~natural--resources~~
 13 and--environment HEALTH AND ENVIRONMENTAL SCIENCES" or
 14 "department" (of ~~natural--resources--and--environment HEALTH~~
 15 AND ENVIRONMENTAL SCIENCES) or "director of ~~natural~~
 16 resources and environment HEALTH AND ENVIRONMENTAL SCIENCES"
 17 or "director" (of ~~natural--resources and--environment HEALTH~~
 18 AND ENVIRONMENTAL SCIENCES), as appropriate. The code
 19 commissioner shall conform internal references and grammar
 20 to these changes.

21 (3) (a) All functions of the state board of land
 22 commissioners relating to the reclamation of mined lands
 23 under Title 82, chapter 4, except the adoption of
 24 administrative rules, are transferred to the department of
 25 ~~natural--resources and--environment HEALTH AND ENVIRONMENTAL~~
SCIENCES

1 SCIENCES.

2 (b) All references to the "board of land commissioners"
3 or "board" (of land commissioners) in Title 82, chapter 4,
4 except with respect to the adoption of administrative rules,
5 are changed to the "department of ~~natural--resources--and~~
6 ~~environment~~ HEALTH AND ENVIRONMENTAL SCIENCES" or
7 "department" (of ~~natural--resources--and--environment~~ HEALTH
8 AND ENVIRONMENTAL SCIENCES), as appropriate. The code
9 commissioner shall conform internal references and grammar
10 to these changes.

11 (c) The governor may by executive order assign to the
12 department of ~~natural--resources--and--environment~~ HEALTH AND
13 ENVIRONMENTAL SCIENCES in a manner consistent with [sections
14 1 through 7~~1~~ 29] functions of the board of land
15 commissioners, other than the adoption of administrative
16 rules, relating to the reclamation of mined lands allocated
17 to the board of land commissioners and not transferred by
18 [sections 1 through 7~~1~~ 29].

19 (4) The governor may by executive order assign to the
20 board or department of ~~natural--resources--and--environment~~
21 HEALTH AND ENVIRONMENTAL SCIENCES in a manner consistent
22 with [sections 1 through 7~~1~~ 29] functions allocated to the
23 board of land commissioners or to the department or
24 commissioner of state lands and not transferred by [sections
25 1 through 7~~1~~ 29].

1 NEW-SECTION. ~~Section 3--Functions-----of-----board,~~
2 ~~department,~~ ~~and~~ ~~director~~ ~~of~~ ~~natural~~ ~~resources~~ ~~and~~
3 ~~conservation~~ ~~transferred~~ ~~to~~ ~~board~~ ~~of~~ ~~land~~ ~~commissioners~~ ~~or~~
4 ~~commissioner~~ ~~or~~ ~~department~~ ~~of~~ ~~state~~ ~~lands,~~ ~~(1)~~ ~~Except~~ ~~as~~
5 ~~otherwise~~ ~~provided~~ ~~in~~ ~~(sections~~ ~~1~~ ~~through~~ ~~71)~~, ~~the~~ ~~following~~
6 ~~functions~~ ~~of~~ ~~the~~ ~~board,~~ ~~department,~~ ~~and~~ ~~director~~ ~~of~~ ~~natural~~
7 ~~resources~~ ~~and~~ ~~conservation~~ ~~are~~ ~~transferred~~ ~~to~~ ~~the~~ ~~board~~ ~~of~~
8 ~~land~~ ~~commissioners,~~ ~~the~~ ~~department~~ ~~of~~ ~~state~~ ~~lands,~~ ~~or~~ ~~the~~
9 ~~commissioner~~ ~~of~~ ~~state~~ ~~lands,~~ ~~as~~ ~~appropriate,~~ ~~as~~ ~~established~~
10 ~~in~~ ~~Article~~ ~~X,~~ ~~section~~ ~~4,~~ ~~of~~ ~~the~~ ~~Montana~~ ~~constitution~~ ~~and~~
11 ~~2-15-3201~~ ~~and~~ ~~2-15-3202,~~ ~~respectively;~~

12 (a) ~~appointment~~ ~~of~~ ~~a~~ ~~soil~~ ~~survey~~ ~~advisory~~ ~~council~~ ~~under~~
13 ~~2-15-3306;~~

14 (b) ~~exemption~~ ~~from~~ ~~payment~~ ~~of~~ ~~property~~ ~~taxes~~ ~~under~~
15 ~~15-6-205;~~

16 (c) ~~relating~~ ~~to~~ ~~the~~ ~~wastewater~~ ~~treatment~~ ~~program~~ ~~and~~
17 ~~revolving~~ ~~fund~~ ~~under~~ ~~Title~~ ~~75,~~ ~~chapter~~ ~~5,~~ ~~part~~ ~~11;~~

18 (d) ~~relating~~ ~~to~~ ~~conservation~~ ~~districts~~ ~~under~~ ~~Title~~ ~~76,~~
19 ~~chapter~~ ~~15;~~

20 (e) ~~relating~~ ~~to~~ ~~state~~ ~~owned~~ ~~water~~ ~~projects~~ ~~and~~ ~~the~~
21 ~~water~~ ~~development~~ ~~program~~ ~~under~~ ~~85-1-102~~ ~~and~~ ~~Title~~ ~~85,~~
22 ~~chapter~~ ~~1,~~ ~~parts~~ ~~2~~ ~~through~~ ~~6;~~

23 (f) ~~relating~~ ~~to~~ ~~water~~ ~~users'~~ ~~associations~~ ~~under~~
24 ~~85-6-109,~~ ~~and~~

25 (g) ~~relating~~ ~~to~~ ~~resource~~ ~~development~~ ~~and~~ ~~reclamation~~

1 under Title 90, chapter 2,
 2 {2} Except as otherwise provided in {sections 1 through
 3 71}, any references to the "board of natural resources and
 4 conservation" or "board" of natural resources and
 5 conservation, "department of natural resources and
 6 conservation" or "department" of natural resources and
 7 conservation, or "director of natural resources and
 8 conservation" or "director" of natural resources and
 9 conservation in those titles, chapters, parts, and sections
 10 referred to in subsection {1} are changed to "board of land
 11 commissioners" or "board" of land commissioners,
 12 "department of state lands" or "department" of state
 13 lands, or "commissioner of state lands" or "commissioner"
 14 of state lands, as appropriate. The code commissioner
 15 shall conform internal references and grammar to these
 16 changes.
 17 {3} The governor may by executive order assign to the
 18 board of land commissioners and to the department of state
 19 lands in a manner consistent with {sections 1 through 71}
 20 any functions allocated to the department or board of
 21 natural resources and conservation by the 52nd legislature
 22 and not transferred by {sections 1 through 71}.
 23 NEW SECTION, Section 4, Department, director, and
 24 board changed instructions to code commissioner, {1} The
 25 names of the department and the director of health and

1 environmental sciences are changed to the department and
 2 director of public health, respectively, unless inconsistent
 3 with {sections 1 through 71}, wherever the terms "department
 4 of health and environmental sciences" or "department" of
 5 health and environmental sciences, or "director of health
 6 and environmental sciences" or "director" of health and
 7 environmental sciences appears in the Montana Code
 8 Annotated, the code commissioner shall change the name to
 9 the "department of public health" or "department" of public
 10 health, or to the "director of public health" or "director"
 11 of public health, as appropriate, and conform internal
 12 references and grammar to these changes.
 13 {2} The name of the board of health and environmental
 14 sciences is changed to the board of public health, unless
 15 inconsistent with {sections 1 through 71}, wherever the term
 16 "board of health and environmental sciences" or "board" of
 17 health and environmental sciences appears in the Montana
 18 Code Annotated, the code commissioner shall change the name
 19 to the "board of public health" or "board" of public
 20 health, and conform internal references and grammar to these
 21 changes.
 22 {3} The names of the department and the director of
 23 natural resources and conservation are changed to the
 24 department and director of natural resources and
 25 environment, respectively, unless inconsistent with

1 {sections 1 through 71}, wherever the terms "department of
2 natural resources and conservation" or "department" (of
3 natural resources and conservation) or "director of natural
4 resources and conservation" or "director" (of natural
5 resources and conservation) appear in the Montana Code
6 Annotated, the code commissioner shall change the names to
7 the "department of natural resources and environment" or
8 "department" (of natural resources and environment) or
9 "director of natural resources and environment" or
10 "director" (of natural resources and environment), as
11 appropriate, and conform internal references and grammar to
12 these changes:

13 (4) The name of the board of natural resources and
14 conservation is changed to the board of natural resources
15 and environment. Unless inconsistent with sections 1
16 through 71, wherever the terms "board of natural resources
17 and conservation" or "board" (of natural resources and
18 conservation) appear in the Montana Code Annotated, the code
19 commissioner shall change the names to the "board of natural
20 resources and environment" or "board" (of natural resources
21 and environment) and conform internal references and grammar
22 to these changes:

23 Section 5, Section 2-15-2107, MCA, is amended to read:
24 "2-15-2107. Water pollution control advisory council.
25 (1) There is a water pollution control advisory council.

1 (2) The council consists of eleven members. The members
2 are:
3 (a) the director of fish, wildlife, and parks;
4 (b) the administrator of the water resources division
5 director of the department of natural resources and
6 conservation environment;
7 (c) the director of agriculture;
8 (d) eight members appointed by the governor as follows:
9 (i) a representative of industry concerned with the
10 disposal of inorganic waste;
11 (ii) a representative of industry concerned with the
12 disposal of organic waste;
13 (iii) a livestock feeder;
14 (iv) a representative of municipal government;
15 (v) a representative of an organization concerned with
16 fishing for sport;
17 (vi) a representative from labor;
18 (vii) a supervisor of a soil and water conservation
19 district;
20 (viii) a representative of an organization concerned
21 with water recreation.
22 (3) The appointed council members serve at the pleasure
23 of the governor.
24 (4) Subsections (5) through (8) of 2-15-122 apply to
25 the council and members."

1 Section 6, Section 2-15-3302, MCA, is amended to read:
 2 "2-15-3302. Board of natural resources and conservation
 3 environment --- composition --- quasi-judicial; (1) There is a
 4 board of natural resources and conservation environment.
 5 (2) The board is composed of seven members, appointed
 6 by the governor as prescribed in 2-15-124, informed and
 7 experienced in the subjects of natural resources and
 8 conservation environment.
 9 (3) The board is designated as a quasi-judicial board
 10 for purposes of 2-15-124.
 11 (4) The board is allocated to the department for
 12 administrative purposes only as prescribed in 2-15-121.
 13 (5) In addition to carrying out its functions as
 14 provided by law, the board shall act in an advisory capacity
 15 to the department in all other matters."

16 **Section 2.** Section 17-5-101, MCA, is amended to read:
 17 "17-5-101. Definitions. The following terms as used in
 18 this part have the following meanings:

19 (1) "Bonds" include bonds, notes, warrants, debentures,
 20 certificates of indebtedness, temporary bonds, temporary
 21 notes, interim receipts, interim certificates, and all
 22 instruments or obligations evidencing or representing
 23 indebtedness or evidencing or representing the borrowing of
 24 money or evidencing or representing a charge, lien, or
 25 encumbrance on specific revenues, special assessments,

1 income, or property of a political subdivision, including
 2 all instruments or obligations payable from a special fund.

3 (2) "Political subdivision" includes a county, city,
 4 town, school district, irrigation district, drainage
 5 district, special improvement district, or any other
 6 governmental subdivision of the state but shall not include
 7 the state of Montana, the board of examiners, the division
 8 of water resources of the department of natural resources
 9 and conservation, the state highway commission, or any other
 10 board, agency, or commission of the state.

11 (3) "Governing body" means the board, council,
 12 commission, or other body charged with the general control
 13 of the issuance of bonds of a political subdivision."

14 **Section 3.** Section 17-5-202, MCA, is amended to read:
 15 "17-5-202. Definitions. The following terms, wherever
 16 used or referred to in this part, have the following
 17 meanings:

18 (1) "Public body" includes a county, city, town, school
 19 district, irrigation district, drainage district, special
 20 improvement district, or any other political or governmental
 21 subdivision of the state or any commission, authority, or
 22 agency of a political or governmental subdivision, and also
 23 includes the board of public education, the board of regents
 24 of higher education, the board of examiners, the board of
 25 natural resources and conservation environment CONSERVATION,

1 the board of land commissioners, the state highway
 2 commission, or any other governmental agency of this state.

3 (2) "Bonds" includes bonds, notes, warrants,
 4 debentures, certificates of indebtedness, temporary bonds,
 5 temporary notes, interim receipts, interim certificates, and
 6 all instruments or obligations evidencing or representing
 7 indebtedness or evidencing or representing the borrowing of
 8 money or evidencing or representing a charge, lien, or
 9 encumbrance on specific revenues, income, or property of a
 10 public body, including all instruments or obligations
 11 payable from a special fund."

12 Section 9, Section 40-6-128, MCA, is amended to read:

13 "40-6-128. Proceeding to determine father's identity
 14 and terminate rights. (1) If a child is born out of wedlock
 15 and the mother executes or proposes to execute a release
 16 terminating her rights to the child or if the child
 17 otherwise becomes the subject of an adoption proceeding, the
 18 agency or person to whom the child has been or is to be
 19 relinquished or the mother or person having custody of the
 20 child shall file a petition in the district court to
 21 terminate the parental rights of the father, unless the
 22 father's relationship to the child has been previously
 23 terminated or determined not to exist by the court. The
 24 court shall hold a hearing as soon as practical to determine
 25 the identity of the father and to determine or terminate the

1 rights of the father as provided in this section and in
 2 40-6-129 and 40-6-130. This section is not applicable if the
 3 father is a person whose consent to adoption is not required
 4 under 40-8-111.

5 (2) Proof of service of a notice of intent to release
 6 or the putative father's verified acknowledgment of notice
 7 of intent to release shall be filed with the court, if such
 8 notice was given to the putative father. The court shall
 9 request the records and statistics bureau of the department
 10 of public health and environmental sciences to send to the
 11 court a copy of any notice of intent to claim paternity of
 12 the particular child which the bureau has received.

13 (3) If the mother has failed to name a putative father
 14 or has failed to file a notice of intent to release, the
 15 court shall cause inquiry to be made of the mother in an
 16 effort to identify the natural father. The inquiry shall
 17 include the following:

18 (a) whether the mother was married at the time of
 19 conception of the child or at any time thereafter;

20 (b) whether the mother was cohabiting with a man at the
 21 time of conception or birth of the child;

22 (c) whether the mother has received support payments or
 23 promises of support payments with respect to the child or in
 24 connection with her pregnancy; or

25 (d) whether any man has formally or informally

1 acknowledged--or--declared--his--possible--paternity--of--the
2 child;

3 {4}--Notwithstanding--this--section--or--any--other
4 provisions--of--law--and--in--consideration--of--her--right--to
5 privacy,--no--mother--of--a--child--who--is--the--subject--of
6 proceedings--under--this--part--may--be--compelled--to--testify
7 concerning--or--to--divulge--the--identity--of--the--father--or
8 possible--father--of--that--child;

9 {5}--Notice--of--the--hearing--shall--be--served--upon--the
10 following--persons--in--the--manner--appropriate--under--the
11 Montana--Rules--of--Civil--Procedure--or--any--manner--which--the
12 court--shall--direct:

13 (a)--a--putative--father--who--has--timely--filed--a--notice--of
14 intent--to--claim--paternity--as--provided--in--40-6-126--or
15 40-6-127;

16 (b)--a--putative--father--who--has--not--been--served--with--a
17 notice--of--intent--to--release--at--least--30--days--before--the
18 expected--date--of--delivery--specified--in--the--notice--of--intent
19 to--release;

20 (c)--any--other--male--who--was--not--served--pursuant--to
21 40-6-127(2)--with--a--notice--of--intent--to--release--and--who--the
22 court,--after--inquiry--of--the--mother--or--any--other--appropriate
23 person,--has--reason--to--believe--may--be--the--father--of--the
24 child;

25 {6}--The--notice--of--hearing--shall--inform--the--putative

1 father--that--his--failure--to--appear--at--the--hearing--constitutes
2 a--denial--of--his--interest--in--custody--of--the--child,--which
3 denial--will--result--in--the--court's--termination--of--his--rights
4 to--the--child;

5 {7}--Proof--of--service--of--the--notice--of--hearing--required
6 by--subsection--(5)--shall--be--filed--with--the--court. A--verified
7 acknowledgment--of--service--by--the--party--to--be--served--is--proof
8 of--personal--service. Notice--of--hearing--need--not--be--required
9 if--the--putative--father--is--present--at--the--hearing. A--waiver
10 of--notice--of--hearing--by--a--person--entitled--to--receive--it--is
11 sufficient. If--no--person--has--been--identified--as--the--natural
12 father--or--possible--father,--the--court,--on--the--basis--of--all
13 information--available,--shall--determine--whether--publication
14 or--public--posting--of--notice--of--the--proceeding--is--likely--to
15 lead--to--identification--and--if--so--shall--order--publication--or
16 public--posting--at--the--times--and--places--and--in--the--manner--it
17 considers--appropriate. The--name--of--the--natural--mother--may--be
18 included--in--such--publication--only--with--her--written--consent;

19 {8}--At--the--hearing,--the--court--shall--receive--evidence--as
20 to--the--identity--of--the--father--of--the--child. Based--upon--the
21 evidence--received--and--the--court's--inquiry,--the--court--shall
22 enter--a--finding--identifying--the--father--or--declaring--that--the
23 identity--of--the--father--cannot--be--determined;

24 {9}--If--the--court--finds--that--the--father--of--the--child--is
25 a--person--who--did--not--receive--either--a--timely--notice--of

1 intent to release pursuant to 40-6-127 or a notice required
 2 pursuant to subsection (5) of this section and who has not
 3 waived his right to notice of hearing and is not present at
 4 the hearing, the court shall adjourn further proceedings
 5 until that person is served with a notice of hearing."

6 Section 10, Section 75-10-103, MCA, is amended to read:

7 "75-10-103. Definitions. Unless the context clearly
 8 requires otherwise, in this part the following definitions
 9 apply:

10 (1) "Board" means the board of health and environmental
 11 sciences natural resources and environment provided for in
 12 2-15-2104 2-15-3302.

13 (2) "Department" means the department of health and
 14 environmental sciences natural resources and environment
 15 provided for in Title 2, chapter 15, part 21 33.

16 (3) "Front-end organizational funds" means the money to
 17 be loaned to local governments for initial operating
 18 capital, site evaluation and negotiation, final design
 19 engineering and cost estimates, construction contract
 20 documents, final contract negotiations with energy users,
 21 material markets, and waste suppliers, contract negotiations
 22 with private operational managers, and financial and legal
 23 consultations.

24 (4) "Front-end planning funds" means the money granted
 25 to local governments for contract negotiations between local

1 governments, predesign engineering and cost estimates,
 2 administrative costs, preliminary contract negotiations with
 3 energy users and waste suppliers, financial feasibility
 4 analysis by a financial consultant, legal consultations,
 5 opinions, and review of contracts.

6 (5) "Front-end implementation funds" means the money
 7 granted to local governments for purchase of capital
 8 equipment to be used for a solid waste management system.

9 (6) "Local government" means a county, incorporated
 10 city or town, or refuse disposal district organized under
 11 the laws of this state.

12 (7) "Person" means any individual, firm, partnership,
 13 company, association, corporation, city, town, local
 14 governmental entity, or any other state, federal, or private
 15 entity, whether organized for profit or not.

16 (8) "Resource recovery facility" means any facility at
 17 which solid waste is processed for the purpose of
 18 extracting, converting to energy, or otherwise separating
 19 and preparing solid waste for reuse.

20 (9) "Solid waste" means all putrescible and
 21 nonputrescible wastes, including but not limited to garbage,
 22 rubbish, refuse, hazardous wastes, ashes, sludge from sewage
 23 treatment plants, water supply treatment plants, or air
 24 pollution control facilities, septic tank and cesspool
 25 pumpings, construction and demolition wastes, dead animals,

1 including offsite, discarded home and industrial appliances,
 2 wood wastes and inert materials, but does not include
 3 municipal sewage, industrial wastewater effluents, or mining
 4 wastes as regulated under the mining and reclamation laws
 5 administered by the department of state lands.

6 (10) "Solid waste management system" means any system
 7 which controls the storage, treatment, recycling, recovery,
 8 or disposal of solid waste.

9 (11) "State solid waste plan" means the statewide plan
 10 formulated by the department as authorized by this part."

11 Section 11, Section 75-10-203, MCA, is amended to read:

12 "75-10-203. Definitions. Unless the context requires
 13 otherwise, in this part the following definitions apply:

14 (1) "Board" means the board of health and environmental
 15 sciences natural resources and environment provided for in
 16 2-15-2104 2-15-3302;

17 (2) "Department" means the department of health and
 18 environmental sciences natural resources and environment
 19 provided for in Title 2, chapter 15, part 21 33;

20 (3) "Dispose" or "disposal" means the discharge,
 21 injection, deposit, dumping, spilling, leaking, or placing
 22 of any solid waste into or onto the land so that the solid
 23 waste or any constituent of it may enter the environment or
 24 be emitted into the air or discharged into any waters,
 25 including ground water;

1 (4) "Household waste" means any solid waste derived
 2 from households, including single and multiple residences,
 3 hotels, and motels, crew quarters, and campgrounds and other
 4 public recreation and public land management facilities.

5 (5) "Municipal solid waste landfill" means any publicly
 6 or privately owned landfill or landfill unit that receives
 7 household waste or other types of waste, including
 8 commercial waste, nonhazardous sludge, and industrial solid
 9 waste. The term does not include land application units,
 10 surface impoundments, injection wells, or waste piles.

11 (6) "Person" means an individual, firm, partnership,
 12 company, association, corporation, city, town, local
 13 governmental entity, or any other governmental or private
 14 entity, whether organized for profit or not.

15 (7) "Resource recovery" means the recovery of material
 16 or energy from solid waste.

17 (8) "Resource recovery facility" means a facility at
 18 which solid waste is processed for the purpose of
 19 extracting, converting to energy, or otherwise separating
 20 and preparing solid waste for reuse.

21 (9) "Resource recovery system" means a solid waste
 22 management system which provides for the collection,
 23 separation, recycling, or recovery of solid wastes,
 24 including disposal of nonrecoverable waste residues.

25 (10) "Solid waste" means all putrescible and

1 nonputrescible wastes, including but not limited to garbage,
 2 rubbish, refuse, ashes, sludge from sewage treatment plants,
 3 water supply treatment plants, or air pollution control
 4 facilities, construction and demolition wastes, dead
 5 animals, including offal, discarded home and industrial
 6 appliances, and wood products or wood byproducts and inert
 7 materials. "Solid waste" does not mean municipal sewage,
 8 industrial wastewater effluents, mining wastes regulated
 9 under the mining and reclamation laws administered by the
 10 department of state lands, slash and forest debris regulated
 11 under laws administered by the department of state lands, or
 12 marketable byproducts.

13 (11) "Solid waste management system" means a system
 14 which controls the storage, treatment, recycling, recovery,
 15 or disposal of solid waste.

16 (12) "Storage" means the actual or intended containment
 17 of wastes, either on a temporary basis or for a period of
 18 years.

19 (13) "Transport" means the movement of wastes from the
 20 point of generation to any intermediate points and finally
 21 to the point of ultimate storage or disposal.

22 (14) "Treatment" means a method, technique, or process,
 23 including neutralization, designed to change the physical,
 24 chemical, or biological character or composition of any
 25 solid waste so as to neutralize the waste or so as to render

1 it safer for transport, amenable for recovery, amenable for
 2 storage, or reduced in volume."

3 **Section 4.** Section 75-10-404, MCA, is amended to read:
 4 "75-10-404. Powers of department. (1) The department
 5 may:

6 (a) administer and enforce the provisions of this part,
 7 rules implementing this part, and orders and permits issued
 8 pursuant to this part;

9 (b) conduct and publish studies on hazardous wastes and
 10 hazardous waste management;

11 (c) initiate, conduct, and support research,
 12 demonstration projects, and investigation, as its resources
 13 may allow, and coordinate state agency research programs
 14 pertaining to hazardous waste management;

15 (d) accept and administer grants from the federal
 16 government and from other sources, public and private; and

17 (e) abate public nuisances that affect the public
 18 health and welfare or the environment and that arise from or
 19 in connection with the past or present handling or disposal
 20 of any hazardous waste or regulated substance.

21 (2) The department shall integrate all provisions of
 22 this part with other laws administered by the department to
 23 avoid unnecessary duplication. Furthermore, the department
 24 shall coordinate its activities under this part with the
 25 program administered by the department of agriculture under

1 the Montana Pesticides Act, the programs administered by the
 2 department of state lands related to mining and mine
 3 reclamation, and, the program administered by the department
 4 of public service regulation related to hazardous material
 5 transportation, and provisions of the Montana Major Facility
 6 Siting Act administered by the department of natural
 7 resources and conservation, AND PROVISIONS OF THE MONTANA
 8 MAJOR FACILITY SITING ACT ADMINISTERED BY THE DEPARTMENT OF
 9 NATURAL RESOURCES AND CONSERVATION. The integration and
 10 coordination shall be effected only to the extent that it
 11 can be done in a manner consistent with the goals and
 12 policies of this part and the other laws referred to in this
 13 section."

14 Section 13, Section 75-20-104, MCA, is amended to read:

15 "75-20-104. Definitions. In this chapter, unless the
 16 context requires otherwise, the following definitions apply:

17 (1) "Addition thereto" means the installation of new
 18 machinery and equipment which would significantly change the
 19 conditions under which the facility is operated;

20 (2) "Application" means an application for a
 21 certificate submitted in accordance with this chapter and
 22 the rules adopted hereunder;

23 (3) "Associated facilities" includes but is not limited
 24 to transportation links of any kind, aqueducts, diversion
 25 dams, pipelines, transmission substations, storage ponds,

1 reservoirs, and any other device or equipment associated
 2 with the production or delivery of the energy form or
 3 product produced by a facility, except that the term does
 4 not include a facility or a natural gas or crude oil
 5 gathering line 17 inches or less in inside diameter;

6 (4) "Board" means the board of natural resources and
 7 conservation environment provided for in 2-15-3302;

8 (5) "Board of health" means the board of health and
 9 environmental sciences provided for in 2-15-2104;

10 (6) (5) "Certificate" means the certificate of
 11 environmental compatibility and public need issued by the
 12 board under this chapter that is required for the
 13 construction or operation of a facility;

14 (7) (6) "Commence to construct" means:

15 (a) any clearing of land, excavation, construction, or
 16 other action that would affect the environment of the site
 17 or route of a facility but does not mean changes needed for
 18 temporary use of sites or routes for nonutility purposes or
 19 uses in securing geological data, including necessary
 20 borings to ascertain foundation conditions;

21 (b) the fracturing of underground formations by any
 22 means if such activity is related to the possible future
 23 development of a gasification facility or a facility
 24 employing geothermal resources but does not include the
 25 gathering of geological data by boring of test holes or

1 other---underground---exploration,---investigation,---or
 2 experimentation;

3 (c)--the--commencement--of--eminent--domain--proceedings
 4 under--Title--70,--chapter--30,--for--land--or--rights--of--way--upon
 5 or--over--which--a--facility--may--be--constructed;

6 (d)--the--relocation--or--upgrading--of--an--existing--facility
 7 defined--by--(b)--or--(c)--of--subsection--(10) (8),--including
 8 upgrading--to--a--design--capacity--covered--by--subsection--(10)(b)
 9 (8)(b),--except--that--the--term--does--not--include--normal
 10 maintenance--or--repair--of--an--existing--facility;

11 (8)(7)--"Department"--means--the--department--of--natural
 12 resources--and--conservation environment provided--for--in--Title
 13 27--chapter--157--part--33;

14 (9)--"Department--of--health"--means--the--department--of
 15 health--and--environmental--sciences--provided--for--in--Title--27,
 16 chapter--157--part--21;

17 (10)(8)--"Facility"--means:

18 (a)--except--for--crude--oil--and--natural--gas--refineries--and
 19 those---facilities---subject---to---The--Montana--Strip--and
 20 Underground--Mine--Reclamation--Act,--each--plant,--unit,--or--other
 21 facility--and--associated--facilities--designed--for--or--capable
 22 of:

23 (i)--generating--50--megawatts--of--electricity--or--more--or
 24 any--addition--thereto--(except--pollution--control--facilities
 25 approved--by--the--department--of--health--and--environmental

1 sciences natural--resources--and--environment--added--to--an
 2 existing--plant)--having--an--estimated--cost--in--excess--of--\$10
 3 million;

4 (ii)--producing--25--million--cubic--feet--or--more--of--gas
 5 derived--from--coal--per--day--or--any--addition--thereto--having--an
 6 estimated--cost--in--excess--of--\$10--million;

7 (iii)--producing--25,000--barrels--of--liquid--hydrocarbon
 8 products--per--day--or--more--or--any--addition--thereto--having--an
 9 estimated--cost--in--excess--of--\$10--million;

10 (iv)--enriching--uranium--minerals--or--any--addition--thereto
 11 having--an--estimated--cost--in--excess--of--\$10--million;--or

12 (v)--utilizing--or--converting--500,000--tons--of--coal--per
 13 year--or--more--or--any--addition--thereto--having--an--estimated
 14 cost--in--excess--of--\$10--million;

15 (b)--each--electric--transmission--line--and--associated
 16 facilities--of--a--design--capacity--of--more--than--69--kilovolts,
 17 except--that--the--term:

18 (i)--does--not--include--an--electric--transmission--line--and
 19 associated--facilities--of--a--design--capacity--of--230--kilovolts
 20 or--less--and--10--miles--or--less--in--length;--and

21 (ii)--does--not--include--an--electric--transmission--line--with
 22 a--design--capacity--of--more--than--69--kilovolts--and--up--to--and
 23 including--115--kilovolts--for--which--the--person--planning--to
 24 construct--the--line--has--obtained--right--of--way--agreements--or
 25 options--for--a--right--of--way--from--more--than--75%--of--the--owners

1 who collectively own more than 75% of the property along the
2 centerline;

3 (c) each pipeline, whether partially or wholly within
4 the state, greater than 17 inches in inside diameter and 30
5 miles in length, and associated facilities;

6 (d) any use of geothermal resources, including the use
7 of underground space in existence or to be created, for the
8 creation, use, or conversion of energy, designed for or
9 capable of producing geothermally derived power equivalent
10 to 25 million Btu per hour or more or any addition thereto
11 having an estimated cost in excess of \$750,000;

12 (e) any underground in-situ gasification of coal;

13 (11)(9) "Person" means any individual, group, firm,
14 partnership, corporation, cooperative, association,
15 government subdivision, government agency, local government,
16 or other organization or entity;

17 (12)(10) "Transmission substation" means any structure,
18 device, or equipment assemblage, commonly located and
19 designed for voltage regulation, circuit protection, or
20 switching necessary for the construction or operation of a
21 proposed transmission line;

22 (13)(11) "Utility" means any person engaged in any
23 aspect of the production, storage, sale, delivery, or
24 furnishing of heat, electricity, gas, hydrocarbon products,
25 or energy in any form for ultimate public use."

1 Section 14. Section 75-20-202, MCA, is amended to read:
2 "75-20-202. Exemptions. (1) A certificate is not
3 required under this chapter for a facility under diligent
4 onsite physical construction or in operation on January 17
5 1973:

6 (2) The board may adopt reasonable rules establishing
7 exemptions from this chapter for the relocation,
8 reconstruction, or upgrading of a facility that:

9 (a) would otherwise be covered by this chapter; and
10 (b) (i) is unlikely to have a significant environmental
11 impact by reason of length, size, location, available space
12 or right-of-way, or construction methods; or

13 (ii) utilizes coal, wood, biomass, grain, wind, or sun
14 as a fuel source and the technology of which will result in
15 greater efficiency, promote energy conservation, and promote
16 greater system reliability than the existing facility;

17 (3) A person proposing to construct an exempt facility
18 shall pay to the department reasonable costs, if any,
19 incurred by the department in processing the exemption;

20 (4) This chapter does not apply to a facility defined
21 in 75-20-104(10)(c)(8)(c) that has been designated by the
22 governor for environmental review by an executive agency of
23 the state for the purpose of complying with Title 75,
24 chapter 17 pursuant to Executive Order 4-81 and prior to
25 July 17, 1985."

1 Section 15, Section 75-20-205, MCA, is amended to read:
 2 "75-20-205. Centerline location. (1) For all facilities
 3 defined in 75-20-104(10)(b)(8)(b) and (10)(c) (8)(c) and
 4 associated facilities certified under this chapter, the
 5 board shall condition the certificate upon board approval of
 6 a final centerline location:
 7 (2) The final centerline location must be determined in
 8 a noncontested case proceeding before the board after the
 9 submission of a centerline location report by the
 10 department. Within 60 days after the commencement of a
 11 noncontested case proceeding, the board shall render and
 12 record a decision approving a centerline location.
 13 (3) The department shall consult with the certificate
 14 holder and the affected landowners prior to making its
 15 report.
 16 (4) The department's report must be prepared
 17 considering the criteria set forth in 75-20-301 and
 18 75-20-503 and the findings of fact and conclusions of law
 19 set out in the board decision.
 20 (5) The department report may be completed on segments
 21 of a certified facility as is convenient to the certificate
 22 holder.
 23 (6) The certificate holder shall initiate the final
 24 centerline location approval process by submitting a
 25 proposed centerline location plan to the department. The

1 certificate holder shall pay to the department the actual
 2 costs incurred in processing a final centerline location not
 3 to exceed 25% of the filing fee paid under 75-20-215."

4 Section 16, Section 75-20-200, MCA, is amended to read:
 5 "75-20-200. Certain electric transmission lines. Verification
 6 of requirements. (1) Prior to constructing a
 7 transmission line under 75-20-104(10)(b)(11)(8)(b)(11), the
 8 person planning to construct the line must provide to the
 9 department within 36 months of the date of the public notice
 10 provided under 75-20-207, unless extended by the board for
 11 good cause:

12 (a) copies of the right-of-way agreements or options
 13 for a right-of-way containing sufficient information to
 14 establish landowner consent to construct the line; and
 15 (b) sufficient information for the department to verify
 16 to the board that the requirements of
 17 75-20-104(10)(b)(11)(8)(b)(11) are satisfied.

18 (2) The provisions of 75-20-104(10)(b)(11)(8)(b)(11) do
 19 not apply to any facility for which public notice under
 20 75-20-207 has been given but for which the requirements of
 21 subsection (1) have not been complied with."

22 Section 17, Section 75-20-211, MCA, is amended to read:
 23 "75-20-211. Application filing and contents. proof
 24 of service and notice. (1) (a) An applicant shall file with
 25 the department and department of health a joint on

1 application-for-a-certificate-under-this-chapter-and-for-the
 2 permits--required--under--the--laws--administered---by---the
 3 department-of-health-and-the-board-of-health-in-such-form-as
 4 the--board--requires--under-applicable-rules,-containing-the
 5 following-information:

6 (i)--a-description-of-the-proposed-location-and--of--the
 7 facility-to-be-built-thereon;

8 (ii)--a--summary--of--any-studies-which-have-been-made-of
 9 the-environmental-impact-of-the-facility;

10 (iii)--a-statement-explaining-the-need-for-the-facility;

11 (iv)--for-facilities-defined-in-75-20-104(10)(b) (8)(b)
 12 and--(10)(c) (8)(c),--a-description-of-reasonable-alternate
 13 locations-for-the-facility,-a-general--description--of--the
 14 comparative---merits---and---detriments---of--each--location
 15 submitted,-and-a-statement-of-the-reasons-why--the--proposed
 16 location-is-best-suited-for-the-facility;

17 (v)--(A)--for--facilities--as--defined-in-75-20-104(10)(b)
 18 (8)(b) and--(10)(c) (8)(c),--baseline-data-for-the-primary-and
 19 reasonable-alternate-locations;-or

20 (B)--for--facilities--as--defined--in---75-20-104(10)(a)
 21 (8)(a),--(10)(d) (8)(d),--and--(10)(e) (8)(e),--baseline-data
 22 for-the-proposed-location-and,-at--the--applicant's--option,
 23 any--alternative--locations--acceptable-to-the-applicant-for
 24 siting-the-facility;

25 (vi)--at-the-applicant's-option,-an--environmental--study

1 plan-to-satisfy-the-requirements-of-this-chapter,-and
 2 (vii)--such--other-information-as-the-applicant-considers
 3 relevant-or-as-the-board-and-board-of-health-by-order-or
 4 rule--or-the-department-and-department-of-health-by-order-or
 5 rule-may-require;

6 (b)--A-copy-or-copies-of--the--studies--referred--to--in
 7 subsection--(1)(a)(ii)--above--shall--be--filed--with--the
 8 department,-if-ordered,-and-shall-be--available--for--public
 9 inspection;

10 (2)--An--application--may--consist-of-an-application-for
 11 two-or-more-facilities-in-combination-which--are--physically
 12 and--directly-attached-to-each-other-and-are-operationally-a
 13 single-operating-entity;

14 (3)--An-application-shall-be--accompanied--by--proof--of
 15 service--of-a-copy-of-the-application-on-the-chief-executive
 16 officer--of--each---unit---of---local---government,-county
 17 commissioner,-city--or--county-planning-boards,-and-federal
 18 agencies-charged-with-the-duty-of-protecting-the-environment
 19 or-of-planning-land-use-in-the-area-in-which-any-portion--of
 20 the--proposed--facility--is--proposed--or--is--alternatively
 21 proposed-to-be-located-and-on-the-following-state-government
 22 agencies:

23 (a)--environmental-quality-council;

24 (b)--department-of-public-service-regulation;

25 (c)--department-of-fish,-wildlife,-and-parks;

1 ~~(d) department of state lands;~~
2 ~~(e) department of commerce;~~
3 ~~(f) department of highways;~~
4 ~~(g) department of public health;~~
5 ~~(g)(h) department of revenue;~~
6 ~~(4) The copy of the application shall be accompanied by~~
7 ~~a notice specifying the date on or about which the~~
8 ~~application is to be filed;~~
9 ~~(5) An application shall also be accompanied by proof~~
10 ~~that public notice thereof was given to persons residing in~~
11 ~~the area in which any portion of the proposed facility is~~
12 ~~proposed or is alternatively proposed to be located, by~~
13 ~~publication of a summary of the application in those~~
14 ~~newspapers that will substantially inform those persons of~~
15 ~~the application;"~~
16 ~~Section 18, Section 75-20-213, MCA, is amended to read:~~
17 ~~"75-20-213. Supplemental material --- amendments. (i) An~~
18 ~~application for an amendment of an application or a~~
19 ~~certificate shall be in such form and contain such~~
20 ~~information as the board by rule or the department by order~~
21 ~~prescribes. Notice of such an application shall be given as~~
22 ~~set forth in (3), (4), and (5) of 75-20-211.~~
23 ~~(2) An application may be amended by an applicant any~~
24 ~~time prior to the department's recommendation, if the~~
25 ~~proposed amendment is such that it prevents the department,~~

1 ~~the department of health, or the agencies listed in~~
2 ~~75-20-216(5) from carrying out their duties and~~
3 ~~responsibilities under this chapter, the department may~~
4 ~~require such additional filing fees as the department~~
5 ~~determines necessary, or the department may require a new~~
6 ~~application and filing fee.~~
7 ~~(3) The applicant shall submit supplemental material in~~
8 ~~a timely manner as requested by the department or as offered~~
9 ~~by the applicant to explain, support, or provide the detail~~
10 ~~with respect to an item described in the original~~
11 ~~application, without filing an application for an amendment.~~
12 ~~The department's determination as to whether information is~~
13 ~~supplemental or whether an application for amendment is~~
14 ~~required shall be conclusive."~~
15 ~~Section 19, Section 75-20-215, MCA, is amended to read:~~
16 ~~"75-20-215. Filing fee --- accountability --- refund ---~~
17 ~~use. (i) (a) A filing fee shall be deposited in the state~~
18 ~~special revenue fund for the use of the department in~~
19 ~~administering this chapter. The applicant shall pay to the~~
20 ~~department a filing fee as provided in this section based~~
21 ~~upon the department's estimated costs of processing the~~
22 ~~application under this chapter, but which shall not exceed~~
23 ~~the following scale based upon the estimated cost of the~~
24 ~~facility:~~
25 ~~(i) 4% of any estimated cost up to \$1 million, plus~~

1 (ii) 1% of any estimated cost over \$1 million and up to
 2 \$20 million; plus
 3 (iii) 0.5% of any estimated cost over \$20 million and up
 4 to \$100 million; plus
 5 (iv) 0.25% of any amount of estimated cost over \$100
 6 million and up to \$300 million; plus
 7 (v) 0.125% of any amount of estimated cost over \$300
 8 million and up to \$1 billion; plus
 9 (vi) 0.05% of any amount of estimated cost over \$1
 10 billion;
 11 (b) The department may allow in its discretion a credit
 12 against the fee payable under this section for the
 13 development of information or providing of services required
 14 hereunder or required for preparation of an environmental
 15 impact statement under the Montana or national environmental
 16 policy acts. The applicant may submit the information to the
 17 department together with an accounting of the expenses
 18 incurred in preparing the information. The department shall
 19 evaluate the applicability, validity, and usefulness of the
 20 data and determine the amount which may be credited against
 21 the filing fee payable under this section. Upon 30 days'
 22 notice to the applicant, this credit may at any time be
 23 reduced if the department determines that it is necessary to
 24 carry out its responsibilities under this chapter.
 25 (2) (a) The department may contract with an applicant

1 for the development of information, provision of services
 2 and payment of fees required under this chapter. The
 3 contract may continue an agreement entered into pursuant to
 4 75-20-106. Payments made to the department under such a
 5 contract shall be credited against the fee payable
 6 hereunder. Notwithstanding the provisions of this section,
 7 the revenue derived from the filing fee must be sufficient
 8 to enable the department, the department of health, the
 9 board, the board of health, and the agencies listed in
 10 75-20-216(5) to carry out their responsibilities under this
 11 chapter. The department may amend a contract to require
 12 additional payments for necessary expenses up to the limits
 13 set forth in subsection (1)(a) above upon 30 days' notice to
 14 the applicant. The department and applicant may enter into a
 15 contract which exceeds the scale provided in subsection
 16 (1)(a);
 17 (b) If a contract is not entered into, the applicant
 18 shall pay the filing fee in installments in accordance with
 19 a schedule of installments developed by the department,
 20 provided that no one installment may exceed 20% of the total
 21 filing fee provided for in subsection (1);
 22 (3) The estimated cost of upgrading an existing
 23 transmission substation may not be included in the estimated
 24 cost of a proposed facility for the purpose of calculating a
 25 filing fee.

1 (4) If an application consists of a combination of two
2 or more facilities, the filing fee shall be based on the
3 total estimated cost of the combined facilities.

4 (5) The applicant is entitled to an accounting of
5 moneys expended and to a refund with interest at the rate of
6 6% a year of that portion of the filing fee not expended by
7 the department in carrying out its responsibilities under
8 this chapter. A refund shall be made after all
9 administrative and judicial remedies have been exhausted by
10 all parties to the certification proceedings.

11 (6) The revenues derived from filing fees shall be used
12 by the department in compiling the information required for
13 rendering a decision on a certificate and for carrying out
14 its and the board's other responsibilities under this
15 chapter."

16 Section 20. Section 75-20-216, MCA, is amended to read:

17 "75-20-216. Study, evaluation, and report on proposed
18 facility-- assistance by other agencies. (1) After receipt
19 of an application, the department and department of health
20 shall within 90 days notify the applicant in writing that:

21 (a) the application is in compliance and is accepted as
22 complete; or

23 (b) the application is not in compliance and list the
24 deficiencies therein; and upon correction of these
25 deficiencies and resubmission by the applicant, the

1 department and department of health shall within 30 days
2 notify the applicant in writing that the application is in
3 compliance and is accepted as complete.

4 (2) Upon receipt of an application complying with
5 75-20-211 through 75-20-213, 75-20-215, and this section,
6 the department shall commence an intensive study and
7 evaluation of the proposed facility and its effects,
8 considering all applicable criteria listed in 75-20-301 and
9 75-20-503, and the department of health shall commence a
10 study to enable it or the board of health to issue a
11 decision, opinion, order, certification, or permit as
12 provided in subsection (3). The department and department of
13 health shall use, to the extent they consider it considers
14 applicable, valid and useful existing studies and reports
15 submitted by the applicant or compiled by a state or federal
16 agency.

17 (3) The department of health shall within 1 year
18 following the date of acceptance of an application and the
19 board of health or department of health, if applicable,
20 within an additional 6 months, issue any decision, opinion,
21 order, certification, or permit required under the laws
22 administered by the department of health or the board of
23 health and this chapter. The department of health and the
24 board of health shall determine compliance with all
25 standards, permit requirements, and implementation plans

1 under their jurisdiction for the proposed location or any
 2 proposed alternate location in their decision, opinion,
 3 order, certification, or permit. The decision, opinion,
 4 order, certification, or permit, with or without conditions,
 5 is conclusive on all matters that the department of health
 6 and board of health administer, and any of the criteria
 7 specified in subsections (2) through (7) of 75-20-503 that
 8 are a part of the determinations made under the laws
 9 administered by the department of health and the board of
 10 health. Although the decision, opinion, order,
 11 certification, or permit issued under this subsection is
 12 conclusive, the board retains authority to make the
 13 determination required under 75-20-301(2)(c). The decision,
 14 opinion, order, certification, or permit of the department
 15 of health or the board of health satisfies the review
 16 requirements by those agencies and shall be acceptable in
 17 lieu of an environmental impact statement under the Montana
 18 Environmental Policy Act. A copy of the decision, opinion,
 19 order, certification, or permit shall be served upon the
 20 department and the board and shall be utilized as part of
 21 their final site selection process. Prior to the issuance of
 22 a preliminary decision by the department of health and
 23 pursuant to rules adopted by the board of health, the
 24 department of health shall provide an opportunity for public
 25 review and comment.

1 (4) Within 22 months following acceptance of an
 2 application for a facility as defined in (a) and (d) of
 3 75-20-104(10)(8) and for a facility as defined in (b) and
 4 (e) of 75-20-104(10)(8) which is more than 30 miles in
 5 length and within 1 year for a facility as defined in (b)
 6 and (e) of 75-20-104(10)(8) which is 30 miles or less in
 7 length, the department shall make a report to the board
 8 which shall contain the department's studies, evaluations,
 9 recommendations, other pertinent documents resulting from
 10 its study and evaluation, and an environmental impact
 11 statement or analysis prepared pursuant to the Montana
 12 Environmental Policy Act, if any. If the application is for
 13 a combination of two or more facilities, the department
 14 shall make its report to the board within the greater of the
 15 lengths of time provided for in this subsection for either
 16 of the facilities.

17 (5) The departments of highways, commerce, fish,
 18 wildlife, and parks, state lands, revenue, public health,
 19 and public service regulation shall report to the department
 20 information relating to the impact of the proposed site on
 21 each department's area of expertise. The report may include
 22 opinions as to the advisability of granting, denying, or
 23 modifying the certificate. The department shall allocate
 24 funds obtained from filing fees to the departments making
 25 reports to reimburse them for the costs of compiling

1 information and issuing the required report."

2 Section 21, Section 75-20-218, MCA, is amended to read:

3 "75-20-218. Hearing date, location, department to

4 act as staff, hearings to be held jointly. (1) Upon

5 receipt of the department's report submitted under

6 75-20-216, the board shall set a date for a hearing to begin

7 not more than 120 days after the receipt. Certification

8 hearings shall be conducted by the board in the county seat

9 of Lewis and Clark County or the county in which the

10 facility or the greater portion thereof is to be located.

11 (2) Except as provided in 75-20-221(2), the department

12 shall act as the staff for the board throughout the

13 decisionmaking process and the board may request the

14 department to present testimony or cross-examine witnesses

15 as the board considers necessary and appropriate.

16 (3) At the request of the applicant, the department of

17 health and the board of health shall hold any required

18 permit hearings required under other laws administered by

19 those agencies in conjunction with the board certification

20 hearing. In such a conjunctive hearing the time periods

21 established for reviewing an application and for issuing a

22 decision on certification of a proposed facility under this

23 chapter supersede the time periods specified in other laws

24 administered by the department of health and the board of

25 health."

1 Section 22, Section 75-20-219, MCA, is amended to read:

2 "75-20-219. Amendments to a certificate. (1) Within 30

3 days after notice of an amendment to a certificate is given

4 as set forth in 75-20-213(1), including notice to all active

5 parties to the original proceeding, the department shall

6 determine whether the proposed change in the facility would

7 result in a material increase in any environmental impact of

8 the facility or a substantial change in the location of all

9 or a portion of the facility as set forth in the

10 certificate. If the department determines that the proposed

11 change would result in a material increase in any

12 environmental impact of the facility or a substantial change

13 in the location of all or a portion of the facility, the

14 board shall hold a hearing in the same manner as a hearing

15 is held on an application for a certificate. After hearing,

16 the board shall grant, deny, or modify the amendment with

17 such conditions as it deems appropriate.

18 (2) In those cases where the department determines that

19 the proposed change in the facility would not result in a

20 material increase in any environmental impact or would not

21 be a substantial change in the location of all or a portion

22 of the facility, the board shall automatically grant the

23 amendment either as applied for or upon such terms or

24 conditions as the board considers appropriate unless the

25 department's determination is appealed to the board within

1 15 days after notice of the department's determination is
2 given:

3 (3) if the department or the board, under subsection
4 (4), determines that a hearing is required because the
5 proposed change would result in a material increase in any
6 environmental impact of the facility or a substantial change
7 in the location of all or a portion of the facility, the
8 applicant has the burden of showing by clear and convincing
9 evidence that the amendment should be granted.

10 (4) If the department determines that the proposed
11 change in the facility would not result in a material
12 increase in any environmental impact or would not be a
13 substantial change in the location of all or a portion of
14 the facility and a hearing is required because the
15 department's determination is appealed to the board as
16 provided in subsection (2), the appellant has the burden of
17 showing by clear and convincing evidence that the proposed
18 change in the facility would result in a material increase
19 in any environmental impact of the facility or a substantial
20 change in the location of all or a portion of the facility
21 as set forth in the certificate.

22 (5) If an amendment is required to a certificate which
23 would affect, amend, alter or modify a decision, opinion,
24 order, certification, or permit issued by the department of
25 health or board of health, such amendment must be processed

1 under the applicable statutes administered by the department
2 of health or board of health."

3 Section 23, Section 75-20-220, MEA, is amended to read:

4 "75-20-220. Hearing examiner -- restrictions -- duties:

5 (1) If the board appoints a hearing examiner to conduct any
6 certification proceedings under this chapter, the hearing
7 examiner may not be a member of the board, or an employee of
8 the department, or a member or employee of the department of
9 health or board of health. A hearing examiner, if any, shall
10 be appointed by the board within 20 days after the
11 department's report has been filed with the board. If a
12 hearing is held before the board of health or the department
13 of health, the board and the board of health or the
14 department of health shall mutually agree on the appointment
15 of a hearing examiner to preside at both hearings.

16 (2) A prehearing conference shall be held following
17 notice within 60 days after the department's report has been
18 filed with the board.

19 (3) The prehearing conference shall be organized and
20 supervised by the hearing examiner.

21 (4) The prehearing conference shall be directed toward
22 a determination of the issues presented by the application,
23 the department's report, and an identification of the
24 witnesses and documentary exhibits to be presented by the
25 active parties who intend to participate in the hearing.

1 {5}--The--hearing--examiner--shall--require--the--active
 2 parties-to-submit, in-writing, and--serve--upon--the--other
 3 active--parties, all-direct-testimony-which-they-propose-and
 4 any-studies, investigations, reports, or-other-exhibits-that
 5 any-active-party-wishes-the-board-to-consider. These-written
 6 exhibits-and-any-documents-that-the-board-itself-wishes--to
 7 use-or-rely-on-shall-be-submitted-and-served-in-like-manner,
 8 at--least-20-days-prior-to-the-date-set-for-the-hearing. For
 9 good--cause--shown, the--hearing--examiner--may--allow--the
 10 introduction-of-new-evidence-at-any-time.

11 {6}--The-hearing-examiner-shall--allow--discovery--which
 12 shall--be--completed-before-the-commencement-of-the-hearing,
 13 upon-good-cause-shown-and-under-such-other-conditions-as-the
 14 hearing-examiner-shall-prescribe.

15 {7}--Public--witnesses--and--other--interested--public
 16 parties-may-appear-and-present-oral-testimony-at-the-hearing
 17 or--submit--written-testimony-to-the-hearing-examiner-at-the
 18 time-of-their-appearance. These--witnesses--are--subject--to
 19 cross-examination.

20 {8}--The-hearing-examiner-shall-issue-a-prehearing-order
 21 specifying--the--issues--of-fact-and-of-law, identifying-the
 22 witnesses-of-the-active-parties, naming-the-public-witnesses
 23 and-other-interested--parties--who--have--submitted--written
 24 testimony--in--lieu--of--appearance, outlining-the-order-in
 25 which-the-hearing-shall-proceed, setting-forth-these-section

1 75-20-301-criteria-as-to-which-no-issue-of-fact-or-law-has
 2 been--raised--which--are-to-be-conclusively-presumed-and-are
 3 not-subject-to-further-proof-except-for--good--cause--shown,
 4 and--any--other--special-rules-to-expedite-the-hearing-which
 5 the-hearing-examiner-shall-adopt-with-the--approval--of--the
 6 board.

7 {9}--At--the--conclusion--of--the--hearing, the-hearing
 8 examiner-shall-declare-the-hearing-closed-and-shall, within
 9 60-days-of-that-date, prepare-and-submit-to-the-board-and-in
 10 the--case--of--a--conjunctive-hearing, within-90-days-to-the
 11 board-and-the--board--of--health--or--department--of--health
 12 proposed--findings--of--fact, conclusions--of--law, and--a
 13 recommended-decision.

14 {10}--The--hearing--examiner--appointed--to--conduct--a
 15 certification-proceeding-under--this--chapter--shall--insure
 16 that--the--time--of--the--proceeding, from-the-date-the
 17 department's-report--is--filed--with--the--board--until--the
 18 recommended--report--and-order-of-the-examiner-is-filed-with
 19 the-board, does-not-exceed-9-calendar-months-unless-extended
 20 by-the-board-for-good-cause.

21 {11}--The-board-or-hearing-examiner-may-waive--all--or--a
 22 portion--of--the--procedures--set--forth--in-subsections-{2}
 23 through-{8}-of-this-section-to-expedite-the--hearing--for--a
 24 facility--when--the-department-has-recommended-approval-of-a
 25 facility-and-no-objections-have-been-filed."

1 Section 24, Section 75-20-221, MCA, is amended to read:
 2 "75-20-221. Parties to certification proceeding ---
 3 waiver --- statement of intent to participate; (1) The
 4 parties to a certification proceeding or to a proceeding
 5 involving the issuance of a decision, opinion, order,
 6 certification, or permit by the board of health department
 7 under this chapter may include as active parties:
 8 (a) the applicant;
 9 (b) each political entity, unit of local government,
 10 and government agency, including the department of health,
 11 entitled to receive service of a copy of the application
 12 under 75-20-211(3);
 13 (c) any person entitled to receive service of a copy of
 14 the application under 75-20-211(5);
 15 (d) any nonprofit organization formed in whole or in
 16 part to promote conservation or natural beauty, to protect
 17 the environment, personal health, or other biological
 18 values, to preserve historical sites, to promote consumer
 19 interests, to represent commercial and industrial groups, or
 20 to promote the orderly development of the areas in which the
 21 facility is to be located;
 22 (e) any other interested person who establishes an
 23 interest in the proceeding;
 24 (2) The department shall be an active party in any
 25 certification proceeding in which the department recommends

1 denial of all or a portion of a facility;
 2 (3) The parties to a certification proceeding may also
 3 include, as public parties, any Montana citizen and any
 4 party referred to in (b), (c), (d), or (e) of subsection
 5 (1);
 6 (4) Any party waives the right to be a party if the
 7 party does not participate in the hearing before the board
 8 or the board of health;
 9 (5) Each unit of local government entitled to receive
 10 service of a copy of the application under 75-20-211(3)
 11 shall file with the board a statement showing whether the
 12 unit of local government intends to participate in the
 13 certification proceeding; if the unit of local government
 14 does not intend to participate, it shall list in this
 15 statement its reasons for failing to do so. This statement
 16 of intent shall be published before the proceeding begins in
 17 a newspaper of general circulation within the jurisdiction
 18 of the applicable unit of local government."
 19 Section 25, Section 75-20-225, MCA, is amended to read:
 20 "75-20-225. Certificate renewal --- application ---
 21 contents --- filing fee; (1) Any certificate holder for a
 22 facility as defined in 75-20-104(10)(a)(i)(8)(a)(i) may
 23 apply for renewal of a certificate prior to the certificate
 24 lapsing;
 25 (2) An applicant for a renewal of a certificate shall

1 file with the department and department of health a joint an
 2 application in such form as the board requires by rule.

3 (3) An application for renewal of a certificate must
 4 include updated information on the matters listed in
 5 75-20-211(1)(a) that have changed since the original
 6 application and such other information as the board requires
 7 by rule for certification. The matters listed in
 8 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate
 9 locations must be updated only if the board determines that
 10 within the certified location significant changes have
 11 occurred to warrant a review of alternate locations.

12 (4) An application filed under subsection (1) must
 13 comply with the provisions of 75-20-211(3) through (5).

14 (5) Except as provided in this subsection, the
 15 applicant shall pay a filing fee to the department in
 16 accordance with 75-20-215(2). The fee is in addition to any
 17 previous filing fee paid for processing the original
 18 application for a certificate pursuant to 75-20-215. The fee
 19 may not exceed the following scale:

20 (a) 0.125% of any estimated cost up to \$300 million;
 21 plus

22 (b) 0.063% of any estimated cost over \$300 million.⁴

23 Section 26, Section 75-20-226, MCA, is amended to read:

24 "75-20-226. Renewal study. (1) Upon receipt of a
 25 completed application for renewal of a certificate, the

1 department shall evaluate the updated information and any
 2 significant changes in need, alternatives, technology,
 3 baseline environment, and the environmental impacts of a
 4 facility that have taken place since the original study
 5 performed in granting the certificate, considering the
 6 applicable criteria listed in 75-20-301 and 75-20-503 and
 7 the original board findings and certificate conditions.

8 (2) The department of health and the board of health,
 9 within 10 months of acceptance of a complete renewal
 10 application, shall complete the statutory duties established
 11 in 75-20-216(3). A copy of any decision, opinion, order,
 12 certification, or permit must be served on the department
 13 and the board and must be used as part of their
 14 decisionmaking process.

15 (3) Within 12 months following acceptance of a complete
 16 application for renewal of a certificate, the department
 17 shall make a report to the board. This report must contain
 18 the department's studies, evaluations, recommendations, and
 19 other pertinent documents resulting from its study and
 20 evaluation and an updated environmental impact statement or
 21 analysis pursuant to the Montana Environmental Policy Act.
 22 The department's report must be directed to the question of
 23 whether the original board findings and conditions have been
 24 or need to be altered as a result of any significant changes
 25 in need, alternatives, technology, baseline environment, or

1 environmental impact since issuance of the certificate,
 2 considering the applicable criteria listed in 75-20-301 and
 3 75-20-503:

4 (4) The departments of highways, commerce, fish,
 5 wildlife, and parks, state lands, revenue, public health,
 6 and public service regulation shall report to the department
 7 information relating to the impact of the proposed site on
 8 each department's area of responsibility. The report may
 9 include opinions as to the advisability of renewing the
 10 certificate. The department shall allocate funds obtained
 11 from filing fees to the departments making reports to
 12 reimburse them for the cost of compiling information and
 13 issuing the required reports."

14 Section 27, Section 75-20-301, MEA, is amended to read:

15 "75-20-301. Decision of board --- findings necessary for
 16 certification. (1) Within 60 days after submission of the
 17 recommended decision by the hearing examiner, the board
 18 shall make complete findings, issue an opinion, and render a
 19 decision upon the record, either granting or denying the
 20 application as filed or granting it upon such terms,
 21 conditions, or modifications of the construction, operation,
 22 or maintenance of the facility as the board considers
 23 appropriate;

24 (2) The board may not grant a certificate either as
 25 proposed by the applicant or as modified by the board unless

1 it shall find and determine:

- 2 (a) the basis of the need for the facility;
- 3 (b) the nature of the probable environmental impact;
- 4 (c) that the facility minimizes adverse environmental
 5 impact, considering the state of available technology and
 6 the nature and economics of the various alternatives;
- 7 (d) each of the criteria listed in 75-20-503;
- 8 (e) in the case of an electric, gas, or liquid
 9 transmission line or aqueduct:
 10 (i) what part, if any, of the line or aqueduct shall be
 11 located underground;
- 12 (ii) that the facility is consistent with regional plans
 13 for expansion of the appropriate grid of the utility systems
 14 serving the state and interconnected utility systems; and
 15 (iii) that the facility will serve the interests of
 16 utility system economy and reliability;
- 17 (f) that the location of the facility as proposed
 18 conforms to applicable state and local laws and regulations
 19 issued thereunder, except that the board may refuse to apply
 20 any local law or regulation if it finds that, as applied to
 21 the proposed facility, the law or regulation is unreasonably
 22 restrictive in view of the existing technology, of factors
 23 of cost or economics, or of the needs of consumers, whether
 24 located inside or outside of the directly affected
 25 government subdivisions;

1 (g) that the facility will serve the public interest,
 2 convenience, and necessity;
 3 (h) that the department of health or board of health
 4 have has issued a decision, opinion, order, certification,
 5 or permit as required by 75-20-216(3); and
 6 (i) that the use of public lands for location of the
 7 facility was evaluated and public lands were selected
 8 whenever their use is as economically practicable as the use
 9 of private lands and compatible with the environmental
 10 criteria listed in 75-20-503;
 11 (j) in determining that the facility will serve the
 12 public interest, convenience, and necessity under subsection
 13 (2)(g) of this section, the board shall consider:
 14 (a) the items listed in subsections (2)(a) and (2)(b)
 15 of this section;
 16 (b) the benefits to the applicant and the state
 17 resulting from the proposed facility;
 18 (c) the effects of the economic activity resulting from
 19 the proposed facility;
 20 (d) the effects of the proposed facility on the public
 21 health, welfare, and safety;
 22 (e) any other factors that it considers relevant;
 23 (f) Considerations of need, public need, or public
 24 convenience and necessity and demonstration thereof by the
 25 applicant shall apply only to utility facilities."

1 Section 28--Section 75-20-302, MCA, is amended to read:
 2 "75-20-302--Conditions imposed--(1) If the board
 3 determines that the location of all or a part of the
 4 proposed facility should be modified, it may condition its
 5 certificate upon such modification, provided that the
 6 persons residing in the area affected by the modification
 7 have been given reasonable notice of the modification;
 8 (2) in making its findings under 75-20-301(2)(a) for a
 9 facility defined in 75-20-104(10)(a)(i)(0)(a)(i), the board
 10 may condition a certificate upon actual load growth reaching
 11 a specified level or on availability of other planned energy
 12 resources;"
 13 Section 29--Section 75-20-303, MCA, is amended to read:
 14 "75-20-303--Opinion issued with decision--contents--
 15 (1) in rendering a decision on an application for a
 16 certificate, the board shall issue an opinion stating its
 17 reasons for the action taken;
 18 (2) if the board has found that any regional or local
 19 law or regulation which would be otherwise applicable is
 20 unreasonably restrictive pursuant to 75-20-301(2)(f), it
 21 shall state in its opinion the reasons therefor;
 22 (3) Any certificate issued by the board shall include
 23 the following:
 24 (a) an environmental evaluation statement related to
 25 the facility being certified. The statement shall include

1 but not be limited to analysis of the following information:
 2 (i) the environmental impact of the proposed facility;
 3 (ii) any adverse environmental effects which cannot be
 4 avoided by issuance of the certificate;
 5 (iii) problems and objections raised by other federal
 6 and state agencies and interested groups; and
 7 (iv) alternatives to the proposed facility;
 8 (b) a plan for monitoring environmental effects of the
 9 proposed facility;
 10 (c) a plan for monitoring the certified facility site
 11 between the time of certification and completion of
 12 construction;
 13 (d) a time limit as provided in subsection (4); and
 14 (e) a statement signed by the applicant showing
 15 agreement to comply with the requirements of this chapter
 16 and the conditions of the certificate;
 17 (4) (a) The board shall issue as part of the
 18 certificate the following time limits:
 19 (i) For a facility as defined in (b) or (c) of
 20 75-20-104(10)(b) or (8)(c) that is more than 30 miles in
 21 length, construction must be completed within 10 years;
 22 (ii) For a facility as defined in (b) of
 23 75-20-104(10)(b) that is 30 miles or less in length,
 24 construction must be completed within 5 years;
 25 (iii) For a facility as defined in (a) of

1 75-20-104(10)(8)(a), construction must begin within 6 years
 2 and continue with due diligence in accordance with
 3 preliminary construction plans established in the
 4 certificate;
 5 (b) Unless extended or renewed in accordance with
 6 subsection (4)(c) or 75-20-225 through 75-20-227, a
 7 certificate lapses and is void if the facility is not
 8 constructed or if construction of the facility is not
 9 commenced within the time limits provided in this section;
 10 (c) The time limit may be extended for a reasonable
 11 period upon a showing by the applicant to the board that a
 12 good faith effort is being undertaken to complete
 13 construction under subsections (4)(a)(i) and (4)(a)(ii) or
 14 to begin construction under subsection (4)(a)(iii). Under
 15 this subsection, a good faith effort includes the process of
 16 acquiring any necessary state or federal permit or
 17 certificate for the facility and the process of judicial
 18 review of any such permit or certificate;
 19 (5) The provisions of subsection (4) apply to any
 20 facility for which a certificate has not been issued or for
 21 which construction is yet to be commenced."
 22 Section 30, Section 75-20-304, MCA, is amended to read:
 23 "75-20-304. Waiver of provisions of certification
 24 proceedings. (1) The board may waive compliance with any of
 25 the provisions of 75-20-216 through 75-20-222, 75-20-501, 7

1 and--this-part-if-the-applicant-makes-a-clear-and-convincing
 2 showing-to-the-board-at-a-public-hearing-that-an--immediate,
 3 urgent-need-for-a-facility-exists-and-that-the-applicant-did
 4 not--have--knowledge--that-the-need-for-the-facility-existed
 5 sufficiently-in-advance-to-fully-comply-with-the--provisions
 6 of-75-20-216-through-75-20-222,75-20-501,7-and-this-part.
 7 (2)--The--board--may--waive--compliance--with-any-of-the
 8 provisions-of-this-chapter--upon--receipt--of--notice--by--a
 9 person-subject-to-this-chapter-that-a-facility-or-associated
 10 facility--has-been-damaged-or-destroyed-as-a-result-of-fire,
 11 flood,7-or--other--natural--disaster--or--as--the--result--of
 12 insurrection,7-war,7-or-other-civil-disorder-and-there-exists
 13 an-immediate-need-for-construction--of--a--new--facility--or
 14 associated--facility--or--the--relocation--of--a--previously
 15 existing-facility-or-associated-facility-in-order-to-promote
 16 the-public-welfare.
 17 (3)--The--board--shall--waive--compliance--with--the
 18 requirements-of-subsections-(2)(c),7-(3)(b),7--and--(3)(c)--of
 19 75-20-301--and--75-20-501(5)--and--the--requirements--of
 20 subsections-(1)(a)(iv)-and-(v)-of--75-20-211,7-75-20-216(3),7
 21 and--75-20-303(3)(a)(iv)--relating--to--consideration--of
 22 alternative--sites--if--the--applicant--makes--a--clear--and
 23 convincing-showing-to-the-board-at-a-public-hearing-that:
 24 (a)--a-proposed-facility-will-be-constructed-in-a-county
 25 where-a-single-employer-within-the-county--has--permanently

1 curtailed-or-ceased-operations-causing-a-loss-of-250-or-more
 2 permanent--jobs--within-2-years-at-the-employer's-operations
 3 within-the-preceding-10-year-period;
 4 (b)--the-county-and-municipal-governing-bodies-in-whose
 5 jurisdiction--the-facility-is-proposed-to-be-located-support
 6 by-resolution-such-a-waiver;
 7 (c)--the-proposed-facility-will-be-constructed-within--a
 8 15-mile--radius--of--the-operations-that-have-ceased-or-been
 9 curtailed;7-and
 10 (d)--the-proposed-facility-will-have-a-beneficial-effect
 11 on-the-economy-of--the--county--in--which--the--facility--is
 12 proposed-to-be-located.
 13 (4)--The--waiver--provided-for-in-subsection-(3)--applies
 14 only-to-permanent-job--losses--by--a--single--employer,7--The
 15 waiver-provided-for-in-subsection-(3)--does-not-apply-to-jobs
 16 of-a-temporary-or-seasonal-nature,7-including-but-not-limited
 17 to-construction-jobs-or-job-losses-during-labor-disputes;
 18 (5)--The--waiver-provided-for-in-subsection-(3)--does-not
 19 apply-to-consideration-of-alternatives--or--minimum--adverse
 20 environmental--impact--for-a-facility-defined-in-subsections
 21 (10)(b) (8)(b),7-(c),7-(d),7-or--(e)--of--75-20-104,7--for--an
 22 associated--facility--defined--in--75-20-104(3),7--or--for--any
 23 portion-of-or-process-in-a-facility--defined--in--subsection
 24 (10)(a) (8)(a)--of-75-20-104-to-the-extent-that-the-process
 25 or-portion-of-the-facility-is-not-subject-to-a-permit-issued

1 by the department of health or board of health;
 2 (6) The applicant shall pay all expenses required to
 3 process and conduct a hearing on a waiver request under
 4 subsection (3). However, any payments made under this
 5 subsection shall be credited toward the fee paid under
 6 75-20-215 to the extent the data or evidence presented at
 7 the hearing or the decision of the board under subsection
 8 (3) can be used in making a certification decision under
 9 this chapter;

10 (7) The board may grant only one waiver under
 11 subsections (3) and (4) for each permanent loss of jobs as
 12 defined in subsection (3)(a);"

13 Section 31, Section 75-20-402, MCA, is amended to read:

14 "75-20-402. Monitoring. The board, and the department,
 15 the department of health, and the board of health shall
 16 monitor the operations of all certificated facilities for
 17 assuring continuing compliance with this chapter and
 18 certificates issued hereunder and for discovering and
 19 preventing noncompliance with this chapter and the
 20 certificates. The applicant shall pay all expenses related
 21 to the monitoring plan established in subsection (3)(b) or
 22 (3)(c) of 75-20-303 to the extent federal funds available
 23 for the facility, as determined by the department of health,
 24 have not been provided for such purposes;"

25 Section 32, Section 75-20-406, MCA, is amended to read:

1 "75-20-406. Judicial review of board, board of health,
 2 and department of health decisions. (1) Any active party as
 3 defined in 75-20-221 aggrieved by the final decision of the
 4 board on an application for a certificate may obtain
 5 judicial review of that decision by the filing of a petition
 6 in a state district court of competent jurisdiction;

7 (2) The judicial review procedure shall be the same as
 8 that for contested cases under the Montana Administrative
 9 Procedure Act;

10 (3) When the board of health or department of health
 11 conducts hearings pursuant to 75-20-216(3) and 75-20-210 and
 12 the applicant is granted a permit or certification, with or
 13 without conditions, pursuant to the other laws administered
 14 by the department of health and the board of health and
 15 this chapter, the decision may only be appealed only in
 16 conjunction with the final decision of the board as provided
 17 in subsections (1) and (2). If a permit or certification is
 18 denied by the department of health or the board of health,
 19 the applicant may;

20 (a) appeal the denial under the appellate review
 21 procedures provided in the other laws administered by the
 22 department of health and the board of health; or

23 (b) reserve the right to appeal the denial by the
 24 department of health or the board of health until after the
 25 board has issued a final decision under 75-20-301;

1 (4) Nothing in this section may be construed to
 2 prohibit the board from holding a hearing as herein provided
 3 on all matters that are not the subject of a pending appeal
 4 by the applicant under subsection (3)(a)."

5 Section 337, Section 75-20-501, MCA, is amended to read:

6 "75-20-501. Annual long-range plan submitted
 7 contents available to public; (1) Each utility and each
 8 person contemplating the construction of a facility within
 9 this state in the ensuing 10 years shall furnish annually to
 10 the department for its review a long-range plan for the
 11 construction and operation of facilities;

12 (2) The plan shall be submitted by July 1 of each year
 13 and must include the following:

14 (a) the general location, size, and type of all
 15 facilities to be owned and operated by the utility or person
 16 whose construction is projected to commence during the
 17 ensuing 10 years, as well as those facilities to be removed
 18 from service during the planning period;

19 (b) in the case of utility facilities, a description of
 20 efforts by the utility or person to coordinate the plan with
 21 other utilities or persons so as to provide a coordinated
 22 regional plan for meeting the energy needs of the region;

23 (c) a description of the efforts to involve
 24 environmental protection and land use planning agencies in
 25 the planning process, as well as other efforts to identify

1 and minimize environmental problems at the earliest possible
 2 stage in the planning process;

3 (d) projections of the demand for the service rendered
 4 by the utility or person and explanation of the basis for
 5 those projections and a description of the manner and extent
 6 to which the proposed facilities will meet the projected
 7 demand; and

8 (e) additional information that the board by rule or
 9 the department on its own initiative or upon the advice of
 10 interested state agencies might request in order to carry
 11 out the purposes of this chapter;

12 (3) The plan shall be furnished to the governing body
 13 of each county in which any facility included in the plan
 14 under (2)(a) of this section is proposed to be located and
 15 made available to the public by the department. The utility
 16 or person shall give public notice throughout the state of
 17 its plan by filing the plan with the environmental quality
 18 council, the department of public health and environmental
 19 sciences, the department of highways, the department of
 20 public service regulation, the department of state lands,
 21 the department of fish, wildlife, and parks, and the
 22 department of commerce, citizen environmental protection and
 23 resource planning groups and other interested persons may
 24 obtain a plan by written request and payment therefor to the
 25 department.

1 (4) A rural electric cooperative may furnish the
2 department with a copy of the long-range plan and 2-year
3 work plan required to be completed under federal rural
4 electrification requirements in lieu of the long-range plan
5 required in subsection (1).

6 (5) No person may file an application for a facility
7 unless the facility had been adequately identified in a
8 long-range plan at least 2 years prior to acceptance of an
9 application by the department, except for electric
10 transmission lines of a design capacity of 230 kilovolts or
11 less.

12 Section 34, Section 75-20-1202, MCA, is amended to
13 read:

14 "75-20-1202. Definitions. As used in this part and
15 75-20-201 through 75-20-203, the following definitions
16 apply:

17 (1) (a) "Nuclear facility" means each plant, unit, or
18 other facility designed for or capable of:

19 (1) generating 50 megawatts of electricity or more by
20 means of nuclear fission;

21 (2) converting, enriching, fabricating, or reprocessing
22 uranium minerals or nuclear fuels; or

23 (3) storing or disposing of radioactive wastes or
24 materials from a nuclear facility;

25 (b) "Nuclear facility" does not include any small-scale

1 facility used solely for educational, research, or medical
2 purposes not connected with the commercial generation of
3 energy.

4 (2) "Facility" as defined in 75-20-104(10)(b) is
5 further defined to include any nuclear facility as defined
6 in subsection (1)(a) of this section.

7 Section 35, Section 76-15-103, MCA, is amended to read:
8 "76-15-103. Definitions. Unless the context requires
9 otherwise, in this chapter the following definitions apply:

10 (1) "Agency of this state" includes the government of
11 this state and any subdivision, agency, or instrumentality,
12 corporate or otherwise, of the government of this state;

13 (2) "Board" means the board of natural resources and
14 conservation land commissioners provided for in 2-15-3302
15 Article X, section 4, of the Montana constitution;

16 (3) "Department" means the department of natural
17 resources and conservation state lands provided for in Title
18 2, chapter 15, part 33 32;

19 (4) "District" or "conservation district" means a
20 governmental subdivision of this state and a public body
21 corporate and politic organized in accordance with this
22 chapter, for the purposes, with the powers, and subject to
23 the restrictions hereinafter set forth;

24 (5) "Due notice" means notice published at least twice,
25 with an interval of at least 14 days between the two

1 publication--dates,--in--a--newspaper--or--other--publication--of
 2 general--circulation--within--the--proposed--area--or--by--posting
 3 at--a--reasonable--number--of--conspicuous--places--within--the
 4 appropriate--area,--the--posting--to--include,--where--possible,
 5 posting--at--public--places--where--it--may--be--customary--to--post
 6 notices--concerning--county--or--municipal--affairs--generally:

7 {6}--"Government"--or--"governmental"--includes--the
 8 government--of--this--state,--the--government--of--the--United
 9 States,--and--any--subdivision,--agency,--or--instrumentality,
 10 corporate--or--otherwise,--of--either--of--them:

11 {7}--"Land-occupier"--or--"occupier--of--land"--includes--a
 12 person,--firm,--corporation,--municipality,--or--other--entity--who
 13 holds--title--to--or--is--in--possession--of--lands--lying--within--a
 14 district--organized--under--this--chapter,--whether--as--owner,
 15 lessee,--renter,--tenant,--or--otherwise:

16 {8}--"Petition"--means--a--petition--filed--under--76-15-201
 17 for--the--creation--of--a--district:

18 {9}--"Qualified elector"--means--an--elector--as--defined--in
 19 Title--13:

20 {10}--"Supervisor"--means--one--of--the--members--of--the
 21 governing--body--of--a--district,--elected--or--appointed--in
 22 accordance--with--this--chapter:

23 {11}--"United States"--or--"agencies--of--the--United--States"
 24 includes--the--United--States--of--America,--the--soil--conservation
 25 service--of--the--United--States--department--of--agriculture,--and

1 any--other--agency--or--instrumentality,--corporate--or--otherwise,
 2 of--the--United--States--of--America:"

3 **Section 5.** Section 80-8-110, MCA, is amended to read:

4 "80-8-110. Cooperation with other agencies. (1) The
 5 department of agriculture may cooperate with agencies of
 6 this state or its subdivisions or with any agency of any
 7 other state or the federal government for the purpose of
 8 carrying out the provisions of this chapter, securing
 9 uniformity of rules, and entering into reciprocal licensing
 10 and certification agreements with other states.

11 (2) The department of agriculture and the department of
 12 health--and--environmental--sciences natural--resources--and
 13 environment HEALTH AND ENVIRONMENTAL SCIENCES shall enter
 14 into a memorandum of agreement concerning the inspection,
 15 regulation, and responsibilities of persons or activities
 16 that may be involved in the management, disposal, storage,
 17 transportation, treatment, recycling, or recovery of
 18 hazardous wastes and the disposal of solid wastes.

19 (3) For the purpose of this section, "solid waste"
 20 means all putrescible and nonputrescible wastes including
 21 but not limited to garbage; rubbish; refuse; hazardous
 22 wastes; ashes; sludge from sewage treatment plants, water
 23 supply treatment plants, or air pollution control
 24 facilities; construction and demolition wastes; dead
 25 animals, including offal; discarded home and industrial

1 appliances; and wood products or wood byproducts and inert
 2 materials. Solid waste does not mean municipal sewage,
 3 industrial wastewater ~~effluents~~ effluents, mining wastes
 4 regulated under the mining and reclamation laws administered
 5 by the department of ~~state lands~~ natural resources and
 6 environment HEALTH AND ENVIRONMENTAL SCIENCES, slash and
 7 forest debris regulated under laws administered by the
 8 department of state lands, or marketable wood byproducts.

9 (4) For the purpose of this section, "hazardous waste"
 10 means any waste or combination of wastes of a solid, liquid,
 11 contained gaseous, or semisolid form which may cause or
 12 contribute to an increase in mortality or an increase in
 13 serious illness, taking into account the toxicity of the
 14 waste, its persistence and degradability in nature, its
 15 potential for assimilation or concentration in tissue, and
 16 other factors that may otherwise cause or contribute to
 17 adverse acute or chronic effects on the health of persons or
 18 other living organisms. Hazardous wastes include but are not
 19 limited to those which are toxic, radioactive, corrosive,
 20 flammable, irritants, strong sensitizers, or which generate
 21 pressure through decomposition, heat, or other means,
 22 excluding wood chips and wood used for manufacturing or fuel
 23 purposes."

24 Section 37, Section 81-23-103, MCA, is amended to read:
 25 "81-23-103. General powers of the department: (1) The

1 department shall supervise, regulate, and control the milk
 2 industry of this state, including the production,
 3 processing, storage, distribution, and sale of milk sold for
 4 consumption in this state. Nothing in this chapter abrogates
 5 or affects the status, force, or operation of any provision
 6 of public health laws or the law under which the department
 7 of livestock is constituted together with the department of
 8 livestock rules, county board of health rules, or municipal
 9 ordinances for the promotion or protection of the public
 10 health. The department may cooperate with the department of
 11 public health and environmental sciences, the board of
 12 livestock, any county or city board of health, or the
 13 department of agriculture in enforcing this chapter.

14 (2) The department shall investigate all matters
 15 pertaining to the production, processing, storage,
 16 distribution, and sale of milk in this state and conduct
 17 hearings upon any subject pertinent to the administration of
 18 this chapter. The department may subpoena milk dealers,
 19 their records, books, and accounts, and any other person
 20 from whom information may be desired or considered necessary
 21 to carry out the purposes and intent of this chapter and may
 22 take depositions of witnesses who are sick or absent from
 23 the state or who cannot otherwise appear in person before
 24 the department at its offices. The department shall give at
 25 least 10 days' notice to the proposed witness."

1 **Section 6.** Section 82-4-103, MCA, is amended to read:

2 "82-4-103. **Definitions.** When used in this part, unless
3 a different meaning clearly appears from the context, the
4 following definitions apply:

5 (1) "Board" means the board of ~~land--commissioners~~
6 natural-resources-and-environment **HEALTH AND ENVIRONMENTAL**
7 **SCIENCES** as provided for in ~~Article-X7-section-47-of-the~~
8 ~~constitution-of-this-state Title--27--chapter--157--part--33~~
9 2-15-2104.

10 (2) "Department" means the department of ~~state-lands~~
11 natural-resources-and-environment **HEALTH AND ENVIRONMENTAL**
12 **SCIENCES** provided for in Title 2, chapter 15, part 32 ~~33~~ 21.

13 (3) "Mineral" means mineral as defined in 82-4-203.

14 (4) "New mine" means a strip- or underground-mining
15 operation proposed for an area of land which the department
16 determines, because of distance from an existing strip-mine
17 or underground-mine operation or their respective facilities
18 or because of important differences in topography, soils,
19 wildlife, geologic structure, aquifers, or vegetation from
20 an existing strip-mine or underground-mine operation, does
21 not constitute an expansion of an existing operation.

22 (5) "Operation" means all of the premises, facilities,
23 railroad loops, roads, power lines, and equipment used in
24 the process of producing and removing mineral from a
25 designated strip-mine or underground-mine area.

1 (6) "Operator" means a person who intends to operate a
2 new strip mine or new underground mine involving the removal
3 of more than 10,000 cubic yards of mineral or overburden.

4 (7) "Person" means a person, partnership, corporation,
5 association, or other legal entity or any political
6 subdivision or agency of the state.

7 (8) "Preparatory work" means all on-site disturbances,
8 excluding prospecting, associated with the initiation of a
9 new strip mine or underground mine, including but not
10 limited to the construction of railroad spurs or loops,
11 buildings to house mining operations, roads, storage and
12 train load-out facilities, transmission lines, erection of
13 draglines and loading shovels, and other associated
14 facilities.

15 (9) "Strip mining" means any part of the process
16 followed in the production of mineral by the opencut method,
17 including mining by the auger method or any similar method
18 which penetrates a mineral deposit and removes mineral
19 directly through a series of openings made by a machine
20 which enters the deposit from a surface excavation or any
21 other method or process in which the strata or overburden is
22 removed or displaced in order to recover the mineral.

23 (10) "Underground mining" means any part of the process
24 followed in the production of a mineral such that vertical
25 or horizontal shafts, slopes, drifts, or incline planes

1 connected with excavations penetrating the mineral stratum
2 or strata are utilized."

3 **Section 7.** Section 82-4-111, MCA, is amended to read:

4 "82-4-111. ~~Orders and rules~~ Rules of board ---hearings.

5 The board shall:

6 ~~{1}--issue, after an opportunity for a hearing, orders~~
7 ~~requiring an operator to adopt the remedial measures~~
8 ~~necessary to comply with this part and rules adopted under~~
9 ~~this part;~~

10 ~~{2}--issue, after an opportunity for a hearing, a final~~
11 ~~order directing the department to revoke a permit when the~~
12 ~~requirements set forth by the notice of noncompliance, order~~
13 ~~of suspension, or an order of the board requiring remedial~~
14 ~~measures have not been complied with according to the terms~~
15 ~~herein;~~

16 {3} adopt, after an opportunity for a hearing, general
17 rules pertaining to new strip mines and to new underground
18 mines and preparatory work to accomplish the purposes of
19 this part;

20 ~~{4}--conduct hearings under provisions of this part or~~
21 ~~rules adopted by the board."~~

22 **Section 8.** Section 82-4-112, MCA, is amended to read:

23 "82-4-112. Administration. The department shall:

24 (1) exercise general supervision, administration, and
25 enforcement of this part and all rules and orders adopted

1 under this part;

2 (2) order the suspension of any permit for failure to
3 comply with this part, any rule adopted under this part, or
4 permit issued pursuant to this part;

5 (3) order the halting of any operation that is started
6 without first having secured a permit as required by this
7 part;

8 (4) make investigations and inspections necessary to
9 insure compliance with this part;

10 (5) encourage and conduct investigations, research,
11 experiments, and demonstrations and collect and disseminate
12 information relating to new strip mines, new underground
13 mines, and reclamation of lands and waters affected by
14 preparatory work;

15 {6} issue, after an opportunity for a hearing, orders
16 requiring an operator to adopt the remedial measures
17 necessary to comply with this part and rules adopted under
18 this part;

19 {7} issue, after an opportunity for a hearing, a final
20 order revoking a permit when the requirements set forth by
21 the notice of noncompliance, order of suspension, or an
22 order of the board requiring remedial measures have not been
23 complied with according to the terms contained in this part;

24 {8} conduct hearings under the provisions of this part
25 or rules adopted by the board;

1 ~~(6)~~(9) adopt rules with respect to the filing of
2 reports, the issuance of permits, and other matters of
3 procedure and administration."

4 **Section 9.** Section 82-4-123, MCA, is amended to read:

5 "82-4-123. Permit fee and surety bond. A fee of \$50
6 shall be paid before the mine-site location permit required
7 in this part may be issued. The operator shall also file
8 with the department a bond payable to the state of Montana
9 with surety satisfactory to the department in the penal sum
10 to be determined by the board ~~on-the-recommendation-of-the~~
11 ~~commissioner~~ of not less than \$200 or more than \$10,000 for
12 each acre or fraction thereof of the area of land to be
13 disturbed by preparatory work, with a minimum bond of
14 \$5,000, conditioned upon the faithful performance of the
15 requirements set forth in this part and of the rules of the
16 board. In determining the amount of the bond within the
17 above limits, the board shall take into consideration the
18 character and nature of the surface and subsurface
19 disturbances, the future suitable use of the land involved,
20 and the cost of removing or burying facilities, subsidence
21 stabilization, water controls, backfilling, grading,
22 topsoiling, and reclamation to be required. Notwithstanding
23 the above limits, the bond may not be less than the total
24 estimated cost to the state of completing the work described
25 in the reclamation plan."

1 **Section 10.** Section 82-4-129, MCA, is amended to read:

2 "82-4-129. Noncompliance -- suspension of permits. (1)
3 If any of the requirements of this part or rules or orders
4 of the department ~~and-the-board~~ have not been complied with
5 within the time limits set by the department ~~or-the-board~~ or
6 by this part, the department shall serve a notice of
7 noncompliance on the operator or, where found necessary, the
8 ~~commissioner~~ department shall order the suspension of a
9 permit. The notice or order shall be handed to the operator
10 in person or served by certified ~~or--registered~~ mail
11 addressed to the permanent address shown on the application
12 for a permit. The notice of noncompliance or order of
13 suspension shall specify in what respects the operator has
14 failed to comply with this part or the rules or orders of
15 the department and the board. If the operator has not
16 complied with the requirement set forth in the notice of
17 noncompliance or order of suspension within time limits set
18 therein, the permit may be revoked by order of the board and
19 the performance bond forfeited to the department.

20 (2) Any additional strip-mining or underground-mining
21 or mine-site location permits held by an operator whose
22 mine-site location permit has been revoked shall be
23 suspended and the operator is not eligible to receive
24 another permit or to have the suspended permits reinstated
25 until he has complied with all the requirements of this part

1 in respect to former permits issued him. An operator who has
 2 forfeited a bond is not eligible to receive another permit
 3 unless the land for which the bond was forfeited has been
 4 reclaimed without cost to the state or the operator has paid
 5 into the reclamation account a sum together with the value
 6 of the bond the board finds adequate to reclaim the lands.
 7 The department may not issue any additional permits to an
 8 operator who has repeatedly been in noncompliance or
 9 violation of this part."

10 **Section 11.** Section 82-4-203, MCA, is amended to read:

11 **"82-4-203. Definitions.** Unless the context requires
 12 otherwise, in this part the following definitions apply:

13 (1) "Abandoned" means an operation where no mineral is
 14 being produced and where the department determines that the
 15 operation will not continue or resume.

16 (2) "Alluvial valley floor" means the unconsolidated
 17 stream-laid deposits holding streams where water
 18 availability is sufficient for subirrigation or flood
 19 irrigation agricultural activities; but the term does not
 20 include upland areas which are generally overlain by a thin
 21 veneer of colluvial deposits composed chiefly of debris from
 22 sheet erosion, deposits by unconcentrated runoff or slope
 23 wash, together with talus, other mass movement accumulation,
 24 and windblown deposits.

25 (3) "Aquifer" means any geologic formation or natural

1 zone beneath the earth's surface that contains or stores
 2 water and transmits it from one point to another in
 3 quantities which permit or have the potential to permit
 4 economic development as a water source.

5 (4) "Area of land affected" means the area of land from
 6 which overburden is to be or has been removed and upon which
 7 the overburden is to be or has been deposited and includes
 8 all land overlying any tunnels, shafts, or other excavations
 9 used to extract the mineral, lands affected by the
 10 construction of new railroad loops and roads or the
 11 improvement or use of existing railroad loops and roads to
 12 gain access and to haul the mineral, processing facilities
 13 at or near the mine site or other mine associated
 14 facilities, waste deposition areas, treatment ponds, and any
 15 other surface or subsurface disturbance associated with
 16 strip mining or underground mining, and all activities
 17 necessary and incident to the reclamation of such
 18 operations.

19 (5) "Bench" means the ledge, shelf, table, or terrace
 20 formed in the contour method of strip mining.

21 (6) "Board" means the board of ~~land--commissioners~~
 22 natural-resources-and-environment HEALTH AND ENVIRONMENTAL
 23 SCIENCES provided for in ~~Article--X7--section--47--of-the~~
 24 ~~constitution-of-this-state~~ Title--27--chapter--15,--part--33
 25 2-15-2104.

1 (7) "Coal conservation plan" means the planned course
2 of conduct of a strip- or underground-mining operation to
3 include plans for the removal and utilization of minable and
4 marketable coal located within the area planned to be mined.

5 (8) "Coal preparation" means the chemical or physical
6 processing of coal and its cleaning, concentrating, or other
7 processing or preparation. The term does not mean the
8 conversion of coal to another energy form or to a gaseous or
9 liquid hydrocarbon, except for incidental amounts that do
10 not leave the plant, nor does the term mean processing for
11 other than commercial purposes.

12 (9) "Coal preparation plant" means a commercial
13 facility where coal is subject to coal preparation. The term
14 includes commercial facilities associated with coal
15 preparation activities but is not limited to loading
16 buildings, water treatment facilities, water storage
17 facilities, settling basins and impoundments, and coal
18 processing and other waste disposal areas.

19 ~~{10}-"Commissioner"--means--the--commissioner--of--state~~
20 ~~lands-provided-for-in-2-15-3202-~~

21 ~~{11}{10}~~ "Contour strip mining" means that strip-mining
22 method commonly carried out in areas of rough and hilly
23 topography in which the coal or mineral seam outcrops along
24 the side of the slope and entrance is made to the seam by
25 excavating a bench or table cut at and along the site of the

1 seam outcropping with the excavated overburden commonly
2 being cast down the slope below the mineral seam and the
3 operating bench.

4 ~~{12}{11}~~ "Degree" means from the horizontal and in each
5 case is subject to a tolerance of 5% error.

6 ~~{13}{12}~~ "Department" means the department of ~~state~~
7 ~~lands natural-resources--and--environment~~ HEALTH AND
8 ENVIRONMENTAL SCIENCES provided for in Title 2, chapter 15,
9 part ~~32 33 21~~.

10 ~~{13}~~ "Director" means the director of the department.

11 (14) "Failure to conserve coal" means the nonremoval or
12 nonutilization of minable and marketable coal by an
13 operation, provided that the nonremoval or nonutilization of
14 minable and marketable coal in accordance with reclamation
15 standards established by the department shall not be
16 considered failure to conserve coal.

17 (15) "Fill bench" means that portion of a bench or table
18 which is formed by depositing overburden beyond or downslope
19 from the cut section as formed in the contour method of
20 strip mining.

21 (16) "Imminent danger to the health and safety of the
22 public" means the existence of any condition or practice or
23 any violation of a permit or other requirement of this part
24 in a strip- or underground-coal-mining and reclamation
25 operation that could reasonably be expected to cause

1 substantial physical harm to persons outside the permit area
 2 before such condition, practice, or violation can be abated.
 3 A reasonable expectation of death or serious injury before
 4 abatement exists if a rational person, subjected to the same
 5 conditions or practices giving rise to the peril, would not
 6 expose himself or herself to the danger during the time
 7 necessary for abatement.

8 (17) "Marketable coal" means a minable coal that is
 9 economically feasible to mine and is fit for sale in the
 10 usual course of trade.

11 (18) "Method of operation" means the method or manner by
 12 which the cut, open pit, shaft, or excavation is made, the
 13 overburden is placed or handled, water is controlled, and
 14 other acts are performed by the operator in the process of
 15 uncovering and removing the minerals that affect the
 16 reclamation of the area of land affected.

17 (19) "Minaable coal" means that coal which can be removed
 18 through strip- or underground-mining methods adaptable to
 19 the location that coal is being mined or is planned to be
 20 mined.

21 (20) "Mineral" means coal and uranium.

22 (21) "Operation" means all of the premises, facilities,
 23 railroad loops, roads, and equipment used in the process of
 24 producing and removing mineral from and reclaiming a
 25 designated strip-mine or underground-mine area, including

1 coal preparation plants, and all activities, including
 2 excavation incident thereto, or prospecting for the purpose
 3 of determining the location, quality, or quantity of a
 4 natural mineral deposit.

5 (22) "Operator" means a person engaged in strip mining
 6 or underground mining who removes or intends to remove more
 7 than 10,000 cubic yards of mineral or overburden or a person
 8 engaged in coal mining who removes or intends to remove more
 9 than 250 tons of coal from the earth by mining within 12
 10 consecutive calendar months in any one location or a person
 11 engaged in operating a coal preparation plant.

12 (23) "Overburden" means all of the earth and other
 13 materials which lie above a natural mineral deposit and also
 14 means such earth and other material after removal from their
 15 natural state in the process of mining.

16 (24) "Person" means a person, partnership, corporation,
 17 association, or other legal entity or any political
 18 subdivision or agency of the state or federal government.

19 (25) "Prime farmland" means that land previously
 20 prescribed by the United States secretary of agriculture on
 21 the basis of such factors as moisture availability,
 22 temperature regime, chemical balance, permeability,
 23 surface-layer composition, susceptibility to flooding, and
 24 erosion characteristics and which historically has been used
 25 for intensive agricultural purposes and as defined in the

1 Federal Register.

2 (26) "Prospecting" means the removal of overburden, core
3 drilling, construction of roads, or any other disturbance of
4 the surface for the purpose of determining the location,
5 quantity, or quality of a natural mineral deposit.

6 (27) "Reclamation" means backfilling, subsidence
7 stabilization, water control, grading, highwall reduction,
8 topsoiling, planting, revegetation, and other work to
9 restore an area of land affected by strip mining or
10 underground mining under a plan approved by the department.

11 (28) "Remining" means conducting surface coal mining and
12 reclamation operations that affect previously mined areas
13 (for example, the recovery of additional mineral from
14 existing gob or tailings piles).

15 (29) "Strip mining" means any part of the process
16 followed in the production of mineral by the opencut method,
17 including mining by the auger method or any similar method
18 which penetrates a mineral deposit and removes mineral
19 directly through a series of openings made by a machine
20 which enters the deposit from a surface excavation or any
21 other mining method or process in which the strata or
22 overburden is removed or displaced in order to recover the
23 mineral. For the purposes of this part only, strip mining
24 also includes remining and coal preparation. The terms
25 "remining" and "coal preparation" are not included in the

1 definition of "strip mining" for purposes of Title 15,
2 chapter 35, part 1.

3 (30) "Subsidence" means a vertically downward movement
4 of overburden materials resulting from the actual mining of
5 an underlying mineral deposit or associated underground
6 excavations.

7 (31) "Surface owner" means a person who holds legal or
8 equitable title to the land surface and whose principal
9 place of residence is on the land or who personally conducts
10 farming or ranching operations upon a farm or ranch unit to
11 be directly affected by strip-mining operations or who
12 receives directly a significant portion of his income, if
13 any, from such farming or ranching operations or the state
14 of Montana where the state owns the surface.

15 (32) "Topsoil" means the unconsolidated mineral matter
16 naturally present on the surface of the earth that has been
17 subjected to and influenced by genetic and environmental
18 factors of parent material, climate, macro- and
19 microorganisms, and topography, all acting over a period of
20 time, and that is necessary for the growth and regeneration
21 of vegetation on the surface of the earth.

22 (33) "Underground mining" means any part of the process
23 followed in the production of a mineral such that vertical
24 or horizontal shafts, slopes, drifts, or incline planes
25 connected with excavations penetrating the mineral stratum

1 or strata are utilized and includes mining by in situ
2 methods.

3 (34) "Unwarranted failure to comply" means the failure
4 of a permittee to prevent the occurrence of any violation of
5 his permit or any requirement of this part due to
6 indifference, lack of diligence, or lack of reasonable care,
7 or the failure to abate any violation of such permit or this
8 part due to indifference, lack of diligence, or lack of
9 reasonable care.

10 (35) "Waiver" means any document which demonstrates the
11 clear intention to release rights in the surface estate for
12 the purpose of permitting the extraction of subsurface
13 minerals by strip-mining methods.

14 (36) "Written consent" means such written statement as
15 is executed by the owner of the surface estate, upon a form
16 approved by the department, demonstrating that such owner
17 consents to entry of an operator for the purpose of
18 conducting strip-mining operations and that such consent is
19 given only to such strip-mining and reclamation operations
20 which fully comply with the terms and requirements of this
21 part."

22 **Section 12.** Section 82-4-204, MCA, is amended to read:

23 "82-4-204. Board orders, rules, and hearings. The board
24 shall:

25 ~~{1}--issue-orders-requiring-an--operator--to--adopt--the~~

1 ~~remedial--measures--necessary--to--comply-with-this-part-and~~
2 ~~rules-adopted-under-this-part;~~

3 ~~{2}--issue, after an opportunity for a hearing, a final~~
4 ~~order--directing--the-department-to-revoke-a-permit-when-the~~
5 ~~requirements-set-forth-by-the-notice-of-noncompliance, order~~
6 ~~of-suspension, or an order of the board--requiring--remedial~~
7 ~~measures--have-not-been-complied-with-according-to-the-terms~~
8 ~~herein;~~

9 {3} adopt, after an opportunity for a hearing, general
10 rules pertaining to strip mining and to underground mining
11 to accomplish the purposes of this part;

12 ~~{4}--conduct-hearings-under-provisions-of-this--part--or~~
13 ~~rules-adopted-by-the-board."~~

14 **Section 13.** Section 82-4-205, MCA, is amended to read:

15 "82-4-205. Administration by department of state lands
16 natural resources and environment HEALTH AND ENVIRONMENTAL
17 SCIENCES. The department:

18 (1) shall exercise general supervision, administration,
19 and enforcement of this part and all rules and orders
20 adopted under this part;

21 (2) shall examine and pass upon all plans and
22 specifications submitted by the operator for the method of
23 operation, subsidence stabilization, water control,
24 backfilling, grading, highwall reduction, topsoiling, and
25 for the reclamation of the area of land affected by his

1 operation;

2 (3) shall order the suspension of any permit for
3 failure to comply with this part or any rule adopted under
4 this part;

5 (4) shall order the halting of any operation that is
6 started without first having secured a permit as required by
7 this part or order the cessation of operations not in
8 compliance with this part in accordance with 82-4-251;

9 (5) shall make investigations and inspections necessary
10 to insure compliance with this part;

11 (6) may encourage and conduct investigations, research,
12 experiments, and demonstrations and collect and disseminate
13 information relating to strip mining and to underground
14 mining and reclamation of lands and waters affected by strip
15 mining and underground mining;

16 (7) may adopt rules with respect to the filing of
17 reports, the issuance of permits, monitoring, and other
18 matters of procedure and administration;

19 (8) shall issue orders requiring an operator to adopt
20 the remedial measures necessary to comply with this part and
21 rules adopted under this part;

22 (9) shall issue, after an opportunity for a hearing, a
23 final order revoking a permit when the requirements set
24 forth by the notice of noncompliance, order of suspension,
25 or an order of the board requiring remedial measures have

1 not been complied with according to the terms contained in
2 this part;

3 ~~(8)~~(10) may shall conduct hearings under the provisions
4 of this part or rules adopted by the board."

5 **Section 14.** Section 82-4-223, MCA, is amended to read:

6 **"82-4-223. Permit fee and surety bond.** (1) An
7 application fee of \$100 shall be paid before the permit
8 required in this part shall be issued.

9 (2) Before a permit may be issued, the operator shall
10 file with the department a bond payable to the state of
11 Montana with surety satisfactory to the department in the
12 penal sum to be determined by the board~~---on---the~~
13 ~~recommendation--of--the--commissioner,~~ of not less than \$200
14 for each acre or fraction thereof of the area of land
15 affected, with a minimum bond of \$10,000, conditioned upon
16 the faithful performance of the requirements set forth in
17 this part and of the rules of the board. The operator may
18 elect to deposit cash, negotiable bonds, or negotiable
19 certificates of deposit of any bank organized or transacting
20 business in the United States. The cash deposit or market
21 value of such securities shall be equal to or greater than
22 the amount of the bond required for the bonded area. The
23 level of bonding shall be relative to the degree of
24 disturbance projected by the original permit and the annual
25 report. A political subdivision or agency of the state need

1 not file a bond unless required to do so by the board. The
2 board shall adjust the amount of bond required if the cost
3 of reclamation changes.

4 (3) In determining the amount of the bond, the board
5 shall take into consideration the character and nature of
6 the overburden, the future suitable use of the land
7 involved, and the cost of backfilling, grading, highwall
8 reduction, subsidence stabilization, water control,
9 topsoiling, and reclamation to be required, but in no event
10 shall the bond be less than the total estimated cost to the
11 state of completing the work described in the reclamation
12 plan."

13 **Section 15.** Section 82-4-227, MCA, is amended to read:

14 ***82-4-227. Refusal of permit.** (1) An application for a
15 prospecting, strip-mining, or underground-mining permit or
16 major revision shall not be approved by the department
17 unless, on the basis of the information set forth in the
18 application, an on-site inspection, and an evaluation of the
19 operation by the department, the applicant has affirmatively
20 demonstrated that the requirements of this part and rules
21 will be observed and that the proposed method of operation,
22 backfilling, grading, subsidence stabilization, water
23 control, highwall reduction, topsoiling, revegetation, or
24 reclamation of the affected area can be carried out
25 consistently with the purpose of this part. The applicant

1 for a permit or major revision has the burden of
2 establishing that his application is in compliance with this
3 part and the rules adopted under it.

4 (2) The department shall not approve the application
5 for a prospecting, strip-mining, or underground-mining
6 permit where the area of land described in the application
7 includes land having special, exceptional, critical, or
8 unique characteristics or that mining or prospecting on that
9 area would adversely affect the use, enjoyment, or
10 fundamental character of neighboring land having special,
11 exceptional, critical, or unique characteristics. For the
12 purposes of this part, land is defined as having such
13 characteristics if it possesses special, exceptional,
14 critical, or unique:

15 (a) biological productivity, the loss of which would
16 jeopardize certain species of wildlife or domestic stock;

17 (b) ecological fragility, in the sense that the land,
18 once adversely affected, could not return to its former
19 ecological role in the reasonable foreseeable future;

20 (c) ecological importance, in the sense that the
21 particular land has such a strong influence on the total
22 ecosystem of which it is a part that even temporary effects
23 felt by it could precipitate a system-wide reaction of
24 unpredictable scope or dimensions; or

25 (d) scenic, historic, archaeologic, topographic,

1 geologic, ethnologic, scientific, cultural, or recreational
2 significance. (In applying this subsection, particular
3 attention should be paid to the inadequate preservation
4 previously accorded Plains Indian history and culture.)

5 (3) The department may not approve an application for a
6 strip- or underground-coal-mining permit or major revision
7 unless the application affirmatively demonstrates that:

8 (a) the assessment of the probable cumulative impact of
9 all anticipated mining in the area on the hydrologic balance
10 has been made by the department and the proposed operation
11 thereof has been designed to prevent material damage to the
12 hydrologic balance outside the permit area; and

13 (b) the proposed strip- or underground-coal-mining
14 operation would not:

15 (i) interrupt, discontinue, or preclude farming on
16 alluvial valley floors that are irrigated or naturally
17 subirrigated, excluding undeveloped rangelands that are not
18 significant to farming on alluvial valley floors and those
19 lands as to which the regulatory-authority department finds
20 that if the farming that will be interrupted, discontinued,
21 or precluded is of such small acreage as to be of negligible
22 impact on the farm's agricultural production; or

23 (ii) materially damage the quantity or quality of water
24 in surface water or underground water systems that supply
25 these valley floors in subsection (3)(b)(i).

1 (4) Subsection (3)(b) does not affect those strip- or
2 underground-coal-mining operations that in the year
3 preceding the enactment of Public Law 95-87 produced coal in
4 commercial quantities and were located within or adjacent to
5 alluvial valley floors or had obtained specific permit
6 approval by the department to conduct strip- or
7 underground-coal-mining operations within alluvial valley
8 floors. If coal deposits are precluded from being mined
9 under this subsection, the commissioner director shall
10 certify to the secretary of interior that the mineral owner
11 or lessee may be eligible for participation in coal exchange
12 programs pursuant to section 510(5) of Public Law 95-87.

13 (5) If the area proposed to be mined contains prime
14 farmland, the department may not grant a permit to mine coal
15 on the prime farmland unless it finds in writing that the
16 applicant has the technological capability to restore the
17 mined area, within a reasonable time, to equivalent or
18 higher levels of yield as nonmined prime farmland in the
19 surrounding area under equivalent levels of management and
20 can meet the soil reconstruction standards of 82-4-232(3).
21 Nothing in this subsection applies to any permit issued
22 prior to August 3, 1977, or to any revisions or renewals
23 thereof, or to any existing strip- or underground-mining
24 operations for which a permit was issued prior to August 3,
25 1977.

1 (6) If the department finds that the overburden on any
 2 part of the area of land described in the application for a
 3 prospecting, strip-mining, or underground-mining permit is
 4 such that experience in the state with a similar type of
 5 operation upon land with similar overburden shows that
 6 substantial deposition of sediment in streambeds,
 7 subsidence, landslides, or water pollution cannot feasibly
 8 be prevented, the department shall delete that part of the
 9 land described in the application upon which the overburden
 10 exists. The burden is on the applicant to demonstrate that
 11 any area should not be deleted under this subsection.

12 (7) If the department finds that the operation will
 13 constitute a hazard to a dwelling house, public building,
 14 school, church, cemetery, commercial or institutional
 15 building, public road, stream, lake, or other public
 16 property, the department shall delete those areas from the
 17 prospecting, strip-mining, or underground-mining permit
 18 application before it can be approved. In no case may
 19 strip- or underground-coal-mining be allowed within 300 feet
 20 of any occupied dwelling, unless waived by the owner, nor
 21 within 300 feet of any public building, school, church,
 22 community, or institutional building, or public park; nor
 23 within 100 feet of a cemetery; nor within 100 feet of the
 24 outside right-of-way line of any public road, except where
 25 mine access roads or haulage roads join such right-of-way

1 line. The department may permit such roads to be relocated
 2 or the area affected to lie within 100 feet of the road if,
 3 after public notice and opportunity for public hearing in
 4 the locality, a written finding is made that the interests
 5 of the public and the landowners affected will be protected.

6 (8) No strip- or underground-mining may be conducted
 7 within 500 feet of active or abandoned underground mines in
 8 order to prevent breakthroughs and to protect health or
 9 safety of miners. The department shall permit an operator to
 10 mine near, through, or partially through an abandoned
 11 underground mine or closer to an active underground mine if:

12 (a) the nature, timing, and sequencing of specific
 13 strip-mine activities and specific underground-mine
 14 activities are jointly approved by the department and the
 15 regulatory authority concerned with the health and safety of
 16 underground miners; and

17 (b) such operations will result in improved resource
 18 recovery, abatement of water pollution, or elimination of
 19 hazards to the health and safety of the public.

20 (9) The department may not approve an application for a
 21 strip- or underground-coal-mining operation if the area
 22 proposed to be mined is included within an area designated
 23 unsuitable for strip or underground coal mining or within an
 24 area under review for this designation under an
 25 administrative proceeding, unless in such an area as to

1 which an administrative proceeding has commenced pursuant to
 2 this part, the operator making the permit application
 3 demonstrates that prior to January 1, 1977, he made
 4 substantial legal and financial commitments in relation to
 5 the operation for which he is applying for a permit.

6 (10) No permit or major permit revision for a strip- or
 7 underground-coal-mining operation may be issued unless the
 8 applicant has affirmatively demonstrated by its coal
 9 conservation plan that no failure to conserve coal will
 10 occur. The department may require the applicant to submit
 11 any information it considers necessary for review of the
 12 coal conservation plan.

13 (11) Whenever information available to the department
 14 indicates that any strip- or underground-coal-mining
 15 operation owned or controlled by the applicant is currently
 16 in violation of Public Law 95-87, as amended, or any state
 17 law required by Public Law 95-87, as amended, or any law,
 18 rule, or regulation of the United States or of any
 19 department or agency in the United States pertaining to air
 20 or water environmental protection, the department shall not
 21 issue a strip- or underground-coal-mining permit or major
 22 revision until the applicant submits proof that the
 23 violation has been corrected or is in the process of being
 24 corrected to the satisfaction of the administering agency.

25 (12) The department may not issue a strip- or

1 underground-coal-mining permit or major revision to any
 2 applicant which it finds, after an opportunity for hearing,
 3 owns or controls any strip- or underground-coal-mining
 4 operation which has demonstrated a pattern of willful
 5 violations of Public Law 95-87, as amended, or any state law
 6 required by Public Law 95-87, as amended, of such a nature
 7 and duration and with such resulting irreparable damage to
 8 the environment to indicate an intent not to comply with the
 9 provisions of this part.

10 (13) Subject to valid existing rights, no strip- or
 11 underground-coal-mining operations except those which
 12 existed as of August 3, 1977, may be conducted on private
 13 lands within the boundaries of units of the national park
 14 system, the national wildlife refuge systems, the national
 15 wilderness preservation system, the wild and scenic rivers
 16 system, including study rivers designated under section 5(a)
 17 of the Wild and Scenic Rivers Act, or national recreation
 18 areas designated by act of congress."

19 **Section 16.** Section 82-4-321, MCA, is amended to read:
 20 "82-4-321. Administration Board rulemaking. The board
 21 is charged with the responsibility of administering this
 22 part. In order to To implement its the terms and provisions
 23 of this part, the board shall from time to time promulgate
 24 such rules as the board shall deem considers necessary. The
 25 board may delegate such powers, duties, and functions to the

~~department-as-it-deems-necessary-for-the-performance-of--its
duties-as-administrator-of-this-part--The-board-shall-employ
experienced--qualified--persons--in-the-field-of-mined-land
reclamation-who--for-the-purpose-of-this-part--are--referred
to-as-supervisors--"~~

Section 17. Section 82-4-337, MCA, is amended to read:

**"82-4-337. Inspection -- issuance of operating permit
-- modification.** (1) (a) The board shall cause all
applications for operating permits to be reviewed for
completeness within 30 days of receipt. The board shall
notify the applicant concerning completeness as soon as
possible. An application is considered complete unless the
applicant is notified of any deficiencies within 30 days of
receipt.

(b) Unless the review period is extended as provided in
this section, the board shall review the adequacy of the
proposed reclamation plan and plan of operation within 30
days of the determination that the application is complete
or within 60 days of receipt of the application if the board
does not notify the applicant of any deficiencies in the
application. If the applicant is not notified of
deficiencies or inadequacies in the proposed reclamation
plan and plan of operation within such time period, the
operating permit shall be issued upon receipt of the bond as
required in 82-4-338. The department shall promptly notify

the applicant of the form and amount of bond which will be
required. No permit may be issued until sufficient bond has
been submitted pursuant to 82-4-338.

(c) (i) Prior to issuance of a permit, the department
shall inspect the site unless the department has failed to
act on the application within the time prescribed in
subsection (1)(b). If the site is not accessible due to
extended adverse weather conditions, the department may
extend the time period prescribed in subsection (1)(b) by
not more than 180 days to allow inspection of the site and
reasonable review. The department must serve written notice
of extension upon the applicant in person or by certified
mail, and any such extension is subject to appeal to the
board in accordance with the Montana Administrative
Procedure Act.

(ii) If the department determines that additional time
is needed to review the application and reclamation plan for
a major operation, the department and the applicant shall
negotiate to extend the period prescribed in subsection
(1)(b) by not more than 365 days in order to permit
reasonable review.

(iii) Failure of the board to act upon a complete
application within the extension period constitutes approval
of the application, and the permit shall be issued promptly
upon receipt of the bond as required in 82-4-338.

1 (2) The operating permit shall be granted for the
2 period required to complete the operation and shall be valid
3 until the operation authorized by the permit is completed or
4 abandoned unless the permit is suspended or revoked by the
5 board as provided in this part.

6 (3) The operating permit shall provide that the
7 reclamation plan may be modified by the board department,
8 upon its own motion or upon proper application of the
9 permittee ~~or department~~, after timely notice and opportunity
10 for hearing, at any time during the term of the permit and
11 for any of the following reasons:

12 (a) to modify the requirements so they will not
13 conflict with existing laws;

14 (b) when the previously adopted reclamation plan is
15 impossible or impracticable to implement and maintain;

16 (c) when significant environmental problem situations
17 are revealed by field inspection."

18 **Section 18.** Section 82-4-362, MCA, is amended to read:

19 ***82-4-362. Suspension of permits -- hearing.** (1) If any
20 of the requirements of this part, the rules adopted under
21 this part, or the reclamation plan have not been complied
22 with within the time limits set by the department ~~or--board~~
23 or by this part, the department shall serve a notice of
24 noncompliance on the licensee or permittee or, if necessary,
25 the commissioner shall order the suspension of the permit.

1 The notice or order must be handed to the licensee or
2 permittee in person or served by certified ~~or--registered~~
3 mail addressed to the permanent address shown on the
4 application for a permit. The notice of noncompliance must
5 specify in what respects the operator has failed to comply
6 with this part, the rules adopted under this part, or the
7 reclamation plan.

8 (2) If the licensee or permittee has not complied with
9 the requirements set forth in the notice of noncompliance or
10 order of suspension within the time limits set therein, the
11 permit may be revoked by order of the board and the
12 performance bond forfeited to the department. The licensee
13 or permittee is entitled to a hearing before the department
14 on the revocation of a permit or license or the forfeiture
15 of a performance bond if a hearing is requested within 30
16 days after service of notice as provided in subsection (1).
17 The notice must state when those measures may be undertaken
18 and must give notice of opportunity for a hearing. If a
19 hearing is requested within the 30-day period, the permit or
20 license may not be revoked and the bond may not be forfeited
21 until a final decision is made by the department.

22 (3) If a permittee fails to pay the fee or file the
23 report required under 82-4-339, the department shall serve
24 notice of this failure, by certified mail or personal
25 delivery, on the permittee. If the permittee does not comply

1 within 30 days of receipt of the notice, the commissioner
2 shall suspend the permit. The commissioner shall reinstate
3 the permit upon compliance."

4 **Section 19.** Section 82-4-421, MCA, is amended to read:

5 "82-4-421. Administration ~~----delegation-of-functions.~~
6 The board ~~is~~ and the department are the administrator
7 ~~administrators~~ of this part, and ~~it-has~~ they have all the
8 power necessary to implement and enforce it. ~~The--board--may~~
9 ~~delegate--to--the--commissioner--of--state--lands--such--powers,~~
10 ~~duties,--and--functions--under--this--part--as--it--considers~~
11 ~~necessary--for--the--performance--of--its--duties,--"~~

12 **Section 20.** Section 82-4-422, MCA, is amended to read:

13 "82-4-422. Powers, duties, and functions of board Board
14 to prepare and adopt rules. The board ~~has-the-following~~
15 ~~powers, duties, and functions to: shall~~

16 ~~{1}--enter-into-contracts-where-it-is-found-on-the-basis~~
17 ~~of-the-information-set--forth--in--the--application--and--an~~
18 ~~evaluation---of---the---operation--by--the--board--that--the~~
19 ~~requirements-of-the-part-or-rules-will-be-observed-and--that~~
20 ~~the--operation--and-the-reclamation-of-the-affected-area-can~~
21 ~~be-carried-out-consistently-with-the-purpose-of-the-part;~~

22 {2} prepare and adopt rules pertaining to opencut
23 mining to accomplish the purposes of this part;

24 {3} ~~conduct--hearings--and,---for---the---purposes---of~~
25 ~~conducting-such-hearings;--administer-oaths-and-affirmations;~~

1 subpoena ~~--witnesses,--compel--attendance--of--witnesses,--hear~~
2 ~~evidence,--and-require-the-production-of-any--books,--papers,~~
3 ~~correspondence,--memoranda,--agreements,--documents,--or--other~~
4 ~~records-relevant-or-material-to-the-inquiry;~~

5 {4} ~~adopt--uniform--procedures--for---the---filing---of~~
6 ~~necessary--records,--the--issuance-of-contracts,--and-for-any~~
7 ~~other-matters-of-administration-not-specifically--enumerated~~
8 ~~in-this-part;~~

9 {5} ~~reclaim--any--affected-land-with-respect-to-which-a~~
10 ~~bond-has-been-forfeited,--and~~

11 {6} ~~make--investigations--or--inspections---which---are~~
12 ~~considered-necessary-to-insure-compliance-with-any-provision~~
13 ~~of-this-part."~~

14 **Section 21.** Section 82-4-425, MCA, is amended to read:

15 "82-4-425. Inspection of opencut mining by board. The
16 board or its accredited representatives may enter upon lands
17 subjected to opencut mining at all reasonable times for the
18 purpose of inspection to determine whether the provisions of
19 this part have been complied with."

20 **Section 22.** Section 82-4-427, MCA, is amended to read:

21 "82-4-427. Board Department hearing. (1) A person who
22 is aggrieved by a final decision of the ~~commissioner--of~~
23 ~~state-lands~~ department on an application for a contract or a
24 contract amendment is entitled to a hearing ~~before-the-board~~
25 on that decision.

1 (2) The Montana Administrative Procedure Act governs
 2 hearings before the board department and judicial review of
 3 decisions of the board department under this part."

4 NEW SECTION. Section 23. Duties of department. The
 5 department shall:

6 (1) enter into contracts where it is found on the basis
 7 of the information set forth in the application and an
 8 evaluation of the operation by the board that the
 9 requirements of this part or rules adopted under this part
 10 will be observed and that the operation and the reclamation
 11 of the affected area can be carried out consistently with
 12 the purpose of this part;

13 (2) conduct hearings and, for the purposes of
 14 conducting the hearings, administer oaths and affirmations,
 15 subpoena witnesses, compel attendance of witnesses, hear
 16 evidence, and require the production of any books, papers,
 17 correspondence, memoranda, agreements, documents, or other
 18 records relevant or material to the inquiry;

19 (3) adopt uniform procedures for the filing of
 20 necessary records, the issuance of contracts, and any other
 21 matters of administration not specifically enumerated in
 22 this part;

23 (4) reclaim affected land with respect to which a bond
 24 has been forfeited; and

25 (5) conduct investigations or inspections that are

1 considered necessary to ensure compliance with a provision
 2 of this part.

3 ~~Section 56. Section 85-1-102, MCA, is amended to read:~~

4 ~~"85-1-102. Definitions. Unless the context requires~~
 5 ~~otherwise, in this chapter the following definitions apply:~~

6 ~~(1) "Administrative costs" means costs incurred by the~~
 7 ~~department;~~

8 ~~(a) for the purpose of protecting the department's~~
 9 ~~properties and assets;~~

10 ~~(b) to oversee the operation and maintenance of the~~
 11 ~~projects;~~

12 ~~(c) to administer contracts and receivables;~~

13 ~~(d) to maintain project financial records;~~

14 ~~(e) to provide technical assistance for operating,~~
 15 ~~maintaining, and rehabilitating the projects; and~~

16 ~~(f) to assist in securing funds for operating,~~
 17 ~~maintaining, and rehabilitating the projects;~~

18 ~~(2) "Board" means the board of natural resources and~~
 19 ~~conservation land commissioners provided for in 2-15-3382~~
 20 ~~Article X, section 4, of the Montana constitution;~~

21 ~~(3) "Cost of operation and maintenance" means the costs~~
 22 ~~of operation, maintenance, and routine repairs and the costs~~
 23 ~~incurred by the water users' association or the department~~
 24 ~~in the distribution of water from the project, excluding the~~
 25 ~~department's administrative costs.~~

(4) "Cost of works" means the cost of construction, including any rehabilitation or alteration of the project, the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for the construction, the cost of all water rights acquired or exercised by the department in connection with those works, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense, and other expenses as may be necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

(5) "Department" means the department of natural resources and conservation state lands provided for in Title 2, chapter 15, part 33 32.

(6) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(7) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605 but does not include a governmental entity such as an agency, local government, or political subdivision of the state, the United States, or any agency thereof, or any other governmental entity.

(8) "Project" means any one of the works defined in this section or any combination of works which are physically connected or jointly managed and operated as a single unit.

(9) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(10) "Water development account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to finance loans under the provisions of the water development program to agencies, local governments, and political subdivisions of the state.

1 private--persons7--and--any--other--eligible--recipients--and--to
2 purchase--liens--and--operate--property7--as---provided---in
3 85-1-6157--from--proceeds--of--bonds--issued--under--part--6--of--this
4 chapter7

5 {11}--"Water--development--activity"--means--an--action--or
6 program--to--protect--and--enhance--water--based--recreation--or--to
7 protect--or--enhance--water--resources--for--the--benefit--of
8 agriculture7--flood--control7--or--other--uses7--including--but--not
9 limited--to--the--promotion--of--efficient--use--of--water--in
10 agriculture7--the--improvement--of--water--quality--in--agriculture
11 and---other---nonpoint---source---uses7--the--protection--and
12 enhancement--of--water--based--recreation7--the--control---of
13 erosion--of--streambanks--and--control--of--sedimentation--of
14 rivers--and--streams7--and--providing--greater--local--and--state
15 control---of--Montana--water--resources7--Water--development
16 activities--may--provide--any--combination--of--marketable--and
17 nonmarketable--benefits7

18 {12}--"Water--development--state--special--revenue--account"
19 means--a--separate--account--created--by--85-1-604--within--the
20 state--special--revenue--fund--of--the--state--treasury--for--the
21 purposes--of--the--water--development--program--as--set--forth--in
22 85-1-6047

23 {13}--"Water--development--project"--means--a--project--as
24 defined--in--subsection--(8)7--except--that--water--development
25 projects--are--not--limited--to--projects--owned--or--operated--by

1 the--department7

2 {14}--"Water--development--debt--service--fund"--means--a
3 separate--fund--created--by--85-1-603--within--the--debt--service
4 fund--type--of--the--state--treasury--to--be--used--as--provided--in
5 85-1-6197

6 {15}--"Works"--means--all--property--and--rights7--easements7
7 and--franchises--relating--to--property--and--considered--necessary
8 or--convenient--for--the--operation--of--the--works--and--all--water
9 rights--acquired--or--exercised--by--the--department--in--connection
10 with--those--works--and--includes--all--means--of--conserving--and
11 distributing---water7---including7---without---limiting---the
12 generality--of--the--foregoing7--reservoirs7--dams7--diversion
13 canals7--distributing--canals7--waste--canals7--drainage--canals7
14 dikes7--lateral--ditches--and--pumping--units7--mains7--pipelines7
15 and--waterworks--systems--and--includes--all--works--for--the
16 conservation7--development7--storage7--distribution7--and
17 utilization---of---water7--including--without--limiting--the
18 generality--of--the--foregoing7--works--for--the--purpose--of
19 irrigation7--flood--prevention7--drainage7--fish--and--wildlife7
20 recreation7--development--of--power7--watering---of---stock7
21 supplying--of--water--for--public7--domestic7--industrial7--or
22 other--uses--and--for--fire--protection7"

23 Section--577--Section--85-1-2037--MCA7--is--amended--to--read:
24 "85-1-2037--State--water--plan7--(1)---The--department--of
25 natural--resources--and--environment--shall--gather--from--any

1 source-reliable--information--relating--to--Montana's--water
 2 resources--and--prepare--from--the--information--a--continuing
 3 comprehensive--inventory--of--the--water--resources--of--the--state.
 4 In--preparing--this--inventory,--the--department--may--conduct
 5 studies;--adopt--studies--made--by--other--competent--water
 6 resource--groups;--including--federal;--regional;--state;--or
 7 private--agencies;--perform--research--or--employ--other--competent
 8 agencies--to--perform--research--on--a--contract--basis;--and--hold
 9 public--hearings--in--affected--areas--at--which--all--interested
 10 parties--must--be--given--an--opportunity--to--appear.

11 (2)--The department of natural resources and environment
 12 shall--formulate--and,--with--the--approval--of--the--board--of
 13 natural resources and environment,--adopt--and--amend;--extend;
 14 or--add--to--a--comprehensive,--coordinated--multiple--use--water
 15 resources--plan--known--as--the--"state--water--plan";--The--state
 16 water--plan--may--be--formulated--and--adopted--in--sections;--these
 17 sections--corresponding--with--hydrologic--divisions--of--the
 18 state.--The--state--water--plan--must--set--out--a--progressive
 19 program--for--the--conservation,--development,--and--utilization
 20 of--the--state's--water--resources--and--propose--the--most
 21 effective--means--by--which--these--water--resources--may--be
 22 applied--for--the--benefit--of--the--people;--with--due
 23 consideration--of--alternative--uses--and--combinations--of--uses.
 24 Before--adopting--the--state--water--plan--or--any--section--of--the
 25 plan,--the--department--shall--hold--public--hearings--in--the--state

1 or--in--an--area--of--the--state--encompassed--by--a--section--of--the
 2 plan--if--adoption--of--a--section--is--proposed.--Notice--of--the
 3 hearing--or--hearings--must--be--published--for--2--consecutive
 4 weeks--in--a--newspaper--of--general--county--circulation--in--each
 5 county--encompassed--by--the--proposed--plan--or--section--of--the
 6 plan--at--least--30--days--prior--to--the--hearing.

7 (3)--The department of natural resources and environment
 8 shall--submit--to--the--water--policy--committee--established--in
 9 85-2-105--and--to--the--legislature--at--the--beginning--of--each
 10 regular--session--the--state--water--plan--or--any--section--of--the
 11 plan--or--amendments,--additions,--or--revisions--to--the--plan--that
 12 the--department--has--formulated--and--adopted.

13 (4)--The--legislature,--by--joint--resolution,--may--revise
 14 the--state--water--plan.

15 (5)--The department of natural resources and environment
 16 shall--prepare--a--continuing--inventory--of--the--ground--water
 17 resources--of--the--state.--The--ground--water--inventory--must--be
 18 included--in--the--comprehensive--water--resources--inventory
 19 described--in--subsection--(1)--but--must--be--a--separate--component
 20 of--the--inventory.

21 (6)--The department of natural resources and environment
 22 shall--publish--the--comprehensive--inventory;--the--state--water
 23 plan;--the--ground--water--inventory;--or--any--part--of--each;--and
 24 the--department--may--assess--and--collect--a--reasonable--charge
 25 for--these--publications.

{7}--in--developing--and--revising--the--state--water--plan--as
 provided--in--this--section,--the--department--of--natural
 resources--and--environment--shall--consult--with--the--water
 policy--committee--established--in--85-2-105--and--solicit--the
 advice--of--the--committee--in--carrying--out--its--duties--under
 this--section."

Section-58,--Section-85-1-205,--MCA,--is--amended--to--read:

"85-1-205,--Acquisition--of--water--in--federal--reservoirs:
 The--department--of--natural--resources--and--environment--may
 acquire--water--or--water--storage--by--purchase--option--or
 agreement--with--the--federal--government--from--any--federal
 reservoir--for--the--purpose--of--sale,--rent,--or--distribution--for
 any--beneficial--use;--in--such--cases,--the--department--is--not
 required--to--construct--any--diversion--or--appropriation
 facilities--or--works,--and--it--may--sell,--rent,--or--distribute
 such--water--at--such--rates--and--under--such--terms--and--conditions
 as--it--considers--appropriate."

Section-59,--Section-85-1-223,--MCA,--is--amended--to--read:

"85-1-223,--Negotiations--with--other--states--by--the
 department;--The--department--of--natural--resources--and
 environment--may--negotiate--with--the--duily--constituted
 authorities--or--agencies--of--other--states--and--of--the--United
 States--in--the--preparation--of--interstate--compacts--or
 agreements--governing--the--use,--distribution,--and--allocation
 of--the--water--of--any--stream--or--streams--flowing--from--Montana

into--such--other--states--or--flowing--from--such--other--states
 into--Montana;--it--shall--cooperate--with--other--states--and--with
 the--United--States--in--making--the--necessary--studies--and
 obtaining--the--data--necessary--to--the--preparation--of--the
 compacts;--This--authority--and--the--duties--hereby--imposed--are
 limited--to--the--preparation--and--proposal--of--the--compact--and
 the--compact--or--agreement--is--not--binding--upon--the--state--of
 Montana--until--approved--by--the--legislature--of--Montana--and--the
 legislatures--of--the--other--state--or--states--involved--in--the
 compact."

Section-60,--Section-85-2-512,--MCA,--is--amended--to--read:

"85-2-512,--Investigations;--(1)--The--department--shall
 compile--information--for--the--purpose--of--enabling--it--to--comply
 with--this--part--in--compiling--this--information;--the
 department--shall--make--use--of--investigations,--technical
 personnel,--surveys,--and--information--available--from--the
 Montana--bureau--of--mines--and--geology,--the--United--States
 geological--survey,--the--board--of--oil--and--gas--conservation,
 the--department--of--health--and--environmental--sciences,--and--any
 other--private,--state,--or--governmental--agency;

(2)--In--addition--to--the--foregoing,--the--department--may
 request--specific--investigations--by--the--preceding--public
 agencies--where--desired--information--is--not--otherwise
 available."

Section-61,--Section-85-2-514,--MCA,--is--amended--to--read:

1 "85-2-514.---inspection--of--wells;--The--department; or--the
 2 state--bureau--of--mines--and--geology;--or--the--department--of
 3 health--and--environmental--sciences--may--enter--on--the--property
 4 of--any--appropriator--where--a--well--is--situated;--at--any
 5 reasonable--hour--of--the--day;--for--the--purpose--of--investigating
 6 any--matters--in--connection--with--this--part."

7 Section-62;--Section-85-9-104;--MCA;--is--amended--to--read:

8 "85-9-104;--limitations;--(1)--Nothing--in--this--chapter
 9 shall--be--construed--to--grant--to--the--district--the--power--to
 10 generate;--distribute;--or--sell--electric--energy;

11 (2)--The--provisions--of--this--chapter--do--not--abrogate--or
 12 limit--in--any--manner--the--rights;--powers;--duties;--and
 13 functions--of--the--department;--conservation--districts;
 14 department--of--health--and--environmental--sciences;--or--the
 15 department--of--fish;--wildlife;--and--parks--but--are
 16 supplementary--thereto--and--in--aid--thereof."

17 Section-63;--Section-85-9-202;--MCA;--is--amended--to--read:

18 "85-9-202;--Action--by--department--of--natural--resources
 19 upon--receipt--of--request;--(1)--Sooner--than--11--days--after--the
 20 request--is--received;--the--department--shall--acknowledge--the
 21 request;

22 (2)--The--department--shall--itself;--through--cooperating
 23 agencies;--or--together--with--cooperating--agencies;

24 (a)--consult--with--the--board--of--supervisors--and--all
 25 persons--who--may--participate--in--the--proposed--project;

1 (b)--conduct--a--preliminary--survey--of--the--proposed
 2 district;

3 (c)--estimate--costs--of--works;--maintenance;--and
 4 operation;

5 (d)--determine--sources--of--financing;

6 (e)--reach--a--tentative--decision--on--the--feasibility;
 7 desirability;--and--compatibility--with--the--state--water--plan--of
 8 the--proposed--district;

9 (f)--adjust--the--boundaries--of--the--proposed--district--to
 10 improve--the--feasibility;--desirability;--or--consistency--with
 11 the--state--water--plan;

12 (g)--sooner--than--1--year--after--receipt--of--the--request;
 13 send--a--report--of--the--preliminary--survey--to--the--applicants;
 14 the--board--of--supervisors;--department--of--fish;--wildlife;--and
 15 parks;--department--of--health--and--environmental--sciences;--and
 16 other--affected--state--and--federal--resource--agencies--for--their
 17 comments."

18 Section-64;--Section-85-9-204;--MCA;--is--amended--to--read:

19 "85-9-204;--Feasibility--study--and--report---adjustment
 20 of--proposed--boundaries;--After--the--hearing;--the--applicants--or
 21 any--one--of--them--may--request--the--department--to--prepare--a
 22 detailed--feasibility--study--of--the--proposed--district;--if--the
 23 department--concludes--that--the--proposed--district--is--feasible;
 24 desirable;--and--consistent--with--the--state--water--plan;--it
 25 shall--prepare--a--feasibility--report--and--sooner--than--1--year

1 after receipt of the request send copies to the applicants,
 2 if any, the department of fish, wildlife, and parks,
 3 department of health and environmental sciences, and other
 4 affected state and federal water resource agencies. For good
 5 cause shown, based upon the actual technical problems in
 6 completing the report, the department may use necessary
 7 additional time to complete and distribute the report. The
 8 detailed feasibility report shall describe the proposed
 9 works and contain an estimate of the cost of the works, the
 10 means of financing, and the estimated costs of operation and
 11 maintenance. The department may adjust the boundaries of the
 12 proposed district to improve the feasibility, desirability,
 13 and consistency with the state water plan and to exclude
 14 land which would receive no direct or indirect benefits from
 15 the proposed district."

16 **Section 24.** Section 90-15-102, MCA, is amended to read:

17 "90-15-102. Definitions. As used in this chapter, the
 18 following definitions apply:

19 (1) "Committee" means the natural resource data system
 20 advisory committee created by 2-15-1514.

21 (2) "Library" means the state library provided for in
 22 22-1-201.

23 (3) "Natural heritage program" means a program of
 24 information acquisition, storage, and retrieval for data
 25 relating to the flora, fauna, and biological community types

1 of Montana.

2 (4) "Principal data source agencies" means any of the
 3 following state agencies: the department of natural
 4 resources and conservation environment CONSERVATION; the
 5 department of fish, wildlife, and parks; the department of
 6 state lands; the department of health and environmental
 7 sciences; THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
 8 SCIENCES; the department of agriculture; the department of
 9 highways; the state historical society; and the Montana
 10 university system."

11 NEW SECTION, Section 66, began interest in facilities
 12 transferred. (1) The legal interest of the department of
 13 fish, wildlife, and parks in those facilities and structures
 14 listed in subsection (2) is transferred to the department of
 15 state lands and must be managed for fish and wildlife
 16 purposes in consultation with the department of fish,
 17 wildlife, and parks. The present uses of the facilities and
 18 structures listed in subsection (2) must continue.

19 (2) Facilities and structures transferred pursuant to
 20 subsection (1) are as follows:

21 (a) South Sandstone reservoir, Fallon County;

22 (b) Bearpaw Lake, Hill County;

23 (c) Clearwater fish barrier, Missoula County;

24 (d) Whitetail reservoir, Daniels County;

25 (e) Gartside reservoir, Richland County; and

1 ~~{f}--Rainy-Lake-fish-barrier,-Missoula-County-~~

2 **NEW SECTION. Section 25. Codification instruction.**

3 [Section 55 23] is intended to be codified as an integral

4 part of Title 82, chapter 4, part 4, and the provisions of

5 Title 82, chapter 4, part 4, apply to [section 55 23].

6 **NEW SECTION. Section 26. Saving clause.** [This act]

7 does not affect rights and duties that matured, penalties

8 that were incurred, or proceedings that were begun before

9 [the effective date of this act].

10 **NEW SECTION. Section 27. Severability.** If a part of

11 [this act] is invalid, all valid parts that are severable

12 from the invalid part remain in effect. If a part of [this

13 act] is invalid in one or more of its applications, the part

14 remains in effect in all valid applications that are

15 severable from the invalid applications.

16 **NEW SECTION. Section 28. Implementation according to**

17 **executive order.** The implementation of [sections 1 through

18 66 24] must begin July 1, 1991, and conclude January 1,

19 1992, according to a schedule in an executive order signed

20 by the governor. The governor may execute and implement an

21 executive order necessary to carry out the purposes of this

22 section.

23 **NEW SECTION. Section 29. Effective dates.** (1)

24 [Sections 67 25 through 70 28] and this section are

25 effective on passage and approval.

1 (2) [Sections 1 through 66 24] are effective according

2 to the schedule provided in [section 70 28].

-End-

HOUSE BILL NO. 866

INTRODUCED BY D. BROWN, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT REORGANIZING--THE
 NATURAL--RESOURCE--AND--ENVIRONMENTAL--FUNCTIONS--OF--THE--BOARD,
 DIRECTOR,--AND--DEPARTMENT--OF--HEALTH--AND--ENVIRONMENTAL
 SCIENCES,--THE--BOARD,--DIRECTOR,--AND--DEPARTMENT--OF--NATURAL
 RESOURCES--AND--CONSERVATION,--AND TRANSFERRING THE FUNCTIONS
 OF THE BOARD OF STATE LAND COMMISSIONERS AND THE
 COMMISSIONER AND DEPARTMENT OF STATE LANDS,--RENAMING RELATED
 TO RECLAMATION OF MINED LANDS, COAL MINING IMPACTS, AND
 HARD-ROCK MINING IMPACTS TO THE BOARD, DIRECTOR, AND
 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND--THE
 BOARD,--DIRECTOR,--AND--DEPARTMENT--OF--NATURAL--RESOURCES--AND
 CONSERVATION,--PROVIDING--FOR--THE--POWERS,--DUTIES,--AND
 FUNCTIONS--OF--THESE--AGENCIES; DIRECTING THE ENVIRONMENTAL
 QUALITY COUNCIL TO CONDUCT A STUDY OF THE NEED FOR
 ADDITIONAL REORGANIZATION; AMENDING SECTIONS 2-15-2107,
 2-15-3302, 17-5-101, 17-5-202, 40-6-120,--75-10-103,
 75-10-203, 75-10-404, 75-20-104,--75-20-202,--75-20-205,
 75-20-208,--75-20-211,--75-20-213,--75-20-215,--75-20-216,
 75-20-218,--75-20-219,--75-20-220,--75-20-221,--75-20-225,
 75-20-226,--75-20-301,--75-20-302,--75-20-303,--75-20-304,
 75-20-402,--75-20-406,--75-20-501,--75-20-1202,--76-15-103,
 80-8-110, 81-23-103, 82-4-103, 82-4-111, 82-4-112, 82-4-123,

82-4-129, 82-4-203, 82-4-204, 82-4-205, 82-4-223, 82-4-227,
 82-4-321, 82-4-337, 82-4-362, 82-4-421, 82-4-422, 82-4-425,
 82-4-427, 85-1-102,--85-1-203,--85-1-205,--85-1-223,--85-2-512,
 85-2-514,--85-9-104,--85-9-202,--85-9-204, AND 90-15-102, MCA;
 AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION; Section 1--Functions of board, director,
 and--department--of--health--and--environmental--sciences
 transferred to board, director, or department of natural
 resources and environment:--(1) The following functions of
 the board, department, and director of health and
 environmental sciences are transferred to the board,
 department, or director of natural resources and
 environment, as appropriate, as established in 2-15-3302 and
 2-15-3301, respectively:

- (a) relating to jurisdiction over lands within the
 state under 2-1-202 and 2-1-209;
- (b) membership on the Flathead basin commission under
 2-15-213;
- (c) relating to issuance of certificates to members of
 the water and wastewater operators' advisory council under
 2-15-2105;
- (d) membership on the petroleum tank release
 compensation board under 2-15-2100;



1 (e)--relating--to--the--enforcement--of--department--rules--by
 2 the--board--of--a--refuse--disposal--district--under--7-13-215;
 3 (f)--relating--to--determinations--concerning--the--use--of
 4 air--pollution--control--equipment--under--15-6-135;
 5 (g)--adoption--of--standards--for--measuring--the--efficiency
 6 of--wood--stoves--under--15-32-102--and--15-32-203;
 7 (h)--relating--to--certification--of--water--and--wastewater
 8 treatment--plant--operators--under--Title--37--chapter--42;
 9 (i)--relating--to--environmental--protection--under--Title
 10 75;
 11 (j)--relating--to--the--regulation--of--subdivisions--under
 12 Title--76--chapters--3--and--4;
 13 (k)--compliance--with--the--department--of--state--lands'
 14 schedules--for--onsite--consultation--for--timber--sales--under
 15 76-13-132;
 16 (l)--consultation--with--the--board--of--land--commissioners
 17 for--the--purpose--of--accepting--grants--of--federal--land--under
 18 77-1-211;
 19 (m)--consultation--with--the--board--of--land--commissioners
 20 for--the--purpose--of--disposing--of--institutional--property--under
 21 77-2-302;
 22 (n)--relating--to--the--regulation--of--pesticides--under
 23 Title--80--chapter--8;
 24 (o)--relating--to--the--regulation--of--agricultural
 25 chemicals--under--Title--80--chapter--15;

1 (p)--approval--of--the--means--of--disposal--of--wastewater,
 2 sewage,
 3 and--air--pollutants--before--the--construction--or
 4 remodeling--of--a--dairy--products--manufacturing--plant--under
 5 01-22-403;
 6 (q)--investigation--of--the--obstruction--of--streams--by
 7 beaver--dams--under--87-1-224;
 8 (r)--approval--of--rules--governing--the--use--of--lands--and
 9 waters--under--87-1-303;--and
 10 (s)--relating--to--the--natural--resources--information
 11 system--under--Title--90--chapter--15;
 12 (2)--All--references--to--the--"board--of--health--and
 13 environmental--sciences"--or--"board"--(of--health--and
 14 environmental--sciences),--"department--of--health--and
 15 environmental--sciences"--or--"department"--(of--health--and
 16 environmental--sciences),--or--"director--of--health--and
 17 environmental--sciences"--or--"director"--(of--health--and
 18 environmental--sciences)--in--those--titles,
 19 chapters,
 20 parts,
 21 and--sections--referred--to--in--subsection--(1)--are--changed--to
 22 "board--of--natural--resources--and--environment"--or--"board"--(of
 23 natural--resources--and--environment),--"department--of--natural
 24 resources--and--environment"--or--"department"--(of--natural
 25 resources--and--environment),--or--"director--of--natural
 26 resources--and--environment"--or--"director"--(of--natural
 27 resources--and--environment),--as--appropriate. The--code
 28 commissioner--shall--conform--internal--references--and--grammar

1 to these changes:

2 {3}--The--governor--may--by--executive--order--assign--to--the
3 board--of--natural--resources--and--environment--or--to--the
4 department--of--natural--resources--and--environment--in--a--manner
5 consistent--with--{sections--1--through--71}--functions--allocated
6 to--the--board--or--department--of--natural--resources--and
7 conservation--by--the--52nd--legislature--and--not--transferred--by
8 {sections--1--through--71}.

9 NEW SECTION. Section 1. Functions of board of land
10 commissioners and department and commissioner of state lands
11 transferred to board, department, or director of natural
12 resources and environment HEALTH AND ENVIRONMENTAL SCIENCES.

13 (1) Except as otherwise provided in {sections 1 through 71
14 29 30}, the following functions of the board of land
15 commissioners, the department of state lands, and the
16 commissioner of state lands are transferred to the board of
17 natural--resources--and--environment HEALTH AND ENVIRONMENTAL
18 SCIENCES, the department of natural--resources--and
19 environment HEALTH AND ENVIRONMENTAL SCIENCES, or the
20 director of natural--resources--and--environment HEALTH AND
21 ENVIRONMENTAL SCIENCES, as appropriate, as established in
22 sections--2-15-3302 2-15-2101 and 2-15-3301 2-15-2104,
23 respectively:

24 (a) relating to reclamation of mined lands under Title
25 82, chapter 4;

1 (b) relating to coal mining impacts under Title 90,
2 chapter 6, part 2; and

3 (c) relating to hard-rock mining impacts under Title
4 90, chapter 6, part 3.

5 (2) Except as otherwise provided in {sections 1 through
6 71 29 30}, any references to the "board of land
7 commissioners" or "board" (of land commissioners),
8 "department of state lands" or "department" (of state
9 lands), or "commissioner of state lands" or "commissioner"
10 (of state lands) in those titles, chapters, parts, and
11 sections referred to in subsection (1) are changed to "board
12 of natural--resources--and--environment HEALTH AND
13 ENVIRONMENTAL SCIENCES" or "board" (of natural--resources--and
14 environment HEALTH AND ENVIRONMENTAL SCIENCES), "department
15 of natural--resources--and--environment HEALTH AND
16 ENVIRONMENTAL SCIENCES" or "department" (of natural
17 resources--and--environment HEALTH AND ENVIRONMENTAL SCIENCES)
18 or "director of natural--resources--and--environment HEALTH AND
19 ENVIRONMENTAL SCIENCES" or "director" (of natural--resources
20 and--environment HEALTH AND ENVIRONMENTAL SCIENCES), as
21 appropriate. The code commissioner shall conform internal
22 references and grammar to these changes.

23 (3) (a) All functions of the state board of land
24 commissioners relating to the reclamation of mined lands
25 under Title 82, chapter 4, except the adoption of

1 administrative rules, are transferred to the department of
 2 ~~natural-resources-and-environment~~ HEALTH AND ENVIRONMENTAL
 3 SCIENCES.

4 (b) All references to the "board of land commissioners"
 5 or "board" (of land commissioners) in Title 82, chapter 4,
 6 except with respect to the adoption of administrative rules,
 7 are changed to the "department of ~~natural-resources-and-~~
 8 ~~environment~~ HEALTH AND ENVIRONMENTAL SCIENCES" or
 9 "department" (of ~~natural-resources-and-environment~~ HEALTH
 10 AND ENVIRONMENTAL SCIENCES), as appropriate. The code
 11 commissioner shall conform internal references and grammar
 12 to these changes.

13 (c) The governor may by executive order assign to the
 14 department of ~~natural-resources-and-environment~~ HEALTH AND
 15 ENVIRONMENTAL SCIENCES in a manner consistent with [sections
 16 1 through 71 29 30] functions of the board of land
 17 commissioners, other than the adoption of administrative
 18 rules, relating to the reclamation of mined lands allocated
 19 to the board of land commissioners and not transferred by
 20 [sections 1 through 71 29 30].

21 (4) The governor may by executive order assign to the
 22 board or department of ~~natural-resources-and-environment~~
 23 HEALTH AND ENVIRONMENTAL SCIENCES in a manner consistent
 24 with [sections 1 through 71 29 30] functions allocated to
 25 the board of land commissioners or to the department or

1 commissioner of state lands and not transferred by [sections
 2 1 through 71 29 30].

3 ~~NEW-SECTION: Section 3, Functions of board,~~
 4 ~~department, and director of natural resources and~~
 5 ~~conservation transferred to board of land commissioners or~~
 6 ~~commissioner or department of state lands. (1) Except as~~
 7 ~~otherwise provided in sections 1 through 71, the following~~
 8 ~~functions of the board, department, and director of natural~~
 9 ~~resources and conservation are transferred to the board of~~
 10 ~~land commissioners, the department of state lands, or the~~
 11 ~~commissioner of state lands, as appropriate, as established~~
 12 ~~in Article X, section 4, of the Montana constitution and~~
 13 ~~2-15-3201 and 2-15-3202, respectively:~~

14 (a) appointment of a soil survey advisory council under
 15 2-15-3306;

16 (b) exemption from payment of property taxes under
 17 15-6-205;

18 (c) relating to the wastewater treatment program and
 19 revolving fund under Title 75, chapter 5, part 1;

20 (d) relating to conservation districts under Title 76
 21 chapter 15;

22 (e) relating to state owned water projects and the
 23 water development program under 85-1-102 and Title 85,
 24 chapter 17, parts 2 through 6;

25 (f) relating to water users' associations under

1 05-6-109, and
 2 {g} relating to resource development and reclamation
 3 under Title 90, chapter 2,
 4 {2} Except as otherwise provided in {sections 1 through
 5 71}, any references to the "board of natural resources and
 6 conservation" or "board" of natural resources and
 7 conservation, "department of natural resources and
 8 conservation" or "department" of natural resources and
 9 conservation, or "director of natural resources and
 10 conservation" or "director" of natural resources and
 11 conservation in those titles, chapters, parts, and sections
 12 referred to in subsection (1) are changed to "board of land
 13 commissioners" or "board" of land commissioners,
 14 "department of state lands" or "department" of state
 15 lands, or "commissioner of state lands" or "commissioner"
 16 of state lands, as appropriate. The code commissioner
 17 shall conform internal references and grammar to these
 18 changes.
 19 {3} The governor may by executive order assign to the
 20 board of land commissioners and to the department of state
 21 lands in a manner consistent with {sections 1 through 71}
 22 any functions allocated to the department or board of
 23 natural resources and conservation by the 52nd legislature
 24 and not transferred by {sections 1 through 71};
 25 NEW SECTION, Section 4, Department, director, and

1 board changed instructions to code commissioner, (1) The
 2 names of the department and the director of health and
 3 environmental sciences are changed to the department and
 4 director of public health, respectively. Unless inconsistent
 5 with {sections 1 through 71} wherever the terms "department
 6 of health and environmental sciences" or "department" of
 7 health and environmental sciences or "director of health
 8 and environmental sciences" or "director" of health and
 9 environmental sciences appears in the Montana Code
 10 Annotated, the code commissioner shall change the name to
 11 the "department of public health" or "department" of public
 12 health or to the "director of public health" or "director"
 13 of public health, as appropriate, and conform internal
 14 references and grammar to these changes.
 15 {2} The name of the board of health and environmental
 16 sciences is changed to the board of public health. Unless
 17 inconsistent with {sections 1 through 71}, wherever the term
 18 "board of health and environmental sciences" or "board" of
 19 health and environmental sciences appears in the Montana
 20 Code Annotated, the code commissioner shall change the name
 21 to the "board of public health" or "board" of public
 22 health and conform internal references and grammar to these
 23 changes.
 24 {3} The names of the department and the director of
 25 natural resources and conservation are changed to the

1 department and director of natural resources and
 2 environment, respectively. Unless inconsistent with
 3 {sections 1 through 7}, wherever the terms "department of
 4 natural resources and conservation" or "department" (of
 5 natural resources and conservation) or "director of natural
 6 resources and conservation" or "director" (of natural
 7 resources and conservation) appear in the Montana Code
 8 Annotated, the code commissioner shall change the names to
 9 the "department of natural resources and environment" or
 10 "department" (of natural resources and environment) or
 11 "director of natural resources and environment" or
 12 "director" (of natural resources and environment); as
 13 appropriate, and conform internal references and grammar to
 14 these changes;

15 {4} The name of the board of natural resources and
 16 conservation is changed to the board of natural resources
 17 and environment. Unless inconsistent with {sections 1
 18 through 7}, wherever the terms "board of natural resources
 19 and conservation" or "board" (of natural resources and
 20 conservation) appear in the Montana Code Annotated, the code
 21 commissioner shall change the names to the "board of natural
 22 resources and environment" or "board" (of natural resources
 23 and environment) and conform internal references and grammar
 24 to these changes;

25 Section 5. Section 2-15-2107, MCA, is amended to read:

1 "2-15-2107. Water pollution control advisory council;
 2 (1) There is a water pollution control advisory council;
 3 (2) The council consists of eleven members. The members
 4 are:
 5 (a) the director of fish, wildlife, and parks;
 6 (b) the administrator of the water resources division
 7 director of the department of natural resources and
 8 conservation environment;
 9 (c) the director of agriculture;
 10 (d) eight members appointed by the governor as follows:
 11 (i) a representative of industry concerned with the
 12 disposal of inorganic waste;
 13 (ii) a representative of industry concerned with the
 14 disposal of organic waste;
 15 (iii) a livestock feeder;
 16 (iv) a representative of municipal government;
 17 (v) a representative of an organization concerned with
 18 fishing for sport;
 19 (vi) a representative from labor;
 20 (vii) a supervisor of a soil and water conservation
 21 district;
 22 (viii) a representative of an organization concerned
 23 with water recreation;
 24 (3) The appointed council members serve at the pleasure
 25 of the governor.

~~(4) Subsections (5) through (8) of 2-15-122 apply to the council and members.~~

~~Section 6, Section 2-15-3302, MCA, is amended to read:~~

~~"2-15-3302. Board of natural resources and conservation environment --- composition --- quasi-judicial. (1) There is a board of natural resources and conservation environment.~~

~~(2) The board is composed of seven members, appointed by the governor as prescribed in 2-15-124, informed and experienced in the subjects of natural resources and conservation environment.~~

~~(3) The board is designated as a quasi-judicial board for purposes of 2-15-124.~~

~~(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.~~

~~(5) In addition to carrying out its functions as provided by law, the board shall act in an advisory capacity to the department in all other matters."~~

Section 2. Section 17-5-101, MCA, is amended to read:

"17-5-101. Definitions. The following terms as used in this part have the following meanings:

(1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of

money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state but shall not include the state of Montana, the board of examiners, the division of water resources of the department of natural resources and conservation, the state highway commission, or any other board, agency, or commission of the state.

(3) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision."

Section 3. Section 17-5-202, MCA, is amended to read:

"17-5-202. Definitions. The following terms, wherever used or referred to in this part, have the following meanings:

(1) "Public body" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state or any commission, authority, or agency of a political or governmental subdivision, and also includes the board of public education, the board of regents

1 of higher education, the board of examiners, the board of
 2 natural resources and conservation environment CONSERVATION,
 3 the board of land commissioners, the state highway
 4 commission, or any other governmental agency of this state.

5 (2) "Bonds" includes bonds, notes, warrants,
 6 debentures, certificates of indebtedness, temporary bonds,
 7 temporary notes, interim receipts, interim certificates, and
 8 all instruments or obligations evidencing or representing
 9 indebtedness or evidencing or representing the borrowing of
 10 money or evidencing or representing a charge, lien, or
 11 encumbrance on specific revenues, income, or property of a
 12 public body, including all instruments or obligations
 13 payable from a special fund."

14 Section 9--Section 40-6-128, MCA, is amended to read:

15 "40-6-128--Proceeding to determine father's identity
 16 and terminate rights--(1) if a child is born out of wedlock
 17 and the mother executes or proposes to execute a release
 18 terminating her rights to the child or if the child
 19 otherwise becomes the subject of an adoption proceeding, the
 20 agency or person to whom the child has been or is to be
 21 relinquished or the mother or person having custody of the
 22 child shall file a petition in the district court to
 23 terminate the parental rights of the father, unless the
 24 father's relationship to the child has been previously
 25 terminated or determined not to exist by the court.--The

1 court shall hold a hearing as soon as practical to determine
 2 the identity of the father and to determine or terminate the
 3 rights of the father as provided in this section and in
 4 40-6-129 and 40-6-130.--This section is not applicable if the
 5 father is a person whose consent to adoption is not required
 6 under 40-8-111.

7 (2)--Proof of service of a notice of intent to release
 8 or the putative father's verified acknowledgment of notice
 9 of intent to release shall be filed with the court, if such
 10 notice was given to the putative father.--The court shall
 11 request the records and statistics bureau of the department
 12 of public health and environmental sciences to send to the
 13 court a copy of any notice of intent to claim paternity of
 14 the particular child which the bureau has received.

15 (3)--if the mother has failed to name a putative father
 16 or has failed to file a notice of intent to release, the
 17 court shall cause inquiry to be made of the mother in an
 18 effort to identify the natural father.--The inquiry shall
 19 include the following:

20 (a)--whether the mother was married at the time of
 21 conception of the child or at any time thereafter;

22 (b)--whether the mother was cohabiting with a man at the
 23 time of conception or birth of the child;

24 (c)--whether the mother has received support payments or
 25 promises of support payments with respect to the child or in

1 connection-with-her-pregnancy;-or
 2 {d}-whether-any-man-has-formally-or-informally
 3 acknowledged-or-declared-his-possible-paternity-of-the
 4 child;
 5 {4}-Notwithstanding-this-section-or-any-other
 6 provisions-of-law-and-in-consideration-of-her-right-to
 7 privacy,-no-mother-of-a-child-who-is-the-subject-of
 8 proceedings-under-this-part-may-be-compelled-to-testify
 9 concerning-or-to-divulge-the-identity-of-the-father-or
 10 possible-father-of-that-child;
 11 {5}-Notice-of-the-hearing-shall-be-served-upon-the
 12 following-persons-in-the-manner-appropriate-under-the
 13 Montana-Rules-of-Civil-Procedure-or-any-manner-which-the
 14 court-shall-direct;
 15 {a}-a-putative-father-who-has-timely-filed-a-notice-of
 16 intent-to-claim-paternity-as-provided-in-40-6-126-or
 17 40-6-127;
 18 {b}-a-putative-father-who-has-not-been-served-with-a
 19 notice-of-intent-to-release-at-least-30-days-before-the
 20 expected-date-of-delivery-specified-in-the-notice-of-intent
 21 to-release;
 22 {c}-any-other-male-who-was-not-served-pursuant-to
 23 40-6-127{2}-with-a-notice-of-intent-to-release-and-who-the
 24 court,-after-inquiry-of-the-mother-or-any-other-appropriate
 25 person,-has-reason-to-believe-may-be-the-father-of-the

1 child;
 2 {6}-The-notice-of-hearing-shall-inform-the-putative
 3 father-that-his-failure-to-appear-at-the-hearing-constitutes
 4 a-denial-of-his-interest-in-custody-of-the-child,-which
 5 denial-will-result-in-the-court's-termination-of-his-rights
 6 to-the-child;
 7 {7}-Proof-of-service-of-the-notice-of-hearing-required
 8 by-subsection-{5}-shall-be-filed-with-the-court.-A-verified
 9 acknowledgment-of-service-by-the-party-to-be-served-is-proof
 10 of-personal-service.-Notice-of-hearing-need-not-be-required
 11 if-the-putative-father-is-present-at-the-hearing.-A-waiver
 12 of-notice-of-hearing-by-a-person-entitled-to-receive-it-is
 13 sufficient,-if-no-person-has-been-identified-as-the-natural
 14 father-or-possible-father,-the-court,-on-the-basis-of-all
 15 information-available,-shall-determine-whether-publication
 16 or-public-posting-of-notice-of-the-proceeding-is-likely-to
 17 lead-to-identification-and-if-so-shall-order-publication-or
 18 public-posting-at-the-times-and-places-and-in-the-manner-it
 19 considers-appropriate.-The-name-of-the-natural-mother-may-be
 20 included-in-such-publication-only-with-her-written-consent.
 21 {8}-At-the-hearing,-the-court-shall-receive-evidence-as
 22 to-the-identity-of-the-father-of-the-child.-Based-upon-the
 23 evidence-received-and-the-court's-inquiry,-the-court-shall
 24 enter-a-finding-identifying-the-father-or-declaring-that-the
 25 identity-of-the-father-cannot-be-determined.

{9}--If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing."

Section 18, Section 75-10-103, MCA, is amended to read:
 "75-10-103. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

{1}--"Board" means the board of health and environmental sciences natural resources and environment provided for in 2-15-2104 2-15-3302.

{2}--"Department" means the department of health and environmental sciences natural resources and environment provided for in Title 2, chapter 15, part 21 33.

{3}--"Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

{4}--"Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, pre-design engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

{5}--"Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

{6}--"Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

{7}--"Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity whether organized for profit or not.

{8}--"Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

{9}--"Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, hazardous wastes, ashes, sludge from sewage treatment plants, water supply treatment plants, or air

1 pollution--control--facilities,--septic--tank--and--cesspool
 2 pumpings,--construction-and-demolition-wastes,--dead-animals,
 3 including-offal,--discarded-home-and--industrial--appliances,
 4 wood--wastes--and--inert--materials,--but--does--not--include
 5 municipal-sewage,--industrial-wastewater-effluents,--or--mining
 6 wastes-as-regulated-under-the-mining--and--reclamation--laws
 7 administered-by-the-department-of-state-lands;

8 {10}--"Solid--waste--management--system"--means-any-system
 9 which-controls-the-storage,--treatment,--recycling,--recovery,
 10 or-disposal-of-solid-waste;

11 {11}--"State--solid--waste-plan"--means-the-statewide-plan
 12 formulated-by-the-department-as-authorized-by-this-part,--"

13 Section-11---Section-75-10-203,--MCA,--is-amended-to-read:
 14 "75-10-203,--Definitions,--Unless--the--context--requires
 15 otherwise,--in-this-part-the-following-definitions-apply:

16 {1}--"Board"--means-the-board-of-health-and-environmental
 17 sciences natural--resources--and--environment provided-for-in
 18 2-15-2104 2-15-3302;

19 {2}--"Department"--means-the--department--of--health--and
 20 environmental--sciences natural--resources--and--environment
 21 provided-for-in-Title-2,--chapter-15,--part-21 33;

22 {3}--"Dispose"--or--"disposal"--means--the--discharge,
 23 injection,--deposit,--dumping,--spilling,--leaking,--or--placing
 24 of-any-solid-waste-into-or-onto-the-land-so-that--the--solid
 25 waste--or-any-constituent-of-it-may-enter-the-environment-or

1 be-emitted-into-the-air--or--discharged--into--any--waters,
 2 including-ground-water;

3 {4}--"Household--waste"--means--any--solid-waste-derived
 4 from-households,--including-single-and--multiple--residences,
 5 hotels,--and--motel,--crew-quarters,--and--campgrounds--and--other
 6 public-recreation-and-public-land-management-facilities;

7 {5}--"Municipal--solid--waste--landfill"--means-any-publicly
 8 or--privately--owned-landfill-or-landfill-unit-that-receives
 9 household--waste--or--other--types--of--waste,--including
 10 commercial--waste,--nonhazardous-sludge,--and--industrial--solid
 11 waste--The-term-does-not--include--land-application--units,
 12 surface-impoundments,--injection-wells,--or--waste-piles;

13 {6}--"Person"--means--an--individual,--firm,--partnership,
 14 company,--association,--corporation,--city,--town,--local
 15 governmental--entity,--or--any-other-governmental-or-private
 16 entity,--whether-organized-for-profit-or-not;

17 {7}--"Resource-recovery"--means-the-recovery-of--material
 18 or-energy-from-solid-waste;

19 {8}--"Resource--recovery--facility"--means-a-facility-at
 20 which--solid--waste--is--processed--for--the--purpose--of
 21 extracting,--converting--to--energy,--or--otherwise-separating
 22 and-preparing-solid-waste-for-reuse;

23 {9}--"Resource-recovery--system"--means--a--solid--waste
 24 management--system--which--provides--for--the--collection,
 25 separation,--recycling,--or--recovery--of--solid--wastes;

1 including disposal of nonrecoverable waste residues:

2 (10) "Solid waste" means all putrescible and
3 nonputrescible wastes, including but not limited to garbage,
4 rubbish, refuse, ashes, sludge from sewage treatment plants,
5 water supply treatment plants, or air pollution control
6 facilities, construction and demolition wastes, dead
7 animals, including offal, discarded home and industrial
8 appliances, and wood products or wood byproducts and inert
9 materials. "Solid waste" does not mean municipal sewer
10 industrial wastewater effluents, mining wastes regulated
11 under the mining and reclamation laws administered by the
12 department of state lands, slash and forest debris regulated
13 under laws administered by the department of state lands, or
14 marketable byproducts.

15 (11) "Solid waste management system" means a system
16 which controls the storage, treatment, recycling, recovery,
17 or disposal of solid waste.

18 (12) "Storage" means the actual or intended containment
19 of wastes, either on a temporary basis or for a period of
20 years.

21 (13) "Transport" means the movement of wastes from the
22 point of generation to any intermediate points and finally
23 to the point of ultimate storage or disposal.

24 (14) "Treatment" means a method, technique, or process,
25 including neutralization, designed to change the physical

1 chemical, or biological character or composition of any
2 solid waste so as to neutralize the waste or so as to render
3 it safer for transport, amenable for recovery, amenable for
4 storage, or reduced in volume."

5 **Section 4.** Section 75-10-404, MCA, is amended to read:

6 "75-10-404. Powers of department. (1) The department
7 may:

8 (a) administer and enforce the provisions of this part,
9 rules implementing this part, and orders and permits issued
10 pursuant to this part;

11 (b) conduct and publish studies on hazardous wastes and
12 hazardous waste management;

13 (c) initiate, conduct, and support research,
14 demonstration projects, and investigation, as its resources
15 may allow, and coordinate state agency research programs
16 pertaining to hazardous waste management;

17 (d) accept and administer grants from the federal
18 government and from other sources, public and private; and

19 (e) abate public nuisances that affect the public
20 health and welfare or the environment and that arise from or
21 in connection with the past or present handling or disposal
22 of any hazardous waste or regulated substance.

23 (2) The department shall integrate all provisions of
24 this part with other laws administered by the department to
25 avoid unnecessary duplication. Furthermore, the department

1 shall coordinate its activities under this part with the
 2 program administered by the department of agriculture under
 3 the Montana Pesticides Act, the programs administered by the
 4 department of state lands related to mining and mine
 5 reclamation, and, the program administered by the department
 6 of public service regulation related to hazardous material
 7 transportation, and provisions of the Montana Major Facility
 8 Siting Act administered by the department of natural
 9 resources and conservation, AND PROVISIONS OF THE MONTANA
 10 MAJOR FACILITY SITING ACT ADMINISTERED BY THE DEPARTMENT OF
 11 NATURAL RESOURCES AND CONSERVATION. The integration and
 12 coordination shall be effected only to the extent that it
 13 can be done in a manner consistent with the goals and
 14 policies of this part and the other laws referred to in this
 15 section."

16 Section 13, Section 75-20-104, MCA, is amended to read:
 17 "75-20-104. Definitions. In this chapter, unless the
 18 context requires otherwise, the following definitions apply:
 19 (1) "Addition thereto" means the installation of new
 20 machinery and equipment which would significantly change the
 21 conditions under which the facility is operated;
 22 (2) "Application" means an application for a
 23 certificate submitted in accordance with this chapter and
 24 the rules adopted hereunder;
 25 (3) "Associated facilities" includes but is not limited

1 to transportation links of any kind, aqueducts, diversion
 2 dams, pipelines, transmission substations, storage ponds,
 3 reservoirs, and any other device or equipment associated
 4 with the production or delivery of the energy form or
 5 product produced by a facility, except that the term does
 6 not include a facility or a natural gas or crude oil
 7 gathering line 17 inches or less in inside diameter;

8 (4) "Board" means the board of natural resources and
 9 conservation environment provided for in 2-15-3302;

10 (5) "Board of health" means the board of health and
 11 environmental sciences provided for in 2-15-2104;

12 (6) (5) "Certificate" means the certificate of
 13 environmental compatibility and public need issued by the
 14 board under this chapter that is required for the
 15 construction or operation of a facility;

16 (7) (6) "Commence to construct" means:

17 (a) any clearing of land, excavation, construction, or
 18 other action that would affect the environment of the site
 19 or route of a facility but does not mean changes needed for
 20 temporary use of sites or routes for nonutility purposes or
 21 uses in securing geological data, including necessary
 22 borings to ascertain foundation conditions;

23 (b) the fracturing of underground formations by any
 24 means if such activity is related to the possible future
 25 development of a gasification facility or a facility

1 employing geothermal resources but does not include the
2 gathering of geological data by boring of test holes or
3 other underground exploration, investigation, or
4 experimentation;

5 (c) the commencement of eminent domain proceedings
6 under Title 70, chapter 30, for land or rights of way upon
7 or over which a facility may be constructed;

8 (d) the relocation or upgrading of an existing facility
9 defined by (b) or (c) of subsection (10) (8), including
10 upgrading to a design capacity covered by subsection (10) (b)
11 (8) (b), except that the term does not include normal
12 maintenance or repair of an existing facility;

13 (8) (7) "Department" means the department of natural
14 resources and conservation environment provided for in Title
15 2, chapter 15, part 33;

16 (9) "Department of health" means the department of
17 health and environmental sciences provided for in Title 2,
18 chapter 15, part 21;

19 (10) (8) "Facility" means:

20 (a) except for crude oil and natural gas refineries and
21 those facilities subject to The Montana Strip and
22 Underground Mine Reclamation Act, each plant, unit, or other
23 facility and associated facilities designed for or capable
24 of:

25 (i) generating 50 megawatts of electricity or more or

1 any addition thereto (except pollution control facilities
2 approved by the department of health and environmental
3 sciences natural resources and environment added to an
4 existing plant) having an estimated cost in excess of \$10
5 million;

6 (ii) producing 25 million cubic feet or more of gas
7 derived from coal per day or any addition thereto having an
8 estimated cost in excess of \$10 million;

9 (iii) producing 25,000 barrels of liquid hydrocarbon
10 products per day or more or any addition thereto having an
11 estimated cost in excess of \$10 million;

12 (iv) enriching uranium minerals or any addition thereto
13 having an estimated cost in excess of \$10 million; or

14 (v) utilizing or converting 500,000 tons of coal per
15 year or more or any addition thereto having an estimated
16 cost in excess of \$10 million;

17 (b) each electric transmission line and associated
18 facilities of a design capacity of more than 69 kilovolts,
19 except that the term:

20 (i) does not include an electric transmission line and
21 associated facilities of a design capacity of 230 kilovolts
22 or less and 10 miles or less in length; and

23 (ii) does not include an electric transmission line with
24 a design capacity of more than 69 kilovolts and up to and
25 including 115 kilovolts for which the person planning to

1 construct the line has obtained right-of-way agreements or
 2 options for a right-of-way from more than 75% of the owners
 3 who collectively own more than 75% of the property along the
 4 centerline;

5 (c) each pipeline, whether partially or wholly within
 6 the state, greater than 17 inches in inside diameter and 30
 7 miles in length, and associated facilities;

8 (d) any use of geothermal resources, including the use
 9 of underground space in existence or to be created, for the
 10 creation, use, or conversion of energy, designed for or
 11 capable of producing geothermally derived power equivalent
 12 to 25 million Btu per hour or more or any addition thereto
 13 having an estimated cost in excess of \$750,000;

14 (e) any underground in situ gasification of coal;

15 (ii)(9) "Person" means any individual, group, firm,
 16 partnership, corporation, cooperative, association,
 17 government subdivision, government agency, local government,
 18 or other organization or entity;

19 (i2)(i0) "Transmission substation" means any structure,
 20 device, or equipment assemblage, commonly located and
 21 designed for voltage regulation, circuit protection, or
 22 switching necessary for the construction or operation of a
 23 proposed transmission line;

24 (i3)(i1) "Utility" means any person engaged in any
 25 aspect of the production, storage, sale, delivery, or

1 furnishing of heat, electricity, gas, hydrocarbon products,
 2 or energy in any form for ultimate public use."

3 Section 14, Section 75-20-202, MCA, is amended to read:

4 "75-20-202. Exemptions. (1) A certificate is not
 5 required under this chapter for a facility under diligent
 6 onsite physical construction or in operation on January 1,
 7 1973.

8 (2) The board may adopt reasonable rules establishing
 9 exemptions from this chapter for the relocation,
 10 reconstruction, or upgrading of a facility that:

11 (a) would otherwise be covered by this chapter, and

12 (b) (i) is unlikely to have a significant environmental
 13 impact by reason of length, size, location, available space
 14 or right-of-way, or construction methods, or

15 (ii) utilizes coal, wood, biomass, grain, wind, or sun
 16 as a fuel source and the technology of which will result in
 17 greater efficiency, promote energy conservation, and promote
 18 greater system reliability than the existing facility;

19 (3) A person proposing to construct an exempt facility
 20 shall pay to the department reasonable costs, if any,
 21 incurred by the department in processing the exemption;

22 (4) This chapter does not apply to a facility defined
 23 in 75-20-104(i)(c)(i0)(c) that has been designated by the
 24 governor for environmental review by an executive agency of
 25 the state for the purpose of complying with Title 757

1 chapter 17 pursuant to Executive Order 4-81 and prior to
2 July 17, 1985.⁴

3 Section 15, Section 75-20-205, MCA, is amended to read:
4 "75-20-205. Centerline location: (1) For all facilities
5 defined in 75-20-104(10)(b)(8)(b) and (10)(c) (8)(c) and
6 associated facilities certified under this chapter, the
7 board shall condition the certificate upon board approval of
8 a final centerline location:

9 (2) The final centerline location must be determined in
10 a noncontested case proceeding before the board after the
11 submission of a centerline location report by the
12 department. Within 60 days after the commencement of a
13 noncontested case proceeding, the board shall render and
14 record a decision approving a centerline location:

15 (3) The department shall consult with the certificate
16 holder and the affected landowners prior to making its
17 report:

18 (4) The department's report must be prepared
19 considering the criteria set forth in 75-20-301 and
20 75-20-503 and the findings of fact and conclusions of law
21 set out in the board decision:

22 (5) The department report may be completed on segments
23 of a certified facility as is convenient to the certificate
24 holder:

25 (6) The certificate holder shall initiate the final

1 centerline location approval process by submitting a
2 proposed centerline location plan to the department. The
3 certificate holder shall pay to the department the actual
4 costs incurred in processing a final centerline location not
5 to exceed 25% of the filing fee paid under 75-20-215.⁴

6 Section 16, Section 75-20-207, MCA, is amended to read:
7 "75-20-207. Certain electric transmission lines ---
8 verification of requirements: (1) Prior to constructing a
9 transmission line under 75-20-104(10)(b)(iii)(8)(b)(iii), the
10 person planning to construct the line must provide to the
11 department within 36 months of the date of the public notice
12 provided under 75-20-207, unless extended by the board for
13 good cause:

14 (a) copies of the right-of-way agreements or options
15 for a right-of-way containing sufficient information to
16 establish landowner consent to construct the line, and

17 (b) sufficient information for the department to verify
18 to the board that the requirements of
19 75-20-104(10)(b)(iii)(8)(b)(iii) are satisfied:

20 (2) The provisions of 75-20-104(10)(b)(iii)(8)(b)(iii) do
21 not apply to any facility for which public notice under
22 75-20-207 has been given but for which the requirements of
23 subsection (1) have not been complied with.⁴

24 Section 17, Section 75-20-211, MCA, is amended to read:
25 "75-20-211. Application filing and contents --- proof

1 of-service-and-notice; (1)(a) An applicant shall file with
 2 the department and department of health a joint an
 3 application for a certificate under this chapter and for the
 4 permits required under the laws administered by the
 5 department of health and the board of health in such form as
 6 the board requires under applicable rules, containing the
 7 following information:

- 8 (i) a description of the proposed location and of the
 9 facility to be built thereon;
- 10 (ii) a summary of any studies which have been made of
 11 the environmental impact of the facility;
- 12 (iii) a statement explaining the need for the facility;
- 13 (iv) for facilities defined in 75-20-104(10)(b) (8)(b)
 14 and (10)(c) (8)(c), a description of reasonable alternate
 15 locations for the facility, a general description of the
 16 comparative merits and detriments of each location
 17 submitted, and a statement of the reasons why the proposed
 18 location is best suited for the facility;
- 19 (v) (A) for facilities as defined in 75-20-104(10)(b)
 20 (8)(b) and (10)(c) (8)(c), baseline data for the primary and
 21 reasonable alternate locations; or
- 22 (B) for facilities as defined in 75-20-104(10)(a)
 23 (8)(a), (10)(d) (8)(d), and (10)(e) (8)(e), baseline data
 24 for the proposed location and, at the applicant's option,
 25 any alternative locations acceptable to the applicant for

1 siting the facility;

2 (vi) at the applicant's option, an environmental study
 3 plan to satisfy the requirements of this chapter; and
 4 (vii) such other information as the applicant considers
 5 relevant or as the board and board of health by order or
 6 rule or the department and department of health by order or
 7 rule may require.

8 (b) A copy or copies of the studies referred to in
 9 subsection (1)(a)(ii) above shall be filed with the
 10 department, if ordered, and shall be available for public
 11 inspection.

12 (2) An application may consist of an application for
 13 two or more facilities in combination which are physically
 14 and directly attached to each other and are operationally a
 15 single operating entity.

16 (3) An application shall be accompanied by proof of
 17 service of a copy of the application on the chief executive
 18 officer of each unit of local government, county
 19 commissioner, city or county planning boards, and federal
 20 agencies charged with the duty of protecting the environment
 21 or of planning land use in the area in which any portion of
 22 the proposed facility is proposed or is alternatively
 23 proposed to be located and on the following state government
 24 agencies:

- 25 (a) environmental quality council;

- 1 (b)--department-of-public-service-regulation;
- 2 (c)--department-of-fish,wildlife,and-parks;
- 3 (d)--department-of-state-lands;
- 4 (e)--department-of-commerce;
- 5 (f)--department-of-highways;
- 6 (g)--department-of-public-health;
- 7 (g)(h)--department-of-revenue;

8 (4)--The copy of the application shall be accompanied by
 9 a--notice--specifying--the--date--on--or--about--which--the
 10 application is to be filed;

11 (5)--An application shall also be accompanied by proof
 12 that public notice thereof was given to persons residing in
 13 the area in which any portion of the proposed facility is
 14 proposed or is alternatively proposed to be located, by
 15 publication of a summary of the application in those
 16 newspapers that will substantially inform those persons of
 17 the application;"

18 Section 18. Section 75-20-213, MCA, is amended to read:

19 "75-20-213. Supplemental material-- amendments-- (1) An
 20 application for an amendment of an application or a
 21 certificate shall be in such form and contain such
 22 information as the board by rule or the department by order
 23 prescribes. Notice of such an application shall be given as
 24 set forth in (3), (4), and (5) of 75-20-211.

25 (2) An application may be amended by an applicant any

1 time prior to the department's recommendation. If the
 2 proposed amendment is such that it prevents the department,
 3 the department of health, or the agencies listed in
 4 75-20-216(5) from carrying out their duties and
 5 responsibilities under this chapter, the department may
 6 require such additional filing fees as the department
 7 determines necessary, or the department may require a new
 8 application and filing fee.

9 (3) The applicant shall submit supplemental material in
 10 a timely manner as requested by the department or as offered
 11 by the applicant to explain, support, or provide the detail
 12 with respect to an item described in the original
 13 application, without filing an application for an amendment.
 14 The department's determination as to whether information is
 15 supplemental or whether an application for amendment is
 16 required shall be conclusive."

17 Section 19. Section 75-20-215, MCA, is amended to read:

18 "75-20-215. Filing fee-- accountability-- refund--
 19 use-- (1) (a) A filing fee shall be deposited in the state
 20 special revenue fund for the use of the department in
 21 administering this chapter. The applicant shall pay to the
 22 department a filing fee as provided in this section based
 23 upon the department's estimated costs of processing the
 24 application under this chapter, but which shall not exceed
 25 the following scale based upon the estimated cost of the

1 facility:

2 (i) 4% of any estimated cost up to \$1 million, plus

3 (ii) 1% of any estimated cost over \$1 million and up to

4 \$20 million, plus

5 (iii) 0.5% of any estimated cost over \$20 million and up

6 to \$100 million, plus

7 (iv) 0.25% of any amount of estimated cost over \$100

8 million and up to \$300 million, plus

9 (v) 0.125% of any amount of estimated cost over \$300

10 million and up to \$1 billion, plus

11 (vi) 0.05% of any amount of estimated cost over \$1

12 billion;

13 (b) The department may allow in its discretion a credit

14 against the fee payable under this section for the

15 development of information or providing of services required

16 hereunder or required for preparation of an environmental

17 impact statement under the Montana or national environmental

18 policy acts. The applicant may submit the information to the

19 department together with an accounting of the expenses

20 incurred in preparing the information. The department shall

21 evaluate the applicability, validity, and usefulness of the

22 data and determine the amount which may be credited against

23 the filing fee payable under this section. Upon 30 days

24 notice to the applicant, this credit may at any time be

25 reduced if the department determines that it is necessary to

1 carry out its responsibilities under this chapter.

2 (2) (a) The department may contract with an applicant

3 for the development of information, provision of services

4 and payment of fees required under this chapter. The

5 contract may continue an agreement entered into pursuant to

6 75-20-106. Payments made to the department under such a

7 contract shall be credited against the fee payable

8 hereunder. Notwithstanding the provisions of this section,

9 the revenue derived from the filing fee must be sufficient

10 to enable the department, the department of health, the

11 board, the board of health, and the agencies listed in

12 75-20-216(5) to carry out their responsibilities under this

13 chapter. The department may amend a contract to require

14 additional payments for necessary expenses up to the limits

15 set forth in subsection (1)(a) above upon 30 days

16 notice to the applicant. The department and applicant may enter into a

17 contract which exceeds the scale provided in subsection

18 (1)(a);

19 (b) If a contract is not entered into, the applicant

20 shall pay the filing fee in installments in accordance with

21 a schedule of installments developed by the department,

22 provided that no one installment may exceed 20% of the total

23 filing fee provided for in subsection (1);

24 (3) The estimated cost of upgrading an existing

25 transmission substation may not be included in the estimated

1 cost-of-a-proposed-facility-for-the-purpose-of-calculating-a
2 filing-fee:

3 (4)--If-an-application-consists-of-a-combination-of--two
4 or--more--facilities;--the--filing-fee-shall-be-based-on-the
5 total-estimated-cost-of-the-combined-facilities:

6 (5)--The-applicant--is--entitled--to--an--accounting--of
7 moneys-expended-and-to-a-refund-with-interest-at-the-rate-of
8 6%--a-year-of-that-portion-of-the-filing-fee-not-expended-by
9 the-department-in-carrying-out--its--responsibilities--under
10 this--chapter;--A--refund--shall--be--made--after--all
11 administrative-and-judicial-remedies-have-been-exhausted--by
12 all-parties-to-the-certification-proceedings:

13 (6)--The-revenues-derived-from-filing-fees-shall-be-used
14 by--the-department-in-compiling-the-information-required-for
15 rendering-a-decision-on-a-certificate-and-for--carrying--out
16 its--and--the--board's--other--responsibilities--under--this
17 chapter:*

18 Section-26;--Section-75-20-216;--MEA;--is-amended-to-read:

19 *75-20-216;--Study;--evaluation;--and-report-on-proposed
20 facility---assistance-by-other-agencies;--(1)After--receipt
21 of--an--application;--the-department-and-department-of-health
22 shall-within-90-days-notify-the-applicant-in-writing-that:

23 (a)--the-application-is-in-compliance-and-is-accepted-as
24 complete;--or

25 (b)--the-application-is-not-in-compliance-and--list--the

1 deficiencies---therein;---and---upon---correction---of---these
2 deficiencies--and--resubmission--by---the---applicant;---the
3 department--and--department--of--health-shall-within-30-days
4 notify-the-applicant-in-writing-that-the-application--is--in
5 compliance-and-is-accepted-as-complete;

6 (2)--Upon--receipt--of--an--application--complying--with
7 75-20-211--through--75-20-213;--75-20-215;--and--this-section;--
8 the--department--shall--commence--an--intensive--study---and
9 evaluation---of--the--proposed--facility--and--its--effects;--
10 considering-all-applicable-criteria-listed-in-75-20-301--and
11 75-20-503;--and--the--department--of--health-shall-commence-a
12 study-to-enable-it--or--the--board--of--health--to--issue--a
13 decision;--opinion;--order;--certification;--or--permit--as
14 provided-in-subsection-(3);--The-department-and-department-of
15 health-shall-use;--to-the-extent-they-consider it--considers
16 applicable;--valid--and--useful-existing-studies-and-reports
17 submitted-by-the-applicant-or-compiled-by-a-state-or-federal
18 agency:

19 (3)--The--department--of--health--shall--within--1--year
20 following-the-date-of-acceptance-of-an-application--and--the
21 board--of--health--or--department--of--health;--if-applicable;--
22 within-an-additional-6-months;--issue-any-decision;--opinion;--
23 order;--certification;--or--permit--required--under-the-laws
24 administered-by-the-department-of-health--or--the--board--of
25 health--and--this--chapter;--The-department-of-health-and-the

1 board of health shall determine compliance with all
 2 standards, permit requirements, and implementation plans
 3 under their jurisdiction for the proposed location or any
 4 proposed alternate location in their decision, opinion,
 5 order, certification, or permit. The decision, opinion,
 6 order, certification, or permit, with or without conditions,
 7 is conclusive on all matters that the department of health
 8 and board of health administer, and any of the criteria
 9 specified in subsections (2) through (7) of 75-20-503 that
 10 are a part of the determinations made under the laws
 11 administered by the department of health and the board of
 12 health. Although the decision, opinion, order,
 13 certification, or permit issued under this subsection is
 14 conclusive, the board retains authority to make the
 15 determination required under 75-20-301(2)(c). The decision,
 16 opinion, order, certification, or permit of the department
 17 of health or the board of health satisfies the review
 18 requirements by those agencies and shall be acceptable in
 19 lieu of an environmental impact statement under the Montana
 20 Environmental Policy Act. A copy of the decision, opinion,
 21 order, certification, or permit shall be served upon the
 22 department and the board and shall be utilized as part of
 23 their final site selection process. Prior to the issuance of
 24 a preliminary decision by the department of health and
 25 pursuant to rules adopted by the board of health, the

1 department of health shall provide an opportunity for public
 2 review and comment.

3 (4) Within 22 months following acceptance of an
 4 application for a facility as defined in (a) and (d) of
 5 75-20-104(10)(8) and for a facility as defined in (b) and
 6 (c) of 75-20-104(10)(8) which is more than 30 miles in
 7 length, and within 1 year for a facility as defined in (b)
 8 and (c) of 75-20-104(10)(8) which is 30 miles or less in
 9 length, the department shall make a report to the board
 10 which shall contain the department's studies, evaluations,
 11 recommendations, other pertinent documents resulting from
 12 its study and evaluation, and an environmental impact
 13 statement or analysis prepared pursuant to the Montana
 14 Environmental Policy Act, if any, if the application is for
 15 a combination of two or more facilities, the department
 16 shall make its report to the board within the greater of the
 17 lengths of time provided for in this subsection for either
 18 of the facilities.

19 (5) The departments of highways, commerce, fish,
 20 wildlife, and parks, state lands, revenue, public health,
 21 and public service regulation shall report to the department
 22 information relating to the impact of the proposed site on
 23 each department's area of expertise. The report may include
 24 opinions as to the advisability of granting, denying, or
 25 modifying the certificate. The department shall allocate

1 funds-obtained-from-filing-fees-to--the--departments--making
2 reports--to--reimburse--them--for--the--costs--of--compiling
3 information-and-issuing-the-required-report;#

4 Section-21--Section-75-20-218, MCA, is amended to read:
5 "75-20-218. Hearing--date----location----department-to
6 act-as-staff----hearings--to--be--held--jointly--(1)--Upon
7 receipt---of---the---department's---report--submitted--under
8 75-20-216, the board shall set a date for a hearing to begin
9 not more than 120 days after the receipt. Certification
10 hearings--shall--be--conducted--by--the--board--in--the--county--seat
11 of Lewis and Clark County or the county in which the
12 facility or the greater portion thereof is to be located;

13 (2) Except as provided in 75-20-221(2), the department
14 shall act as the staff for the board throughout the
15 decisionmaking process and the board may request the
16 department to present testimony or cross-examine witnesses
17 as the board considers necessary and appropriate;

18 (3) At the request of the applicant, the department of
19 health and the board of health shall hold any required
20 permit hearings required under other laws administered by
21 those agencies in conjunction with the board certification
22 hearing. In such a conjunctive hearing the time periods
23 established for reviewing an application and for issuing a
24 decision on certification of a proposed facility under this
25 chapter supersede the time periods specified in other laws

1 administered by the department of health and the board of
2 health;#

3 Section-22--Section-75-20-219, MCA, is amended to read:
4 "75-20-219. Amendments--to--a--certificate--(1)--Within--30
5 days after notice of an amendment to a certificate is given
6 as set forth in 75-20-213(1), including notice to all active
7 parties to the original proceeding, the department shall
8 determine whether the proposed change in the facility would
9 result in a material increase in any environmental impact of
10 the facility or a substantial change in the location of all
11 or a portion of the facility as set forth in the
12 certificate. If the department determines that the proposed
13 change would result in a material increase in any
14 environmental impact of the facility or a substantial change
15 in the location of all or a portion of the facility, the
16 board shall hold a hearing in the same manner as a hearing
17 is held on an application for a certificate. After hearing,
18 the board shall grant, deny, or modify the amendment with
19 such conditions as it deems appropriate;

20 (2) In those cases where the department determines that
21 the proposed change in the facility would not result in a
22 material increase in any environmental impact or would not
23 be a substantial change in the location of all or a portion
24 of the facility, the board shall automatically grant the
25 amendment either as applied for or upon such terms or

1 conditions as the board considers appropriate unless the
2 department's determination is appealed to the board within
3 15 days after notice of the department's determination is
4 given:

5 (3) If the department or the board, under subsection
6 (4), determines that a hearing is required because the
7 proposed change would result in a material increase in any
8 environmental impact of the facility or a substantial change
9 in the location of all or a portion of the facility, the
10 applicant has the burden of showing by clear and convincing
11 evidence that the amendment should be granted:

12 (4) If the department determines that the proposed
13 change in the facility would not result in a material
14 increase in any environmental impact or would not be a
15 substantial change in the location of all or a portion of
16 the facility and a hearing is required because the
17 department's determination is appealed to the board as
18 provided in subsection (2), the appellant has the burden of
19 showing by clear and convincing evidence that the proposed
20 change in the facility would result in a material increase
21 in any environmental impact of the facility or a substantial
22 change in the location of all or a portion of the facility
23 as set forth in the certificate:

24 (5) If an amendment is required to a certificate which
25 would affect, amend, alter or modify a decision, opinion,

1 order, certification, or permit issued by the department of
2 health or board of health, such amendment must be processed
3 under the applicable statutes administered by the department
4 of health or board of health."

5 Section 23, Section 75-20-220, MCA, is amended to read:
6 "75-20-220. Hearing examiner --- restrictions --- duties.
7 (1) If the board appoints a hearing examiner to conduct any
8 certification proceedings under this chapter, the hearing
9 examiner may not be a member of the board, or an employee of
10 the department, or a member or employee of the department of
11 health or board of health. A hearing examiner, if any, shall
12 be appointed by the board within 20 days after the
13 department's report has been filed with the board, if a
14 hearing is held before the board of health or the department
15 of health, the board and the board of health or the
16 department of health shall mutually agree on the appointment
17 of a hearing examiner to preside at both hearings:

18 (2) A prehearing conference shall be held following
19 notice within 60 days after the department's report has been
20 filed with the board:

21 (3) The prehearing conference shall be organized and
22 supervised by the hearing examiner:

23 (4) The prehearing conference shall be directed toward
24 a determination of the issues presented by the application,
25 the department's report, and an identification of the

1 witnesses--and--documentary--exhibits--to--be--presented--by--the
2 active--parties--who--intend--to--participate--in--the--hearing;

3 {5}--The--hearing--examiner--shall--require--the--active
4 parties--to--submit,--in--writing,--and--serve--upon--the--other
5 active--parties,--all--direct--testimony--which--they--propose--and
6 any--studies,--investigations,--reports,--or--other--exhibits--that
7 any--active--party--wishes--the--board--to--consider. These--written
8 exhibits--and--any--documents--that--the--board--itself--wishes--to
9 use--or--rely--on--shall--be--submitted--and--served--in--like--manner,
10 at--least--20--days--prior--to--the--date--set--for--the--hearing. For
11 good--cause--shown,--the--hearing--examiner--may--allow--the
12 introduction--of--new--evidence--at--any--time.

13 {6}--The--hearing--examiner--shall--allow--discovery--which
14 shall--be--completed--before--the--commencement--of--the--hearing,
15 upon--good--cause--shown--and--under--such--other--conditions--as--the
16 hearing--examiner--shall--prescribe.

17 {7}--Public--witnesses--and--other--interested--public
18 parties--may--appear--and--present--oral--testimony--at--the--hearing
19 or--submit--written--testimony--to--the--hearing--examiner--at--the
20 time--of--their--appearance. These--witnesses--are--subject--to
21 cross--examination.

22 {8}--The--hearing--examiner--shall--issue--a--prehearing--order
23 specifying--the--issues--of--fact--and--of--law,--identifying--the
24 witnesses--of--the--active--parties,--naming--the--public--witnesses
25 and--other--interested--parties--who--have--submitted--written

1 testimony--in--lieu--of--appearance,--outlining--the--order--in
2 which--the--hearing--shall--proceed,--setting--forth--those--section
3 75-20-301--criteria--as--to--which--no--issue--of--fact--or--law--has
4 been--raised--which--are--to--be--conclusively--presumed--and--are
5 not--subject--to--further--proof--except--for--good--cause--shown,
6 and--any--other--special--rules--to--expedite--the--hearing--which
7 the--hearing--examiner--shall--adopt--with--the--approval--of--the
8 board.

9 {9}--At--the--conclusion--of--the--hearing,--the--hearing
10 examiner--shall--declare--the--hearing--closed--and--shall,--within
11 60--days--of--that--date,--prepare--and--submit--to--the--board--and--in
12 the--case--of--a--conjunctive--hearing,--within--90--days--to--the
13 board--and--the--board--of--health--or--department--of--health
14 proposed--findings--of--fact,--conclusions--of--law,--and--a
15 recommended--decision.

16 {10}--The--hearing--examiner--appointed--to--conduct--a
17 certification--proceeding--under--this--chapter--shall--insure
18 that--the--time--of--the--proceeding,--from--the--date--the
19 department's--report--is--filed--with--the--board--until--the
20 recommended--report--and--order--of--the--examiner--is--filed--with
21 the--board,--does--not--exceed--9--calendar--months--unless--extended
22 by--the--board--for--good--cause.

23 {11}--The--board--or--hearing--examiner--may--waive--all--or--a
24 portion--of--the--procedures--set--forth--in--subsections--(2)
25 through--(8)--of--this--section--to--expedite--the--hearing--for--a

1 facility--when--the--department--has--recommended--approval--of--a
2 facility--and--no--objections--have--been--filed;#

3 Section-24;--Section-75-20-221;--MCA;--is--amended--to--read:

4 #75-20-221;--Parties--to--certification--proceeding-----
5 waiver-----statement--of--intent--to--participate;--(1)--The
6 parties--to--a--certification--proceeding--or--to--a--proceeding
7 involving--the--issuance--of--a--decision;--opinion;--order;
8 certification;--or--permit--by--the--board--of--health department
9 under--this--chapter--may--include--as--active--parties:

10 (a)--the--applicant;

11 (b)--each--political--entity;--unit--of--local--government;
12 and--government--agency;--including--the--department--of--health;
13 entitled--to--receive--service--of--a--copy--of--the--application
14 under--75-20-211(3);

15 (c)--any--person--entitled--to--receive--service--of--a--copy--of
16 the--application--under--75-20-211(5);

17 (d)--any--nonprofit--organization--formed--in--whole--or--in
18 part--to--promote--conservation--or--natural--beauty;--to--protect
19 the--environment;--personal--health;--or--other--biological
20 values;--to--preserve--historical--sites;--to--promote--consumer
21 interests;--to--represent--commercial--and--industrial--groups;--or
22 to--promote--the--orderly--development--of--the--areas--in--which--the
23 facility--is--to--be--located;

24 (e)--any--other--interested--person--who--establishes--an
25 interest--in--the--proceeding;

1 (2)--The--department--shall--be--an--active--party--in--any
2 certification--proceeding--in--which--the--department--recommends
3 denial--of--all--or--a--portion--of--a--facility;

4 (3)--The--parties--to--a--certification--proceeding--may--also
5 include;--as--public--parties;--any--Montana--citizen--and--any
6 party--referred--to--in--(b);--(c);--(d);--or--(e)--of--subsection
7 (1);

8 (4)--Any--party--waives--the--right--to--be--a--party--if--the
9 party--does--not--participate--in--the--hearing--before--the--board
10 or--the--board--of--health;

11 (5)--Each--unit--of--local--government--entitled--to--receive
12 service--of--a--copy--of--the--application--under--75-20-211(3)
13 shall--file--with--the--board--a--statement--showing--whether--the
14 unit--of--local--government--intends--to--participate--in--the
15 certification--proceeding;--if--the--unit--of--local--government
16 does--not--intend--to--participate;--it--shall--list--in--this
17 statement--its--reasons--for--failing--to--do--so;--This--statement
18 of--intent--shall--be--published--before--the--proceeding--begins--in
19 a--newspaper--of--general--circulation--within--the--jurisdiction
20 of--the--applicable--unit--of--local--government;#

21 Section-25;--Section-75-20-225;--MCA;--is--amended--to--read;

22 #75-20-225;--Certificate--renewal-----application-----
23 contents-----filing--fee;--(1)--Any--certificate--holder--for--a
24 facility--as--defined--in--75-20-104(10)(a)(i);(8)(a)(i)--may
25 apply--for--renewal--of--a--certificate--prior--to--the--certificate

1 lapsing.

2 {2}--An applicant for a renewal of a certificate shall

3 file with the department and department of health a joint an

4 application in such form as the board requires by rule.

5 {3}--An application for renewal of a certificate must

6 include updated information on the matters listed in

7 75-20-211(1)(a) that have changed since the original

8 application and such other information as the board requires

9 by rule for certification. The matters listed in

10 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate

11 locations must be updated only if the board determines that

12 within the certified location significant changes have

13 occurred to warrant a review of alternate locations.

14 {4}--An application filed under subsection (1) must

15 comply with the provisions of 75-20-211(3) through (5).

16 {5}--Except as provided in this subsection, the

17 applicant shall pay a filing fee to the department in

18 accordance with 75-20-215(2). The fee is in addition to any

19 previous filing fee paid for processing the original

20 application for a certificate pursuant to 75-20-215. The fee

21 may not exceed the following scale:

22 (a)--0.125% of any estimated cost up to \$300 million;

23 plus

24 (b)--0.063% of any estimated cost over \$300 million.⁴

25 Section 26, Section 75-20-226, MCA, is amended to read:

1 75-20-226, Renewal study. (1) Upon receipt of a

2 completed application for renewal of a certificate, the

3 department shall evaluate the updated information and any

4 significant changes in need, alternatives, technology,

5 baseline environment, and the environmental impacts of a

6 facility that have taken place since the original study

7 performed in granting the certificate, considering the

8 applicable criteria listed in 75-20-301 and 75-20-503 and

9 the original board findings and certificate conditions.

10 (2) The department of health and the board of health,

11 within 10 months of acceptance of a complete renewal

12 application, shall complete the statutory duties established

13 in 75-20-216(3). A copy of any decision, opinion, order,

14 certification, or permit must be served on the department

15 and the board and must be used as part of their

16 decisionmaking process.

17 (3) Within 12 months following acceptance of a complete

18 application for renewal of a certificate, the department

19 shall make a report to the board. This report must contain

20 the department's studies, evaluations, recommendations, and

21 other pertinent documents resulting from its study and

22 evaluation and an updated environmental impact statement or

23 analysis pursuant to the Montana Environmental Policy Act.

24 The department's report must be directed to the question of

25 whether the original board findings and conditions have been

1 or need to be altered as a result of any significant changes
 2 in need, alternatives, technology, baseline environment, or
 3 environmental impact since issuance of the certificate,
 4 considering the applicable criteria listed in 75-20-301 and
 5 75-20-503.

6 (4) The departments of highways, commerce, fish,
 7 wildlife, and parks, state lands, revenue, public health,
 8 and public service regulation shall report to the department
 9 information relating to the impact of the proposed site on
 10 each department's area of responsibility. The report may
 11 include opinions as to the advisability of renewing the
 12 certificate. The department shall allocate funds obtained
 13 from filing fees to the departments making reports to
 14 reimburse them for the cost of compiling information and
 15 issuing the required reports."

16 Section 27, Section 75-20-301, MCA, is amended to read:

17 "75-20-301. Decision of board --- findings necessary for
 18 certification. (1) Within 60 days after submission of the
 19 recommended decision by the hearing examiner, the board
 20 shall make complete findings, issue an opinion, and render a
 21 decision upon the record, either granting or denying the
 22 application as filed or granting it upon such terms,
 23 conditions, or modifications of the construction, operation,
 24 or maintenance of the facility as the board considers
 25 appropriate.

1 (2) The board may not grant a certificate either as
 2 proposed by the applicant or as modified by the board unless
 3 it shall find and determine:

4 (a) the basis of the need for the facility;
 5 (b) the nature of the probable environmental impact;
 6 (c) that the facility minimizes adverse environmental
 7 impact, considering the state of available technology and
 8 the nature and economics of the various alternatives;

9 (d) each of the criteria listed in 75-20-503;
 10 (e) in the case of an electric, gas, or liquid
 11 transmission line or aqueduct:

12 (i) what part, if any, of the line or aqueduct shall be
 13 located underground;

14 (ii) that the facility is consistent with regional plans
 15 for expansion of the appropriate grid of the utility systems
 16 serving the state and interconnected utility systems; and

17 (iii) that the facility will serve the interests of
 18 utility system economy and reliability;

19 (f) that the location of the facility as proposed
 20 conforms to applicable state and local laws and regulations
 21 issued thereunder, except that the board may refuse to apply
 22 any local law or regulation if it finds that, as applied to
 23 the proposed facility, the law or regulation is unreasonably
 24 restrictive in view of the existing technology, of factors
 25 of cost or economics, or of the needs of consumers, whether

1 located--inside--or--outside--of---the---directly---affected
2 government-subdivisions;

3 (g)--that--the--facility--will--serve--the--public--interest,
4 convenience, and-necessity;

5 (h)--that--the--department--of--health--or--board--of--health
6 have has--issued--a--decision, opinion, order, certification,
7 or-permit--as--required--by--75-20-216(3); and

8 (i)--that--the--use--of--public--lands--for--location--of--the
9 facility--was--evaluated--and--public--lands--were--selected
10 whenever--their--use--is--as--economically--practicable--as--the--use
11 of--private--lands--and--compatible--with--the--environmental
12 criteria--listed--in--75-20-503.

13 (3)--in--determining--that--the--facility--will--serve--the
14 public--interest, convenience, and-necessity--under--subsection
15 (2)(g)--of--this--section, the--board--shall--consider:

16 (a)--the--items--listed--in--subsections--(2)(a)--and--(2)(b)
17 of--this--section;

18 (b)--the--benefits--to--the--applicant--and--the--state
19 resulting--from--the--proposed--facility;

20 (c)--the--effects--of--the--economic--activity--resulting--from
21 the--proposed--facility;

22 (d)--the--effects--of--the--proposed--facility--on--the--public
23 health, welfare, and-safety;

24 (e)--any--other--factors--that--it--considers--relevant;

25 (4)--Considerations--of--need, public--need, or--public

1 convenience--and--necessity--and--demonstration--thereof--by--the
2 applicant--shall--apply--only--to--utility--facilities."

3 Section-20--Section-75-20-302, MCA, is-amended-to-read:

4 "75-20-302--Conditions--imposed,--(1)--If--the--board
5 determines--that--the--location--of--all--or--a--part--of--the
6 proposed--facility--should--be--modified, it--may--condition--its
7 certificate--upon--such--modification, provided--that--the
8 persons--residing--in--the--area--affected--by--the--modification
9 have--been--given--reasonable--notice--of--the--modification;

10 (2)--In--making--its--findings--under--75-20-302(2)(a)--for--a
11 facility--defined--in--75-20-104(10)(a)(i)(8)(a)(i), the--board
12 may--condition--a--certificate--upon--actual--load--growth--reaching
13 a--specified--level--or--on--availability--of--other--planned--energy
14 resources;"

15 Section-29--Section-75-20-303, MCA, is-amended-to-read:

16 "75-20-303--Opinion--issued--with--decision---contents:
17 (1)--In--rendering--a--decision--on--an--application--for--a
18 certificate, the--board--shall--issue--an--opinion--stating--its
19 reasons--for--the--action--taken;

20 (2)--If--the--board--has--found--that--any--regional--or--local
21 law--or--regulation--which--would--be--otherwise--applicable--is
22 unreasonably--restrictive--pursuant--to--75-20-301(2)(f), it
23 shall--state--in--its--opinion--the--reasons--therefor;

24 (3)--Any--certificate--issued--by--the--board--shall--include
25 the--following:

1 (a) an environmental evaluation statement related to
 2 the facility being certified. The statement shall include
 3 but not be limited to analysis of the following information:
 4 (i) the environmental impact of the proposed facility;
 5 (ii) any adverse environmental effects which cannot be
 6 avoided by issuance of the certificate;
 7 (iii) problems and objections raised by other federal
 8 and state agencies and interested groups; and
 9 (iv) alternatives to the proposed facility;
 10 (b) a plan for monitoring environmental effects of the
 11 proposed facility;
 12 (c) a plan for monitoring the certified facility site
 13 between the time of certification and completion of
 14 construction;
 15 (d) a time limit as provided in subsection (4); and
 16 (e) a statement signed by the applicant showing
 17 agreement to comply with the requirements of this chapter
 18 and the conditions of the certificate;
 19 (4) (a) The board shall issue as part of the
 20 certificate the following time limits:
 21 (i) For a facility as defined in (b) or (c) of
 22 75-20-104(10)(b) or (c) that is more than 30 miles in
 23 length, construction must be completed within 10 years;
 24 (ii) For a facility as defined in (b) of
 25 75-20-104(10)(b) that is 30 miles or less in length,

1 construction must be completed within 5 years;
 2 (iii) For a facility as defined in (a) of
 3 75-20-104(10)(a), construction must begin within 6 years
 4 and continue with due diligence in accordance with
 5 preliminary construction plans established in the
 6 certificate;
 7 (b) Unless extended or renewed in accordance with
 8 subsection (4)(c) or 75-20-225 through 75-20-227, a
 9 certificate lapses and is void if the facility is not
 10 constructed or if construction of the facility is not
 11 commenced within the time limits provided in this section;
 12 (c) The time limit may be extended for a reasonable
 13 period upon a showing by the applicant to the board that a
 14 good faith effort is being undertaken to complete
 15 construction under subsections (4)(a)(i) and (4)(a)(ii) or
 16 to begin construction under subsection (4)(a)(iii). Under
 17 this subsection, a good faith effort includes the process of
 18 acquiring any necessary state or federal permit or
 19 certificate for the facility and the process of judicial
 20 review of any such permit or certificate;
 21 (5) The provisions of subsection (4) apply to any
 22 facility for which a certificate has not been issued or for
 23 which construction is yet to be commenced."
 24 Section 30, Section 75-20-304, MEA, is amended to read:
 25 "75-20-304. Waiver of provisions of certification

1 proceedings--(1)-The board may waive compliance with any of
 2 the provisions of 75-20-216 through 75-20-222, 75-20-501,
 3 and this part if the applicant makes a clear and convincing
 4 showing to the board at a public hearing that an immediate,
 5 urgent need for a facility exists and that the applicant did
 6 not have knowledge that the need for the facility existed
 7 sufficiently in advance to fully comply with the provisions
 8 of 75-20-216 through 75-20-222, 75-20-501 and this part.

9 (2)--The board may waive compliance with any of the
 10 provisions of this chapter upon receipt of notice by a
 11 person subject to this chapter that a facility or associated
 12 facility has been damaged or destroyed as a result of fire,
 13 flood, or other natural disaster or as the result of
 14 insurrection, war, or other civil disorder and there exists
 15 an immediate need for construction of a new facility or
 16 associated facility or the relocation of a previously
 17 existing facility or associated facility in order to promote
 18 the public welfare.

19 (3)--The board shall waive compliance with the
 20 requirements of subsections (2)(c), (3)(b), and (3)(c) of
 21 75-20-301 and 75-20-501(5) and the requirements of
 22 subsections (1)(e)(iv) and (v) of 75-20-211, 75-20-216(3),
 23 and 75-20-303(3)(a)(iv) relating to consideration of
 24 alternative sites if the applicant makes a clear and
 25 convincing showing to the board at a public hearing that:

1 (a)--a proposed facility will be constructed in a county
 2 where a single employer within the county has permanently
 3 curtailed or ceased operations causing a loss of 250 or more
 4 permanent jobs within 2 years at the employer's operations
 5 within the preceding 10-year period;

6 (b)--the county and municipal governing bodies in whose
 7 jurisdiction the facility is proposed to be located support
 8 by resolution such a waiver;

9 (c)--the proposed facility will be constructed within a
 10 15-mile radius of the operations that have ceased or been
 11 curtailed; and

12 (d)--the proposed facility will have a beneficial effect
 13 on the economy of the county in which the facility is
 14 proposed to be located.

15 (4)--The waiver provided for in subsection (3) applies
 16 only to permanent job losses by a single employer. The
 17 waiver provided for in subsection (3) does not apply to jobs
 18 of a temporary or seasonal nature, including but not limited
 19 to construction jobs or job losses during labor disputes.

20 (5)--The waiver provided for in subsection (3) does not
 21 apply to consideration of alternatives or minimum adverse
 22 environmental impact for a facility defined in subsections
 23 (10)(b), (10)(b), (c), (d), or (e) of 75-20-104 for an
 24 associated facility defined in 75-20-104(3) or for any
 25 portion of or process in a facility defined in subsection

1 ~~{10}(a) {8}(a) of 75-20-104 to the extent that the process~~
2 ~~or portion of the facility is not subject to a permit issued~~
3 ~~by the department of health or board of health;~~

4 ~~{6}--The applicant shall pay all expenses required to~~
5 ~~process and conduct a hearing on a waiver request under~~
6 ~~subsection {3}. However, any payments made under this~~
7 ~~subsection shall be credited toward the fee paid under~~
8 ~~75-20-215 to the extent the data or evidence presented at~~
9 ~~the hearing or the decision of the board under subsection~~
10 ~~{3} can be used in making a certification decision under~~
11 ~~this chapter;~~

12 ~~{7}--The board may grant only one waiver under~~
13 ~~subsections {3} and {4} for each permanent loss of jobs as~~
14 ~~defined in subsection {3}(a)."~~

15 ~~Section 31, Section 75-20-402, MCA, is amended to read:~~

16 ~~"75-20-402. Monitoring. The board, and the department,~~
17 ~~the department of health, and the board of health shall~~
18 ~~monitor the operations of all certificated facilities for~~
19 ~~assuring continuing compliance with this chapter and~~
20 ~~certificates issued hereunder and for discovering and~~
21 ~~preventing noncompliance with this chapter and the~~
22 ~~certificates. The applicant shall pay all expenses related~~
23 ~~to the monitoring plan established in subsection {3}(b) or~~
24 ~~{3}(c) of 75-20-303 to the extent federal funds available~~
25 ~~for the facility, as determined by the department of health,~~

1 ~~have not been provided for such purposes."~~

2 ~~Section 32, Section 75-20-406, MCA, is amended to read:~~

3 ~~"75-20-406. Judicial review of board, board of health,~~
4 ~~and department of health decisions. {1} Any active party as~~
5 ~~defined in 75-20-221 aggrieved by the final decision of the~~
6 ~~board on an application for a certificate may obtain~~
7 ~~judicial review of that decision by the filing of a petition~~
8 ~~in a state district court of competent jurisdiction;~~

9 ~~{2}--The judicial review procedure shall be the same as~~
10 ~~that for contested cases under the Montana Administrative~~
11 ~~Procedure Act;~~

12 ~~{3}--When the board of health or department of health~~
13 ~~conducts hearings pursuant to 75-20-216{3} and 75-20-218 and~~
14 ~~the applicant is granted a permit or certification, with or~~
15 ~~without conditions, pursuant to the other laws administered~~
16 ~~by the department of health and the board of health and~~
17 ~~this chapter, the decision may only be appealed only in~~
18 ~~conjunction with the final decision of the board as provided~~
19 ~~in subsections {1} and {2}. If a permit or certification is~~
20 ~~denied by the department of health or the board of health,~~
21 ~~the applicant may;~~

22 ~~{a}--appeal the denial under the appellate review~~
23 ~~procedures provided in the other laws administered by the~~
24 ~~department of health and the board of health; or~~

25 ~~{b}--reserve the right to appeal the denial by the~~

1 department of health or the board of health until after the
2 board has issued a final decision under 75-20-301.

3 (4) Nothing in this section may be construed to
4 prohibit the board from holding a hearing as herein provided
5 on all matters that are not the subject of a pending appeal
6 by the applicant under subsection (3)(a)."

7 Section 33, Section 75-20-501, MCA, is amended to read:

8 "75-20-501. Annual long-range plan submitted
9 contents available to public. (1) Each utility and each
10 person contemplating the construction of a facility within
11 this state in the ensuing 10 years shall furnish annually to
12 the department for its review a long-range plan for the
13 construction and operation of facilities:

14 (2) The plan shall be submitted by July 1 of each year
15 and must include the following:

16 (a) the general location, size, and type of all
17 facilities to be owned and operated by the utility or person
18 whose construction is projected to commence during the
19 ensuing 10 years, as well as those facilities to be removed
20 from service during the planning period;

21 (b) in the case of utility facilities, a description of
22 efforts by the utility or person to coordinate the plan with
23 other utilities or persons so as to provide a coordinated
24 regional plan for meeting the energy needs of the region;

25 (c) a description of the efforts to involve

1 environmental protection and land use planning agencies in
2 the planning process, as well as other efforts to identify
3 and minimize environmental problems at the earliest possible
4 stage in the planning process;

5 (d) projections of the demand for the service rendered
6 by the utility or person and explanation of the basis for
7 those projections and a description of the manner and extent
8 to which the proposed facilities will meet the projected
9 demand; and

10 (e) additional information that the board by rule or
11 the department on its own initiative or upon the advice of
12 interested state agencies might request in order to carry
13 out the purposes of this chapter.

14 (3) The plan shall be furnished to the governing body
15 of each county in which any facility included in the plan
16 under (2)(a) of this section is proposed to be located and
17 made available to the public by the department. The utility
18 or person shall give public notice throughout the state of
19 its plan by filing the plan with the environmental quality
20 council, the department of public health and environmental
21 sciences, the department of highways, the department of
22 public service regulation, the department of state lands,
23 the department of fish, wildlife, and parks, and the
24 department of commerce. Citizen environmental protection and
25 resource planning groups and other interested persons may

1 obtain a plan by written request and payment therefor to the
2 department;

3 (4) A rural electric cooperative may furnish the
4 department with a copy of the long range plan and 2 year
5 work plan required to be completed under federal rural
6 electrification requirements in lieu of the long range plan
7 required in subsection (1);

8 (5) No person may file an application for a facility
9 unless the facility had been adequately identified in a
10 long range plan at least 2 years prior to acceptance of an
11 application by the department, except for electric
12 transmission lines of a design capacity of 230 kilovolts or
13 less;

14 Section 34, Section 75-20-1202, MCA, is amended to
15 read:

16 "75-20-1202. Definitions. As used in this part and
17 75-20-201 through 75-20-203, the following definitions
18 apply:

19 (1) (a) "Nuclear facility" means each plant, unit, or
20 other facility designed for or capable of:

21 (i) generating 50 megawatts of electricity or more by
22 means of nuclear fission;

23 (ii) converting, enriching, fabricating, or reprocessing
24 uranium minerals or nuclear fuels; or

25 (iii) storing or disposing of radioactive wastes or

1 materials from a nuclear facility;

2 (b) "Nuclear facility" does not include any small scale
3 facility used solely for educational, research, or medical
4 purposes not connected with the commercial generation of
5 energy;

6 (2) "Facility," as defined in 75-20-104(10)(B), is
7 further defined to include any nuclear facility as defined
8 in subsection (1)(a) of this section;

9 Section 35, Section 76-15-103, MCA, is amended to read:
10 "76-15-103. Definitions. Unless the context requires
11 otherwise, in this chapter the following definitions apply:

12 (1) "Agency of this state" includes the government of
13 this state and any subdivision, agency, or instrumentality,
14 corporate or otherwise, of the government of this state;

15 (2) "Board" means the board of natural resources and
16 conservation land commissioners provided for in 2-15-3302
17 Article X, section 4, of the Montana constitution;

18 (3) "Department" means the department of natural
19 resources and conservation state lands provided for in Title
20 2, chapter 15, part 33 32;

21 (4) "District" or "conservation district" means a
22 governmental subdivision of this state and a public body
23 corporate and politic organized in accordance with this
24 chapter, for the purposes, with the powers, and subject to
25 the restrictions hereinafter set forth.

(5) ~~"Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area, the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.~~

(6) ~~"Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.~~

(7) ~~"Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity who holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.~~

(8) ~~"Petition" means a petition filed under 76-15-201 for the creation of a district.~~

(9) ~~"Qualified elector" means an elector as defined in Title 13.~~

(10) ~~"Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.~~

(11) ~~"United States" or "agencies of the United States"~~

~~includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America."~~

Section 5. Section 80-8-110, MCA, is amended to read:

"80-8-110. Cooperation with other agencies. (1) The department of agriculture may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department of agriculture and the department of health and environmental sciences natural resources and environment HEALTH AND ENVIRONMENTAL SCIENCES shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control

1 facilities; construction and demolition wastes; dead
 2 animals, including offal; discarded home and industrial
 3 appliances; and wood products or wood byproducts and inert
 4 materials. Solid waste does not mean municipal sewage,
 5 industrial wastewater ~~effluents~~ effluents, mining wastes
 6 regulated under the mining and reclamation laws administered
 7 by the department of state ~~lands~~ natural-resources-and
 8 environment HEALTH AND ENVIRONMENTAL SCIENCES, slash and
 9 forest debris regulated under laws administered by the
 10 department of state lands, or marketable wood byproducts.

11 (4) For the purpose of this section, "hazardous waste"
 12 means any waste or combination of wastes of a solid, liquid,
 13 contained gaseous, or semisolid form which may cause or
 14 contribute to an increase in mortality or an increase in
 15 serious illness, taking into account the toxicity of the
 16 waste, its persistence and degradability in nature, its
 17 potential for assimilation or concentration in tissue, and
 18 other factors that may otherwise cause or contribute to
 19 adverse acute or chronic effects on the health of persons or
 20 other living organisms. Hazardous wastes include but are not
 21 limited to those which are toxic, radioactive, corrosive,
 22 flammable, irritants, strong sensitizers, or which generate
 23 pressure through decomposition, heat, or other means,
 24 excluding wood chips and wood used for manufacturing or fuel
 25 purposes."

1 ~~Section 37. Section 81-23-103, MCA, is amended to read:~~
 2 ~~"81-23-103. General powers of the department. (1) The~~
 3 ~~department shall supervise, regulate, and control the milk~~
 4 ~~industry of this state, including the production,~~
 5 ~~processing, storage, distribution, and sale of milk sold for~~
 6 ~~consumption in this state. Nothing in this chapter abrogates~~
 7 ~~or affects the status, force, or operation of any provision~~
 8 ~~of public health laws or the law under which the department~~
 9 ~~of livestock is constituted together with the department of~~
 10 ~~livestock rules, county board of health rules, or municipal~~
 11 ~~ordinances for the promotion or protection of the public~~
 12 ~~health. The department may cooperate with the department of~~
 13 ~~public health and environmental sciences, the board of~~
 14 ~~livestock, any county or city board of health, or the~~
 15 ~~department of agriculture in enforcing this chapter.~~
 16 ~~(2) The department shall investigate all matters~~
 17 ~~pertaining to the production, processing, storage,~~
 18 ~~distribution, and sale of milk in this state and conduct~~
 19 ~~hearings upon any subject pertinent to the administration of~~
 20 ~~this chapter. The department may subpoena milk dealers,~~
 21 ~~their records, books, and accounts, and any other person~~
 22 ~~from whom information may be desired or considered necessary~~
 23 ~~to carry out the purposes and intent of this chapter and may~~
 24 ~~take depositions of witnesses who are sick or absent from~~
 25 ~~the state or who cannot otherwise appear in person before~~

1 ~~the department at its offices. The department shall give at~~
 2 ~~least 10 days' notice to the proposed witness."~~

3 **Section 6.** Section 82-4-103, MCA, is amended to read:

4 "82-4-103. Definitions. When used in this part, unless
 5 a different meaning clearly appears from the context, the
 6 following definitions apply:

7 (1) "Board" means the board of ~~land~~ commissioners
 8 natural-resources-and-environment HEALTH AND ENVIRONMENTAL
 9 SCIENCES as provided for in ~~Article X, section 47 of the~~
 10 ~~constitution of this state Title 2, chapter 15, part 33~~
 11 2-15-2104.

12 (2) "Department" means the department of ~~state lands~~
 13 natural-resources-and-environment HEALTH AND ENVIRONMENTAL
 14 SCIENCES provided for in Title 2, chapter 15, part ~~32~~ 33 21.

15 (3) "Mineral" means mineral as defined in 82-4-203.

16 (4) "New mine" means a strip- or underground-mining
 17 operation proposed for an area of land which the department
 18 determines, because of distance from an existing strip-mine
 19 or underground-mine operation or their respective facilities
 20 or because of important differences in topography, soils,
 21 wildlife, geologic structure, aquifers, or vegetation from
 22 an existing strip-mine or underground-mine operation, does
 23 not constitute an expansion of an existing operation.

24 (5) "Operation" means all of the premises, facilities,
 25 railroad loops, roads, power lines, and equipment used in

1 the process of producing and removing mineral from a
 2 designated strip-mine or underground-mine area.

3 (6) "Operator" means a person who intends to operate a
 4 new strip mine or new underground mine involving the removal
 5 of more than 10,000 cubic yards of mineral or overburden.

6 (7) "Person" means a person, partnership, corporation,
 7 association, or other legal entity or any political
 8 subdivision or agency of the state.

9 (8) "Preparatory work" means all on-site disturbances,
 10 excluding prospecting, associated with the initiation of a
 11 new strip mine or underground mine, including but not
 12 limited to the construction of railroad spurs or loops,
 13 buildings to house mining operations, roads, storage and
 14 train load-out facilities, transmission lines, erection of
 15 draglines and loading shovels, and other associated
 16 facilities.

17 (9) "Strip mining" means any part of the process
 18 followed in the production of mineral by the opencut method,
 19 including mining by the auger method or any similar method
 20 which penetrates a mineral deposit and removes mineral
 21 directly through a series of openings made by a machine
 22 which enters the deposit from a surface excavation or any
 23 other method or process in which the strata or overburden is
 24 removed or displaced in order to recover the mineral.

25 (10) "Underground mining" means any part of the process

1 followed in the production of a mineral such that vertical
2 or horizontal shafts, slopes, drifts, or incline planes
3 connected with excavations penetrating the mineral stratum
4 or strata are utilized."

5 **Section 7.** Section 82-4-111, MCA, is amended to read:

6 "~~82-4-111. Orders and rules~~ Rules of board ---hearings.

7 The board shall:

8 ~~{1}--issue, after an opportunity for a hearing, orders~~
9 ~~requiring an operator to adopt the remedial measures~~
10 ~~necessary to comply with this part and rules adopted under~~
11 ~~this part;~~

12 ~~{2}--issue, after an opportunity for a hearing, a final~~
13 ~~order directing the department to revoke a permit when the~~
14 ~~requirements set forth by the notice of noncompliance, order~~
15 ~~of suspension, or an order of the board requiring remedial~~
16 ~~measures have not been complied with according to the terms~~
17 ~~herein;~~

18 {3} adopt, after an opportunity for a hearing, general
19 rules pertaining to new strip mines and to new underground
20 mines and preparatory work to accomplish the purposes of
21 this part;

22 ~~{4}--conduct hearings under provisions of this part or~~
23 ~~rules adopted by the board."~~

24 **Section 8.** Section 82-4-112, MCA, is amended to read:

25 "~~82-4-112. Administration.~~ The department shall:

1 (1) exercise general supervision, administration, and
2 enforcement of this part and all rules and orders adopted
3 under this part;

4 (2) order the suspension of any permit for failure to
5 comply with this part, any rule adopted under this part, or
6 permit issued pursuant to this part;

7 (3) order the halting of any operation that is started
8 without first having secured a permit as required by this
9 part;

10 (4) make investigations and inspections necessary to
11 insure compliance with this part;

12 (5) encourage and conduct investigations, research,
13 experiments, and demonstrations and collect and disseminate
14 information relating to new strip mines, new underground
15 mines, and reclamation of lands and waters affected by
16 preparatory work;

17 {6} issue, after an opportunity for a hearing, orders
18 requiring an operator to adopt the remedial measures
19 necessary to comply with this part and rules adopted under
20 this part;

21 {7} issue, after an opportunity for a hearing, a final
22 order revoking a permit when the requirements set forth by
23 the notice of noncompliance, order of suspension, or an
24 order of the board requiring remedial measures have not been
25 complied with according to the terms contained in this part;

1 (8) conduct hearings under the provisions of this part
2 or rules adopted by the board;

3 ~~(6)~~(9) adopt rules with respect to the filing of
4 reports, the issuance of permits, and other matters of
5 procedure and administration."

6 **Section 9.** Section 82-4-123, MCA, is amended to read:

7 "82-4-123. Permit fee and surety bond. A fee of \$50
8 shall be paid before the mine-site location permit required
9 in this part may be issued. The operator shall also file
10 with the department a bond payable to the state of Montana
11 with surety satisfactory to the department in the penal sum
12 to be determined by the board ~~on-the-recommendation-of-the~~
13 ~~commissioner~~ of not less than \$200 or more than \$10,000 for
14 each acre or fraction thereof of the area of land to be
15 disturbed by preparatory work, with a minimum bond of
16 \$5,000, conditioned upon the faithful performance of the
17 requirements set forth in this part and of the rules of the
18 board. In determining the amount of the bond within the
19 above limits, the board shall take into consideration the
20 character and nature of the surface and subsurface
21 disturbances, the future suitable use of the land involved,
22 and the cost of removing or burying facilities, subsidence
23 stabilization, water controls, backfilling, grading,
24 topsoiling, and reclamation to be required. Notwithstanding
25 the above limits, the bond may not be less than the total

1 estimated cost to the state of completing the work described
2 in the reclamation plan."

3 **Section 10.** Section 82-4-129, MCA, is amended to read:

4 "82-4-129. Noncompliance -- suspension of permits. (1)
5 If any of the requirements of this part or rules or orders
6 of the department ~~and-the-board~~ have not been complied with
7 within the time limits set by the department ~~or-the-board~~ or
8 by this part, the department shall serve a notice of
9 noncompliance on the operator or, where found necessary, the
10 ~~commissioner~~ department shall order the suspension of a
11 permit. The notice or order shall be handed to the operator
12 in person or served by certified ~~or--registered~~ mail
13 addressed to the permanent address shown on the application
14 for a permit. The notice of noncompliance or order of
15 suspension shall specify in what respects the operator has
16 failed to comply with this part or the rules or orders of
17 the department and the board. If the operator has not
18 complied with the requirement set forth in the notice of
19 noncompliance or order of suspension within time limits set
20 therein, the permit may be revoked by order of the board and
21 the performance bond forfeited to the department.

22 (2) Any additional strip-mining or underground-mining
23 or mine-site location permits held by an operator whose
24 mine-site location permit has been revoked shall be
25 suspended and the operator is not eligible to receive

1 another permit or to have the suspended permits reinstated
 2 until he has complied with all the requirements of this part
 3 in respect to former permits issued him. An operator who has
 4 forfeited a bond is not eligible to receive another permit
 5 unless the land for which the bond was forfeited has been
 6 reclaimed without cost to the state or the operator has paid
 7 into the reclamation account a sum together with the value
 8 of the bond the board finds adequate to reclaim the lands.
 9 The department may not issue any additional permits to an
 10 operator who has repeatedly been in noncompliance or
 11 violation of this part."

12 **Section 11.** Section 82-4-203, MCA, is amended to read:

13 "82-4-203. **Definitions.** Unless the context requires
 14 otherwise, in this part the following definitions apply:

15 (1) "Abandoned" means an operation where no mineral is
 16 being produced and where the department determines that the
 17 operation will not continue or resume.

18 (2) "Alluvial valley floor" means the unconsolidated
 19 stream-laid deposits holding streams where water
 20 availability is sufficient for subirrigation or flood
 21 irrigation agricultural activities; but the term does not
 22 include upland areas which are generally overlain by a thin
 23 veneer of colluvial deposits composed chiefly of debris from
 24 sheet erosion, deposits by unconcentrated runoff or slope
 25 wash, together with talus, other mass movement accumulation,

1 and windblown deposits.

2 (3) "Aquifer" means any geologic formation or natural
 3 zone beneath the earth's surface that contains or stores
 4 water and transmits it from one point to another in
 5 quantities which permit or have the potential to permit
 6 economic development as a water source.

7 (4) "Area of land affected" means the area of land from
 8 which overburden is to be or has been removed and upon which
 9 the overburden is to be or has been deposited and includes
 10 all land overlying any tunnels, shafts, or other excavations
 11 used to extract the mineral, lands affected by the
 12 construction of new railroad loops and roads or the
 13 improvement or use of existing railroad loops and roads to
 14 gain access and to haul the mineral, processing facilities
 15 at or near the mine site or other mine associated
 16 facilities, waste deposition areas, treatment ponds, and any
 17 other surface or subsurface disturbance associated with
 18 strip mining or underground mining, and all activities
 19 necessary and incident to the reclamation of such
 20 operations.

21 (5) "Bench" means the ledge, shelf, table, or terrace
 22 formed in the contour method of strip mining.

23 (6) "Board" means the board of ~~land--commissioners~~
 24 natural-resources-and-environment HEALTH AND ENVIRONMENTAL
 25 SCIENCES provided for in ~~Article--X,--section--47--of--the~~

1 ~~constitution-of-this-state Title--2,--chapter--15,--part--33~~
2 ~~2-15-2104.~~

3 (7) "Coal conservation plan" means the planned course
4 of conduct of a strip- or underground-mining operation to
5 include plans for the removal and utilization of minable and
6 marketable coal located within the area planned to be mined.

7 (8) "Coal preparation" means the chemical or physical
8 processing of coal and its cleaning, concentrating, or other
9 processing or preparation. The term does not mean the
10 conversion of coal to another energy form or to a gaseous or
11 liquid hydrocarbon, except for incidental amounts that do
12 not leave the plant, nor does the term mean processing for
13 other than commercial purposes.

14 (9) "Coal preparation plant" means a commercial
15 facility where coal is subject to coal preparation. The term
16 includes commercial facilities associated with coal
17 preparation activities but is not limited to loading
18 buildings, water treatment facilities, water storage
19 facilities, settling basins and impoundments, and coal
20 processing and other waste disposal areas.

21 ~~{10} "Commissioner"--means--the--commissioner--of--state~~
22 ~~lands--provided--for--in--2-15-3282-~~

23 ~~{11}~~ {10} "Contour strip mining" means that strip-mining
24 method commonly carried out in areas of rough and hilly
25 topography in which the coal or mineral seam outcrops along

1 the side of the slope and entrance is made to the seam by
2 excavating a bench or table cut at and along the site of the
3 seam outcropping with the excavated overburden commonly
4 being cast down the slope below the mineral seam and the
5 operating bench.

6 ~~{12}~~ {11} "Degree" means from the horizontal and in each
7 case is subject to a tolerance of 5% error.

8 ~~{13}~~ {12} "Department" means the department of state
9 ~~lands natural--resources---and---environment~~ HEALTH AND
10 ENVIRONMENTAL SCIENCES provided for in Title 2, chapter 15,
11 part 32 ~~33~~ 21.

12 {13} "Director" means the director of the department.

13 (14) "Failure to conserve coal" means the nonremoval or
14 nonutilization of minable and marketable coal by an
15 operation, provided that the nonremoval or nonutilization of
16 minable and marketable coal in accordance with reclamation
17 standards established by the department shall not be
18 considered failure to conserve coal.

19 (15) "Fill bench" means that portion of a bench or table
20 which is formed by depositing overburden beyond or downslope
21 from the cut section as formed in the contour method of
22 strip mining.

23 (16) "Imminent danger to the health and safety of the
24 public" means the existence of any condition or practice or
25 any violation of a permit or other requirement of this part

1 in a strip- or underground-coal-mining and reclamation
 2 operation that could reasonably be expected to cause
 3 substantial physical harm to persons outside the permit area
 4 before such condition, practice, or violation can be abated.
 5 A reasonable expectation of death or serious injury before
 6 abatement exists if a rational person, subjected to the same
 7 conditions or practices giving rise to the peril, would not
 8 expose himself or herself to the danger during the time
 9 necessary for abatement.

10 (17) "Marketable coal" means a minable coal that is
 11 economically feasible to mine and is fit for sale in the
 12 usual course of trade.

13 (18) "Method of operation" means the method or manner by
 14 which the cut, open pit, shaft, or excavation is made, the
 15 overburden is placed or handled, water is controlled, and
 16 other acts are performed by the operator in the process of
 17 uncovering and removing the minerals that affect the
 18 reclamation of the area of land affected.

19 (19) "Minaable coal" means that coal which can be removed
 20 through strip- or underground-mining methods adaptable to
 21 the location that coal is being mined or is planned to be
 22 mined.

23 (20) "Mineral" means coal and uranium.

24 (21) "Operation" means all of the premises, facilities,
 25 railroad loops, roads, and equipment used in the process of

1 producing and removing mineral from and reclaiming a
 2 designated strip-mine or underground-mine area, including
 3 coal preparation plants, and all activities, including
 4 excavation incident thereto, or prospecting for the purpose
 5 of determining the location, quality, or quantity of a
 6 natural mineral deposit.

7 (22) "Operator" means a person engaged in strip mining
 8 or underground mining who removes or intends to remove more
 9 than 10,000 cubic yards of mineral or overburden or a person
 10 engaged in coal mining who removes or intends to remove more
 11 than 250 tons of coal from the earth by mining within 12
 12 consecutive calendar months in any one location or a person
 13 engaged in operating a coal preparation plant.

14 (23) "Overburden" means all of the earth and other
 15 materials which lie above a natural mineral deposit and also
 16 means such earth and other material after removal from their
 17 natural state in the process of mining.

18 (24) "Person" means a person, partnership, corporation,
 19 association, or other legal entity or any political
 20 subdivision or agency of the state or federal government.

21 (25) "Prime farmland" means that land previously
 22 prescribed by the United States secretary of agriculture on
 23 the basis of such factors as moisture availability,
 24 temperature regime, chemical balance, permeability,
 25 surface-layer composition, susceptibility to flooding, and

1 erosion characteristics and which historically has been used
2 for intensive agricultural purposes and as defined in the
3 Federal Register.

4 (26) "Prospecting" means the removal of overburden, core
5 drilling, construction of roads, or any other disturbance of
6 the surface for the purpose of determining the location,
7 quantity, or quality of a natural mineral deposit.

8 (27) "Reclamation" means backfilling, subsidence
9 stabilization, water control, grading, highwall reduction,
10 topsoiling, planting, revegetation, and other work to
11 restore an area of land affected by strip mining or
12 underground mining under a plan approved by the department.

13 (28) "Remining" means conducting surface coal mining and
14 reclamation operations that affect previously mined areas
15 (for example, the recovery of additional mineral from
16 existing gob or tailings piles).

17 (29) "Strip mining" means any part of the process
18 followed in the production of mineral by the opencut method,
19 including mining by the auger method or any similar method
20 which penetrates a mineral deposit and removes mineral
21 directly through a series of openings made by a machine
22 which enters the deposit from a surface excavation or any
23 other mining method or process in which the strata or
24 overburden is removed or displaced in order to recover the
25 mineral. For the purposes of this part only, strip mining

1 also includes remining and coal preparation. The terms
2 "remining" and "coal preparation" are not included in the
3 definition of "strip mining" for purposes of Title 15,
4 chapter 35, part 1.

5 (30) "Subsidence" means a vertically downward movement
6 of overburden materials resulting from the actual mining of
7 an underlying mineral deposit or associated underground
8 excavations.

9 (31) "Surface owner" means a person who holds legal or
10 equitable title to the land surface and whose principal
11 place of residence is on the land or who personally conducts
12 farming or ranching operations upon a farm or ranch unit to
13 be directly affected by strip-mining operations or who
14 receives directly a significant portion of his income, if
15 any, from such farming or ranching operations or the state
16 of Montana where the state owns the surface.

17 (32) "Topsoil" means the unconsolidated mineral matter
18 naturally present on the surface of the earth that has been
19 subjected to and influenced by genetic and environmental
20 factors of parent material, climate, macro- and
21 microorganisms, and topography, all acting over a period of
22 time, and that is necessary for the growth and regeneration
23 of vegetation on the surface of the earth.

24 (33) "Underground mining" means any part of the process
25 followed in the production of a mineral such that vertical

1 or horizontal shafts, slopes, drifts, or incline planes
2 connected with excavations penetrating the mineral stratum
3 or strata are utilized and includes mining by in situ
4 methods.

5 (34) "Unwarranted failure to comply" means the failure
6 of a permittee to prevent the occurrence of any violation of
7 his permit or any requirement of this part due to
8 indifference, lack of diligence, or lack of reasonable care,
9 or the failure to abate any violation of such permit or this
10 part due to indifference, lack of diligence, or lack of
11 reasonable care.

12 (35) "Waiver" means any document which demonstrates the
13 clear intention to release rights in the surface estate for
14 the purpose of permitting the extraction of subsurface
15 minerals by strip-mining methods.

16 (36) "Written consent" means such written statement as
17 is executed by the owner of the surface estate, upon a form
18 approved by the department, demonstrating that such owner
19 consents to entry of an operator for the purpose of
20 conducting strip-mining operations and that such consent is
21 given only to such strip-mining and reclamation operations
22 which fully comply with the terms and requirements of this
23 part."

24 **Section 12.** Section 82-4-204, MCA, is amended to read:
25 **"82-4-204. Board orders, rules, and hearings.** The board

1 shall:

2 ~~(1) issue orders requiring an operator to adopt the~~
3 ~~remedial measures necessary to comply with this part and~~
4 ~~rules adopted under this part;~~

5 ~~(2) issue, after an opportunity for a hearing, a final~~
6 ~~order directing the department to revoke a permit when the~~
7 ~~requirements set forth by the notice of noncompliance, order~~
8 ~~of suspension, or an order of the board requiring remedial~~
9 ~~measures have not been complied with according to the terms~~
10 ~~herein;~~

11 (3) adopt, after an opportunity for a hearing, general
12 rules pertaining to strip mining and to underground mining
13 to accomplish the purposes of this part;

14 ~~(4) conduct hearings under provisions of this part or~~
15 ~~rules adopted by the board."~~

16 **Section 13.** Section 82-4-205, MCA, is amended to read:
17 **"82-4-205. Administration by department of state lands**
18 **natural resources and environment HEALTH AND ENVIRONMENTAL**
19 **SCIENCES.** The department:

20 (1) shall exercise general supervision, administration,
21 and enforcement of this part and all rules and orders
22 adopted under this part;

23 (2) shall examine and pass upon all plans and
24 specifications submitted by the operator for the method of
25 operation, subsidence stabilization, water control,

1 backfilling, grading, highwall reduction, topsoiling, and
 2 for the reclamation of the area of land affected by his
 3 operation;

4 (3) shall order the suspension of any permit for
 5 failure to comply with this part or any rule adopted under
 6 this part;

7 (4) shall order the halting of any operation that is
 8 started without first having secured a permit as required by
 9 this part or order the cessation of operations not in
 10 compliance with this part in accordance with 82-4-251;

11 (5) shall make investigations and inspections necessary
 12 to insure compliance with this part;

13 (6) may encourage and conduct investigations, research,
 14 experiments, and demonstrations and collect and disseminate
 15 information relating to strip mining and to underground
 16 mining and reclamation of lands and waters affected by strip
 17 mining and underground mining;

18 (7) may adopt rules with respect to the filing of
 19 reports, the issuance of permits, monitoring, and other
 20 matters of procedure and administration;

21 (8) shall issue orders requiring an operator to adopt
 22 the remedial measures necessary to comply with this part and
 23 rules adopted under this part;

24 (9) shall issue, after an opportunity for a hearing, a
 25 final order revoking a permit when the requirements set

1 forth by the notice of noncompliance, order of suspension,
 2 or an order of the board requiring remedial measures have
 3 not been complied with according to the terms contained in
 4 this part;

5 †8)(10) may shall conduct hearings under the provisions
 6 of this part or rules adopted by the board."

7 **Section 14.** Section 82-4-223, MCA, is amended to read:

8 "82-4-223. Permit fee and surety bond. (1) An
 9 application fee of \$100 shall be paid before the permit
 10 required in this part shall be issued.

11 (2) Before a permit may be issued, the operator shall
 12 file with the department a bond payable to the state of
 13 Montana with surety satisfactory to the department in the
 14 penal sum to be determined by the board~~---on---the~~
 15 ~~recommendation--of--the--commissioner,~~ of not less than \$200
 16 for each acre or fraction thereof of the area of land
 17 affected, with a minimum bond of \$10,000, conditioned upon
 18 the faithful performance of the requirements set forth in
 19 this part and of the rules of the board. The operator may
 20 elect to deposit cash, negotiable bonds, or negotiable
 21 certificates of deposit of any bank organized or transacting
 22 business in the United States. The cash deposit or market
 23 value of such securities shall be equal to or greater than
 24 the amount of the bond required for the bonded area. The
 25 level of bonding shall be relative to the degree of

1 disturbance projected by the original permit and the annual
2 report. A political subdivision or agency of the state need
3 not file a bond unless required to do so by the board. The
4 board shall adjust the amount of bond required if the cost
5 of reclamation changes.

6 (3) In determining the amount of the bond, the board
7 shall take into consideration the character and nature of
8 the overburden, the future suitable use of the land
9 involved, and the cost of backfilling, grading, highwall
10 reduction, subsidence stabilization, water control,
11 topsoiling, and reclamation to be required, but in no event
12 shall the bond be less than the total estimated cost to the
13 state of completing the work described in the reclamation
14 plan."

15 **Section 15.** Section 82-4-227, MCA, is amended to read:

16 "82-4-227. Refusal of permit. (1) An application for a
17 prospecting, strip-mining, or underground-mining permit or
18 major revision shall not be approved by the department
19 unless, on the basis of the information set forth in the
20 application, an on-site inspection, and an evaluation of the
21 operation by the department, the applicant has affirmatively
22 demonstrated that the requirements of this part and rules
23 will be observed and that the proposed method of operation,
24 backfilling, grading, subsidence stabilization, water
25 control, highwall reduction, topsoiling, revegetation, or

1 reclamation of the affected area can be carried out
2 consistently with the purpose of this part. The applicant
3 for a permit or major revision has the burden of
4 establishing that his application is in compliance with this
5 part and the rules adopted under it.

6 (2) The department shall not approve the application
7 for a prospecting, strip-mining, or underground-mining
8 permit where the area of land described in the application
9 includes land having special, exceptional, critical, or
10 unique characteristics or that mining or prospecting on that
11 area would adversely affect the use, enjoyment, or
12 fundamental character of neighboring land having special,
13 exceptional, critical, or unique characteristics. For the
14 purposes of this part, land is defined as having such
15 characteristics if it possesses special, exceptional,
16 critical, or unique:

17 (a) biological productivity, the loss of which would
18 jeopardize certain species of wildlife or domestic stock;

19 (b) ecological fragility, in the sense that the land,
20 once adversely affected, could not return to its former
21 ecological role in the reasonable foreseeable future;

22 (c) ecological importance, in the sense that the
23 particular land has such a strong influence on the total
24 ecosystem of which it is a part that even temporary effects
25 felt by it could precipitate a system-wide reaction of

1 unpredictable scope or dimensions; or

2 (d) scenic, historic, archaeologic, topographic,
3 geologic, ethnologic, scientific, cultural, or recreational
4 significance. (In applying this subsection, particular
5 attention should be paid to the inadequate preservation
6 previously accorded Plains Indian history and culture.)

7 (3) The department may not approve an application for a
8 strip- or underground-coal-mining permit or major revision
9 unless the application affirmatively demonstrates that:

10 (a) the assessment of the probable cumulative impact of
11 all anticipated mining in the area on the hydrologic balance
12 has been made by the department and the proposed operation
13 thereof has been designed to prevent material damage to the
14 hydrologic balance outside the permit area; and

15 (b) the proposed strip- or underground-coal-mining
16 operation would not:

17 (i) interrupt, discontinue, or preclude farming on
18 alluvial valley floors that are irrigated or naturally
19 subirrigated, excluding undeveloped rangelands that are not
20 significant to farming on alluvial valley floors and those
21 lands as to which the regulatory-authority department finds
22 that if the farming that will be interrupted, discontinued,
23 or precluded is of such small acreage as to be of negligible
24 impact on the farm's agricultural production; or

25 (ii) materially damage the quantity or quality of water

1 in surface water or underground water systems that supply
2 these valley floors in subsection (3)(b)(i).

3 (4) Subsection (3)(b) does not affect those strip- or
4 underground-coal-mining operations that in the year
5 preceding the enactment of Public Law 95-87 produced coal in
6 commercial quantities and were located within or adjacent to
7 alluvial valley floors or had obtained specific permit
8 approval by the department to conduct strip- or
9 underground-coal-mining operations within alluvial valley
10 floors. If coal deposits are precluded from being mined
11 under this subsection, the commissioner director shall
12 certify to the secretary of interior that the mineral owner
13 or lessee may be eligible for participation in coal exchange
14 programs pursuant to section 510(5) of Public Law 95-87.

15 (5) If the area proposed to be mined contains prime
16 farmland, the department may not grant a permit to mine coal
17 on the prime farmland unless it finds in writing that the
18 applicant has the technological capability to restore the
19 mined area, within a reasonable time, to equivalent or
20 higher levels of yield as nonmined prime farmland in the
21 surrounding area under equivalent levels of management and
22 can meet the soil reconstruction standards of 82-4-232(3).
23 Nothing in this subsection applies to any permit issued
24 prior to August 3, 1977, or to any revisions or renewals
25 thereof, or to any existing strip- or underground-mining

1 operations for which a permit was issued prior to August 3,
2 1977.

3 (6) If the department finds that the overburden on any
4 part of the area of land described in the application for a
5 prospecting, strip-mining, or underground-mining permit is
6 such that experience in the state with a similar type of
7 operation upon land with similar overburden shows that
8 substantial deposition of sediment in streambeds,
9 subsidence, landslides, or water pollution cannot feasibly
10 be prevented, the department shall delete that part of the
11 land described in the application upon which the overburden
12 exists. The burden is on the applicant to demonstrate that
13 any area should not be deleted under this subsection.

14 (7) If the department finds that the operation will
15 constitute a hazard to a dwelling house, public building,
16 school, church, cemetery, commercial or institutional
17 building, public road, stream, lake, or other public
18 property, the department shall delete those areas from the
19 prospecting, strip-mining, or underground-mining permit
20 application before it can be approved. In no case may
21 strip- or underground-coal-mining be allowed within 300 feet
22 of any occupied dwelling, unless waived by the owner, nor
23 within 300 feet of any public building, school, church,
24 community, or institutional building, or public park; nor
25 within 100 feet of a cemetery; nor within 100 feet of the

1 outside right-of-way line of any public road, except where
2 mine access roads or haulage roads join such right-of-way
3 line. The department may permit such roads to be relocated
4 or the area affected to lie within 100 feet of the road if,
5 after public notice and opportunity for public hearing in
6 the locality, a written finding is made that the interests
7 of the public and the landowners affected will be protected.

8 (8) No strip- or underground-mining may be conducted
9 within 500 feet of active or abandoned underground mines in
10 order to prevent breakthroughs and to protect health or
11 safety of miners. The department shall permit an operator to
12 mine near, through, or partially through an abandoned
13 underground mine or closer to an active underground mine if:

14 (a) the nature, timing, and sequencing of specific
15 strip-mine activities and specific underground-mine
16 activities are jointly approved by the department and the
17 regulatory authority concerned with the health and safety of
18 underground miners; and

19 (b) such operations will result in improved resource
20 recovery, abatement of water pollution, or elimination of
21 hazards to the health and safety of the public.

22 (9) The department may not approve an application for a
23 strip- or underground-coal-mining operation if the area
24 proposed to be mined is included within an area designated
25 unsuitable for strip or underground coal mining or within an

1 area under review for this designation under an
 2 administrative proceeding, unless in such an area as to
 3 which an administrative proceeding has commenced pursuant to
 4 this part, the operator making the permit application
 5 demonstrates that prior to January 1, 1977, he made
 6 substantial legal and financial commitments in relation to
 7 the operation for which he is applying for a permit.

8 (10) No permit or major permit revision for a strip- or
 9 underground-coal-mining operation may be issued unless the
 10 applicant has affirmatively demonstrated by its coal
 11 conservation plan that no failure to conserve coal will
 12 occur. The department may require the applicant to submit
 13 any information it considers necessary for review of the
 14 coal conservation plan.

15 (11) Whenever information available to the department
 16 indicates that any strip- or underground-coal-mining
 17 operation owned or controlled by the applicant is currently
 18 in violation of Public Law 95-87, as amended, or any state
 19 law required by Public Law 95-87, as amended, or any law,
 20 rule, or regulation of the United States or of any
 21 department or agency in the United States pertaining to air
 22 or water environmental protection, the department shall not
 23 issue a strip- or underground-coal-mining permit or major
 24 revision until the applicant submits proof that the
 25 violation has been corrected or is in the process of being

1 corrected to the satisfaction of the administering agency.

2 (12) The department may not issue a strip- or
 3 underground-coal-mining permit or major revision to any
 4 applicant which it finds, after an opportunity for hearing,
 5 owns or controls any strip- or underground-coal-mining
 6 operation which has demonstrated a pattern of willful
 7 violations of Public Law 95-87, as amended, or any state law
 8 required by Public Law 95-87, as amended, of such a nature
 9 and duration and with such resulting irreparable damage to
 10 the environment to indicate an intent not to comply with the
 11 provisions of this part.

12 (13) Subject to valid existing rights, no strip- or
 13 underground-coal-mining operations except those which
 14 existed as of August 3, 1977, may be conducted on private
 15 lands within the boundaries of units of the national park
 16 system, the national wildlife refuge systems, the national
 17 wilderness preservation system, the wild and scenic rivers
 18 system, including study rivers designated under section 5(a)
 19 of the Wild and Scenic Rivers Act, or national recreation
 20 areas designated by act of congress."

21 **Section 16.** Section 82-4-321, MCA, is amended to read:

22 "~~82-4-321. Administration Board rulemaking. The board~~
 23 ~~is charged with the responsibility of administering this~~
 24 ~~part. In order to~~ To implement its the terms and provisions
 25 of this part, the board shall from time to time promulgate

1 such rules as the board shall deem considers necessary. The
 2 ~~board may delegate such powers, duties, and functions to the~~
 3 ~~department as it deems necessary for the performance of its~~
 4 ~~duties as administrator of this part. The board shall employ~~
 5 ~~experienced, qualified persons in the field of mined land~~
 6 ~~reclamation who, for the purpose of this part, are referred~~
 7 ~~to as supervisors."~~

8 **Section 17.** Section 82-4-337, MCA, is amended to read:

9 "82-4-337. Inspection -- issuance of operating permit
 10 -- modification. (1) (a) The board shall cause all
 11 applications for operating permits to be reviewed for
 12 completeness within 30 days of receipt. The board shall
 13 notify the applicant concerning completeness as soon as
 14 possible. An application is considered complete unless the
 15 applicant is notified of any deficiencies within 30 days of
 16 receipt.

17 (b) Unless the review period is extended as provided in
 18 this section, the board shall review the adequacy of the
 19 proposed reclamation plan and plan of operation within 30
 20 days of the determination that the application is complete
 21 or within 60 days of receipt of the application if the board
 22 does not notify the applicant of any deficiencies in the
 23 application. If the applicant is not notified of
 24 deficiencies or inadequacies in the proposed reclamation
 25 plan and plan of operation within such time period, the

1 operating permit shall be issued upon receipt of the bond as
 2 required in 82-4-338. The department shall promptly notify
 3 the applicant of the form and amount of bond which will be
 4 required. No permit may be issued until sufficient bond has
 5 been submitted pursuant to 82-4-338.

6 (c) (i) Prior to issuance of a permit, the department
 7 shall inspect the site unless the department has failed to
 8 act on the application within the time prescribed in
 9 subsection (1)(b). If the site is not accessible due to
 10 extended adverse weather conditions, the department may
 11 extend the time period prescribed in subsection (1)(b) by
 12 not more than 180 days to allow inspection of the site and
 13 reasonable review. The department must serve written notice
 14 of extension upon the applicant in person or by certified
 15 mail, and any such extension is subject to appeal to the
 16 board in accordance with the Montana Administrative
 17 Procedure Act.

18 (ii) If the department determines that additional time
 19 is needed to review the application and reclamation plan for
 20 a major operation, the department and the applicant shall
 21 negotiate to extend the period prescribed in subsection
 22 (1)(b) by not more than 365 days in order to permit
 23 reasonable review.

24 (iii) Failure of the board to act upon a complete
 25 application within the extension period constitutes approval

1 of the application, and the permit shall be issued promptly
2 upon receipt of the bond as required in 82-4-338.

3 (2) The operating permit shall be granted for the
4 period required to complete the operation and shall be valid
5 until the operation authorized by the permit is completed or
6 abandoned unless the permit is suspended or revoked by the
7 board as provided in this part.

8 (3) The operating permit shall provide that the
9 reclamation plan may be modified by the board department,
10 upon its own motion or upon proper application of the
11 permittee ~~or-department~~, after timely notice and opportunity
12 for hearing, at any time during the term of the permit and
13 for any of the following reasons:

14 (a) to modify the requirements so they will not
15 conflict with existing laws;

16 (b) when the previously adopted reclamation plan is
17 impossible or impracticable to implement and maintain;

18 (c) when significant environmental problem situations
19 are revealed by field inspection."

20 **Section 18.** Section 82-4-362, MCA, is amended to read:

21 "82-4-362. Suspension of permits -- hearing. (1) If any
22 of the requirements of this part, the rules adopted under
23 this part, or the reclamation plan have not been complied
24 with within the time limits set by the department ~~or--board~~
25 or by this part, the department shall serve a notice of

1 noncompliance on the licensee or permittee or, if necessary,
2 the commissioner shall order the suspension of the permit.
3 The notice or order must be handed to the licensee or
4 permittee in person or served by certified ~~or--registered~~
5 mail addressed to the permanent address shown on the
6 application for a permit. The notice of noncompliance must
7 specify in what respects the operator has failed to comply
8 with this part, the rules adopted under this part, or the
9 reclamation plan.

10 (2) If the licensee or permittee has not complied with
11 the requirements set forth in the notice of noncompliance or
12 order of suspension within the time limits set therein, the
13 permit may be revoked by order of the board and the
14 performance bond forfeited to the department. The licensee
15 or permittee is entitled to a hearing before the department
16 on the revocation of a permit or license or the forfeiture
17 of a performance bond if a hearing is requested within 30
18 days after service of notice as provided in subsection (1).
19 The notice must state when those measures may be undertaken
20 and must give notice of opportunity for a hearing. If a
21 hearing is requested within the 30-day period, the permit or
22 license may not be revoked and the bond may not be forfeited
23 until a final decision is made by the department.

24 (3) If a permittee fails to pay the fee or file the
25 report required under 82-4-339, the department shall serve

1 notice of this failure, by certified mail or personal
2 delivery, on the permittee. If the permittee does not comply
3 within 30 days of receipt of the notice, the commissioner
4 shall suspend the permit. The commissioner shall reinstate
5 the permit upon compliance."

6 **Section 19.** Section 82-4-421, MCA, is amended to read:

7 "~~82-4-421. Administration ---delegation-of-functions.~~
8 The board is and the department are the administrator
9 administrators of this part, and ~~it has~~ they have all the
10 power necessary to implement and enforce it. ~~The board may~~
11 ~~delegate to the commissioner of state lands such powers,~~
12 ~~duties, and functions under this part as it considers~~
13 ~~necessary for the performance of its duties."~~

14 **Section 20.** Section 82-4-422, MCA, is amended to read:

15 "~~82-4-422. Powers, duties, and functions of board~~ Board
16 to prepare and adopt rules. The board ~~has the following~~
17 ~~powers, duties, and functions to:~~ shall

18 ~~(1) enter into contracts where it is found on the basis~~
19 ~~of the information set forth in the application and an~~
20 ~~evaluation of the operation by the board that the~~
21 ~~requirements of the part or rules will be observed and that~~
22 ~~the operation and the reclamation of the affected area can~~
23 ~~be carried out consistently with the purpose of the part;~~

24 (2) prepare and adopt rules pertaining to opencut
25 mining to accomplish the purposes of this part;

1 ~~(3) conduct hearings and for the purposes of~~
2 ~~conducting such hearings, administer oaths and affirmations,~~
3 ~~subpoena witnesses, compel attendance of witnesses, hear~~
4 ~~evidence, and require the production of any books, papers,~~
5 ~~correspondence, memoranda, agreements, documents, or other~~
6 ~~records relevant or material to the inquiry;~~

7 ~~(4) adopt uniform procedures for the filing of~~
8 ~~necessary records, the issuance of contracts, and for any~~
9 ~~other matters of administration not specifically enumerated~~
10 ~~in this part;~~

11 ~~(5) reclaim any affected land with respect to which a~~
12 ~~bond has been forfeited; and~~

13 ~~(6) make investigations or inspections which are~~
14 ~~considered necessary to insure compliance with any provision~~
15 ~~of this part."~~

16 **Section 21.** Section 82-4-425, MCA, is amended to read:

17 "~~82-4-425. Inspection of opencut mining by board.~~ The
18 board ~~or its accredited representatives~~ may enter upon lands
19 subjected to opencut mining at all reasonable times for the
20 purpose of inspection to determine whether the provisions of
21 this part have been complied with."

22 **Section 22.** Section 82-4-427, MCA, is amended to read:

23 "~~82-4-427. Board~~ Department hearing. (1) A person who
24 is aggrieved by a final decision of the ~~commissioner of~~
25 ~~state lands~~ department on an application for a contract or a

1 contract amendment is entitled to a hearing ~~before the board~~
 2 on that decision.

3 (2) The Montana Administrative Procedure Act governs
 4 hearings before the ~~board~~ department and judicial review of
 5 decisions of the ~~board~~ department under this part."

6 NEW SECTION. Section 23. Duties of department. The
 7 department shall:

8 (1) enter into contracts where it is found on the basis
 9 of the information set forth in the application and an
 10 evaluation of the operation by the board that the
 11 requirements of this part or rules adopted under this part
 12 will be observed and that the operation and the reclamation
 13 of the affected area can be carried out consistently with
 14 the purpose of this part;

15 (2) conduct hearings and, for the purposes of
 16 conducting the hearings, administer oaths and affirmations,
 17 subpoena witnesses, compel attendance of witnesses, hear
 18 evidence, and require the production of any books, papers,
 19 correspondence, memoranda, agreements, documents, or other
 20 records relevant or material to the inquiry;

21 (3) adopt uniform procedures for the filing of
 22 necessary records, the issuance of contracts, and any other
 23 matters of administration not specifically enumerated in
 24 this part;

25 (4) reclaim affected land with respect to which a bond

1 has been forfeited; and

2 (5) conduct investigations or inspections that are
 3 considered necessary to ensure compliance with a provision
 4 of this part.

5 ~~Section 567--Section 85-1-102, MEA, is amended to read:~~
 6 ~~"85-1-102.--Definitions.--Unless--the--context--requires~~
 7 ~~otherwise,--in--this--chapter--the--following--definitions--apply:~~

8 ~~(1)--"Administrative--costs"--means--costs--incurred--by--the~~
 9 ~~department:~~

10 ~~(a)--for--the--purpose--of--protecting--the--department's~~
 11 ~~properties--and--assets;~~

12 ~~(b)--to--oversee--the--operation--and--maintenance--of--the~~
 13 ~~projects;~~

14 ~~(c)--to--administer--contracts--and--receivables;~~

15 ~~(d)--to--maintain--project--financial--records;~~

16 ~~(e)--to--provide--technical--assistance--for--operating,~~
 17 ~~maintaining,--and--rehabilitating--the--projects,--and~~

18 ~~(f)--to--assist--in--securing--funds--for--operating,~~
 19 ~~maintaining,--and--rehabilitating--the--projects;~~

20 ~~(2)--"Board"--means--the--board--of--natural--resources--and~~
 21 ~~conservation and commissioners provided--for--in--2-15-3302~~
 22 ~~Article X, section 4, of the Montana constitution.~~

23 ~~(3)--"Cost--of--operation--and--maintenance"--means--the--costs~~
 24 ~~of--operation,--maintenance,--and--routine--repairs--and--the--costs~~
 25 ~~incurred--by--the--water--users'--association--or--the--department~~

1 in-the-distribution-of-water-from-the-project,-excluding-the
2 department's-administrative-costs;

3 {4}--"Cost-of-works" means--the--cost--of--construction,
4 including--any--rehabilitation-or-alteration-of-the-project,
5 the-cost-of-all--lands,-property,-rights,-easements,-and
6 franchises--acquired--which--are--deemed--necessary--for-the
7 construction,-the-cost--of--all--water--rights--acquired--or
8 exercised--by-the-department-in-connection-with-those-works,
9 the-cost-of-all-machinery-and-equipment,-financing--charges,
10 interest--prior--to-and-during-construction-and-for-a-period
11 not-exceeding-3-years-after-the-completion-of--construction,
12 cost---of---engineering---and---legal---expenses,-plans,
13 specifications,-surveys,-estimates--of--cost,-and---other
14 expenses---necessary---or---incident---to---determining--the
15 feasibility-or-practicability-of-any-project,-administrative
16 expense,-and-other-expenses-as-may-be-necessary-or--incident
17 to--the--financing---authorized---in--this--part--and--the
18 construction-of-the-works-and-the-placing-of--the--works--in
19 operation;

20 {5}--"Department"---means---the--department--of--natural
21 resources-and-conservation state-lands provided-for-in-Title
22 27,-chapter-25,-part-33 32;

23 {6}--"Owner"---means---all---individuals,-irrigation
24 districts,-drainage-districts,-flood-control-districts,
25 incorporated-companies,-societies,-or-associations-having

1 any-title-or-interest-in-any-properties,-rights,-easements,
2 or-franchises-to-be-acquired;

3 {7}--"Private-person" means-any-individual,-association,
4 partnership,-corporation,-or--other-nongovernmental-entity
5 not-eligible-for-loans-and-grants-under--85-1-605--but--does
6 not--include--a-governmental-entity-such-as-an-agency,-local
7 government,-or--political--subdivision--of--the--state,-the
8 United---States,-or--any--agency--thereof,-or--any--other
9 governmental-entity;

10 {8}--"Project" means-any-one-of--the--works--defined--in
11 this--section---or---any--combination--of--works--which--are
12 physically-connected-or-jointly-managed-and-operated--as--a
13 single-unit;

14 {9}--"Public--benefits" means-those-benefits-that-accrue
15 from-a-water-development--project--or--activity--to--persons
16 other--than--the--private--grant--or--loan-recipient-and-that
17 enhance-the-common-well-being--of--the--people--of--Montana.
18 Public--benefits--include-but-are-not-limited-to-recreation,
19 flood-control,-erosion-reduction,-agricultural-flood--damage
20 reduction,-water--quality--enhancement,-sediment-reduction,
21 access---to---recreation---opportunities,-and---wildlife
22 conservation;

23 {10}--"Water--development--account" means--a--separate
24 account-created-by-85-1-617-within-the-state-special-revenue
25 fund-of-the--state--treasury--to--finance--loans--under--the

1 provisions of the water development program to agencies,
 2 local governments, and political subdivisions of the state,
 3 private persons, and any other eligible recipients and to
 4 purchase liens and operate property, as provided in
 5 85-1-615, from proceeds of bonds issued under part 6 of this
 6 chapter:

7 (11) "Water development activity" means an action or
 8 program to protect and enhance water-based recreation or to
 9 protect or enhance water resources for the benefit of
 10 agriculture, flood control, or other uses, including but not
 11 limited to the promotion of efficient use of water in
 12 agriculture, the improvement of water quality in agriculture
 13 and other nonpoint source uses, the protection and
 14 enhancement of water-based recreation, the control of
 15 erosion of streambanks and control of sedimentation of
 16 rivers and streams, and providing greater local and state
 17 control of Montana water resources. Water development
 18 activities may provide any combination of marketable and
 19 nonmarketable benefits:

20 (12) "Water development state special revenue account"
 21 means a separate account created by 85-1-604 within the
 22 state special revenue fund of the state treasury for the
 23 purposes of the water development program as set forth in
 24 85-1-604:

25 (13) "Water development project" means a project as

1 defined in subsection (8), except that water development
 2 projects are not limited to projects owned or operated by
 3 the department:

4 (14) "Water development debt service fund" means a
 5 separate fund created by 85-1-603 within the debt service
 6 fund type of the state treasury to be used as provided in
 7 85-1-619:

8 (15) "Works" means all property and rights, easements,
 9 and franchises relating to property and considered necessary
 10 or convenient for the operation of the works and all water
 11 rights acquired or exercised by the department in connection
 12 with those works and includes all means of conserving and
 13 distributing water, including, without limiting the
 14 generality of the foregoing, reservoirs, dams, diversion
 15 canals, distributing canals, waste canals, drainage canals,
 16 dikes, lateral ditches and pumping units, mains, pipelines,
 17 and waterworks systems and includes all works for the
 18 conservation, development, storage, distribution, and
 19 utilization of water, including without limiting the
 20 generality of the foregoing, works for the purpose of
 21 irrigation, flood prevention, drainage, fish and wildlife,
 22 recreation, development of power, watering of stock,
 23 supplying of water for public, domestic, industrial, or
 24 other uses and for fire protection."

25 Section 57, Section 85-1-203, MCA, is amended to read:

1 "85-1-203. State water plan. (1) The department of
2 natural resources and environment shall gather from any
3 source reliable information relating to Montana's water
4 resources and prepare from the information a continuing
5 comprehensive inventory of the water resources of the state.
6 In preparing this inventory, the department may conduct
7 studies; adopt studies made by other competent water
8 resource groups, including federal, regional, state, or
9 private agencies; perform research or employ other competent
10 agencies to perform research on a contract basis; and hold
11 public hearings in affected areas at which all interested
12 parties must be given an opportunity to appear.

13 (2) The department of natural resources and environment
14 shall formulate and, with the approval of the board of
15 natural resources and environment, adopt and amend, extend,
16 or add to a comprehensive, coordinated multiple-use water
17 resources plan known as the "state water plan". The state
18 water plan may be formulated and adopted in sections; these
19 sections corresponding with hydrologic divisions of the
20 state. The state water plan must set out a progressive
21 program for the conservation, development, and utilization
22 of the state's water resources and propose the most
23 effective means by which these water resources may be
24 applied for the benefit of the people, with due
25 consideration of alternative uses and combinations of uses.

1 Before adopting the state water plan or any section of the
2 plan, the department shall hold public hearings in the state
3 or in an area of the state encompassed by a section of the
4 plan if adoption of a section is proposed. Notice of the
5 hearing or hearings must be published for 2 consecutive
6 weeks in a newspaper of general county circulation in each
7 county encompassed by the proposed plan or section of the
8 plan at least 30 days prior to the hearing.

9 (3) The department of natural resources and environment
10 shall submit to the water policy committee established in
11 85-2-105 and to the legislature at the beginning of each
12 regular session the state water plan or any section of the
13 plan or amendments, additions, or revisions to the plan that
14 the department has formulated and adopted.

15 (4) The legislature, by joint resolution, may revise
16 the state water plan.

17 (5) The department of natural resources and environment
18 shall prepare a continuing inventory of the ground water
19 resources of the state. The ground water inventory must be
20 included in the comprehensive water resources inventory
21 described in subsection (1) but must be a separate component
22 of the inventory.

23 (6) The department of natural resources and environment
24 shall publish the comprehensive inventory, the state water
25 plan, the ground water inventory, or any part of each, and

1 the department may assess and collect a reasonable charge
2 for these publications:

3 (7) In developing and revising the state water plan as
4 provided in this section, the department of natural
5 resources and environment shall consult with the water
6 policy committee established in 85-2-105 and solicit the
7 advice of the committee in carrying out its duties under
8 this section."

9 Section 58, Section 85-1-205, MCA, is amended to read:

10 "85-1-205. Acquisition of water in federal reservoirs.
11 The department of natural resources and environment may
12 acquire water or water storage by purchase option or
13 agreement with the federal government from any federal
14 reservoir for the purpose of sale, rent, or distribution for
15 any beneficial use. In such cases, the department is not
16 required to construct any diversion or appropriation
17 facilities or works, and it may sell, rent, or distribute
18 such water at such rates and under such terms and conditions
19 as it considers appropriate."

20 Section 59, Section 85-1-223, MCA, is amended to read:

21 "85-1-223. Negotiations with other states by the
22 department. The department of natural resources and
23 environment may negotiate with the duly constituted
24 authorities or agencies of other states and of the United
25 States in the preparation of interstate compacts or

1 agreements governing the use, distribution, and allocation
2 of the water of any stream or streams flowing from Montana
3 into such other states or flowing from such other states
4 into Montana. It shall cooperate with other states and with
5 the United States in making the necessary studies and
6 obtaining the data necessary to the preparation of the
7 compacts. This authority and the duties hereby imposed are
8 limited to the preparation and proposal of the compact and
9 the compact or agreement is not binding upon the state of
10 Montana until approved by the legislature of Montana and the
11 legislatures of the other state or states involved in the
12 compact."

13 Section 60, Section 85-2-512, MCA, is amended to read:

14 "85-2-512. Investigations. (1) The department shall
15 compile information for the purpose of enabling it to comply
16 with this part. In compiling this information, the
17 department shall make use of investigations, technical
18 personnel, surveys, and information available from the
19 Montana bureau of mines and geology, the United States
20 geological survey, the board of oil and gas conservation,
21 the department of health and environmental sciences, and any
22 other private, state, or governmental agency.

23 (2) In addition to the foregoing, the department may
24 request specific investigations by the preceding public
25 agencies where desired information is not otherwise

1 available."

2 Section 61, Section 85-2-514, MCA, is amended to read:

3 "85-2-514. Inspection of wells. The department, or the

4 state bureau of mines and geology, or the department of

5 health and environmental sciences may enter on the property

6 of any appropriator where a well is situated, at any

7 reasonable hour of the day, for the purpose of investigating

8 any matters in connection with this part."

9 Section 62, Section 85-9-104, MCA, is amended to read:

10 "85-9-104. Limitations. (1) Nothing in this chapter

11 shall be construed to grant to the district the power to

12 generate, distribute, or sell electric energy.

13 (2) The provisions of this chapter do not abrogate or

14 limit in any manner the rights, powers, duties, and

15 functions of the department, conservation districts,

16 department of health and environmental sciences, or the

17 department of fish, wildlife, and parks but are

18 supplementary thereto and in aid thereof."

19 Section 63, Section 85-9-202, MCA, is amended to read:

20 "85-9-202. Action by department of natural resources

21 upon receipt of request. (1) Sooner than 11 days after the

22 request is received, the department shall acknowledge the

23 request.

24 (2) The department shall itself, through cooperating

25 agencies, or together with cooperating agencies:

1 (a) consult with the board of supervisors and all

2 persons who may participate in the proposed project;

3 (b) conduct a preliminary survey of the proposed

4 district;

5 (c) estimate costs of works, maintenance, and

6 operation;

7 (d) determine sources of financing;

8 (e) reach a tentative decision on the feasibility,

9 desirability, and compatibility with the state water plan of

10 the proposed district;

11 (f) adjust the boundaries of the proposed district to

12 improve the feasibility, desirability, or consistency with

13 the state water plan;

14 (g) sooner than 1 year after receipt of the request,

15 send a report of the preliminary survey to the applicants,

16 the board of supervisors, department of fish, wildlife, and

17 parks, department of health and environmental sciences, and

18 other affected state and federal resource agencies for their

19 comments."

20 Section 64, Section 85-9-204, MCA, is amended to read:

21 "85-9-204. Feasibility study and report. Adjustment

22 of proposed boundaries. After the hearing, the applicants or

23 any one of them may request the department to prepare a

24 detailed feasibility study of the proposed district, if the

25 department concludes that the proposed district is feasible,

1 desirable, and consistent with the state water plan, it
 2 shall prepare a feasibility report and sooner than 1 year
 3 after receipt of the request send copies to the applicants,
 4 if any, the department of fish, wildlife, and parks,
 5 department of health and environmental sciences, and other
 6 affected state and federal water resource agencies. For good
 7 cause shown, based upon the actual technical problems in
 8 completing the report, the department may use necessary
 9 additional time to complete and distribute the report. The
 10 detailed feasibility report shall describe the proposed
 11 works and contain an estimate of the cost of the works, the
 12 means of financing, and the estimated costs of operation and
 13 maintenance. The department may adjust the boundaries of the
 14 proposed district to improve the feasibility, desirability,
 15 and consistency with the state water plan and to exclude
 16 land which would receive no direct or indirect benefits from
 17 the proposed district."

18 **Section 24.** Section 90-15-102, MCA, is amended to read:
 19 "90-15-102. Definitions. As used in this chapter, the
 20 following definitions apply:

- 21 (1) "Committee" means the natural resource data system
 22 advisory committee created by 2-15-1514.
 23 (2) "Library" means the state library provided for in
 24 22-1-201.
 25 (3) "Natural heritage program" means a program of

1 information acquisition, storage, and retrieval for data
 2 relating to the flora, fauna, and biological community types
 3 of Montana.

4 (4) "Principal data source agencies" means any of the
 5 following state agencies: the department of natural
 6 resources and conservation environment CONSERVATION; the
 7 department of fish, wildlife, and parks; the department of
 8 state lands; the department of health and environmental
 9 sciences; THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
 10 SCIENCES; the department of agriculture; the department of
 11 highways; the state historical society; and the Montana
 12 university system."

13 NEW SECTION. Section 66. Legal interest in facilities
 14 transferred. (1) The legal interest of the department of
 15 fish, wildlife, and parks in those facilities and structures
 16 listed in subsection (2) is transferred to the department of
 17 state lands and must be managed for fish and wildlife
 18 purposes in consultation with the department of fish,
 19 wildlife, and parks. The present uses of the facilities and
 20 structures listed in subsection (2) must continue.

- 21 (2) Facilities and structures transferred pursuant to
 22 subsection (1) are as follows:
 23 (a) South Sandstone reservoir, Fallon County;
 24 (b) Bearpaw Lake, Hill County;
 25 (c) Clearwater fish barrier, Missoula County;

- 1 ~~(d)--Whitetail-reservoir,-Danteis-County;~~
- 2 ~~(e)--Gartside-reservoir,-Richland-County;-and~~
- 3 ~~(f)--Rainy-lake-fish-barrier,-Missoula-County-~~

4 NEW SECTION. SECTION 25. STUDY OF ADDITIONAL NEEDS FOR
 5 REORGANIZATION OF NATURAL RESOURCE AND ENVIRONMENTAL
 6 FUNCTIONS. THE ENVIRONMENTAL QUALITY COUNCIL SHALL:

7 (1) CONDUCT AND COORDINATE A STUDY IN COOPERATION WITH
 8 THE GOVERNOR'S OFFICE AND STATE AGENCIES TO ASSESS THE NEED
 9 FOR ADDITIONAL REORGANIZATION OF NATURAL RESOURCE AND
 10 ENVIRONMENTAL FUNCTIONS OF STATE GOVERNMENT TO COMPLEMENT
 11 THE REORGANIZATION OF FUNCTIONS PROVIDED BY [THIS ACT];

12 (2) CONDUCT THE STUDY REQUIRED BY SUBSECTION (1) IN A
 13 MANNER THAT PROMOTES PUBLIC INVOLVEMENT AND THAT IS DESIGNED
 14 TO ACHIEVE PUBLIC CONSENSUS ON THE NEED FOR ANY ADDITIONAL
 15 REORGANIZATION AND ON RECOMMENDATIONS CONCERNING THE
 16 SPECIFIC NATURAL RESOURCE AND ENVIRONMENTAL FUNCTIONS THAT
 17 MAY REQUIRE REORGANIZATION; AND

18 (3) REPORT ITS FINDINGS TO THE 53RD LEGISLATURE,
 19 INCLUDING RECOMMENDATIONS FOR LEGISLATIVE CONSIDERATION TO
 20 IMPLEMENT ANY ADDITIONAL REORGANIZATION OF NATURAL RESOURCE
 21 AND ENVIRONMENTAL FUNCTIONS THAT IS NECESSARY.

22 NEW SECTION. Section 26. Codification instruction.
 23 [Section 55 23] is intended to be codified as an integral
 24 part of Title 82, chapter 4, part 4, and the provisions of
 25 Title 82, chapter 4, part 4, apply to [section 55 23].

1 NEW SECTION. Section 27. Saving clause. [This act]
 2 does not affect rights and duties that matured, penalties
 3 that were incurred, or proceedings that were begun before
 4 [the effective date of this act].

5 NEW SECTION. Section 28. Severability. If a part of
 6 [this act] is invalid, all valid parts that are severable
 7 from the invalid part remain in effect. If a part of [this
 8 act] is invalid in one or more of its applications, the part
 9 remains in effect in all valid applications that are
 10 severable from the invalid applications.

11 NEW SECTION. Section 29. Implementation according to
 12 executive order. The implementation of [sections 1 through
 13 66 ~~24~~ 25] must begin July 1, 1991, and conclude January 1,
 14 1992, according to a schedule in an executive order signed
 15 by the governor. The governor may execute and implement an
 16 executive order necessary to carry out the purposes of this
 17 section.

18 NEW SECTION. Section 30. Effective dates. (1)
 19 [Sections 67 ~~25~~ 26 through 70 ~~28~~ 29] and this section are
 20 effective on passage and approval.

21 (2) [Sections 1 through 66 ~~24~~ 25] are effective
 22 according to the schedule provided in [section 70 ~~28~~ 29].

-End-

SENATE STANDING COMMITTEE REPORT

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April 10, 1991

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April 10, 1991

MR. PRESIDENT:

We, your committee on State Administration having had under consideration House Bill No. 866 (third reading copy -- blue), respectfully report that House Bill No. 866 be amended and as so amended be concurred in:

1. Title, lines 8 through 13.
Strike: "TRANSFERRING" on line 8 through "SCIENCES" on line 13
2. Title, line 16.
Following: "AGENCIES"
Strike: ";
3. Title, line 18.
Strike: "ADDITIONAL"
Following: "REORGANIZATION"
Insert: "OF THE NATURAL RESOURCE AND ENVIRONMENTAL FUNCTIONS OF STATE GOVERNMENT"
4. Title, line 18 on page 1 through line 4 on page 2.
Strike: "AMENDING SECTIONS" on page 1, line 18 through "MCA;" on page 2, line 4
5. Title, page 2, line 5.
Following: "PROVIDING"
Insert: "AN"
Strike: "DATES"
Insert: "DATE"
6. Pages 2 through 117.
Strike: page 2, line 8 through page 117, line 3
Renummer: subsequent sections
7. Page 117, line 4.
Strike: "ADDITIONAL NEEDS"
Insert: "need"
8. Page 117, line 10 and 11.
Strike: "TO COMPLEMENT THE REORGANIZATION OF FUNCTIONS PROVIDED BY [THIS ACT]"
9. Page 117, line 14.
Strike: "ADDITIONAL"

10. Page 117, line 20.
Strike: "ADDITIONAL"

11. Page 117, line 22 through line 17 on page 118.
Strike: sections 26, 27, 28 and 29 in their entirety
renumber: subsequent section

12. Page 118, line 18.
Strike: "dates. (1)"
Insert: "date."

13. Page 118, lines 19 through 22.
Strike: lines 19 through 22 in their entirety
Insert: "[Section 1] is effective July 1, 1991."

Signed: Eleanor Vaughn
Eleanor Vaughn, Chairman

4-10-91
Coord.
4-10-91
Sec. of Senate