

MINUTES OF MEETING
SENATE NATURAL RESOURCES
February 20, 1981

The fourteenth meeting of the Natural Resources Committee was called to order by Senator Harold Dover, Chairman, at 12:30 P.M., on the above date in Room 405 of the State Capitol Building.

ROLL CALL: All members were present.

DISPOSITION OF SB 367: Senator O'Hara made a motion that SB 367 do pass. This motion passed with a vote of 9 for and 1 opposed, Senator Van Valkenburg. Senator Brown and Senator Ryan had not arrived at the meeting yet.

DISPOSITION OF SB 327: Senator Keating proposed the following amendments: Page 1, line 7, following "property", insert "during emergencies"; line 17, page 1, following "when", insert "emergency"; page 6, line 10, following "of", insert "all factors involved including".

Senator Elliott moved the amendments.

Senator Manley asked if it said anything in the bill about who declares the emergency.

Senator Brown said the landowner basically and if there is an emergency they can go out and do whatever is necessary.

Senator Dover said you have 15 days to report the action you have taken.

The motion passed with a vote of 11 for and 1 opposed, Senator Manley.

Senator Keating questioned the word "of" following "days" on page 4, line 21.

Senator Dover said you could insert "following" after "days" on page 4, line 21 and delete "of".

Senator Keating moved this amendment. The amendment passed unanimously.

Senator Van Valkenburg made a motion to amend SB 327 by striking sections 2, 6 and 7 in their entirety. These sections have nothing to do with emergency conditions, they deal with normal conditions.

Senator Brown said with these sections in the bill the bill deals with more than just emergency situations as intended.

Senator Keating asked what does section 7 repeal.

Senator Van Valkenburg said this section removes the arbitration panel.

Senator Keating said we did not intend to do that.

Senator Hafferman said he went to the Legislative Council with petitions to ask them to draft the bill. They prepared it.

Senator Manley said we should take a look at the first amendment. You don't need an emergency to have to do that. You may have to build a dyke or something before the actual emergency to save the house.

Senator Elliott said Senator Manley is right, we shouldn't have adopted the amendments relative to emergencies. He made a motion that we reconsider the action on those amendments regarding emergency.

The motion to reconsider the emergency amendments passed with a vote of 10 for and 2 opposed, Senator Brown and Senator Van Valkenburg.

Senator Brown said with regard to Senator Van Valkenburg's motion, this bill is cutting the other provisions of this law, repealing the arbitration panel and other enforcement action.

Senator Keating made a motion to amend SB 327 as follows: Page 1, line 7, following "property", insert "during emergencies"; line 17, page 1, following "when", insert "emergency"; page 6, line 10, following "of", insert "all factors involved including"; page 4, line 21, after "days", strike "of", insert "following"; and strike sections 2, 6 and 7 in their entirety.

Senator Elliott would like an explanation for putting in the emergency amendments.

Senator Keating said so that citizens can act in emergency conditions.

Senator Elliott said the word emergency limits the amount of times these things can be done.

Senator Dover said emergency alterations that are necessary to protect the life and property of land owners may not wait until the point of emergency. Some alterations could be done before the water comes.

Senator Elliott made a motion that we accept Senator Keating's motion without the emergency parts. Kathleen can fix the title accordingly.

The motion passed with a vote of 11 for and 1 opposed, Senator Ryan.

Senator Keating made a motion that this bill do pass as amended.

Senator Ryan asked Senator Hafferman if he was satisfied with this bill.

Senator Hafferman said they have weakened my bill, but if its all I can get I'll take it.

Senator Dover said we have not weakened the bill, just taken out the parts of the bill that should not have been there in the first place which do not refer to emergencies.

Senator Manley said we have taken out the emergency. This will not restrict land owners when it is necessary to protect lives, property and economic well being.

The motion passed with a vote of 11 for and 1 opposed, Senator Ryan.

DISPOSITION OF SB 482: Senator Brown said this is a backward way of setting up a profession even though Sid Groff is well intended.

Senator Manley made a motion to do pass.

Senator Van Valkenburg said if we are going to act on a do pass, I would like the bill amended to adopt the Morrison amendment and Groff amendment.

Senator O'Hara made a substitute motion that SB 482 do not pass.

The motion passed with a vote of 11 for and 1 opposed, Senator Van Valkenburg.

DISPOSITION OF SB 258: Senator Keating furnished the committee with a letter from the Director, Department of Health and Environmental Sciences, which gave reasons for opposition to SB 430, proposed as an amendment to SB 258.

Senator Dover asked Mr. Steven Pilcher, Chief, Water Quality Bureau, if he would quickly run over Dr. Drynan's letter.

Mr. Pilcher said he didn't feel he could give the letter justice by just briefly running through what it had to say. He requested that the committee at least take the time to read through Dr. Drynan's conclusions.

Senator Brown suggested that Senator Keating could summarize the sub-committee actions while the committee was looking at Dr. Drynan's conclusions.

Senator Keating explained that one of the things that has been going on in the state has been an attempt to try to bring the extremes together. People of the state are saying we have to have more development of our natural resources to help to improve our economy

and provide jobs, but we still want to have clean air and water. In order to work toward this goal to develop our natural resources numerous permits are needed in order to get anything going and these permits are acquired from various agencies. In order to streamline activities we are proposing to coordinate air and water quality, facility siting and natural resources mining permits into a single department for purposes of administration. We are not working for a single permit but working for a closer coordination and better understanding. Senator Brown, at the governor's request, is submitting SB 258 to change the Bureau of Reclamation from State Lands to the Department of Natural Resources and Forestry from Natural Resources to State Lands. I am asking for an amendment to his bill to include the transfer of Air Quality, Water Quality, Subdivisions Bureau and Solid Waste Management from Environmental Sciences to the Department of Natural Resources. They are all a part of the permitting process. If these agencies were in the same department, with a single director, there would be a better administration of that process.

Senator Ryan objected to the procedure of the meeting. He said this is a very irregular executive session, giving explanation for the bill and Mr. Pilcher giving his opinion.

Senator Etchart said Senator Ryan is out of line, the Chairman asked the subcommittee to report.

Senator Brown said we were not soliciting testimony. When we met in subcommittee Mona Jamison, Governor's Office, said that Dr. Drynan, as Director of the Department of Health and division that would be most affected by the proposed transfer, would like the opportunity to submit a written statement outlining objections to the transfer. We had to take action in the subcommittee to report here today. The letter was prepared with the understanding the letter would be presented to the committee today. Mr. Pilcher was requested by the committee to summarize this letter. We had no intention of reopening the hearing.

Senator Ryan withdrew his objections.

Senator Dover asked if the sample amendment Katherine had given him was the machinery to get SB 430 into SB 258.

Senator Keating said yes and he made a motion that SB 258 do pass as amended.

Senator Van Valkenburg asked the Chairman if this is the recommendation of the subcommittee.

Senator Keating said yes.

Senator Van Valkenburg asked what was the report of the subcommittee, was the subcommittee unanimous on these points.

Senator Keating said yes the subcommittee was unanimous, except for the motion on the effective date of the transfer of the Department of Health functions of October 1, 1982, the vote was 3 to one.

Senator Dover said that Senator Manley was not at the subcommittee meeting to vote.

Senator Brown asked if the committee was clear in a general sense on what the subcommittee recommendations are. It was voted unanimously to -- 1. transfer the air and water quality, subdivisions and solid waste functions from the Health Department to the Department of Natural Resources, 2. the rules and standards set for these agencies would be transferred from the Health Department to the Department of Natural Resources, 3. the authority to hold contested case hearings would be delegated to the Department of Natural Resources. The Director would be the person who would hear all hearings. The standard would be the Board of Natural Resources and Conservation, 4. there would be two new membership requirements to the Board of Natural Resources, a medical doctor and an engineer. The governor's office wanted the effective date for the transfer of the Department of Health functions to be July 1, 1983. I supported that. The other members supported the motion that the transfer was to take place October 1, 1982.

Senator Van Valkenburg asked the governor's position with respect to the amendments.

Senator Brown said the governor's office position is they support the concept and have no objection to what is being proposed. They are aware of legitimate concerns about splitting up the Health Department.

Senator Manning is in favor of this if it will simplify the mechanics for obtaining permits.

Senator Brown said the governor's office did not wish to leave the impression that this would result in one stop permitting. We are not making any substantial changes in the law or reducing standards. He requested that the motion made by Senator Keating authorize work with Katherine to make necessary changes pertaining to the amendments.

Senator Keating said that would be included in the motion.

The motion on the amendments passed with a vote of 9 for, 2 opposed, Senator Van Valkenburg and Senator Manley. Senator Ryan had stepped out of the meeting for a few moments.

Senator Keating made a motion that SB 258 do pass as amended. The motion passed with a vote of 9 for, 2 opposed, Senator Manley and Senator Van Valkenburg. Senator Ryan had not returned.

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ADJOURNMENT: There being no further business, the meeting adjourned
at 2:00 P.M.



HAROLD DOVER, Chairman

ROLL CALL

NATURAL RESOURCES COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date _____

| NAME | PRESENT | ABSENT | EXCUSED |
|-----------------------------|---------|--------|---------|
| Harold Dover, Chairman | ✓ | | |
| Mark Etchart, Vice Chairman | ✓ | | |
| Thomas Keating | ✓ | | |
| Roger Elliott | ✓ | | |
| Larry Tveit | ✓ | | |
| Jesse O'Hara | ✓ | | |
| John Manley | ✓ | | |
| William Hafferman | ✓ | | |
| Steve Brown | ✓ | | |
| Dave Manning | ✓ | | |
| Patrick Ryan | ✓ | | |
| Fred Van Valkenburg | ✓ | | |
| | | | |
| | | | |
| | | | |

Each day attach to minutes.

DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES

DIRECTOR'S OFFICE



TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

(406) 449-2544

February 20, 1981

HELENA, MONTANA 59620

Senate Natural Resources Committee
Capitol Station
Helena, Montana 59620

Dear Senators:

As the Director of the Department of Health and Environmental Sciences, (DHES), I would like to take this opportunity to comment on Senate Bill 430, which proposes to transfer the Air Quality Bureau, Water Quality Bureau, Subdivision Bureau and Solid Waste Management Bureau from the DHES to the Department of Natural Resources and Conservation (DNRC). Such a move would significantly hamper and weaken the ability of the Department to monitor public health standards and provide the best possible public health for the people of Montana.

When considering the possibility of moving the bureaus to DNRC, one might ask why the bureaus are in the DHES? Simply stated, they're in the Department because the laws they administer were created in response to public health problems. Montanans demanded progressive health laws, and their legislators responded accordingly. This dominant theme of citizens demanding a healthful place to live has been repeatedly emphasized for the past 80 years, and was again strongly stressed by the framers of the 1971 Montana Constitution directing that the state and private citizens "...shall maintain and improve a clean and healthful environment...for present and future generations."

If the historical implications of Montana's public health laws are to achieve and maintain conditions that will protect human health and safety, could moving the bureaus to DNRC improve or even maintain those laws at their present level? I don't think so. If the move is made, I believe it will not only be contradicting decades of public health legislation, but could lead to the deterioration of years of cooperative work between state and local health agencies.

Since the creation of the Department in 1901, there has been an unbroken, interdependent working relationship between the Department, Board of Health, local health departments and the medical community throughout Montana. This flow of intercooperation has worked well for Montana. The idea of moving the Department's environmental health programs outside the sphere of state and local public health was also considered during Executive Reorganization in 1971, but after a good deal of research, the architects of the reorganization decided it was wise not to alter this successful working relationship.

Since many environmental programs are conducted by local health departments, and with the trend to encourage more local responsibility, it seems doubtful that the DNRC could create a stronger relationship than that which has been forged in the past eight decades.

As far as my duties as director, I now have, and will continue to have, daily consultations with staff from the environmental programs concerning the medical aspects of different situations. While it is true that DNRC could contract for physician services, it is doubtful it could do so on a daily basis. Besides myself, there are physicians in the Health Services Bureau who are available for consultation and assistance.

Another aspect to consider is the working relationship between the Department's divisions, and the bureaus in the Environmental Sciences Division. There has always been a "team spirit" in the Department when it comes to solving public health problems. To some this is not evident, since many parts of the Department have been physically situated throughout Helena because of the lack of room in the Cogswell Building. But the spirit remains unchanged, and I pledge to make it more evident and stronger. Certainly it will become more evident when the new addition to the Cogswell Building is completed and the entire department is under one roof.

To give you a better idea of the cooperation that exists between the bureaus SB430 proposes to move and other agencies in the Department and in local health departments, consider some of the following examples of cooperation:

Water Quality Bureau

--Safe Drinking Water Program: Personnel in this program work closely with the Preventive Health Services Bureau when there are outbreaks of water-borne diseases. A recent example was the outbreak of giardia in Red Lodge. They also provide technical and engineering support to the Dental Health Bureau in the school fluoridation programs; give technical expertise to the Food & Consumer Safety Bureau when there are questions pertaining to water supplies for trailer parks; coordinate with the Occupational Health Bureau in inspecting water supplies for radiological contamination, and evaluate the results of drinking water samples done by DHES labs before the samples are sent to water supply owners.

--Water Quality Management: Staff work with the Preventive Health Services Bureau to alert medical professionals and the public when toxic algae endanger state waters. Last summer this interdepartment cooperation helped alert the public to the toxic algae in the Nelson Reservoir, which proved to be one of the town of Saco's water supplies. Other examples include: Assisting the Food and Consumer Safety Bureau in conducting a program to help county sanitarians identify toxic algae, and train municipal employees in the management of water supply reservoirs.

--Waste Water Discharge Permits: Persons in this section work with local health staffs in detecting toxic substances and high concentrations of fecal coliforms. They also work with the Occupational Health Bureau in the area of uranium solution mining.

The bureau estimates that less than 10 percent of its permits are for projects that require permits from other state agencies.

Air Quality Bureau

Last year's eruption of Mount St. Helens provides a good example of how the bureau responds and coordinates with other agencies. During the disaster the bureau worked quickly and was able to obtain advice and help from the Department Director, the Occupational Health Bureau, Food and Consumer Safety Bureau, Preventive Health Services Bureau and state labs; and outside the department, it was able to quickly establish important communications with local health departments throughout the state.

The bureau also works with the Occupational Health Bureau when there are chemical spills and extensively uses the services of the DHES' labs.

The bureau estimates it spends about 8 percent of its time working on permits for projects that need permits from other state agencies. The other 92 percent of its time pertains to such activities as inspections, developing a state implementation plan, compliance analysis and prevention of significant deterioration review, to name a few.

Solid Waste Management Bureau

Due to the nature of proper solid waste management, nearly all phases of its programs require close working relationships with local health departments. Such programs as the proper management of local sanitary landfills, the junk vehicle program and the disposal of hazardous wastes are some of the more well known programs. But the bureau also: works with the Department's Hospital and Medical Facilities Division and Health Services Division to insure special care is taken in handling and disposing of hospital wastes; coordinates with the Occupational Health Bureau to monitor the generation of methane gas at waste disposal sites and assists in the disposal of radioactive wastes; relies on the Department's Laboratory Division for sample analysis, and works with the Food and Consumer Safety Bureau to license food services establishments.

Subdivision Bureau

The Subdivision Bureau works with local health departments in the review and approval of subdivisions. This relationship has grown and matured, and now many of the local departments are assuming greater responsibility for the review and approval of subdivisions.

Additionally, the bureau works with the Food and Consumer Safety Bureau in licensing trailer courts and recreational vehicle parks. The two bureaus also cooperate in keeping local sanitarians abreast of new developments in the areas of proper sewage disposal and protection of home water sources.

I think this brief review of a few of the working relationships between the bureaus proposed to be transferred to DNRC and their state and local health-related counterparts points out the importance of maintaining close working relationships within the area of public health.

This review would not be complete without pointing out another important area of cooperation--cooperation between state agencies. Two significant examples of cooperation are emergency response work that's been done to streamline the Major Facility Siting Act.

In emergency response, interdepartment and interagency cooperation was exemplified several years ago by the Pierce Packing Company PCB problem. The response effort not only involved the bureaus proposed for transfer (except for the Subdivision Bureau), but it also included the Occupational Health Bureau, Food and Consumer Safety Bureau, Emergency Medical Services Bureau, Health Services Division and Laboratory Division. Other state departments involved included the Department of Livestock, Department of Agriculture, Department of Military Affairs and the Governor's Office.

An important consideration to keep in mind is when an emergency situation occurs such as spills or PCB type incidents the need for instant and accurate communication is imperative. Lives are at stake, and often it's many lives. If the lines of communications concerning primary responsibilities, such as public health, have been severed or neglected, the public pays the price in destruction, injury or possibly death.

As for the Major Facility Siting Act, the days of confusion experienced during the review of Colstrip Units 3 and 4 have given way to continued refinement and order. This has been accomplished through legislative action, executive branch cooperation and streamlining within the departments. The DHES continues to work toward cooperation with other agencies and refinement of its own rules and regulations.

Last fall the DHES proposed and the Board of Health approved a proposal to exempt Major Facility Siting Act Applications from the time and procedural requirements of the air and MPDES (Montana Pollution Discharge Elimination Systems) permit rules. Additionally, the Solid Waste Management Bureau had a section added to the Montana Solid Waste Management Act that said if a development being reviewed under the siting act generates hazardous wastes that require a license under the act, the license review will be done in conjunction with the DHES' air and water quality studies.

If transferred to another department, these laws and regulations would not change, thus the time needed to complete scientific studies, draw up permit requirements and hold hearings for the proposed permits and licenses would remain unchanged.

In conclusion I'd like to restate my concerns regarding the passage of SB430. I think my review of the facts show:

A-Decades have been spent creating public health laws aimed at protecting the health and welfare of Montanans. The public sanctioned these laws, and prior legislative assemblies designated that these laws be administered within Montana's public health community.

This community, consisting of the DHES, local public agencies and the medical profession has worked cooperatively to bring good health care to Montana. To disrupt this sphere of cooperation only invites serious problems.

B-There still remains to be addressed the question:

DNRC has as its function promotion of water use, whereas the Water Quality Bureau has regulatory action over the usage as it affects public health. Is it wise to have both of these interests within the same department? Can it or does it appear as it does to me to be essentially a conflict of interest situation?

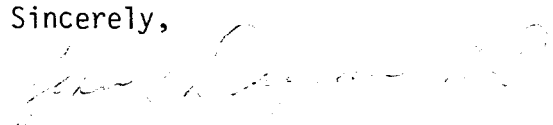
C-As for the Department, there is a strong, critical working relationship throughout all bureaus and divisions. No bureau or division works in a vacuum, all depend on the expertise of others. To extract one would be to invite trouble, to subtract four would greatly multiply the problem.

SB 430 would cause fragmentation to answer a problem covered by 1 percent of the various bureaus work, while calling into jeopardy 93 to 95 percent of its duties that remain unquestioned by industry, communities, public health officials and Montana's medical community. Does having permit issuance in one agency to satisfy a few special interest groups outweigh the advantages of retaining health functions within one agency so they receive the proper emphasis? We hope that you will give this question adequate consideration in your deliberations. If you do not know the answer, I hope that action will be delayed so reorganization can be reviewed without the short time constraints that are present in the remainder of this legislative session.

February 20, 1981

As director of the Department, I speak for the entire staff when I say we are constantly striving to refine working relations with our counterparts in state government, federal government, and local health departments, but our first and foremost duty is to insure that the citizens of Montana receive the best public health care possible, and to do this we must remain as an unfragmented, close working department.

Sincerely,



John J. Drynan, M.D.
Director

cc: Governor Ted Schwinden
Leo Berry

STANDING COMMITTEE REPORT

February 20, 19 81

PRESIDENT

MR.

NATURAL RESOURCES

We, your committee on

SENATE

367

having had under consideration Bill No.

SENATE

367

Respectfully report as follows: That Bill No.

DO PASS

g/c

HAROLD DOVER,

Chairman.

STANDING COMMITTEE REPORT

February 20,

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19.....

MR. **PRESIDENT**.....

We, your committee on **NATURAL RESOURCES**.....

having had under consideration **SENATE**..... Bill No. **327**

Respectfully report as follows: That **SENATE**..... Bill No. **327**
be amended as follows:

1. Title, line 4
Following: "TO"
Strike: "INCREASE"
Insert: "BROADEN"
2. Title, line 5
Following: "THE" on line 4
Strike: "AUTHORITY OF"
Insert: "STATE POLICY WITH RESPECT TO"
3. Title, line 5
Following: "LANDOWNERS"
Strike: "TO ALTER"
INSERT: "AND ALTERATION OF"

~~XXXXXX~~
DO PASS



(continued)

4. Title, line 7
Following: "75-7-102,"
Strike: "75-7-112,"
5. Title, line 3
Following: "75-7-113,"
Strike: "75-7-115,"
Insert: "AND"
6. Title, lines 8 and 9
Following: "87-5-501," on line 8
Strike: "AND" through "87-5-505," on lines 8 and 9
7. Pages 2 through 4
Following: Line 2 on page 2
Strike: Section 2 in its entirety from the bill
Renumber subsequent sections
8. Page 4, line 21
Following: "days"
Strike: "of"
Insert: "following"
9. Page 5, line 17
Following: "or"
Insert: "a member of the team or"
10. Pages 5 and 6
Following: line 21 on page 5
Strike: Section 4 in its entirety from the bill
Renumber subsequent sections
11. Page 6, line 10
Following: "involved"
Insert: "all factors involved including"
12. Pages 6 and 7
Following: line 12 on page 6
Strike: Section 6 in its entirety from the bill
Renumber subsequent section
13. Page 7, lines 4 and 5
Following: line 3 on page 7
Strike: Section 7 in its entirety from the bill

J.C.

And, as so amended,
DO PASS

STANDING COMMITTEE REPORT

February 20,

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MR. **PRESIDENT**

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE** Bill No. **482**

Respectfully report as follows: That **SENATE** Bill No. **482**

4/10

DO NOT PASS

~~**DO PASS**~~

[Signature]
.....
HAROLD DOVER,

Chairman.

STANDING COMMITTEE REPORT

February 20,

1981

MR. **PRESIDENT**.....

We, your committee on **NATURAL RESOURCES**.....

having had under consideration **SENATE**..... Bill No. **258**

Respectfully report as follows: That **SENATE**..... Bill No. **258**

be amended as follows:

1. Title, line 9.

Following: "LANDS"

Insert: "AND THE BOARD OF LAND COMMISSIONERS"

2. Title, lines 10 through 13.

Following: "CONSERVATION;" on line 10

Strike: "AMENDING" through "82-4-427, MCA."

Insert: "TO TRANSFER FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION THE REGULATORY FUNCTIONS RELATING TO AIR AND WATER QUALITY, PUBLIC WATER SUPPLY, SANITATION IN SUBDIVISIONS, MAJOR FACILITY SITING, SOLID WASTE, AND OTHER MISCELLANEOUS FUNCTIONS; TO TRANSFER THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES' RULE-MAKING AUTHORITY TO THE BOARD OF NATURAL RESOURCES AND CONSERVATION; TO TRANSFER THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' RULE-MAKING AUTHORITY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; TO TRANSFER THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES' CONTESTED CASE AUTHORITY

~~XXXXXXXX~~

(continued)

H.C.

February 20,

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TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; TO REQUIRE THAT THE MEMBERSHIP OF THE BOARD OF NATURAL RESOURCES INCLUDE ONE ENGINEER AND ONE MEDICAL DOCTOR; TO GENERALLY REVISE THE LAWS TO CONFORM TO THE TRANSFER; REPEALING SECTION 75-5-502, MCA, AND PROVIDING EFFECTIVE DATES."

3. Page 22, line 12
Following: line 11

Insert: the attached sections 18 through 50, and,

"Section 51. Section 2-15-3302, MCA, is amended to read:

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

(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. One member shall be a medical doctor licensed by the board of medical examiners and at least one member shall be an engineer licensed by the board of professional engineers and land surveyors.

(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 52. Transition for contested cases. Any contested case filed before October 1, 1982 with the board of health shall be concluded with the board of health unless both parties to the action stipulate in writing that the action may be transferred to the department of natural resources and conservation."

Renumber: subsequent sections

4. Page 22

Following: line 20

Insert: "Section 55. Effective dates. (1) The effective date for sections 1 through 17 is October 1, 1981.

(2) The effective date for the attached sections pertaining to the transfer of functions under various environmental acts is October 1, 1982.

(3) The effective date of the requirement that a medical doctor and an engineer sit on the board of natural resources and conservation is January 1, 1982."

"Section 56. Repealer. Section 75-5-502, MCA, is repealed."

And, as so amended
DO PASS

HAROLD DOVER,

P.A.
Chairman.

"Section 18. Board of health and environmental sciences -- functions transferred to board of natural resources and conservation. (1) The following functions of the board of health and environmental sciences are transferred to the board of natural resources and conservation:

(a) those rulemaking functions specified in 75-2-201 through 75-2-204, 75-2-301, and 75-2-428 relating to air quality, including classifying air contaminant sources, setting emission levels, and approving local air pollution control programs;

(b) those rulemaking functions specified in 75-5-201, 75-5-301 through 75-5-305, 75-5-307, and 75-5-401 relating to water quality, including adopting classifications and standards for state waters and setting standards of performance; and

(c) the rulemaking functions specified in 75-10-106 and 75-10-111 relating to management of material recycling.

(2) Unless inconsistent with this act, any reference in the sections listed in subsection (1) and in 75-2-103, 75-2-105, 75-2-422, 75-5-103, 75-5-105, 75-5-106, 75-6-102, 75-6-107, 75-6-112, 75-6-113, 75-10-103, 75-10-112, 75-10-203, and 75-10-301:

(a) to "board of health and environmental sciences" or "board of health" or "board" (of health and environmental sciences) is changed to "board of natural resources and conservation" or "board" (of natural resources and conservation);

(3) The code commissioner shall conform internal references and grammar, including redundancies, to the changes made by this section.

Section 19. Board of health and environmental sciences -- functions transferred to department of natural resources and conservation. (1) The following functions of the board of health and environmental sciences are transferred to the department of natural resources and conservation:

(a) those functions specified in 75-5-514, 75-5-515, 75-5-614, and 75-5-641 relating to water quality, including conducting enforcement hearings and setting local charges for sewage systems;

(b) those functions specified in 75-10-223, 75-10-224, and 75-10-515 relating to management of material recycling and motor vehicle recycling and disposal;

(c) those functions specified in Title 75, chapter 20, relating to major facility siting, including emission and discharge permits; and

(d) those functions specified in Title 75, chapter 4, part 1, relating to state regulation of subdivisions, including conducting hearings on decisions related to water supply and sewage disposal.

(2) Unless inconsistent with this act, any reference in the sections listed in subsection (1):

(a) to "board of health and environmental sciences" or "board of health" or "board" meaning "board of health and environmental sciences" is changed to "department of natural resources and conservation" or "department" (of natural resources and conservation); and

(b) to "chairman" is changed to "director".

(3) The code commissioner shall conform internal

references and grammar, including redundancies, to the changes made by this section.

Section 20. Department of health and environmental sciences -- functions transferred to the department of natural resources and conservation. (1) The following functions of the department of health and environmental sciences are transferred to the department of natural resources and conservation:

(a) those functions specified in Title 37, chapter 42, relating to water treatment plant operators;

(b) those functions specified in 75-2-301, 75-2-403, 75-2-412, 75-2-413, 75-2-422, 75-2-424, and 75-2-427 relating to air quality, including issuance of permits and enforcement and administration of and study and testing necessary to implement air quality laws, rules, and orders;

(c) those functions specified in 75-5-211 through 75-5-213, 75-5-221, 75-5-402, 75-5-511, 75-5-513, 75-5-601, 75-5-602, 75-5-612, 75-5-613, 75-5-616, 75-5-622, 75-5-635, and 75-5-636 relating to water quality, including issuance of permits and enforcement and administration of and study, monitoring, and testing necessary to implement water quality laws, rules, and orders;

(d) those functions specified in 75-6-104, 75-6-105, 75-6-107, and 75-6-111 through 75-6-113 relating to public water supplies, including distribution, treatment, and investigative and administrative assistance to local governments;

(e) the administrative, enforcement, rulemaking, and regulatory functions specified in 75-10-104, 75-10-105, 75-10-111, 75-10-121, 75-10-122, 75-10-124, 75-10-204, 75-10-205, 75-10-211, 75-10-221, 75-10-222, 75-10-224, 75-10-225, 75-10-231, 75-10-232, 75-10-503, 75-10-511, 75-10-513 through 75-10-515, 75-10-521, 75-10-522, 75-10-531, 75-10-533, 75-10-534, and 75-10-541 relating to management of material recycling and motor vehicle recycling and disposal;

(f) those functions specified in Title 75, chapter 20, relating to major facility siting, including emission and discharge permits; and

(g) those functions specified in 76-2-505 and Title 76, chapter 4, part 1, relating to state regulation of subdivisions, including sanitary standards, fees, and enforcement.

(2) Unless inconsistent with this act, any reference in the sections listed in subsection (1) and in 75-2-103, 75-2-105, 75-5-103, 75-5-105, 75-5-106, 75-5-401, 75-6-102, 75-10-103, 75-10-106, 75-10-113, 75-10-203, and 75-10-501 to the "department of health and environmental sciences" or "department" or "director" (of health and environmental sciences) is changed to the "department of natural resources and conservation" or "department" (of natural resources and conservation). The code commissioner shall conform internal references and grammar, including redundancies, to these changes.

Section 21. Transfer of board and advisory councils.

(1) The board of water and wastewater operators, the air pollution control advisory council, and the water pollution control advisory council, created in Title 2, chapter 15, part 21, are reallocated from the department of health and environmental sciences to the department of natural

"Section 18. Board of health and environmental sciences -- functions transferred to board of natural resources and conservation. (1) The following functions of the board of health and environmental sciences are transferred to the board of natural resources and conservation:

(a) those rulemaking functions specified in 75-2-201 through 75-2-204, 75-2-301, and 75-2-428 relating to air quality, including classifying air contaminant sources, setting emission levels, and approving local air pollution control programs;

(b) those rulemaking functions specified in 75-5-201, 75-5-301 through 75-5-305, 75-5-307, and 75-5-401 relating to water quality, including adopting classifications and standards for state waters and setting standards of performance; and

(c) the rulemaking functions specified in 75-10-106 and 75-10-111 relating to management of material recycling.

(2) Unless inconsistent with this act, any reference in the listed in subsection (1) and in sections 75-2-103, 75-2-105, 75-2-422, 75-5-103, 75-5-105, 75-5-106, 75-6-102, 75-6-107, 75-6-112, 75-6-113, 75-10-103, 75-10-112, 75-10-203, and 75-10-501:

(a) to "board of health and environmental sciences" or "board of health" or "board" (of health and environmental sciences) is changed to "board of natural resources and conservation" or "board" (of natural resources and conservation); and

(b) to "chairman" is changed to "director".

(3) The code commissioner shall conform internal references and grammar, including redundancies, to the changes made by this section.

Section 19. Board of health and environmental sciences -- functions transferred to department of natural resources and conservation. (1) The following functions of the board of health and environmental sciences are transferred to the department of natural resources and conservation:

(a) those functions specified in 75-5-514, 75-5-515, 75-5-614, and 75-5-641 relating to water quality, including conducting enforcement hearings and setting local charges for sewage systems;

(b) those functions specified in 75-10-223, 75-10-224, and 75-10-515 relating to management of material recycling and motor vehicle recycling and disposal;

(c) those functions specified in Title 75, chapter 20, relating to major facility siting, including emission and discharge permits; and

(d) those functions specified in Title 76, chapter 4, part 1, relating to state regulation of subdivisions, including conducting hearings on decisions related to water supply and sewage disposal.

(2) Unless inconsistent with this act, any reference in the sections listed in subsection (1):

(a) to "board of health and environmental sciences" or "board of health" or "board" meaning "board of health and environmental sciences" is changed to "department of natural resources and conservation" or "department" (of natural resources and conservation); and

(b) to "chairman" is changed to "director".

(3) The code commissioner shall conform internal

references and grammar, including redundancies, to the changes made by this section.

Section 20. Department of health and environmental sciences -- functions transferred to the department of natural resources and conservation. (1) The following functions of the department of health and environmental sciences are transferred to the department of natural resources and conservation:

(a) those functions specified in Title 37, chapter 42, relating to water treatment plant operators;

(b) those functions specified in 75-2-301, 75-2-403, 75-2-412, 75-2-413, 75-2-422, 75-2-424, and 75-2-427 relating to air quality, including issuance of permits and enforcement and administration of and study and testing necessary to implement air quality laws, rules, and orders;

(c) those functions specified in 75-5-211 through 75-5-213, 75-5-221, 75-5-402, 75-5-511, 75-5-513, 75-5-601, 75-5-602, 75-5-612, 75-5-613, 75-5-616, 75-5-622, 75-5-635, and 75-5-636 relating to water quality, including issuance of permits and enforcement and administration of and study, monitoring, and testing necessary to implement water quality laws, rules, and orders;

(d) those functions specified in 75-6-104, 75-6-105, 75-6-107, and 75-6-111 through 75-6-113 relating to public water supplies, including distribution, treatment, and investigative and administrative assistance to local governments;

(e) the administrative, enforcement, rulemaking and regulatory functions specified in 75-10-104, 75-10-105, 75-10-111, 75-10-121, 75-10-122, 75-10-124, 75-10-204, 75-10-205, 75-10-211, 75-10-221, 75-10-222, 75-10-224, 75-10-225, 75-10-231, 75-10-232, 75-10-503, 75-10-511, 75-10-513 through 75-10-515, 75-10-521, 75-10-522, 75-10-531, 75-10-533, 75-10-534, and 75-10-341 relating to management of material recycling and motor vehicle recycling and disposal;

(f) those functions specified in Title 75, chapter 20, relating to major facility siting, including emission and discharge permits; and

(g) those functions specified in 76-3-505 and Title 76, chapter 4, part 1, relating to state regulation of subdivisions, including sanitary standards, fees, and enforcement.

(2) Unless inconsistent with this act, any reference in the listed in subsection (1) and in sections 75-2-103, 75-2-105, 75-5-103, 75-5-105, 75-5-106, 75-5-401, 75-6-102, 75-10-103, 75-10-106, 75-10-113, 75-10-203, and 75-10-501 to the "department of health and environmental sciences" or "department" or "director" (of health and environmental sciences) is changed to the "department of natural resources and conservation" or "department" (of natural resources and conservation). The code commissioner shall conform internal references and grammar, including redundancies, to these changes.

Section 21. Transfer of board and advisory councils. (1) The board of water and wastewater operators, the air pollution control advisory council, and the water pollution control advisory council, created in Title 2, chapter 15, part 21, are reallocated from the department of health and environmental sciences to the department of natural

resources and conservation.

(2) Sections 2-15-2105 through 2-15-2107 shall be renumbered to be integral parts of Title 2, chapter 15, part 33.

(3) The code commissioner shall change internal references to both section numbers and names accordingly.

Section 22. Section 2-15-2103, MCA, is amended to read:

"2-15-2103. Division of environmental sciences -- functions. There is a division of environmental sciences within the department. The department shall assign all functions performed by the department relating to air ~~pollution--control--water--pollution--control~~, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and related areas to the division."

Section 23. Section 2-15-2105, MCA, is amended to read:

"2-15-2105. Board of water and wastewater operators.

(1) There is a board of water and wastewater operators.

(2) The board consists of seven members. Except as provided in subsection (2)(e) of this section, the members shall be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members shall hold a certificate by examination of the highest class issued by the department of ~~health--and--environmental--sciences~~. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members shall hold a certificate by examination of the highest class issued by the department of ~~health--and--environmental--sciences~~. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality required to employ a certified operator and who holds a position of either city manager, city engineer, director of public works, works manager, or their equivalent;

(e) ~~the administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator~~ the department's staff.

(3) Members, except the ex officio voting member from the department of ~~health and environmental sciences~~, shall serve for a term of 5 years.

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

Section 24. Section 2-15-2107, MCA, is amended to read:

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

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

(2) The council consists of eleven members. The

members are:

(a) the director of fish, wildlife, and parks;
(b) the ~~administrator of the water resources division of the department of natural resources and conservation~~ director of the department of health and environmental sciences;

(c) the director of agriculture;

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

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

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

(iii) a livestock feeder;

(iv) a representative of municipal government;

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

(vi) a representative from labor;

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

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

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

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

Section 25. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property -- description -- taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(c) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) truck campers, motor homes, and camping and travel trailers, including fifth-wheel trailers, owned by and actually used primarily by a person 60 years of age or older who:

(i) is retired from full employment; and

(ii) whose total income from all sources is not more than \$7,000 for a single person or \$8,000 for a married couple;

(d) new industrial property as defined in this section;

(e) any personal or real property used primarily in the production of gasoline during construction and for the first 3 years of its operation.

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of ~~health and environmental sciences~~ natural resources and conservation shall determine if such utilization is being made.

(b) ~~The department's determination for the use of pollution equipment may be appealed to the board of health and environmental sciences and any person liable for taxes~~

on property determined by the department not to be air or water pollution equipment is entitled to a hearing before the department of natural resources and conservation. The determination of the department may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "New industrial property" means any new industrial plant, including lands, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1951.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(5) "New industrial property" does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value."

Section 26. Section 75-2-104, MCA, is amended to read:

"75-2-104. Limitations -- personal cause of action unbridged. Nothing in this chapter shall be construed to:

(1) grant to the board ~~department~~ any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(2) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(3) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety;

(4) bridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding."

Section 27. Section 75-2-111, MCA, is amended to read:
"75-2-111. Powers of board. The board shall:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

~~(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings, the transcripts of which will be available to the public at cost.~~

~~(3) issue orders necessary to effectuate the purposes of this chapter.~~

~~(4) by rule require access to records relating to emissions;~~

~~(5) by rule adopt a schedule of fees required for permits under this chapter;~~

~~(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."~~

Section 28. Section 75-2-112, MCA, is amended to read:
"75-2-112. Powers and responsibilities of department.

(1) The department is responsible for the administration of this chapter.

(2) The department shall:

~~(a) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the department. The department may compel the attendance of witnesses and the production of evidence at hearings. The department shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.~~

~~(b) issue orders necessary to effectuate the purposes of this chapter;~~

~~(c) have the power to issue orders under and in accordance with 42 U.S.C. 7419.~~

~~(d) by appropriate administrative and judicial proceedings, enforce orders issued by the board department;~~

~~(e) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;~~

~~(f) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;~~

~~(g) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;~~

~~(h) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.~~

(f)(1) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g)(1) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h)(1) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i)(1) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j)(1) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k)(1) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l)(1) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis."

Section 29. Section 75-2-211, MCA, is amended to read:
"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(2) Not later than 150 days before construction begins of any machine, equipment, device, or facility which the department finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department and pay to the department a fee sufficient to cover:

(a) the reasonable costs of reviewing and acting upon the application for such permit; and

(b) the reasonable costs of implementing and enforcing

the terms and conditions of such permit if the permit is granted (not including any court costs or other costs associated with any enforcement action). The fee shall be deposited in an earmarked revenue fund to be used by the department for administration of this section.

(3) Nothing in this section shall restrict the board's authority to adopt regulations providing for a single air quality permit system.

(4) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(5) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

(6) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(7) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing within 150 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. Notification of approval or denial may be served personally or by registered or certified mail on the applicant or his agent.

(8) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board ~~department~~. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

(9) The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board ~~department~~.

Section 30. Section 75-2-212, MCA, is amended to read:

"75-2-212. Variances -- renewals -- filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board ~~department~~ for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board ~~department~~ may require. The board ~~department~~ may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption may be granted pursuant to this section except after public hearing on due notice and until the board ~~department~~ has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption may be granted pursuant to this section for a period to exceed 1 year, but the exemption or partial exemption may be renewed for like periods if no complaint is made to the board ~~department~~ because of it or if, after the complaint has been made and duly considered at a public hearing held by the board ~~department~~ on due notice, the board ~~it~~ finds that renewal is justified. No renewal may be granted except on application therefor. An application shall be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal the applicant shall give public notice of his application in accordance with rules of the board ~~department~~. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board ~~department~~. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the board ~~department~~ may obtain judicial review thereof as provided by 75-2-411.

(5) Nothing in this section and no exemption, partial exemption, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or his property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment (hereinafter called a facility) who applies to the board ~~department~~ for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of this shall be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if no public hearing, environmental impact statement, or appreciable investigation by the department is necessary, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be

deposited in the earmarked revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department to:

- (a) compile the information required for rendering a decision on the request;
- (b) compile the information necessary for any environmental impact statements;
- (c) offset the costs of a public hearing, printing, or mailing; and
- (d) carry out its other responsibilities under this chapter."

Section 31. Section 75-2-401, MCA, is amended to read:

"75-2-401. Enforcement. (1) When the department believes that a violation of this chapter or a rule made under it has occurred, it may cause written notice to be served personally or by registered or certified mail on the alleged violator or his agent. The notice shall specify the provision of this chapter or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board department. On receipt of the request, the board department shall schedule a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board department finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on an order contained in a notice, the board department finds that no violation is occurring, it shall rescind the order.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board department for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(4) This chapter does not prevent the board--or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with a hearing held under this section, the board department may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

Section 32. Section 75-2-402, MCA, is amended to read:

"75-2-402. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons

causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the commencement of the hearing and without adjournment, the board ~~department~~ shall affirm, modify, or set aside the its order ~~of the department~~.

(2) In the absence of a generalized condition such as that referred to in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency subject on the basis of this declaration, whether the power is conferred by statute or constitutional provisions or inheres in the office.

(4) Nothing in 75-2-205 may be construed to require a hearing before the issuance of an emergency order pursuant to this section."

Section 33. Section 75-2-411, MCA, is amended to read:

"75-2-411. Judicial review. (1) A person aggrieved by an order of the ~~board department~~ or local control authority may apply for rehearing upon one or more of the following grounds and ~~and~~ no other grounds:

(a) the ~~board department~~ or local control authority acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to him, which he could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(2) The petition must be in such form and filed in such time as the ~~board department~~ shall prescribe.

(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, a party aggrieved thereby may appeal to the district court of the judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the ~~chairman-of-the-board department~~, which service shall be made by the delivery of a copy of the notice to the ~~chairman~~ it and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the ~~board department~~, the ~~board~~ it shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the ~~board department~~. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the same to be served upon the ~~board department~~ and the appellant.

(c) The court shall hear and decide the cause upon the

record of the board department. The court shall determine whether or not the board department regularly pursued its authority, whether or not the findings of the board department were supported by substantial competent evidence, and whether or not the board department made errors of law prejudicial to the appellant.

(4) Either the board department or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board department, and of the district court's review of that record."

Section 34. Section 75-2-421, MCA, is amended to read:
"75-2-421. Persons subject to noncompliance penalties -- exemptions. (1) Except as provided in subsection (2), the department shall assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter which has received a nonferrous smelter order under 42 U.S.C. 7419) which is not in compliance with any emission limitation specified in an order of the board department, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411 or 42 U.S.C. 7412; or

(c) any source referred to in subsections (1)(a) or (1)(b) which has been granted an exemption, extension, or suspension under subsection (2) or which is covered by a compliance order, or a primary nonferrous smelter which has received a primary nonferrous smelter order under 42 U.S.C. 7419, if such source is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance which:

(a) the department finds is de minimus in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(b)(2)(C) of the federal Clean Air Act.

~~(3) --any person who is jointly or adversely affected by the department's decision may request within 15 days after the department renders its decision upon affidavit setting forth the grounds therefor, a hearing before the board. The hearing shall be held under the provisions of the Montana Administrative Procedure Act"~~

Section 35. Section 75-2-425, MCA, is amended to read:
"75-2-425. Notice of noncompliance -- challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-421(1) which is not in compliance as provided in that subsection, within 30 days after the

department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the ~~board~~ department a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b)."

Section 36. Section 75-2-426, MCA, is amended to read:

"75-2-426. Hearing on challenge. (1) The ~~board~~ department shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 40 days after the receipt of any petition under 75-2-425(2)(b) with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the department within 45 days of the date of decision."

Section 37. Section 75-5-202, MCA, is amended to read:

"75-5-202. ~~Board---hearings~~ Hearings. The ~~board~~ department shall hold hearings necessary for the proper administration of this chapter ~~any-in-the-case-of-permit-issuance---hearings---delegate---this---function---to---the~~ department."

Section 38. Section 75-5-403, MCA, is amended to read:

"75-5-403. Denial or modification of permit. (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder and he may request a hearing before the ~~board~~ department, in the manner stated in 75-5-611, for the purpose of petitioning the ~~board~~ department to reverse or modify the ~~its~~ action of the department. Such hearing shall be held within 30 days after receipt of written request. After the hearing, the ~~board~~ department shall affirm, modify, or reverse the ~~its~~ action of the department. If the holder does not request a hearing before ~~the~~ board, modification of a permit shall be effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before ~~the~~ board, no order modifying his permit shall be effective until 20 days after he has received notice of the final action of the ~~board~~ department.

(2) This section does not apply to any modification made in permit conditions at the time of reissuance, but only to those modifications made in existing permits during their terms."

Section 39. Section 75-5-404, MCA, is amended to read:

"75-5-404. Suspension or revocation of permit -- procedure. If the department suspends or revokes a permit

because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately if the department finds that the violation is likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board department shall grant the holder a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately unless the board it directs otherwise."

Section 40. Section 75-5-501, MCA, is amended to read:
"75-5-501. Board Department to control state matching funds for construction of water pollution control facilities. (1) The board department shall control funds appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities.

(2) The board shall adopt rules and establish standards for the use of such matching funds by local governments in the planning and construction of local water pollution control facilities.

(3) Funds appropriated under this section shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and may not exceed 25% of the total cost of the project as participated in by the federal water pollution control administration."

Section 41. Section 75-5-611, MCA, is amended to read:
"75-5-611. Violation of chapter -- notice and hearing.

(1) When the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it may have written notice served personally or by mail on the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department requires, and the time within which the action is to be taken. For the purposes of this chapter, service by mail is complete on the date of mailing.

(2) In a notice given under subsection (1) of this section, the department may require the alleged violator to appear before the board department for a public hearing and to answer the charges made against him. The hearing shall be held no sooner than 15 days after service of the notice, except that the board department may set an earlier date for hearing if it is requested to do so by the alleged violator. The board department may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board department for a public hearing, he may request the board department to conduct the hearing. The request shall be in writing and shall be filed with the department no later than 30 days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held under this section, it shall be public and shall, if the board department considers it practicable, be held in a county in which the violation is

alleged to have occurred.

(5) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board department may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(6) The alleged violator may petition the board department for a rehearing on the basis of new evidence, which petition the board department may grant for good cause shown.

(7) In addition to or instead of issuing an order, the board department may initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635."

Section 42. Section 75-5-621, MCA, is amended to read:

"75-5-621. Emergencies. (1) Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department shall order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order shall conform to the requirements of 75-5-611(1) so far as practicable. The notice shall indicate that the order is an emergency order.

(3) Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than 5 days thereafter unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board department shall affirm, modify, or set aside the order of the department. The final order of the board department shall be accompanied by the statement specified in 75-5-611(5). An action for review of the final order of the board department may be initiated in the manner specified in 75-5-641. The initiation of such an action or taking of an appeal may not stay the effectiveness of the final order unless the court finds that the board department did not have reasonable cause to issue an order under this section."

Section 43. Section 75-5-641, MCA, is amended to read:

"75-5-641. Appeals from board department orders -- review by district court. (1) An appeal of a final order of the board department shall be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board department if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal does not stay the effectiveness of any order of the board department unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that any violation found by the board department will not continue or, if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board department, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board department."

Section 44. Section 75-6-103, MCA, is amended to read:
"75-6-103. Duties of the board. (1) The board department has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees for services rendered by the department in analyzing water and conducting inspections;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply system;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part; and

(i) any other requirement necessary for the protection of public health as described in this part.

(3) The board department may issue orders necessary to fully implement the provisions of this part."

Section 45. Section 75-6-106, MCA, is amended to read:

"75-6-106. Licensing of laboratories. (1) No laboratory analysis of water taken from a public water supply system or any report of such an analysis required by this part or a rule adopted under this part may be accepted by the department or board unless the analysis or report is made by the laboratory of the department or by a laboratory licensed by the department for such purposes. The department shall issue a license to any laboratory that can meet criteria for licensing established in the rules adopted by

the board.

(2) An application for a license under this section shall be made on forms furnished by the department.

(3) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the department's decision to the board ~~department~~ as provided in the Montana Administrative Procedure Act."

Section 46. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department ~~and department of health~~ shall within 90 days notify the applicant in writing that:

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

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

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

(3) The department ~~of health~~ shall within 1 year following the date of acceptance of an application, and the ~~board of health~~, if applicable a hearing is held, within an additional 6 months, issue any decision, opinion, order, certification, or permit required by state or federal air and water quality laws and this chapter. The department ~~and the board of health~~ shall determine compliance with air and water quality standards and implementation plans for the primary and reasonable alternate locations in ~~their~~ its decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters of air and water quality impacts under the federal and state air and water quality statutes that the department ~~of health and board of health administer~~ administers, and any of the criteria specified in 75-20-503(3) and (4) that are a part of the determinations made under federal and state air and water quality statutes. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). ~~The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be~~

served upon the--department--and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department-of-health-and-purrsuant-to-rules--adopted-by--the board--of--health on air and water quality permits, the department of health shall provide an opportunity for public review and comment. A final decision by the department of health--or--board-of-health on air and water quality permits is subject to appellate review pursuant to the air and water quality statutes administered by the department of--health and-board-of-health.

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

(5) The departments of highways; community affairs; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 47. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date -- location -- department to act as staff -- hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(10), certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

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

(3) At the request of the applicant, the self-authorized-state-air-and-water-quality-agencies department shall hold any required permit hearings required under the state air and water quality laws administered by these agencies in conjunction with the board certification hearing. In such a conjunctive hearing the time period

established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other the state air and water quality laws administered by the department of health or board of health."

Section 48. Section 75-20-219, MCA, is amended to read:

"75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1) including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternatives set forth in the original application. If the department determines that the proposed change would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems appropriate.

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

(3) If a hearing is required, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health under the state air and water quality statutes, such amendment must be processed under the applicable statutes administered by the department of health or board of health."

Section 49. Section 75-20-220, MCA, is amended to read:

"75-20-220. Hearing examiner -- restrictions -- duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board or an employee of the department or a member or employee of the department of health or board of health. A hearing examiner, if any, shall be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health department under air and water quality laws, the board and the board of health department shall mutually agree on the appointment of a hearing examiner to preside at both hearings.

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

filed with the board.

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

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

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

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

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

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

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and the board-of-health department proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceedings, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

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

Section 50. Section 76-4-106, MCA, is amended to read:
"76-4-106. Cooperation with other governmental agencies. (1) The department may require the use of records

of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and city officers and employees, including local health officers and sanitarians, shall cooperate with ~~the board and~~ the department in furthering the purposes of this part so far as is practical and consistent with their own duties."