

HOUSE BILL NO. 652

INTRODUCED BY CONROY, MARKS, CURTISS, RYAN, FEDA,
FABREGA, MOORE, GRAHAM, BURNETT, DEVLIN, BOYLAN,
McLANE, AKLESTAD, PISTORIA, LEE, DAILY, ANDREASON,
COZZENS, MEYER, C. SMITH, UNDERDAL, SIVERTSEN, ABRAMS,
SCHULTZ, BENNETT, D. BROWN, PAVLOVICH, KANDUCH, MATSKO,
IVERSON, HAPPERMAN, GALT, HEALY, DOVER, TEAGUE, MANLEY,
HAZELBAKER, KEYSER, BRIGGS, SEIFERT, ROTH, ELLERD, KROPP

IN THE HOUSE

February 5, 1981	Introduced and referred to Committee on Natural Resources.
February 6, 1981	Fiscal note requested.
February 12, 1981	Fiscal note returned.
February 21, 1981	Committee recommend bill do pass as amended. Report adopted. Statement of intent attached.
February 23, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading, do pass. On motion rules suspended and bill placed on third reading this day.
February 25, 1981	Correctly engrossed. Third reading, passed. Ayes, 63; Noes, 37. Transmitted to Senate.

IN THE SENATE

March 3, 1981	Introduced and referred to Committee on Natural Resources.
March 26, 1981	Committee recommend bill and statement of intent be concurred in as amended. Report adopted.

March 30, 1981

Motion pass consideration.

March 31, 1981

Second reading, concurred in.

On motion rules suspended. Bill placed on calendar for third reading this day and allowed to be transmitted on 71st legislative day. Motion adopted.

Third reading, not concurred in as amended. Ayes, 19; Noes, 31.

On motion Senate reconsider its action taken on third reading and place on second reading this legislative day. Motion adopted.

Second reading, concurred in as amended.

On motion rules suspended. Bill placed on calendar for third reading this day.

Third reading, concurred in as amended. Ayes, 29; Noes, 21.

IN THE HOUSE

April 1, 1981

Returned from Senate with amendments.

April 9, 1981

Second reading, amendments not concurred in.

On motion Free Conference Committee requested and appointed.

April 16, 1981

Free Conference Committee reported and dissolved.

On motion rules suspended and Free Conference Committee report placed on second reading this day.

April 17, 1981

On motion to take from second reading and refer back to a new Free Conference Committee. Motion adopted.

On motion new Free Conference Committee requested and appointed.

April 21, 1981

New Free Conference Committee reported and dissolved.

April 22, 1981

On second reading new Free Conference Committee report rejected.

On motion new Free Conference Committee requested and appointed.

April 23, 1981

New Free Conference Committee reported and dissolved.

Second reading, new Free Conference Committee report adopted.

On motion rules suspended and new Free Conference Committee report placed on third reading this day.

Third reading, new Free Conference report adopted. Ayes, 90; Noes, 2. Transmitted to Senate.

IN THE SENATE

April 23, 1981

New Free Conference Committee report adopted.

IN THE HOUSE

April 23, 1981

Returned from Senate. Sent to enrolling.

Reported correctly enrolled.

BURRIVETT
Bridges
Cochran
Duffy
3
M. S. G. H. H. H.
AKLIS THA
HARRIS

House BILL NO. 652
INTRODUCED BY *Conroy Mack* *Curtis* *Ryan* *John* *Stange*

BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE THE PROHIBITION OF DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS IN THE STATE OF MONTANA ENACTED BY INITIATIVE 84 AND PROVIDING INSTEAD FOR A STATE REGULATORY SYSTEM; PROVIDING FOR THE CONTROL AND CONDEMNATION OF LAND USED FOR DISPOSAL OF MILL TAILINGS FROM URANIUM AND THORIUM ORE PROCESSING; PROVIDING THAT STATE STANDARDS MAY BE NO MORE STRINGENT THAN FEDERAL STANDARDS; AND TO REVISE THE LAWS CONCERNING RADIATION CONTROL; AMENDING SECTIONS 75-3-102, 75-3-103 AS AMENDED BY INITIATIVE 84, 75-3-104, 75-3-201, 75-3-202, 75-3-302 AS AMENDED BY INITIATIVE 84, 75-3-303 AS AMENDED BY INITIATIVE 84, 75-30-102, MCA, AND SECTION 1 OF INITIATIVE 84."

PROHIBITION OF DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS IN THE STATE OF MONTANA ENACTED BY INITIATIVE 84 AND PROVIDING INSTEAD FOR A STATE REGULATORY SYSTEM; PROVIDING FOR THE CONTROL AND CONDEMNATION OF LAND USED FOR DISPOSAL OF MILL TAILINGS FROM URANIUM AND THORIUM ORE PROCESSING; PROVIDING THAT STATE STANDARDS MAY BE NO MORE STRINGENT THAN FEDERAL STANDARDS; AND TO REVISE THE LAWS CONCERNING RADIATION CONTROL; AMENDING SECTIONS 75-3-102, 75-3-103 AS AMENDED BY INITIATIVE 84, 75-3-104, 75-3-201, 75-3-202, 75-3-302 AS AMENDED BY INITIATIVE 84, 75-3-303 AS AMENDED BY INITIATIVE 84, 75-30-102, MCA, AND SECTION 1 OF INITIATIVE 84."

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

Section 1. Section 75-3-102, MCA, is amended to read:
"75-3-102. Purpose. It is the purpose of this chapter

- to provide a program:
(1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;
(2) to promote an orderly regulatory pattern within the state, among the states, and between the federal

1 government and the state and facilitate intergovernmental
2 cooperation with respect to use and regulation of sources of
3 ionizing radiation to the end that duplication of regulation
4 may be minimized;

5 (3) to establish procedures for assumption and
6 performance of certain regulatory responsibilities with
7 respect to by-product, source, and special nuclear
8 materials; and

9 (4) to permit maximum utilization of sources of
10 ionizing radiation consistent with the health and safety of
11 the public;

12 (5) for the control of mill tailings from uranium and
13 thorium ore processing, both at active mill operations and
14 after termination of active operations, in order to
15 stabilize and control the tailings in a safe and
16 environmentally sound manner, minimize or eliminate
17 radiation health hazards to the public, and eliminate to the
18 maximum extent practicable the need for long-term
19 maintenance and monitoring."

20 Section 2. Section 75-3-103, MCA, is amended to read:

21 "75-3-103. Definitions. The definitions used in this
22 chapter are intended to be consistent with those used in
23 Title 10 CFR, parts 1-199, and Title 49 CFR, parts
24 173.389-173.399. Unless the context requires otherwise, in
25 this chapter the following definitions apply:

INTRODUCED BILL
HB 652

1 (1) "Byproduct material" means:

2 (a) any radioactive material (except special nuclear

3 material) yielded in or made radioactive by exposure to the

4 radiation incident to the process of producing or utilizing

5 special nuclear material; and

6 (b) the tailings or wastes produced by the extraction

7 or concentration of uranium or thorium from any ore

8 processed primarily for its source material content,

9 including discrete surface wastes resulting from a uranium

10 solution extraction process, but excluding underground ore

11 bodies depleted by such solution extraction operations.

12 (2) "CFR" means the Code of Federal Regulations

13 published by the United States Government Printing Office,

14 Washington, D.C.

15 ~~(2)(3)~~ "Department" means the department of health and

16 environmental sciences.

17 ~~(3)(4)~~ "Disposal" means burial in soil, release

18 through the sanitary sewerage system, incineration, or

19 permanent long-term storage with no intention of or

20 provision for subsequent removal.

21 ~~(4)(5)~~ "General license" means a license effective

22 pursuant to rules promulgated by the department without the

23 filing of an application to transfer, acquire, own, possess,

24 or use quantities of or devices or equipment utilizing

25 quantities of byproduct, source, special nuclear materials,

1 or other radioactive material occurring naturally or

2 produced artificially. General licenses are effective

3 without the filing of applications with the department or

4 the issuing of licensing documents to the user.

5 ~~(5)(6)~~ "Ionizing radiation" means gamma rays and

6 x-rays, alpha and beta particles, high-speed electrons,

7 neutrons, protons, and other nuclear particles, but not

8 sound or radio waves or visible, infrared, or ultraviolet

9 light.

10 ~~(6)(7)~~ "Large quantity radioactive material" is that

11 quantity of radioactive material defined in 49 CFR

12 173.389(b).

13 ~~(7)(8)~~ "Person" means an individual, corporation,

14 partnership, firm, association, trust, estate, public or

15 private institution, group, agency, political subdivision or

16 agency thereof, and any legal successor, representative,

17 agent, or agency of the foregoing, other than the United

18 States nuclear regulatory commission, any successor thereto,

19 or federal agencies licensed by the nuclear regulatory

20 commission.

21 ~~(8)(9)~~ "Registration" means the registering with the

22 department by the legal owner, user, or authorized

23 representative of sources of ionizing radiation in the

24 manner prescribed by rule.

25 ~~(9)(10)~~ "Source material" means uranium, thorium, or

1 any other material which the department or the United States
 2 nuclear regulatory commission declares by order to be source
 3 material or ores containing one or more of the foregoing
 4 materials in such concentration as the department or the
 5 nuclear regulatory commission declares by order to be source
 6 material after the nuclear regulatory commission has
 7 determined the material in such concentration to be source
 8 material.

9 ~~(10)~~(11) "Special nuclear material" means plutonium,
 10 uranium 233, uranium enriched in the isotope 233 or in the
 11 isotope 235, and any other material which the department or
 12 the United States nuclear regulatory commission or any
 13 successor thereto declares by order to be special nuclear
 14 material or any material artificially enriched by any of the
 15 foregoing but does not include source material.

16 ~~(11)~~(12) "Specific license" means a license issued
 17 after application to use, manufacture, produce, transfer,
 18 receive, acquire, own, or possess quantities of or devices
 19 or equipment utilizing quantities of byproduct, special
 20 nuclear materials, or other radioactive material occurring
 21 naturally or produced artificially.

22 (13) "Surety" means:

23 (a) cash deposits;

24 (b) surety bonds;

25 (c) certificates of deposit;

1 (d) deposits of government securities;

2 (e) letters of credit; and

3 (f) other surety mechanisms considered acceptable by
 4 the department."

5 Section 3. Section 75-3-104, MCA, is amended to read:

6 "75-3-104. Exemptions -- sources, diagnosis, and
 7 therapy. (1) This chapter does not apply to the following
 8 sources or conditions:

9 (a) electrical equipment that is not intended
 10 primarily to produce radiation and that, by nature of
 11 design, does not produce radiation at the point of nearest
 12 approach at a weekly rate higher than one-tenth the
 13 appropriate limit for any critical organ exposed. The
 14 production testing or production servicing of such equipment
 15 is not exempt.

16 (b) radiation machines during process of manufacture
 17 or in storage or transit;

18 (c) any radioactive material while being transported
 19 in conformity with regulations adopted by the nuclear
 20 regulatory commission or any successor thereto or the
 21 interstate commerce commission and specifically applicable
 22 to the transportation of such radioactive materials.

23 (2) No exemptions under this section are granted for
 24 those quantities or types of activities that do not comply
 25 with the established rules promulgated by the nuclear

1 regulatory commission or by any successor thereto.

2 ~~{3}--The--provisions--of--this--chapter--may--not--be~~
3 ~~construed--to--limit--the--kind--or--amount--of--radiation--that--may~~
4 ~~be--intentionally--applied--to--a--person--for--diagnostic--or~~
5 ~~therapeutic--purposes--by--or--under--the--direction--of--a--licensed~~
6 ~~practitioner--of--the--healing--arts."~~

7 Section 4. Section 75-3-201, MCA, is amended to read:
8 "75-3-201. State radiation control agency. (1) The
9 department is the state radiation control agency.

10 (2) Under the laws of this state, the department may
11 employ, compensate, and prescribe the powers and duties of
12 the individuals which are necessary to carry out this
13 chapter.

14 (3) The department may for the protection of the
15 occupational and public health and safety:

16 (a) develop and conduct programs for evaluation and
17 control of hazards associated with the use of sources of
18 ionizing radiation;

19 (b) develop programs and adopt rules with due regard
20 for compatibility with federal programs for licensing and
21 regulation of byproduct, source, radioactive waste, and
22 special nuclear materials and other radioactive materials.
23 These rules shall cover equipment and facilities, methods
24 for transporting, handling, and storage of radioactive
25 materials, permissible levels of exposure, technical

1 qualifications of personnel, required notification of
2 accidents and other incidents involving radioactive
3 materials, survey methods and results, methods of disposal
4 of radioactive materials, posting and labeling of areas and
5 sources, and methods and effectiveness of controlling
6 individuals in posted and restricted areas.

7 (c) adopt rules ~~relating to control of other sources~~
8 ~~of ionizing radiation~~ implement the provisions of this
9 chapter; ~~These--rules--shall--cover--equipment--and--facilities,~~
10 ~~permissible--levels--of--exposure--to--personnel,~~ ~~posting--of~~
11 ~~areas,~~ ~~surveys,~~ ~~and--records~~

12 (d) advise, consult, and cooperate with other agencies
13 of the state, the federal government, other states,
14 interstate agencies, political subdivisions, and groups
15 concerned with control of sources of ionizing radiation;

16 (e) accept and administer loans, grants, or other
17 funds or gifts, conditional or otherwise, in furtherance of
18 its functions, from the federal government and from other
19 sources, public or private;

20 (f) encourage, participate in, or conduct studies,
21 investigations, training, research, and demonstrations
22 relating to control of sources of ionizing radiation;

23 (g) collect and disseminate information relating to
24 control of sources of ionizing radiation, including:

25 (i) maintenance of a file of all license applications,

1 issuances, denials, amendments, transfers, renewals,
2 modifications, suspensions, and revocations;

3 (ii) maintenance of a file of registrants possessing
4 sources of ionizing radiation requiring registration under
5 this chapter and any administrative or judicial action
6 pertaining thereto;

7 (iii) maintenance of a file of all rules relating to
8 regulation of sources of ionizing radiation, pending or
9 adopted, and proceedings thereon."

10 Section 5. Section 75-3-202, MCA, is amended to read:

11 "75-3-202. Licensing and registration. (1) The
12 department shall provide by rule for general or specific
13 licensing of persons to receive, possess, or transfer
14 radioactive materials and devices or equipment utilizing
15 such materials. The rules shall provide for amendment,
16 suspension, or revocation of licenses pursuant to 75-3-401
17 and 75-3-403.

18 (2) Each application for a specific license shall be
19 in writing and shall state such information as the
20 department by rule may determine to be necessary to decide
21 the technical, insurance, and financial qualifications or
22 any other qualification of the applicant as the department
23 considers reasonable and necessary to protect the
24 occupational and public health and safety. The department
25 may, at any time after the filing of the application and

1 before the expiration of the license, require further
2 written statements and may make such inspections as the
3 department considers necessary in order to determine whether
4 the license should be granted, denied, modified, suspended,
5 or revoked. All applications and statements shall be signed
6 by the applicant or licensee. The department may require an
7 application or statement to be made under oath or
8 affirmation.

9 (3) Each license shall be in such form and contain
10 such terms and conditions as the department may by rule
11 prescribe.

12 (4) No license issued pursuant to the provisions of
13 this chapter and no right to possess or utilize sources of
14 ionizing radiation granted by any license may be assigned or
15 in any manner disposed of.

16 (5) The terms and conditions of all licenses shall be
17 subject to amendment, revision, or modification by rules or
18 orders issued in accordance with the provisions of this
19 chapter.

20 (6) The department may require registration and
21 inspection of persons dealing with sources of ionizing
22 radiation which do not require a specific license and may
23 require compliance with specific safety standards to be
24 promulgated by the department.

25 (7) The department is authorized to exempt certain

1 users from the licensing or registration requirements set
2 forth in this section when the department makes a finding
3 that the exemption of the users will not constitute a
4 significant risk to the health and safety of the public.

5 (8) Rules promulgated pursuant to this chapter may
6 provide for recognition of such other state or federal
7 licenses as the department considers desirable, subject to
8 such registration requirements as the department prescribes.

9 ~~(9) The department may charge reasonable fees for its
10 radiation control services, including but not limited to
11 those for the issuance of categories of specific licenses
12 consistent with the categories established by the United
13 States nuclear regulatory commission or any successor
14 thereto, and for inspections of licensees."~~

15 NEW SECTION. Section 6. Ownership of disposal sites
16 and byproduct material. (1) Prior to or following the
17 expiration of any radioactive materials license issued after
18 July 1, 1981, the department may condemn the title to any
19 land, other than land held in trust by the United States for
20 any Indian tribe or owned by an Indian tribe and subject to
21 a restriction against alienation imposed by the United
22 States, or any interest therein, which is used for the
23 disposal of byproduct material pursuant to the license, and
24 the title to the byproduct itself, pursuant to Title 70,
25 chapter 30. Condemnation is not allowed if the United States

1 nuclear regulatory commission or any successor thereto
2 determines, prior to the expiration of the license, that
3 condemnation and transfer of either or both the land and
4 byproduct material is not necessary to protect the public
5 health, safety, or welfare.

6 (2) If the department condemns any interest in land or
7 byproduct material pursuant to this section:

8 (a) the land or material must be maintained by the
9 department in a manner to protect the public health, safety,
10 and welfare;

11 (b) the department is authorized to undertake such
12 monitoring, maintenance, and emergency measures as necessary
13 to protect the public health, safety, and welfare;

14 (c) the transfer of title to the land or byproduct
15 material does not relieve any licensee of liability for
16 fraudulent or negligent acts done prior to condemnation.

17 NEW SECTION. Section 7. Standards for
18 decontamination. (1) The department shall promulgate
19 standards for the decontamination, decommissioning, and
20 reclamation of any site at which ores were processed
21 primarily for their source material content and which sites
22 were used for disposal of byproduct material.

23 (2) Any radioactive material license issued or renewed
24 after July 1, 1981, for any activity that results in the
25 production of byproduct material must contain such terms and

1 provisions as the department determines necessary to insure
 2 that, prior to the expiration of the license, the licensee
 3 will comply with the decontamination, decommissioning, and
 4 reclamation standards of the department.

5 NEW SECTION. Section 8. Surety requirements. (1) Upon
 6 the condemnation of any land used for the disposal of
 7 byproduct material, the condemnation of byproduct material,
 8 or the condemnation of both such land and material, the
 9 department shall:

10 (a) require that an adequate surety, as determined by
 11 the department, be provided by the licensee in order to
 12 ensure the completion of all decontamination,
 13 decommissioning, and reclamation of sites, structures, and
 14 equipment used in conjunction with generation or disposal of
 15 byproduct material; and

16 (b) determine whether any long-term maintenance or
 17 monitoring of the land or byproduct material is necessary.
 18 If the maintenance or monitoring is found necessary, the
 19 licensee must make available to the department the funds
 20 necessary to assure the maintenance and monitoring and funds
 21 necessary to ensure compliance with standards adopted by the
 22 United States nuclear regulatory commission relating to
 23 reclamation and long-term management of the disposal site or
 24 byproduct material, or both.

25 (2) The funds required by this section shall include,

1 but are not limited to, sums collected for long-term
 2 surveillance, and, if necessary, maintenance, but do not
 3 include money held as surety where no default has occurred
 4 and the reclamation or other bonded activity has been
 5 performed.

6 NEW SECTION. Section 9. Requirements for persons
 7 exempt from licensing. The department may, by rule or order,
 8 require persons processing ores primarily for their source
 9 material content but exempt from licensing under this
 10 chapter to conduct monitoring, perform remedial work, and
 11 comply with such measures as the department considers
 12 necessary or desirable to protect health or minimize danger
 13 to life or property.

14 NEW SECTION. Section 10. Maximum state limitations.
 15 No rule, standard, or other requirement adopted by the
 16 department and no license, license term or condition,
 17 registration, exemption, or other grant or limitation of
 18 authority conferred by the department under [sections 6
 19 through 9] may be more stringent or restrictive or impose a
 20 greater financial burden upon any person than the federal
 21 rule, standard, license, license condition, registration,
 22 exemption, or grant or limitation of authority which would
 23 have been applied absent a state program applying [sections
 24 6 through 9] under any agreement or approval by any agency
 25 of the United States.

1 Section 11. Section 1 of Initiative 84 is amended to
2 read as follows:

3 "New Section 1. There is a new MCA section that reads
4 as follows:

5 "~~Policy. It is the policy of the state of Montana, in~~
6 ~~furtherance of its responsibility to protect the public~~
7 ~~health and safety, under the police powers of the state and~~
8 ~~for protection of the constitutional right to a healthy~~
9 ~~environment, to prohibit PROVIDE FOR THE REGULATION OF the~~
10 ~~disposal of certain radioactive material."~~

11 Section 12. Section 75-3-302, MCA, is amended to read:

12 "75-3-302. Disposal of large quantities of radioactive
13 material prohibited -- ~~exceptions--and~~ exclusion. (1) No
14 person may dispose of in Montana large quantity radioactive
15 material, byproduct material, or special nuclear material
16 within the state of Montana, ~~except as authorized by a~~
17 ~~license issued by the United States or by the department.~~

18 ~~{2}--Byproduct--material--{except--large--quantity~~
19 ~~radioactive--material}--possessed,--used,--and--transported--for~~
20 ~~educational--purposes,--scientific--research--and--development~~
21 ~~medical--research,--diagnosis,--and--treatment,--geophysical~~
22 ~~surveying--and--similar--uses--licensed--by--the--United--States~~
23 ~~nuclear--regulatory--commission--shall--be--excepted--from--this~~
24 ~~party--provided--that--such--material--is--being--or--has--been~~
25 ~~lawfully--disposed--of--within--Montana--upon--{the--effective--date~~

1 ~~of--this--Act}.~~

2 ~~{3}{2}~~ Nothing in this part precludes the construction
3 of a nuclear facility approved under the requirements of the
4 Montana Major Facility Siting Act, or the mining of any raw
5 ore, provided that such activity is not inconsistent with
6 this part."

7 Section 13. Section 75-3-303, MCA, is amended to read:

8 "75-3-303. Penalty. A person who knowingly or
9 purposely disposes of large quantity radioactive material,
10 byproduct material, or special nuclear material within
11 Montana ~~in violation of 75-3-302~~ shall be fined an amount
12 not more than \$5,000 or be imprisoned for not more than two
13 years, or both, for each offense. A person who negligently
14 disposes of large quantity radioactive material, byproduct
15 material, or special nuclear material within Montana ~~in~~
16 ~~violation of 75-3-302~~ shall be fined not more than \$1,000
17 for each offense. In this part, each day of violation
18 constitutes a separate offense."

19 Section 14. Section 70-30-102, MCA, is amended to
20 read:

21 "70-30-102. Public uses enumerated. Subject to the
22 provisions of this chapter, the right of eminent domain may
23 be exercised in behalf of the following public uses:

24 (1) all public uses authorized by the government of
25 the United States;

1 (2) public buildings and grounds for the use of the
2 state and all other public uses authorized by the
3 legislature of the state;

4 (3) public buildings and grounds for the use of any
5 county, city or town, or school district; canals, aqueducts,
6 flumes, ditches, or pipes conducting water, heat, or gas for
7 the use of the inhabitants of any county, city, or town;
8 raising the banks of streams, removing obstructions
9 therefrom, and widening, deepening, or straightening their
10 channels; roads, streets, and alleys and all other public
11 uses for the benefit of any county, city, or town or the
12 inhabitants thereof, which may be authorized by the
13 legislature; but the mode of apportioning and collecting the
14 costs of such improvements shall be such as may be provided
15 in the statutes or ordinances by which the same may be
16 authorized;

17 (4) wharves, docks, piers, chutes, booms, ferries,
18 bridges, of all kinds, private roads, plank and turnpike
19 roads, railroads, canals, ditches, flumes, aqueducts, and
20 pipes for public transportation, supplying mines, mills, and
21 smelters for the reduction of ores and farming neighborhoods
22 with water and drainage and reclaiming lands and for
23 floating logs and lumber on streams not navigable and sites
24 for reservoirs necessary for collecting and storing water.
25 However, such reservoir sites must possess a public use

1 demonstrable to the district court as the highest and best
2 use of the land.

3 (5) roads, tunnels, ditches, flumes, pipes, and
4 dumping places for working mines, mills, or smelters for the
5 reduction of ores; also outlets, natural or otherwise, for
6 the flow, deposit, or conduct of tailings or refuse matter
7 from mines, mills, and smelters for the reduction of ores;
8 also an occupancy in common by the owners or the possessors
9 of different mines of any place for the flow, deposit, or
10 conduct of tailings or refuse matter from their several
11 mines, mills, or smelters for reduction of ores and sites
12 for reservoirs necessary for collecting and storing water.
13 However, such reservoir sites must possess a public use
14 demonstrable to the district court as the highest and best
15 use of the land.

16 (6) private roads leading from highways to residences
17 or farms;

18 (7) telephone or electric light lines;

19 (8) telegraph lines;

20 (9) sewerage of any city, county, or town or any
21 subdivision thereof, whether incorporated or unincorporated,
22 or of any settlement consisting of not less than 10 families
23 or of any public buildings belonging to the state or to any
24 college or university;

25 (10) tramway lines;

1 (11) electric power lines;
 2 (12) logging railways;
 3 (13) temporary logging roads and banking grounds for
 4 the transportation of logs and timber products to public
 5 streams, lakes, mills, railroads, or highways for such time
 6 as the court or judge may determine; provided, the grounds
 7 of state institutions be excepted;
 8 (14) underground reservoirs suitable for storage of
 9 natural gas;
 10 (15) to mine and extract ores, metals, or minerals
 11 owned by the plaintiff located beneath or upon the surface
 12 of property where the title to said surface vests in others.
 13 However, the use of the surface for strip mining or open pit
 14 mining of coal (i.e., any mining method or process in which
 15 the strata or overburden is removed or displaced in order to
 16 extract the coal) is not a public use, and eminent domain
 17 may not be exercised for this purpose;
 18 (16) to restore and reclaim lands strip- or
 19 underground-mined for coal and not reclaimed in accordance
 20 with Title 82, chapter 4, part 2, and to abate or control
 21 adverse effects of strip or underground mining on those
 22 lands;
 23 ~~(17) to decontaminate, decommission, or reclaim~~
 24 ~~byproduct material and disposal sites in accordance with~~
 25 ~~Title 75, chapter 3, part 2."~~

1 Section 15. Codification instruction. Sections 6
 2 through 10 and section 1 of Initiative 84, as amended by
 3 this act, are intended to be codified as an integral part of
 4 Title 75, chapter 3, and the provisions of Title 75, chapter
 5 3, apply to sections 6 through 10 and section 1 of
 6 Initiative 84, as amended by this act.
 7 Section 16. Saving clause. This act does not affect
 8 rights and duties that matured, penalties that were
 9 incurred, or proceedings that were begun before the
 10 effective date of this act.
 11 Section 17. Severability. If a part of this act is
 12 invalid, all valid parts that are severable from the invalid
 13 part remain in effect. If a part of this act is invalid in
 14 one or more of its applications, the part remains in effect
 15 in all valid applications that are severable from the
 16 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 321-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 6, 19 81, there is hereby submitted a Fiscal Note for HB 652 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

An act to remove the prohibition of disposal of certain radioactive materials in the state of Montana enacted by initiative 84 and providing instead for a state regulatory system; providing for the control and condemnation of land used for disposal of mill tailings from uranium and thorium ore processing; providing that state standards may be no more stringent than federal standards; and to revise the laws concerning radiation control; amending sections 75-3-102, 75-3-103 as amended by initiative 84, 75-3-104, 75-3-201, 75-3-202, 75-3-302 as amended by initiative 84, 75-3-303 as amended by initiative 84, 75-3-102, MCA, and Section 1 of initiative 84.

ASSUMPTIONS

1. The state of Montana will begin negotiation of "Agreement Status" with the U.S. Nuclear Regulatory Commission (NRC) in FY 1982 to assume the licensing and regulatory authority currently exercised by the NRC.
2. At least two years will be required to consummate the Agreement Status during which time it will be necessary to hire & train staff and during which time there will be no income from license fees.
3. After Agreement Status is consummated, license fees will provide approximately 12% of program operational costs.
4. The license fee for an "In Situ" uranium leaching license is \$67,500, the estimated cost of the license issuance is \$87,000 - a cost of approximately \$20,000 per license to the general fund.

REVENUE IMPACT

There will be no revenue derived from this legislation for at least two years after the initiation of negotiation for Agreement Status with the U.S. Nuclear Regulatory Commission (NRC). The NRC estimates a minimum of two years to consummate the Agreement Status. After Agreement Status is negotiated, the NRC estimates that license and inspection fees will account for approximately 12% of the operational costs of the licensing program.

RELATED EXPENDITURES

		'82	'83	
Salaries				
Grade 16-1	1.00	\$21,296	\$23,425	Sub-total
Grade 14-1	.50	--	9,859	'82
Benefits		4,046	6,324	\$38,192
Contracted Services		500	500	
Supplies & Materials		750	750	Sub-total
Communications & Postage		1,200	1,500	'83
Travel		5,000	7,500	\$55,958
Rent		2,500	2,500	
Repair & Maintenance		--	500	
Equipment		2,900	3,100	

David M. Lewis
BUDGET DIRECTOR

(continued on separate sheet)

Office of Budget and Program Planning

Date: 2-11-81

The above computations are based on the following:

1. The NRC estimates 2 1/2 to 2 3/4 man-years will be expended in the granting of a license for uranium milling or uranium "in situ" leaching. Cost estimates have assumed a cost of \$35,000 per man-year of effort.
2. The NRC estimates that 1/2 to 3/4 man-years effort will be required for maintenance and surveillance of each uranium milling and "in situ" leaching license.
3. The Federal Code of Regulations, 10 CFR 170, estimates that the NRC recovers 12% of licensing costs from license fees.
4. Communications with the states of Texas, Colorado, and North Dakota, indicate that 1 FTE is required for approximately 60 by-product material licenses. There are currently about 90 such licenses in Montana.
5. The NRC will not grant "Agreement Status" for regulation of uranium mill tailings alone. The Agreement Status must encompass all by-product materials licenses as well.

Affect on County or other Local Revenue or expenditures:

None.

Long-Range Effects of Proposed legislation:

1. This proposed legislation will not involve any cost to the state of Montana if "Agreement Status" is not negotiated with the NRC.
2. As By-Products Materials Licenses increase in number, approximately 1/2 FTE will be required for each additional 30 licenses granted and maintained.
3. The cost to the state for granting each uranium milling or "in situ" leaching license will be approximately \$20,000. The cost to the State for maintaining each uranium milling or "in situ" license will be approximately \$12,000 per year

1 STATEMENT OF INTENT

2 HOUSE BILL 652

3 HOUSE NATURAL RESOURCES COMMITTEE

4
5 A statement of intent is required for this bill because
6 it delegates certain rulemaking and licensing authority to
7 the department of health and environmental sciences and the
8 department of state lands. House Bill No. 652 is intended to
9 enable Montana to exercise licensing and enforcement
10 authority over the disposal of "byproduct material" in the
11 state. This enabling legislation, in the form of amendments
12 to Montana's existing radiation control statutes and to
13 Initiative 84, approved by the voters in November, 1980,
14 would conform Montana's statutes to the pattern of federal
15 regulation of these materials under the federal Uranium Mill
16 Tailings Radiation Control Act of 1978 (P. L. 95-604).

17 States may exercise regulatory authority over byproduct
18 material disposal by obtaining "agreement status" with the
19 federal government. House Bill 652 amends Section
20 75-3-201(3)(c) to clarify that the scope of the department
21 of health's rulemaking power extends to and covers the new
22 responsibilities conferred by the bill. The bill also allows
23 the department of state lands to provide for licensing and
24 permitting for reclamation purposes or uranium and thorium
25 mills and tailing disposal sites according to Title 82,

1 chapter 4, and 75-3-202. The department of state lands may
2 also promulgate standards for the reclamation of disposal
3 sites according to Title 82, chapter 4, and [section 7]. The
4 standards and requirements to be adopted by the department
5 of health and environmental sciences and by the department
6 of state lands shall be sufficient to fully protect the
7 public without posing an impediment to rational and
8 controlled development.

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6 of state lands shall be sufficient to fully protect the
7 public without posing an impediment to rational and
8 controlled development.

Approved by Committee
on Natural Resources

HOUSE BILL NO. 652

INTRODUCED BY CONROY, MARKS, CURTISS, RYAN, FEDA,
FABREGA, MOORE, GRAHAM, BURNETT, DEVLIN, BOYLAN,
McLANE, AKLESTAD, PISTORIA, LEE, DAILY, ANDREASON,
COZZENS, MEYER, C. SMITH, UNDERDAL, SIVERTSEN, ABRAMS,
SCHULTZ, BENNETT, D. BROWN, PAVLOVICH, KANDUCH, MATSKO,
IVERSON, HAFFERMAN, GALT, HEALY, DOVER, TEAGUE, MANLEY,
HAZELBAKER, KEYSER, BRIGGS, SEIFERT, ROTH, ELLERD, KROPP

A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE THE
PROHIBITION OF DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS IN
THE STATE OF MONTANA ENACTED BY INITIATIVE 84 AND PROVIDING
INSTEAD FOR A STATE REGULATORY SYSTEM; PROVIDING FOR THE
CONTROL AND CONDEMNATION OF LAND USED FOR DISPOSAL OF MILL
TAILINGS FROM URANIUM AND THORIUM ORE PROCESSING; PROVIDING
~~THAT STATE STANDARDS MAY BE NO MORE STRINGENT THAN FEDERAL~~
STANDARDS; AND TO REVISE THE LAWS CONCERNING RADIATION
CONTROL; AMENDING SECTIONS 75-3-102, 75-3-103 AS AMENDED BY
INITIATIVE 84, 75-3-104, 75-3-201, 75-3-202, 75-3-302 AS
AMENDED BY INITIATIVE 84, 75-3-303 AS AMENDED BY INITIATIVE
84, 75-3-102, MCA, AND SECTION 1 OF INITIATIVE 84; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-3-102, MCA, is amended to read:

75-3-102. Purpose. It is the purpose of this chapter
to provide a program:

(1) of effective regulation of sources of ionizing
radiation for the protection of the occupational and public
health and safety;

(2) to promote an orderly regulatory pattern within
the state, among the states, and between the federal
government and the state and facilitate intergovernmental
cooperation with respect to use and regulation of sources of
ionizing radiation to the end that duplication of regulation
may be minimized;

(3) to establish procedures for assumption and
performance of certain regulatory responsibilities with
respect to by-product, source, and special nuclear
materials; and

(4) to permit maximum utilization of sources of
ionizing radiation consistent with the health and safety of
the public;

(5) for the control of mill tailings from uranium and
thorium ore processing, both at active mill operations and
after termination of active operations, in order to
stabilize and control the tailings in a safe and
environmentally sound manner, minimize or eliminate
radiation health hazards to the public, and eliminate to the
maximum extent practicable the need for long-term

1 maintenance and monitoring."

2 Section 2. Section 75-3-103, MCA, is amended to read:

3 "75-3-103. Definitions. The definitions used in this
4 chapter are intended to be consistent with those used in
5 Title 10 CFR, parts 1-199, and Title 49 CFR, parts
6 173.389-173.399. Unless the context requires otherwise, in
7 this chapter the following definitions apply:

8 (1) "Byproduct material" means:

9 (a) any radioactive material (except special nuclear
10 material) yielded in or made radioactive by exposure to the
11 radiation incident to the process of producing or utilizing
12 special nuclear material; and

13 (b) the tailings or wastes produced by the extraction
14 or concentration of uranium or thorium from any ore
15 processed primarily for its source material content,
16 including discrete surface wastes resulting from a uranium
17 solution extraction process, but excluding underground ore
18 bodies depleted by such solution extraction operations.

19 (2) "CFR" means the Code of Federal Regulations
20 published by the United States Government Printing Office,
21 Washington, D.C.

22 (3) "Department" means the department of health and
23 environmental sciences.

24 (4) "Disposal" means burial in soil, release
25 through the sanitary sewerage system, incineration, or

1 permanent long-term storage with no intention of or
2 provision for subsequent removal.

3 (5) "General license" means a license effective
4 pursuant to rules promulgated by the department OR
5 DEPARTMENT OF STATE LANDS without the filing of an
6 application to transfer, acquire, own, possess, or use
7 quantities of or devices or equipment utilizing quantities
8 of byproduct, source, special nuclear materials, or other
9 radioactive material occurring naturally or produced
10 artificially. General licenses are effective without the
11 filing of applications with the department OR DEPARTMENT OF
12 STATE LANDS or the issuing of licensing documents to the
13 user.

14 (6) "Ionizing radiation" means gamma rays and
15 x-rays, alpha and beta particles, high-speed electrons,
16 neutrons, protons, and other nuclear particles, but not
17 sound or radio waves or visible, infrared, or ultraviolet
18 light.

19 (7) "Large quantity radioactive material" is that
20 quantity of radioactive material defined in 49 CFR
21 173.389(b).

22 (8) "Person" means an individual, corporation,
23 partnership, firm, association, trust, estate, public or
24 private institution, group, agency, political subdivision or
25 agency thereof, and any legal successor, representative,

1 agent, or agency of the foregoing, other than the United
 2 States nuclear regulatory commission, any successor thereto,
 3 or federal agencies licensed by the nuclear regulatory
 4 commission.

5 ~~(8)~~(9) "Registration" means the registering with the
 6 department OR DEPARTMENT OF STATE LANDS by the legal owner,
 7 user, or authorized representative of sources of ionizing
 8 radiation in the manner prescribed by rule.

9 ~~(9)~~(10) "Source material" means uranium, thorium, or
 10 any other material which the department or the United States
 11 nuclear regulatory commission declares by order to be source
 12 material or ores containing one or more of the foregoing
 13 materials in such concentration as the department or the
 14 nuclear regulatory commission declares by order to be source
 15 material after the nuclear regulatory commission has
 16 determined the material in such concentration to be source
 17 material.

18 ~~(10)~~(11) "Special nuclear material" means plutonium,
 19 uranium 233, uranium enriched in the isotope 233 or in the
 20 isotope 235, and any other material which the department or
 21 the United States nuclear regulatory commission or any
 22 successor thereto declares by order to be special nuclear
 23 material or any material artificially enriched by any of the
 24 foregoing but does not include source material.

25 ~~(11)~~(12) "Specific license" means a license issued

1 after application to use, manufacture, produce, transfer,
 2 receive, acquire, own, or possess quantities of or devices
 3 or equipment utilizing quantities of byproduct, special
 4 nuclear materials, or other radioactive material occurring
 5 naturally or produced artificially.

6 (13) "Surety" means:

7 (a) cash deposits;

8 (b) surety bonds;

9 (c) certificates of deposit;

10 (d) deposits of government securities;

11 (e) letters of credit; and

12 (f) other surety mechanisms considered acceptable by
 13 the department."

14 Section 3. Section 75-3-104, MCA, is amended to read:
 15 "75-3-104. Exemptions -- sources, diagnosis, and
 16 therapy. (1) This chapter does not apply to the following
 17 sources or conditions:

18 (a) electrical equipment that is not intended
 19 primarily to produce radiation and that, by nature of
 20 design, does not produce radiation at the point of nearest
 21 approach at a weekly rate higher than one-tenth the
 22 appropriate limit for any critical organ exposed. The
 23 production testing or production servicing of such equipment
 24 is not exempt.

25 (b) radiation machines during process of manufacture

1 or in storage or transit;

2 (c) any radioactive material while being transported

3 in conformity with regulations adopted by the nuclear

4 regulatory commission or any successor thereto or the

5 interstate commerce commission and specifically applicable

6 to the transportation of such radioactive materials.

7 (2) No exemptions under this section are granted for

8 those quantities or types of activities that do not comply

9 with the established rules promulgated by the nuclear

10 regulatory commission or by any successor thereto.

11 ~~{3}--The--provisions--of--this--chapter--may--not---be~~

12 ~~construed--to--limit--the--kind--or--amount--of--radiation--that--may~~

13 ~~be--intentionally--applied--to--a--person--for--diagnostic--or~~

14 ~~therapeutic--purposes--by--or--under--the--direction--of--a--licensed~~

15 ~~practitioner--of--the--healing--arts--"~~

16 Section 4. Section 75-3-201, MCA, is amended to read:

17 "75-3-201. State radiation control agency. (1) The

18 department is the state radiation control agency.

19 (2) Under the laws of this state, the department may

20 employ, compensate, and prescribe the powers and duties of

21 ~~the individuals which are necessary to carry out this~~

22 ~~chapter.~~

23 (3) The department may for the protection of the

24 occupational and public health and safety:

25 (a) develop and conduct programs for evaluation and

1 control of hazards associated with the use of sources of

2 ionizing radiation;

3 (b) develop programs and adopt rules with due regard

4 for compatibility with federal programs for licensing and

5 regulation of byproduct, source, radioactive waste, and

6 special nuclear materials and other radioactive materials.

7 These rules shall cover equipment and facilities, methods

8 for transporting, handling, and storage of radioactive

9 materials, permissible levels of exposure, technical

10 qualifications of personnel, required notification of

11 accidents and other incidents involving radioactive

12 materials, survey methods and results, methods of disposal

13 of radioactive materials, posting and labeling of areas and

14 sources, and methods and effectiveness of controlling

15 individuals in posted and restricted areas.

16 (c) adopt rules relating to control ~~of other sources~~

17 ~~of ionizing radiation, implement the provisions of this~~

18 ~~chapter; these--rules--shall--cover--equipment--and--facilities,~~

19 ~~permissible--levels--of--exposure--to--personnel,~~

20 ~~posting--of~~

21 ~~areas--surveys--and--records.~~

22 (d) advise, consult, and cooperate with other agencies

23 of the state, the federal government, other states,

24 interstate agencies, political subdivisions, and groups

25 concerned with control of sources of ionizing radiation;

(e) accept and administer loans, grants, or other

1 funds or gifts, conditional or otherwise, in furtherance of
 2 its functions, from the federal government and from other
 3 sources, public or private;

4 (f) encourage, participate in, or conduct studies,
 5 investigations, training, research, and demonstrations
 6 relating to control of sources of ionizing radiation;

7 (g) collect and disseminate information relating to
 8 control of sources of ionizing radiation, including:

9 (i) maintenance of a file of all license applications,
 10 issuances, denials, amendments, transfers, renewals,
 11 modifications, suspensions, and revocations;

12 (ii) maintenance of a file of registrants possessing
 13 sources of ionizing radiation requiring registration under
 14 this chapter and any administrative or judicial action
 15 pertaining thereto;

16 (iii) maintenance of a file of all rules relating to
 17 regulation of sources of ionizing radiation, pending or
 18 adopted, and proceedings thereon."

19 Section 5. Section 75-3-202, MCA, is amended to read:

20 "75-3-202. Licensing and registration. (1) The
 21 department shall provide by rule for general or specific
 22 licensing of persons to receive, possess, or transfer
 23 radioactive materials and devices or equipment utilizing
 24 such materials. HOWEVER, THE DEPARTMENT OF STATE LANDS MAY,
 25 IN LIEU OF THE DEPARTMENT, PROVIDE FOR LICENSING AND

1 PERMITTING FOR RECLAMATION PURPOSES OF URANIUM AND THORIUM
 2 MILLS AND TAILING DISPOSAL SITES PURSUANT TO TITLE 82,
 3 CHAPTER 4 AND THIS SECTION. The rules shall provide for
 4 amendment, suspension, or revocation of licenses pursuant to
 5 75-3-401 and 75-3-403.

6 (2) Each application for a specific license shall be
 7 in writing and shall state such information as the
 8 department by rule may determine to be necessary to decide
 9 the technical, insurance, and financial qualifications or
 10 any other qualification of the applicant as the department
 11 considers reasonable and necessary to protect the
 12 occupational and public health and safety. The department
 13 may, at any time after the filing of the application and
 14 before the expiration of the license, require further
 15 written statements and may make such inspections as the
 16 department considers necessary in order to determine whether
 17 the license should be granted, denied, modified, suspended,
 18 or revoked. All applications and statements shall be signed
 19 by the applicant or licensee. The department may require an
 20 application or statement to be made under oath or
 21 affirmation.

22 (3) Each license shall be in such form and contain
 23 such terms and conditions as the department may by rule
 24 prescribe.

25 (4) No license issued pursuant to the provisions of

1 this chapter and no right to possess or utilize sources of
 2 ionizing radiation granted by any license may be assigned or
 3 in any manner disposed of.

4 (5) The terms and conditions of all licenses shall be
 5 subject to amendment, revision, or modification by rules or
 6 orders issued in accordance with the provisions of this
 7 chapter.

8 (6) The department may require registration and
 9 inspection of persons dealing with sources of ionizing
 10 radiation which do not require a specific license and may
 11 require compliance with specific safety standards to be
 12 promulgated by the department.

13 (7) The department is authorized to exempt certain
 14 users from the licensing or registration requirements set
 15 forth in this section when the department makes a finding
 16 that the exemption of the users will not constitute a
 17 significant risk to the health and safety of the public.

18 (8) Rules promulgated pursuant to this chapter may
 19 provide for recognition of such other state or federal
 20 licenses as the department considers desirable, subject to
 21 such registration requirements as the department prescribes.

22 (9) The department OR DEPARTMENT OF STATE LANDS may
 23 charge reasonable fees for its radiation control services,
 24 including but not limited to those for the issuance of
 25 categories of specific licenses consistent with the

1 categories established by the United States nuclear
 2 regulatory commission or any successor thereto, and for
 3 inspections of licensees. FEES FOR THE ISSUANCE OF LICENSES
 4 SHALL BE SUFFICIENT TO COVER THE DEPARTMENT'S OR DEPARTMENT
 5 OF STATE LANDS' FULL COSTS OF PROCESSING AN APPLICATION."

6 NEW SECTION. Section 6. Ownership of disposal sites
 7 and byproduct material. (1) Prior to or following the
 8 expiration of any radioactive materials license issued after
 9 July 1, 1981, the department OR DEPARTMENT OF STATE LANDS
 10 may condemn the title to any land, other than land held in
 11 trust by the United States for any Indian tribe or owned by
 12 an Indian tribe and subject to a restriction against
 13 alienation imposed by the United States, or any interest
 14 therein, which is used for the disposal of byproduct
 15 material pursuant to the license, and the title to the
 16 byproduct itself, pursuant to Title 70, chapter 30.
 17 Condemnation is not allowed if the United States nuclear
 18 regulatory commission or any successor thereto determines,
 19 prior to the expiration of the license, that condemnation
 20 and transfer of either or both the land and byproduct
 21 material is not necessary to protect the public health,
 22 safety, or welfare.

23 (2) If the department OR DEPARTMENT OF STATE LANDS
 24 condemns any interest in land or byproduct material pursuant
 25 to this section:

1 (a) the land or material must be maintained by the
 2 department OR DEPARTMENT OF STATE LANDS in a manner to
 3 protect the public health, safety, and welfare;

4 (b) the department OR DEPARTMENT OF STATE LANDS is
 5 authorized to undertake such monitoring, maintenance, and
 6 emergency measures as necessary to protect the public
 7 health, safety, and welfare;

8 (c) the transfer of title to the land or byproduct
 9 material does not relieve any licensee of liability for
 10 fraudulent or negligent acts done prior to condemnation.

11 NEW SECTION. Section 7. Standards For
 12 decontamination. (1) The department shall promulgate
 13 standards for the decontamination, decommissioning, and
 14 reclamation of any site at which ores were processed
 15 primarily for their source material content and which sites
 16 were used for disposal of byproduct material. HOWEVER, THE
 17 DEPARTMENT OF STATE LANDS, IN LIEU OF THE DEPARTMENT, MAY
 18 PROMULGATE STANDARDS FOR THE RECLAMATION OF SUCH DISPOSAL
 19 SITES PURSUANT TO TITLE 82, CHAPTER 4 AND THIS SECTION.

20 (2) Any radioactive material license issued or renewed
 21 after July 1, 1981, for any activity that results in the
 22 production of byproduct material must contain such terms and
 23 provisions as the department determines necessary to insure
 24 that, prior to the expiration of the license, the licensee
 25 will comply with the decontamination, decommissioning, and

1 reclamation standards of the department.

2 NEW SECTION. Section 8. Surety requirements. (1) Upon
 3 the condemnation of any land used for the disposal of
 4 byproduct material, the condemnation of byproduct material,
 5 or the condemnation of both such land and material, the
 6 department OR DEPARTMENT OF STATE LANDS shall:

7 (a) require that an adequate surety, as determined by
 8 the department, be provided by the licensee in order to
 9 ensure the completion of all decontamination,
 10 decommissioning, and reclamation of sites, structures, and
 11 equipment used in conjunction with generation or disposal of
 12 byproduct material; and

13 (b) determine whether any long-term maintenance or
 14 monitoring of the land or byproduct material is necessary.
 15 If the maintenance or monitoring is found necessary, the
 16 licensee must make available to the department OR DEPARTMENT
 17 OF STATE LANDS the funds necessary to assure the maintenance
 18 and monitoring and funds necessary to ensure compliance with
 19 standards adopted by the United States nuclear regulatory
 20 commission relating to reclamation and long-term management
 21 of the disposal site or byproduct material, or both.

22 (2) The funds required by this section shall include,
 23 but are not limited to, sums collected for long-term
 24 surveillance, and, if necessary, maintenance, but do not
 25 include money held as surety where no default has occurred

1 and the reclamation or other bonded activity has been
2 performed.

3 NEW SECTION. Section 9. Requirements for persons
4 exempt from licensing. The department OR DEPARTMENT OF STATE
5 LANDS may, by rule or order, require persons processing ores
6 primarily for their source material content but exempt from
7 licensing under this chapter to conduct monitoring, perform
8 remedial work, and comply with such measures as the
9 department considers necessary or desirable to protect
10 health or minimize danger to life or property.

11 ~~NEW SECTION. Section 10. Maximum state limitations.
12 No rules, standards, or other requirement adopted by the
13 department and no license, license term or condition,
14 registration, exemption, or other grant or limitation of
15 authority conferred by the department under [sections 6
16 through 9] may be more stringent or restrictive or impose a
17 greater financial burden upon any person than the federal
18 rules, standards, license, license condition, registration,
19 exemption, or grant or limitation of authority which would
20 have been applied absent a state program applying [sections
21 6 through 9] under any agreement or approval by any agency
22 of the United States.~~

23 Section 10. Section 1 of Initiative 84 is amended to
24 read as follows:

25 "New Section 1. There is a new MCA section that reads

1 as follows:

2 "Policy. It is the policy of the state of Montana, in
3 furtherance of its responsibility to protect the public
4 health and safety, under the police powers of the state and
5 for protection of the constitutional right to a healthy
6 environment, to prohibit PROVIDE FOR THE REGULATION OF the
7 disposal of certain radioactive material."

8 Section 11. Section 75-3-302, MCA, is amended to read:

9 "75-3-302. Disposal of large quantities of radioactive
10 material prohibited -- exceptions--and exclusion. (1) No
11 person may dispose of in-Montana large quantity radioactive
12 material PRODUCED IN MONTANA, byproduct material, or special
13 nuclear material within the state of Montana, except as
14 authorized by a license issued by the United States or by
15 the department OR DEPARTMENT OF STATE LANDS. NO PERSON MAY
16 DISPOSE IN MONTANA OF LARGE QUANTITY RADIOACTIVE MATERIAL
17 PRODUCED IN OTHER STATES, EXCEPT THAT BYPRODUCT MATERIAL
18 PRODUCED IN OTHER STATES AND POSSESSED, USED, AND
19 TRANSPORTED FOR EDUCATIONAL PURPOSES, SCIENTIFIC RESEARCH
20 AND DEVELOPMENT, MEDICAL RESEARCH, DIAGNOSIS AND TREATMENT,
21 GEOPHYSICAL SURVEYING, AND OTHER PURPOSES LICENSED BY THE
22 UNITED STATES NUCLEAR REGULATORY COMMISSION OR THE
23 DEPARTMENT IS EXCEPTED FROM THIS PART DURING THE PERIOD OF
24 POSSESSION, USE, AND TRANSPORTATION PRIOR TO DISPOSAL.

25 ~~(2) Byproduct material except large quantity~~

1 ~~radioactive material} possessed, used, and transported for~~
 2 ~~educational purposes, scientific research and development,~~
 3 ~~medical research, diagnosis, and treatment, geophysical~~
 4 ~~surveying, and similar uses licensed by the United States~~
 5 ~~nuclear regulatory commission shall be excepted from this~~
 6 ~~part, provided that such material is being or has been~~
 7 ~~lawfully disposed of within Montana upon the effective date~~
 8 ~~of this Act}.~~

9 {3}{2} Nothing in this part precludes the construction
 10 of a nuclear facility approved under the requirements of the
 11 Montana Major Facility Siting Act, or the mining of any raw
 12 ore, provided that such activity is not inconsistent with
 13 this part."

14 Section 12. Section 75-3-303, MCA, is amended to read:

15 "75-3-303. Penalty. A person who knowingly or
 16 purposely disposes of large quantity radioactive material,
 17 byproduct material, or special nuclear material within
 18 Montana in violation of 75-3-302 shall be fined an amount
 19 not more than \$5,000 or be imprisoned for not more than two
 20 years, or both, for each offense. A person who negligently
 21 disposes of large quantity radioactive material, byproduct
 22 material, or special nuclear material within Montana in
 23 violation of 75-3-302 shall be fined not more than \$1,000
 24 for each offense. In this part, each day of violation
 25 constitutes a separate offense."

1 Section 13. Section 70-30-102, MCA, is amended to
 2 read:

3 "70-30-102. Public uses enumerated. Subject to the
 4 provisions of this chapter, the right of eminent domain may
 5 be exercised in behalf of the following public uses:

6 (1) all public uses authorized by the government of
 7 the United States;

8 (2) public buildings and grounds for the use of the
 9 state and all other public uses authorized by the
 10 legislature of the state;

11 (3) public buildings and grounds for the use of any
 12 county, city or town, or school district; canals, aqueducts,
 13 flumes, ditches, or pipes conducting water, heat, or gas for
 14 the use of the inhabitants of any county, city, or town;
 15 raising the banks of streams, removing obstructions
 16 therefrom, and widening, deepening, or straightening their
 17 channels; roads, streets, and alleys and all other public
 18 uses for the benefit of any county, city, or town or the
 19 inhabitants thereof, which may be authorized by the
 20 legislature; but the mode of apportioning and collecting the
 21 costs of such improvements shall be such as may be provided
 22 in the statutes or ordinances by which the same may be
 23 authorized;

24 (4) wharves, docks, piers, chutes, booms, ferries,
 25 bridges, of all kinds, private roads, plank and turnpike

1 roads, railroads, canals, ditches, flumes, aqueducts, and
 2 pipes for public transportation, supplying mines, mills, and
 3 smelters for the reduction of ores and farming neighborhoods
 4 with water and drainage and reclaiming lands and for
 5 floating logs and lumber on streams not navigable and sites
 6 for reservoirs necessary for collecting and storing water.
 7 However, such reservoir sites must possess a public use
 8 demonstrable to the district court as the highest and best
 9 use of the land.

10 (5) roads, tunnels, ditches, flumes, pipes, and
 11 dumping places for working mines, mills, or smelters for the
 12 reduction of ores; also outlets, natural or otherwise, for
 13 the flow, deposit, or conduct of tailings or refuse matter
 14 from mines, mills, and smelters for the reduction of ores;
 15 also an occupancy in common by the owners or the possessors
 16 of different mines of any place for the flow, deposit, or
 17 conduct of tailings or refuse matter from their several
 18 mines, mills, or smelters for reduction of ores and sites
 19 for reservoirs necessary for collecting and storing water.
 20 However, such reservoir sites must possess a public use
 21 demonstrable to the district court as the highest and best
 22 use of the land.

23 (6) private roads leading from highways to residences
 24 or farms;

25 (7) telephone or electric light lines;

1 (8) telegraph lines;
 2 (9) sewerage of any city, county, or town or any
 3 subdivision thereof, whether incorporated or unincorporated,
 4 or of any settlement consisting of not less than 10 families
 5 or of any public buildings belonging to the state or to any
 6 college or university;

7 (10) tramway lines;

8 (11) electric power lines;

9 (12) logging railways;

10 (13) temporary logging roads and banking grounds for
 11 the transportation of logs and timber products to public
 12 streams, lakes, mills, railroads, or highways for such time
 13 as the court or judge may determine; provided, the grounds
 14 of state institutions be excepted;

15 (14) underground reservoirs suitable for storage of
 16 natural gas;

17 (15) to mine and extract ores, metals, or minerals
 18 owned by the plaintiff located beneath or upon the surface
 19 of property where the title to said surface vests in others.
 20 However, the use of the surface for strip mining or open pit
 21 mining of coal (i.e., any mining method or process in which
 22 the strata or overburden is removed or displaced in order to
 23 extract the coal) is not a public use, and eminent domain
 24 may not be exercised for this purpose;

25 (16) to restore and reclaim lands strip- or

1 underground-mined for coal and not reclaimed in accordance
2 with Title 82, chapter 4, part 2, and to abate or control
3 adverse affects of strip or underground mining on those
4 lands;

5 (17) to decontaminate, decommission, or reclaim
6 byproduct material and disposal sites in accordance with
7 Title 75, chapter 3, part 2."

8 Section 14. Codification instruction. Sections 6
9 through 10 and section 1 of Initiative 84, as amended by
10 this act, are intended to be codified as an integral part of
11 Title 75, chapter 3, and the provisions of Title 75, chapter
12 3, apply to sections 6 through 10 and section 1 of
13 Initiative 84, as amended by this act.

14 Section 15. Saving clause. This act does not affect
15 rights and duties that matured, penalties that were
16 incurred, or proceedings that were begun before the
17 effective date of this act.

18 Section 16. Severability. If a part of this act is
19 invalid, all valid parts that are severable from the invalid
20 part remain in effect. If a part of this act is invalid in
21 one or more of its applications, the part remains in effect
22 in all valid applications that are severable from the
23 invalid applications.

24 SECTION 17. COORDINATION. IF SENATE BILL 258 [LC
25 1003] IS PASSED AND APPROVED, ANY REFERENCE IN THIS ACT TO

1 "DEPARTMENT OF STATE LANDS" IS CHANGED TO "DEPARTMENT OF
2 NATURAL RESOURCES AND CONSERVATION".

3 SECTION 18. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
4 PASSAGE AND APPROVAL.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 652

3 HOUSE NATURAL RESOURCES COMMITTEE

4
5 A statement of intent is required for this bill because
6 it delegates certain rulemaking and licensing authority to
7 the department of health and environmental sciences and the
8 department of state lands. House Bill No. 652 is intended to
9 enable Montana to exercise licensing and enforcement
10 authority over the disposal of "byproduct material" in the
11 state. This enabling legislation, in the form of amendments
12 to Montana's existing radiation control statutes and to
13 Initiative 84, approved by the voters in November, 1980,
14 would conform Montana's statutes to the pattern of federal
15 regulation of these materials under the federal Uranium Mill
16 Tailings Radiation Control Act of 1978 (P. L. 95-604).

17 States may exercise regulatory authority over byproduct
18 material disposal by obtaining "agreement status" with the
19 federal government. House Bill 652 amends Section
20 75-3-201(3)(c) to clarify that the scope of the department
21 of health's rulemaking power extends to and covers the new
22 responsibilities conferred by the bill. The bill also allows
23 the department of state lands to provide for licensing and
24 permitting for reclamation purposes or uranium and thorium
25 mills and tailing disposal sites according to Title 82,

1 chapter 4, and 75-3-202. The department of state lands may
2 also promulgate standards for the reclamation of disposal
3 sites according to Title 82, chapter 4, and [section 7]. The
4 standards and requirements to be adopted by the department
5 of health and environmental sciences and by the department
6 of state lands shall be sufficient to fully protect the
7 public without posing an impediment to rational and
8 controlled development.

HOUSE BILL NO. 652

INTRODUCED BY CONROY, MARKS, CURTISS, RYAN, FEDA,

FABREGA, MOORE, GRAHAM, BURNETT, DEVLIN, BOYLAN,

McLANE, AKLESTAD, PISTORIA, LEE, DAILY, ANDREASON,

COZZENS, MEYER, C. SMITH, UNDERDAL, SIVERTSEN, ABRAMS,

SCHULTZ, BENNETT, D. BROWN, PAVLOVICH, KANDUCH, MATSKO,

IVERSON, HAFFERMAN, GALT, HEALY, DOVER, TEAGUE, MANLEY,

HAZELBAKER, KEYSER, BRIGGS, SEIFERT, ROTH, ELLERD, KROPP

A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE THE PROHIBITION OF DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS IN THE STATE OF MONTANA ENACTED BY INITIATIVE 84 AND PROVIDING INSTEAD FOR A STATE REGULATORY SYSTEM; PROVIDING FOR THE CONTROL AND CONDEMNATION OF LAND USED FOR DISPOSAL OF MILL TAILINGS FROM URANIUM AND THORIUM ORE PROCESSING; PROVIDING ~~THAT STATE STANDARDS MAY BE NO MORE STRINGENT THAN FEDERAL STANDARDS~~ AND TO REVISE THE LAWS CONCERNING RADIATION CONTROL; AMENDING SECTIONS 75-3-102, 75-3-103 AS AMENDED BY INITIATIVE 84, 75-3-104, 75-3-201, 75-3-202, 75-3-302 AS AMENDED BY INITIATIVE 84, 75-3-303 AS AMENDED BY INITIATIVE 84, 75-3-102, MCA, AND SECTION 1 OF INITIATIVE 84; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-3-102, MCA, is amended to read:

"75-3-102. Purpose. It is the purpose of this chapter to provide a program:

(1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials; and

(4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public;

(5) for the control of mill tailings from uranium and thorium ore processing, both at active mill operations and after termination of active operations, in order to stabilize and control the tailings in a safe and environmentally sound manner, minimize or eliminate radiation health hazards to the public, and eliminate to the maximum extent practicable the need for long-term

1 maintenance and monitoring."

2 Section 2. Section 75-3-103, MCA, is amended to read:

3 "75-3-103. Definitions. The definitions used in this
4 chapter are intended to be consistent with those used in
5 Title 10 CFR, parts 1-199, and Title 49 CFR, parts
6 173.389-173.399. Unless the context requires otherwise, in
7 this chapter the following definitions apply:

8 (1) "Byproduct material" means:

9 (a) any radioactive material (except special nuclear
10 material) yielded in or made radioactive by exposure to the
11 radiation incident to the process of producing or utilizing
12 special nuclear material; and

13 (b) the tailings or wastes produced by the extraction
14 or concentration of uranium or thorium from any ore
15 processed primarily for its source material content,
16 including discrete surface wastes resulting from a uranium
17 solution extraction process, but excluding underground ore
18 bodies depleted by such solution extraction operations.

19 (2) "CFR" means the Code of Federal Regulations
20 published by the United States Government Printing Office,
21 Washington, D.C.

22 ~~(2)~~(3) "Department" means the department of health and
23 environmental sciences.

24 ~~(3)~~(4) "Disposal" means burial in soil, release
25 through the sanitary sewerage system, incineration, or

1 permanent long-term storage with no intention of or
2 provision for subsequent removal.

3 ~~(4)~~(5) "General license" means a license effective
4 pursuant to rules promulgated by the department OR
5 DEPARTMENT OF STATE LANDS without the filing of an
6 application to transfer, acquire, own, possess, or use
7 quantities of or devices or equipment utilizing quantities
8 of byproduct, source, special nuclear materials, or other
9 radioactive material occurring naturally or produced
10 artificially. General licenses are effective without the
11 filing of applications with the department OR DEPARTMENT OF
12 STATE LANDS or the issuing of licensing documents to the
13 user.

14 ~~(5)~~(6) "Ionizing radiation" means gamma rays and
15 x-rays, alpha and beta particles, high-speed electrons,
16 neutrons, protons, and other nuclear particles, but not
17 sound or radio waves or visible, infrared, or ultraviolet
18 light.

19 ~~(6)~~(7) "Large quantity radioactive material" is that
20 quantity of radioactive material defined in 49 CFR
21 173.389(b).

22 ~~(7)~~(8) "Person" means an individual, corporation,
23 partnership, firm, association, trust, estate, public or
24 private institution, group, agency, political subdivision or
25 agency thereof, and any legal successor, representative,

1 agent, or agency of the foregoing, other than the United
 2 States nuclear regulatory commission, any successor thereto,
 3 or federal agencies licensed by the nuclear regulatory
 4 commission.

5 ~~(8)~~(9) "Registration" means the registering with the
 6 department OR DEPARTMENT OF STATE LANDS by the legal owner,
 7 user, or authorized representative of sources of ionizing
 8 radiation in the manner prescribed by rule.

9 ~~(9)~~(10) "Source material" means uranium, thorium, or
 10 any other material which the department or the United States
 11 nuclear regulatory commission declares by order to be source
 12 material or ores containing one or more of the foregoing
 13 materials in such concentration as the department or the
 14 nuclear regulatory commission declares by order to be source
 15 material after the nuclear regulatory commission has
 16 determined the material in such concentration to be source
 17 material.

18 ~~(10)~~(11) "Special nuclear material" means plutonium,
 19 uranium 233, uranium enriched in the isotope 233 or in the
 20 isotope 235, and any other material which the department or
 21 the United States nuclear regulatory commission or any
 22 successor thereto declares by order to be special nuclear
 23 material or any material artificially enriched by any of the
 24 foregoing but does not include source material.

25 ~~(11)~~(12) "Specific license" means a license issued

1 after application to use, manufacture, produce, transfer,
 2 receive, acquire, own, or possess quantities of or devices
 3 or equipment utilizing quantities of byproduct, special
 4 nuclear materials, or other radioactive material occurring
 5 naturally or produced artificially.

6 (13) "Surety" means:

7 (a) cash deposits;

8 (b) surety bonds;

9 (c) certificates of deposit;

10 (d) deposits of government securities;

11 (e) letters of credit; and

12 (f) other surety mechanisms considered acceptable by
 13 the department."

14 Section 3. Section 75-3-104, MCA, is amended to read:
 15 "75-3-104. Exemptions -- sources, diagnosis, and
 16 therapy. (1) This chapter does not apply to the following
 17 sources or conditions:

18 (a) electrical equipment that is not intended
 19 primarily to produce radiation and that, by nature of
 20 design, does not produce radiation at the point of nearest
 21 approach at a weekly rate higher than one-tenth the
 22 appropriate limit for any critical organ exposed. The
 23 production testing or production servicing of such equipment
 24 is not exempt.

25 (b) radiation machines during process of manufacture

1 or in storage or transit;

2 (c) any radioactive material while being transported
3 in conformity with regulations adopted by the nuclear
4 regulatory commission or any successor thereto or the
5 interstate commerce commission and specifically applicable
6 to the transportation of such radioactive materials.

7 (2) No exemptions under this section are granted for
8 those quantities or types of activities that do not comply
9 with the established rules promulgated by the nuclear
10 regulatory commission or by any successor thereto.

11 ~~{3}--the provisions of this chapter may not be~~
12 ~~construed to limit the kind or amount of radiation that may~~
13 ~~be intentionally applied to a person for diagnostic or~~
14 ~~therapeutic purposes by or under the direction of a licensed~~
15 ~~practitioner of the healing arts."~~

16 Section 4. Section 75-3-201, MCA, is amended to read:

17 "75-3-201. State radiation control agency. (1) The
18 department is the state radiation control agency.

19 (2) Under the laws of this state, the department may
20 employ, compensate, and prescribe the powers and duties of
21 the individuals which are necessary to carry out this
22 chapter.

23 (3) The department may for the protection of the
24 occupational and public health and safety:

25 (a) develop and conduct programs for evaluation and

1 control of hazards associated with the use of sources of
2 ionizing radiation;

3 (b) develop programs and adopt rules with due regard
4 for compatibility with federal programs for licensing and
5 regulation of byproduct, source, radioactive waste, and
6 special nuclear materials and other radioactive materials.
7 These rules shall cover equipment and facilities, methods
8 for transporting, handling, and storage of radioactive
9 materials, permissible levels of exposure, technical
10 qualifications of personnel, required notification of
11 accidents and other incidents involving radioactive
12 materials, survey methods and results, methods of disposal
13 of radioactive materials, posting and labeling of areas and
14 sources, and methods and effectiveness of controlling
15 individuals in posted and restricted areas.

16 (c) adopt rules relating to control of other sources
17 of ionizing radiation implement the provisions of this
18 chapter; these rules shall cover equipment and facilities,
19 permissible levels of exposure to personnel, posting of
20 areas, surveys, and records.

21 (d) advise, consult, and cooperate with other agencies
22 of the state, the federal government, other states,
23 interstate agencies, political subdivisions, and groups
24 concerned with control of sources of ionizing radiation;

25 (e) accept and administer loans, grants, or other

1 funds or gifts, conditional or otherwise, in furtherance of
2 its functions, from the federal government and from other
3 sources, public or private;

4 (f) encourage, participate in, or conduct studies,
5 investigations, training, research, and demonstrations
6 relating to control of sources of ionizing radiation;

7 (g) collect and disseminate information relating to
8 control of sources of ionizing radiation, including:

9 (i) maintenance of a file of all license applications,
10 issuances, denials, amendments, transfers, renewals,
11 modifications, suspensions, and revocations;

12 (ii) maintenance of a file of registrants possessing
13 sources of ionizing radiation requiring registration under
14 this chapter and any administrative or judicial action
15 pertaining thereto;

16 (iii) maintenance of a file of all rules relating to
17 regulation of sources of ionizing radiation, pending or
18 adopted, and proceedings thereon."

19 Section 5. Section 75-3-202, MCA, is amended to read:

20 "75-3-202. Licensing and registration. (1) The
21 department shall provide by rule for general or specific
22 licensing of persons to receive, possess, or transfer
23 radioactive materials and devices or equipment utilizing
24 such materials. HOWEVER, THE DEPARTMENT OF STATE LANDS MAY,
25 IN LIEU OF THE DEPARTMENT, PROVIDE FOR LICENSING AND

1 PERMITTING FOR RECLAMATION PURPOSES OF URANIUM AND THORIUM
2 MILLS AND TAILING DISPOSAL SITES PURSUANT TO TITLE 82,
3 CHAPTER 4 AND THIS SECTION. The rules shall provide for
4 amendment, suspension, or revocation of licenses pursuant to
5 75-3-401 and 75-3-403.

6 (2) Each application for a specific license shall be
7 in writing and shall state such information as the
8 department by rule may determine to be necessary to decide
9 the technical, insurance, and financial qualifications or
10 any other qualification of the applicant as the department
11 considers reasonable and necessary to protect the
12 occupational and public health and safety. The department
13 may, at any time after the filing of the application and
14 before the expiration of the license, require further
15 written statements and may make such inspections as the
16 department considers necessary in order to determine whether
17 the license should be granted, denied, modified, suspended,
18 or revoked. All applications and statements shall be signed
19 by the applicant or licensee. The department may require an
20 application or statement to be made under oath or
21 affirmation.

22 (3) Each license shall be in such form and contain
23 such terms and conditions as the department may by rule
24 prescribe.

25 (4) No license issued pursuant to the provisions of

1 this chapter and no right to possess or utilize sources of
 2 ionizing radiation granted by any license may be assigned or
 3 in any manner disposed of.

4 (5) The terms and conditions of all licenses shall be
 5 subject to amendment, revision, or modification by rules or
 6 orders issued in accordance with the provisions of this
 7 chapter.

8 (6) The department may require registration and
 9 inspection of persons dealing with sources of ionizing
 10 radiation which do not require a specific license and may
 11 require compliance with specific safety standards to be
 12 promulgated by the department.

13 (7) The department is authorized to exempt certain
 14 users from the licensing or registration requirements set
 15 forth in this section when the department makes a finding
 16 that the exemption of the users will not constitute a
 17 significant risk to the health and safety of the public.

18 (8) Rules promulgated pursuant to this chapter may
 19 provide for recognition of such other state or federal
 20 licenses as the department considers desirable, subject to
 21 such registration requirements as the department prescribes.

22 (9) The department OR DEPARTMENT OF STATE LANDS may
 23 charge reasonable fees for its radiation control services,
 24 including but not limited to those for the issuance of
 25 categories of specific licenses consistent with the

1 categories established by the United States nuclear
 2 regulatory commission or any successor thereto, and for
 3 inspections of licensees. FEES FOR THE ISSUANCE OF LICENSES
 4 SHALL BE SUFFICIENT TO COVER THE DEPARTMENT'S OR DEPARTMENT
 5 OF STATE LANDS' FULL COSTS OF PROCESSING AN APPLICATION."

6 NEW SECTION. Section 6. Ownership of disposal sites
 7 and byproduct material. (1) Prior to or following the
 8 expiration of any radioactive materials license issued after
 9 July 1, 1981, the department OR DEPARTMENT OF STATE LANDS
 10 may condemn the title to any land, other than land held in
 11 trust by the United States for any Indian tribe or owned by
 12 an Indian tribe and subject to a restriction against
 13 alienation imposed by the United States, or any interest
 14 therein, which is used for the disposal of byproduct
 15 material pursuant to the license, and the title to the
 16 byproduct itself, pursuant to Title 70, chapter 30.
 17 Condemnation is not allowed if the United States nuclear
 18 regulatory commission or any successor thereto determines,
 19 prior to the expiration of the license, that condemnation
 20 and transfer of either or both the land and byproduct
 21 material is not necessary to protect the public health,
 22 safety, or welfare.

23 (2) If the department OR DEPARTMENT OF STATE LANDS
 24 condemns any interest in land or byproduct material pursuant
 25 to this section:

1 (a) the land or material must be maintained by the
2 department OR DEPARTMENT OF STATE LANDS in a manner to
3 protect the public health, safety, and welfare;

4 (b) the department OR DEPARTMENT OF STATE LANDS is
5 authorized to undertake such monitoring, maintenance, and
6 emergency measures as necessary to protect the public
7 health, safety, and welfare;

8 (c) the transfer of title to the land or byproduct
9 material does not relieve any licensee of liability for
10 fraudulent or negligent acts done prior to condemnation.

11 NEW SECTION. Section 7. Standards for
12 decontamination. (1) The department shall promulgate
13 standards for the decontamination, decommissioning, and
14 reclamation of any site at which ores were processed
15 primarily for their source material content and which sites
16 were used for disposal of byproduct material. HOWEVER, THE
17 DEPARTMENT OF STATE LANDS, IN LIEU OF THE DEPARTMENT, MAY
18 PROMULGATE STANDARDS FOR THE RECLAMATION OF SUCH DISPOSAL
19 SITES PURSUANT TO TITLE 82, CHAPTER 4 AND THIS SECTION.

20 (2) Any radioactive material license issued or renewed
21 after July 1, 1981, for any activity that results in the
22 production of byproduct material must contain such terms and
23 provisions as the department determines necessary to insure
24 that, prior to the expiration of the license, the licensee
25 will comply with the decontamination, decommissioning, and

1 reclamation standards of the department.

2 NEW SECTION. Section 8. Surety requirements. (1) Upon
3 the condemnation of any land used for the disposal of
4 byproduct material, the condemnation of byproduct material,
5 or the condemnation of both such land and material, the
6 department OR DEPARTMENT OF STATE LANDS shall:

7 (a) require that an adequate surety, as determined by
8 the department, be provided by the licensee in order to
9 ensure the completion of all decontamination,
10 decommissioning, and reclamation of sites, structures, and
11 equipment used in conjunction with generation or disposal of
12 byproduct material; and

13 (b) determine whether any long-term maintenance or
14 monitoring of the land or byproduct material is necessary.
15 If the maintenance or monitoring is found necessary, the
16 licensee must make available to the department OR DEPARTMENT
17 OF STATE LANDS the funds necessary to assure the maintenance
18 and monitoring and funds necessary to ensure compliance with
19 standards adopted by the United States nuclear regulatory
20 commission relating to reclamation and long-term management
21 of the disposal site or byproduct material, or both.

22 (2) The funds required by this section shall include,
23 but are not limited to, sums collected for long-term
24 surveillance, and, if necessary, maintenance, but do not
25 include money held as surety, where no default has occurred

1 and the reclamation or other bonded activity has been
2 performed.

3 NEW SECTION. Section 9. Requirements for persons
4 exempt from licensing. The department OR DEPARTMENT OF STATE
5 LANDS may, by rule or order, require persons processing ores
6 primarily for their source material content but exempt from
7 licensing under this chapter to conduct monitoring, perform
8 remedial work, and comply with such measures as the
9 department considers necessary or desirable to protect
10 health or minimize danger to life or property.

11 ~~NEW SECTION. Section 10. Maximum state limitations.~~
12 ~~No rule, standard, or other requirement adopted by the~~
13 ~~department and no license, license term or condition,~~
14 ~~registration, exemption, or other grant or limitation of~~
15 ~~authority conferred by the department under [sections 6~~
16 ~~through 9] may be more stringent or restrictive or impose a~~
17 ~~greater financial burden upon any person than the federal~~
18 ~~rule, standard, license, license condition, registration,~~
19 ~~exemption, or grant or limitation of authority which would~~
20 ~~have been applied absent a state program applying [sections~~
21 ~~6 through 9] under any agreement or approval by any agency~~
22 ~~of the United States.~~

23 Section 10. Section 1 of Initiative 84 is amended to
24 read as follows:

25 "New Section 1. There is a new MCA section that reads

1 as follows:

2 "Policy. It is the policy of the state of Montana, in
3 furtherance of its responsibility to protect the public
4 health and safety, under the police powers of the state and
5 for protection of the constitutional right to a healthy
6 environment, to ~~prohibit~~ PROVIDE FOR THE REGULATION OF the
7 disposal of certain radioactive material."

8 Section 11. Section 75-3-302, MCA, is amended to read:

9 "75-3-302. Disposal of large quantities of radioactive
10 material prohibited -- ~~exceptions~~--and exclusion. (1) No
11 person may dispose of ~~in Montana~~ large quantity radioactive
12 material PRODUCED IN MONTANA, byproduct material, or special
13 nuclear material within the state of Montana, except as
14 authorized by a license issued by the United States or by
15 the department. OR DEPARTMENT OF STATE LANDS. NO PERSON MAY
16 DISPOSE IN MONTANA OF LARGE QUANTITY RADIOACTIVE MATERIAL
17 PRODUCED IN OTHER STATES, EXCEPT THAT BYPRODUCT MATERIAL
18 PRODUCED IN OTHER STATES AND POSSESSED, USED, AND
19 TRANSPORTED FOR EDUCATIONAL PURPOSES, SCIENTIFIC RESEARCH
20 AND DEVELOPMENT, MEDICAL RESEARCH, DIAGNOSIS AND TREATMENT,
21 GEOPHYSICAL SURVEYING, AND OTHER PURPOSES LICENSED BY THE
22 UNITED STATES NUCLEAR REGULATORY COMMISSION OR THE
23 DEPARTMENT IS EXCEPTED FROM THIS PART DURING THE PERIOD OF
24 POSSESSION, USE, AND TRANSPORTATION PRIOR TO DISPOSAL.

25 ~~{2}--Byproduct material--(except--large--quantity~~

1 ~~radioactive material possessed, used, and transported for~~
 2 ~~educational purposes, scientific research, and development,~~
 3 ~~medical research, diagnosis, and treatment, geophysical~~
 4 ~~surveying, and similar uses licensed by the United States~~
 5 ~~nuclear regulatory commission shall be excepted from this~~
 6 ~~part, provided that such material is being or has been~~
 7 ~~lawfully disposed of within Montana upon the effective date~~
 8 ~~of this Act.]~~

9 (3)(2) Nothing in this part precludes the construction
 10 of a nuclear facility approved under the requirements of the
 11 Montana Major Facility Siting Act, or the mining of any raw
 12 ore, provided that such activity is not inconsistent with
 13 this part."

14 Section 12. Section 75-3-303, MCA, is amended to read:
 15 "75-3-303. Penalty. A person who knowingly or
 16 purposely disposes of large quantity radioactive material,
 17 byproduct material, or special nuclear material within
 18 Montana in violation of 75-3-302 shall be fined an amount
 19 not more than \$5,000 or be imprisoned for not more than two
 20 years, or both, for each offense. A person who negligently
 21 disposes of large quantity radioactive material, byproduct
 22 material, or special nuclear material within Montana in
 23 violation of 75-3-302 shall be fined not more than \$1,000
 24 for each offense. In this part, each day of violation
 25 constitutes a separate offense."

1 Section 13. Section 70-30-102, MCA, is amended to
 2 read:

3 "70-30-102. Public uses enumerated. Subject to the
 4 provisions of this chapter, the right of eminent domain may
 5 be exercised in behalf of the following public uses:

6 (1) all public uses authorized by the government of
 7 the United States;

8 (2) public buildings and grounds for the use of the
 9 state and all other public uses authorized by the
 10 legislature of the state;

11 (3) public buildings and grounds for the use of any
 12 county, city or town, or school district; canals, aqueducts,
 13 flumes, ditches, or pipes conducting water, heat, or gas for
 14 the use of the inhabitants of any county, city, or town;
 15 raising the banks of streams, removing obstructions
 16 therefrom, and widening, deepening, or straightening their
 17 channels; roads, streets, and alleys and all other public
 18 uses for the benefit of any county, city, or town or the
 19 inhabitants thereof, which may be authorized by the
 20 legislature; but the mode of apportioning and collecting the
 21 costs of such improvements shall be such as may be provided
 22 in the statutes or ordinances by which the same may be
 23 authorized;

24 (4) wharves, docks, piers, chutes, booms, ferries,
 25 bridges, of all kinds, private roads, plank and turnpike

1 roads, railroads, canals, ditches, flumes, aqueducts, and
 2 pipes for public transportation, supplying mines, mills, and
 3 smelters for the reduction of ores and farming neighborhoods
 4 with water and drainage and reclaiming lands and for
 5 floating logs and lumber on streams not navigable and sites
 6 for reservoirs necessary for collecting and storing water.
 7 However, such reservoir sites must possess a public use
 8 demonstrable to the district court as the highest and best
 9 use of the land.

10 (5) roads, tunnels, ditches, flumes, pipes, and
 11 dumping places for working mines, mills, or smelters for the
 12 reduction of ores; also outlets, natural or otherwise, for
 13 the flow, deposit, or conduct of tailings or refuse matter
 14 from mines, mills, and smelters for the reduction of ores;
 15 also an occupancy in common by the owners or the possessors
 16 of different mines of any place for the flow, deposit, or
 17 conduct of tailings or refuse matter from their several
 18 mines, mills, or smelters for reduction of ores and sites
 19 for reservoirs necessary for collecting and storing water.
 20 However, such reservoir sites must possess a public use
 21 demonstrable to the district court as the highest and best
 22 use of the land.

23 (6) private roads leading from highways to residences
 24 or farms;

25 (7) telephone or electric light lines;

1 (8) telegraph lines;
 2 (9) sewerage of any city, county, or town or any
 3 subdivision thereof, whether incorporated or unincorporated,
 4 or of any settlement consisting of not less than 10 families
 5 or of any public buildings belonging to the state or to any
 6 college or university;

7 (10) tramway lines;

8 (11) electric power lines;

9 (12) logging railways;

10 (13) temporary logging roads and banking grounds for
 11 the transportation of logs and timber products to public
 12 streams, lakes, mills, railroads, or highways for such time
 13 as the court or judge may determine; provided, the grounds
 14 of state institutions be excepted;

15 (14) underground reservoirs suitable for storage of
 16 natural gas;

17 (15) to mine and extract ores, metals, or minerals
 18 owned by the plaintiff located beneath or upon the surface
 19 of property where the title to said surface vests in others.
 20 However, the use of the surface for strip mining or open pit
 21 mining of coal (i.e., any mining method or process in which
 22 the strata or overburden is removed or displaced in order to
 23 extract the coal) is not a public use, and eminent domain
 24 may not be exercised for this purpose;

25 (16) to restore and reclaim lands strip- or

1 underground-mined for coal and not reclaimed in accordance
 2 with Title 82, chapter 4, part 2, and to abate or control
 3 adverse effects of strip or underground mining on those
 4 lands;

5 (17) to decontaminate, decommission, or reclaim
 6 byproduct material and disposal sites in accordance with
 7 Title 75, chapter 3, part 2."

8 Section 14. Codification instruction. Sections 6
 9 through 10 and section 1 of Initiative 84, as amended by
 10 this act, are intended to be codified as an integral part of
 11 Title 75, chapter 3, and the provisions of Title 75, chapter
 12 3, apply to sections 6 through 10 and section 1 of
 13 Initiative 84, as amended by this act.

14 Section 15. Saving clause. This act does not affect
 15 rights and duties that matured, penalties that were
 16 incurred, or proceedings that were begun before the
 17 effective date of this act.

18 Section 16. Severability. If a part of this act is
 19 invalid, all valid parts that are severable from the invalid
 20 part remain in effect. If a part of this act is invalid in
 21 one or more of its applications, the part remains in effect
 22 in all valid applications that are severable from the
 23 invalid applications.

24 SECTION 17. COORDINATION. IF SENATE BILL 258 [LC
 25 1003] IS PASSED AND APPROVED, ANY REFERENCE IN THIS ACT TO

1 "DEPARTMENT OF STATE LANDS" IS CHANGED TO "DEPARTMENT OF
 2 NATURAL RESOURCES AND CONSERVATION".
 3 SECTION 18. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
 4 PASSAGE AND APPROVAL.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 652

3 HOUSE NATURAL RESOURCES COMMITTEE

4
5 A statement of intent is required for this bill because
6 it delegates certain rulemaking and licensing authority to
7 the department of health and environmental sciences and the
8 department of state lands. House Bill No. 652 is intended to
9 enable Montana to exercise licensing and enforcement
10 authority over the disposal of "byproduct material" in the
11 state. This enabling legislation, in the form of amendments
12 to Montana's existing radiation control statutes and to
13 Initiative 84, approved by the voters in November, 1980,
14 would conform Montana's statutes to the pattern of federal
15 regulation of these materials under the federal Uranium Mill
16 Tailings Radiation Control Act of 1978 (P. L. 95-604).

17 States may exercise regulatory authority over byproduct
18 material disposal by obtaining "agreement status" with the
19 federal government. House Bill 652 amends Section
20 75-3-201(3)(c) to clarify that the scope of the department
21 of health's rulemaking power extends to and covers the new
22 responsibilities conferred by the bill. The bill also allows
23 the department of state lands to provide for ~~licensing--and~~
24 permitting for reclamation purposes ~~or~~ of uranium and
25 thorium mills and tailing disposal sites according to Title

1 82, chapter 4, and 75-3-202. ~~The~~ THE DEPARTMENT IS GIVEN
2 RULEMAKING AUTHORITY FOR ESTABLISHING A FEE STRUCTURE FOR
3 ISSUING LICENSES WHICH INCLUDES AN APPLICATION FEE AND AN
4 ANNUAL LICENSE FEE. FEE STRUCTURES ARE ESTABLISHED SOLELY TO
5 COVER THE DEPARTMENT'S COST OF INSPECTION, REVIEW, AND
6 APPROVAL OF LICENSE REVISIONS. THE DEPARTMENT OF HEALTH AND
7 THE department of state lands may also promulgate standards
8 for the reclamation of disposal sites according to Title 82,
9 chapter 4, and [section 7]. RULEMAKING AUTHORITY IS GIVEN TO
10 THE DEPARTMENT OF HEALTH OR THE DEPARTMENT OF STATE LANDS TO
11 REGULATE THE PROCESSING OF EXEMPT ORES. IN REGULATING THIS
12 PROCESSING, THE DEPARTMENT IS DIRECTED TO TAKE SUCH MEASURES
13 AS ARE NECESSARY TO PROTECT THE PUBLIC'S HEALTH. The
14 standards and requirements to be adopted by the department
15 of health and environmental sciences and by the department
16 of state lands shall be sufficient to fully protect the
17 public without posing an impediment to rational and
18 controlled development.

HOUSE BILL NO. 652

INTRODUCED BY CONROY, MARKS, CURTISS, RYAN, FEDA,

FABREGA, MOORE, GRAHAM, BURNETT, DEVLIN, BOYLAN,

MCLANE, AKLESTAD, PISTORIA, LEE, DAILY, ANDREASON,

COZZENS, MEYER, C. SMITH, UNDERDAL, SIVERTSEN, ABRAMS,

SCHULTZ, BENNETT, D. BROWN, PAVLOVICH, KANDUCH, MATSKO,

IVERSON, HAFFERMAN, GALT, HEALY, DOVER, TEAGUE, MANLEY,

HAZELBAKER, KEYSER, BRIGGS, SEIFERT, ROTH, ELLERD, KROPP

A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE THE PROHIBITION OF DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS IN THE STATE OF MONTANA ENACTED BY INITIATIVE 84 AND PROVIDING INSTEAD FOR A STATE REGULATORY SYSTEM; PROVIDING FOR THE CONTROL AND CONDEMNATION OF LAND USED FOR DISPOSAL OF MILL TAILINGS FROM URANIUM AND THORIUM ORE PROCESSING; ~~PROVIDING THAT STATE STANDARDS MAY BE NO MORE STRINGENT THAN FEDERAL STANDARDS;~~ AND TO REVISE THE LAWS CONCERNING RADIATION CONTROL; AMENDING SECTIONS 75-3-102, 75-3-103 AS AMENDED BY INITIATIVE 84, 75-3-104, 75-3-201, 75-3-202, 75-3-302 AS AMENDED BY INITIATIVE 84, 75-3-303 AS AMENDED BY INITIATIVE 84, 75-3-102, MCA, AND SECTION 1 OF INITIATIVE 84; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND PROVIDING FOR A REFERENDUM."

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

Section 1. Section 75-3-102, MCA, is amended to read:

"75-3-102. Purpose. It is the purpose of this chapter to provide a program:

(1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials; and

(4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public;

(5) for the control of mill tailings from uranium and thorium ore processing, both at active mill operations and after termination of active operations, in order to stabilize and control the tailings in a safe and environmentally sound manner, minimize or eliminate radiation health hazards to the public, and eliminate to the

1 maximum extent practicable the need for long-term
2 maintenance and monitoring."

3 Section 2. Section 75-3-103, MCA, is amended to read:

4 "75-3-103. Definitions. The definitions used in this
5 chapter are intended to be consistent with those used in
6 Title 10 CFR, parts 1-199, and Title 49 CFR, parts
7 173.389-173.399. Unless the context requires otherwise, in
8 this chapter the following definitions apply:

9 (1) "Byproduct material" means:

10 (a) any radioactive material (except special nuclear
11 material) yielded in or made radioactive by exposure to the
12 radiation incident to the process of producing or utilizing
13 special nuclear material; and

14 (b) the tailings or wastes produced by the extraction
15 or concentration of uranium or thorium from any ore
16 processed primarily for its source material content,
17 including discrete surface wastes resulting from a uranium
18 solution extraction process, but excluding underground ore
19 bodies depleted by such solution extraction operations.

20 (2) "CFR" means the Code of Federal Regulations
21 published by the United States Government Printing Office,
22 Washington, D.C.

23 (3) "Department" means the department of health and
24 environmental sciences.

25 (4) "Disposal" means burial in soil, release

1 through the sanitary sewerage system, incineration, or
2 permanent long-term storage with no intention of or
3 provision for subsequent removal.

4 (5) "General license" means a license effective
5 pursuant to rules promulgated by the department OR
6 DEPARTMENT---OF---STATE--LANDS without the filing of an
7 application to transfer, acquire, own, possess, or use
8 quantities of or devices or equipment utilizing quantities
9 of byproduct, source, special nuclear materials, or other
10 radioactive material occurring naturally or produced
11 artificially. General licenses are effective without the
12 filing of applications with the department OR-DEPARTMENT-OF
13 STATE-LANDS or the issuing of licensing documents to the
14 user.

15 (6) "Ionizing radiation" means gamma rays and
16 x-rays, alpha and beta particles, high-speed electrons,
17 neutrons, protons, and other nuclear particles, but not
18 sound or radio waves or visible, infrared, or ultraviolet
19 light.

20 (7) "Large quantity radioactive material" is that
21 quantity of radioactive material defined in 49 CFR
22 173.389(b).

23 (8) "Person" means an individual, corporation,
24 partnership, firm, association, trust, estate, public or
25 private institution, group, agency, political subdivision or

1 agency thereof, and any legal successor, representative,
 2 agent, or agency of the foregoing, other than the United
 3 States nuclear regulatory commission, any successor thereto,
 4 or federal agencies licensed by the nuclear regulatory
 5 commission.

6 ~~{8}~~{9} "Registration" means the registering with the
 7 department ~~OR DEPARTMENT OF STATE LANDS~~ by the legal owner,
 8 user, or authorized representative of sources of ionizing
 9 radiation in the manner prescribed by rule.

10 ~~{9}~~{10} "Source material" means uranium, thorium, or
 11 any other material which the department or the United States
 12 nuclear regulatory commission declares by order to be source
 13 material or ores containing one or more of the foregoing
 14 materials in such concentration as the department or the
 15 nuclear regulatory commission declares by order to be source
 16 material after the nuclear regulatory commission has
 17 determined the material in such concentration to be source
 18 material.

19 ~~{10}~~{11} "Special nuclear material" means plutonium,
 20 uranium 233, uranium enriched in the isotope 233 or in the
 21 isotope 235, and any other material which the department or
 22 the United States nuclear regulatory commission or any
 23 successor thereto declares by order to be special nuclear
 24 material or any material artificially enriched by any of the
 25 foregoing but does not include source material.

1 ~~{11}~~{12} "Specific license" means a license issued
 2 after application to use, manufacture, produce, transfer,
 3 receive, acquire, own, or possess quantities of or devices
 4 or equipment utilizing quantities of byproduct, special
 5 nuclear materials, or other radioactive material occurring
 6 naturally or produced artificially.

7 {13} "Surety" means:

8 {a} cash deposits;

9 {b} surety bonds;

10 {c} certificates of deposit;

11 {d} deposits of government securities;

12 {e} letters of credit; and

13 {f} other surety mechanisms considered acceptable by
 14 the department."

15 Section 3. Section 75-3-104, MCA, is amended to read:

16 "75-3-104. Exemptions -- sources, diagnosis, and
 17 therapy. (1) This chapter does not apply to the following
 18 sources or conditions:

19 {a} electrical equipment that is not intended
 20 primarily to produce radiation and that, by nature of
 21 design, does not produce radiation at the point of nearest
 22 approach at a weekly rate higher than one-tenth the
 23 appropriate limit for any critical organ exposed. The
 24 production testing or production servicing of such equipment
 25 is not exempt.

1 (b) radiation machines during process of manufacture
2 or in storage or transit;

3 (c) any radioactive material while being transported
4 in conformity with regulations adopted by the nuclear
5 regulatory commission or any successor thereto or the
6 interstate commerce commission and specifically applicable
7 to the transportation of such radioactive materials.

8 (2) No exemptions under this section are granted for
9 those quantities or types of activities that do not comply
10 with the established rules promulgated by the nuclear
11 regulatory commission or by any successor thereto.

12 ~~{3}--The--provisions--of--this--chapter--may--not--be
13 construed-to-limit-the-kind-or-amount-of-radiation-that--may
14 be--intentionally--applied--to--a--person--for--diagnostic--or
15 therapeutic--purposes--by--or--under--the--direction--of--a--licensed
16 practitioner--of--the--healing--arts.}~~

17 Section 4. Section 75-3-201, MCA, is amended to read:
18 "75-3-201. State radiation control agency. (1) The
19 department is the state radiation control agency.

20 (2) Under the laws of this state, the department may
21 employ, compensate, and prescribe the powers and duties of
22 the individuals which are necessary to carry out this
23 chapter.

24 (3) The department may for the protection of the
25 occupational and public health and safety:

1 (a) develop and conduct programs for evaluation and
2 control of hazards associated with the use of sources of
3 ionizing radiation;

4 (b) develop programs and adopt rules with due regard
5 for compatibility with federal programs for licensing and
6 regulation of byproduct, source, radioactive waste, and
7 special nuclear materials and other radioactive materials.
8 These rules shall cover equipment and facilities, methods
9 for transporting, handling, and storage of radioactive
10 materials, permissible levels of exposure, technical
11 qualifications of personnel, required notification of
12 accidents and other incidents involving radioactive
13 materials, survey methods and results, methods of disposal
14 of radioactive materials, posting and labeling of areas and
15 sources, and methods and effectiveness of controlling
16 individuals in posted and restricted areas.

17 (c) adopt rules relating to control of other sources
18 of ionizing radiation; implement the provisions of this
19 chapter; these rules shall cover equipment and facilities,
20 permissible levels of exposure to personnel, posting of
21 areas, surveys, and records.

22 (d) advise, consult, and cooperate with other agencies
23 of the state, the federal government, other states,
24 interstate agencies, political subdivisions, and groups
25 concerned with control of sources of ionizing radiation;

1 (e) accept and administer loans, grants, or other
 2 funds or gifts, conditional or otherwise, in furtherance of
 3 its functions, from the federal government and from other
 4 sources, public or private;

5 (f) encourage, participate in, or conduct studies,
 6 investigations, training, research, and demonstrations
 7 relating to control of sources of ionizing radiation;

8 (g) collect and disseminate information relating to
 9 control of sources of ionizing radiation, including:

10 (i) maintenance of a file of all license applications,
 11 issuances, denials, amendments, transfers, renewals,
 12 modifications, suspensions, and revocations;

13 (ii) maintenance of a file of registrants possessing
 14 sources of ionizing radiation requiring registration under
 15 this chapter and any administrative or judicial action
 16 pertaining thereto;

17 (iii) maintenance of a file of all rules relating to
 18 regulation of sources of ionizing radiation, pending or
 19 adopted, and proceedings thereon."

20 Section 5. Section 75-3-202, MCA, is amended to read:

21 "75-3-202. Licensing and registration. (1) The
 22 department shall provide by rule for general or specific
 23 licensing of persons to receive, possess, or transfer
 24 radioactive materials and devices or equipment utilizing
 25 such materials. HOWEVER, THE DEPARTMENT OF STATE LANDS MAY,

1 IN LIEU OF THE DEPARTMENT, PROVIDE FOR LICENSING--AND
 2 PERMITTING FOR RECLAMATION PURPOSES OF URANIUM AND THORIUM
 3 HILLS AND TAILING DISPOSAL SITES PURSUANT TO TITLE 82,
 4 CHAPTER 4 AND THIS SECTION. The rules shall provide for
 5 amendment, suspension, or revocation of licenses pursuant to
 6 75-3-401 and 75-3-403.

7 (2) Each application for a specific license shall be
 8 in writing and shall state such information as the
 9 department by rule may determine to be necessary to decide
 10 the technical, insurance, and financial qualifications or
 11 any other qualification of the applicant as the department
 12 considers reasonable and necessary to protect the
 13 occupational and public health and safety. The department
 14 may, at any time after the filing of the application and
 15 before the expiration of the license, require further
 16 written statements and may make such inspections as the
 17 department considers necessary in order to determine whether
 18 the license should be granted, denied, modified, suspended,
 19 or revoked. All applications and statements shall be signed
 20 by the applicant or licensee. The department may require an
 21 application or statement to be made under oath or
 22 affirmation.

23 (3) Each license shall be in such form and contain
 24 such terms and conditions as the department may by rule
 25 prescribe.

1 (4) No license issued pursuant to the provisions of
 2 this chapter and no right to possess or utilize sources of
 3 ionizing radiation granted by any license may be assigned or
 4 in any manner disposed of.

5 (5) The terms and conditions of all licenses shall be
 6 subject to amendment, revision, or modification by rules or
 7 orders issued in accordance with the provisions of this
 8 chapter.

9 (6) The department may require registration and
 10 inspection of persons dealing with sources of ionizing
 11 radiation which do not require a specific license and may
 12 require compliance with specific safety standards to be
 13 promulgated by the department.

14 (7) The department is authorized to exempt certain
 15 users from the licensing or registration requirements set
 16 forth in this section when the department makes a finding
 17 that the exemption of the users will not constitute a
 18 significant risk to the health and safety of the public.

19 (8) Rules promulgated pursuant to this chapter may
 20 provide for recognition of such other state or federal
 21 licenses as the department considers desirable, subject to
 22 such registration requirements as the department prescribes.

23 (9) The department OR DEPARTMENT OF STATE LANDS may
 24 charge reasonable fees for its radiation control services,
 25 including but not limited to those for the issuance of

1 categories of specific licenses consistent with the
 2 categories established by the United States nuclear
 3 regulatory commission or any successor thereto, and for
 4 inspections of licensees. FEES FOR THE ISSUANCE OF URANIUM
 5 OR THORIUM MILLING OR CONCENTRATION LICENSES SHALL BE
 6 SUFFICIENT TO COVER THE DEPARTMENT'S OR DEPARTMENT OF STATE
 7 LANDS' FULL COSTS OF PROCESSING AN APPLICATION. THE
 8 DEPARTMENT SHALL ESTABLISH A FEE STRUCTURE FOR SUCH MILLING
 9 OR CONCENTRATION LICENSES WHICH INCLUDES AN APPLICATION FEE
 10 AND AN ANNUAL LICENSE MAINTENANCE FEE. THE MAINTENANCE FEE
 11 SHALL BE SET AT A LEVEL WHICH, TAKING ACCOUNT OF THE NATURE
 12 AND SIZE OF THE VARIOUS TYPES OF LICENSES AND ACTIVITIES,
 13 WILL DEFRAY THE DEPARTMENT'S COSTS OF INSPECTIONS, REVIEW,
 14 AND APPROVAL OF LICENSE REVISIONS."

15 NEW SECTION. Section 6. Ownership of disposal sites
 16 and byproduct material. (1) Prior to or following the
 17 expiration of any radioactive materials license issued after
 18 July 1, 1981, the department OR DEPARTMENT OF STATE LANDS
 19 may condemn the title to any land, other than land held in
 20 trust by the United States for any Indian tribe or owned by
 21 an Indian tribe and subject to a restriction against
 22 alienation imposed by the United States, or any interest
 23 therein, which is used for the disposal of byproduct
 24 material pursuant to the license, and the title to the
 25 byproduct itself, pursuant to Title 70, chapter 30.

1 Condemnation is not allowed if the United States nuclear
 2 regulatory commission or any successor thereto determines,
 3 prior to the expiration of the license, that condemnation
 4 and transfer of either or both the land and byproduct
 5 material is not necessary to protect the public health,
 6 safety, or welfare.

7 (2) If the department OR DEPARTMENT OF STATE LANDS
 8 condemns any interest in land or byproduct material pursuant
 9 to this section:

10 (a) the land or material must be maintained by the
 11 department OR DEPARTMENT OF STATE LANDS in a manner to
 12 protect the public health, safety, and welfare;

13 (b) the department OR DEPARTMENT OF STATE LANDS is
 14 authorized to undertake such monitoring, maintenance, and
 15 emergency measures as necessary to protect the public
 16 health, safety, and welfare;

17 (c) the transfer of title to the land or byproduct
 18 material does not relieve any licensee of liability for
 19 fraudulent or negligent acts done prior to condemnation.

20 NEW SECTION. Section 7. Standards for
 21 decontamination. (1) The department shall promulgate
 22 standards for the decontamination, decommissioning, and
 23 reclamation of any site at which ores were processed
 24 primarily for their source material content and which sites
 25 were used for disposal of byproduct material. HOWEVER, THE

1 DEPARTMENT OF STATE LANDS, IN LIEU OF THE DEPARTMENT, MAY
 2 PROMULGATE STANDARDS FOR THE RECLAMATION OF SUCH DISPOSAL
 3 SITES PURSUANT TO TITLE 82, CHAPTER 4, AND THIS SECTION.

4 (2) Any radioactive material license issued or renewed
 5 after July 1, 1981, for any activity that results in the
 6 production of byproduct material must contain such terms and
 7 provisions as the department determines necessary to insure
 8 that, prior to the expiration of the license, the licensee
 9 will comply with the decontamination, decommissioning, and
 10 reclamation standards of the department.

11 NEW SECTION. Section 8. Surety requirements. (1) Upon
 12 the condemnation of any land used for the disposal of
 13 byproduct material, the condemnation of byproduct material,
 14 or the condemnation of both such land and material, the
 15 department OR DEPARTMENT OF STATE LANDS shall:

16 (a) require that an adequate surety, as determined by
 17 the department, be provided by the licensee in order to
 18 ensure the completion of all decontamination,
 19 decommissioning, and reclamation of sites, structures, and
 20 equipment used in conjunction with generation or disposal of
 21 byproduct material; and

22 (b) determine whether any long-term maintenance or
 23 monitoring of the land or byproduct material is necessary.
 24 If the maintenance or monitoring is found necessary, the
 25 licensee must make available to the department OR DEPARTMENT

1 OF STATE LANDS the funds necessary to assure the maintenance
2 and monitoring and funds necessary to ensure compliance with
3 standards adopted by the United States nuclear regulatory
4 commission relating to reclamation and long-term management
5 of the disposal site or byproduct material, or both.

6 (2) The funds required by this section shall include,
7 but are not limited to, sums collected for long-term
8 surveillance, and, if necessary, maintenance, but do not
9 include money held as surety where no default has occurred
10 and the reclamation or other bonded activity has been
11 performed.

12 NEW SECTION. Section 9. Requirements for persons
13 exempt from licensing. The department OR DEPARTMENT OF STATE
14 LANDS may, by rule or order, require persons processing ores
15 primarily for their source material content but exempt from
16 licensing under this chapter to conduct monitoring, perform
17 remedial work, and comply with such measures as the
18 department considers necessary or desirable to protect
19 health or minimize danger to life or property.

20 ~~NEW SECTION. Section 10. Maximum state limitations.~~
21 ~~No rule, standard, or other requirement adopted by the~~
22 ~~department and no license, license term or condition,~~
23 ~~registration, exemption, or other grant or limitation of~~
24 ~~authority conferred by the department under [sections 6~~
25 ~~through 9] may be more stringent or restrictive or impose a~~

1 ~~greater financial burden upon any person than the federal~~
2 ~~rule, standard, license, license condition, registration,~~
3 ~~exemption, or grant or limitation of authority which would~~
4 ~~have been applied absent a state program applying [sections~~
5 ~~6 through 9] under any agreement or approval by any agency~~
6 ~~of the United States.~~

7 Section 10. Section 1 of Initiative 84 is amended to
8 read as follows:

9 "New Section 1. There is a new MCA section that reads
10 as follows:

11 "Policy. It is the policy of the state of Montana, in
12 furtherance of its responsibility to protect the public
13 health and safety, under the police powers of the state and
14 for protection of the constitutional right to a healthy
15 environment, to prohibit PROVIDE FOR THE REGULATION OF THE
16 disposal of certain radioactive material."

17 Section 11. Section 75-3-302, MCA, is amended to read:

18 "75-3-302. Disposal of large quantities of radioactive
19 material prohibited -- ~~exceptions and~~ exclusion. (1) No
20 person may dispose of in Montana large quantity radioactive
21 material PRODUCED IN MONTANA, byproduct material, or special
22 nuclear material within the state of Montana, except as
23 authorized by a license issued by the United States or by
24 the department, OR DEPARTMENT OF STATE LANDS. NO PERSON MAY
25 DISPOSE IN MONTANA OF LARGE QUANTITY RADIOACTIVE MATERIAL

1 PRODUCED IN OTHER STATES, EXCEPT THAT BYPRODUCT MATERIAL
 2 PRODUCED IN OTHER STATES AND POSSESSED, USED, AND
 3 TRANSPORTED FOR EDUCATIONAL PURPOSES, SCIENTIFIC RESEARCH
 4 AND DEVELOPMENT, MEDICAL RESEARCH, DIAGNOSIS AND TREATMENT,
 5 GEOPHYSICAL SURVEYING, AND OTHER PURPOSES LICENSED BY THE
 6 UNITED STATES NUCLEAR REGULATORY COMMISSION OR THE
 7 DEPARTMENT IS EXCEPTED FROM THIS PART DURING THE PERIOD OF
 8 POSSESSION, USE, AND TRANSPORTATION PRIOR TO DISPOSAL.

9 ~~{2}--Byproduct---material---(except---large---quantity~~
 10 ~~radioactive-material)}-possessed,-used,-and-transported--for~~
 11 ~~educational--purposes--scientific-research-and-development,~~
 12 ~~medical--research--diagnosis--and--treatment--geophysical~~
 13 ~~surveying--and--similar--uses--licensed-by-the-United-States~~
 14 ~~nuclear-regulatory-commission-shall-be--excepted--from--this~~
 15 ~~part--provided--that--such--material--is--being-or-has-been~~
 16 ~~lawfully-disposed-of-within-Montana-upon-[the-effective-date~~
 17 ~~of-this-Act]*~~

18 {3}{2} Nothing in this part precludes the construction
 19 of a nuclear facility approved under the requirements of the
 20 Montana Major Facility Siting Act, or the mining of any raw
 21 ore, provided that such activity is not inconsistent with
 22 this part."

23 Section 12. Section 75-3-303, MCA, is amended to read:

24 "75-3-303. Penalty. A person who knowingly or
 25 purposely disposes of large quantity radioactive material,

1 byproduct material, or special nuclear material within
 2 Montana in violation of 75-3-302 shall be fined an amount
 3 not more than \$5,000 or be imprisoned for not more than two
 4 years, or both, for each offense. A person who negligently
 5 disposes of large quantity radioactive material, byproduct
 6 material, or special nuclear material within Montana in
 7 violation of 75-3-302 shall be fined not more than \$1,000
 8 for each offense. In this part, each day of violation
 9 constitutes a separate offense."

10 Section 13. Section 70-30-102, MCA, is amended to
 11 read:

12 "70-30-102. Public uses enumerated. Subject to the
 13 provisions of this chapter, the right of eminent domain may
 14 be exercised in behalf of the following public uses:

15 (1) all public uses authorized by the government of
 16 the United States;

17 (2) public buildings and grounds for the use of the
 18 state and all other public uses authorized by the
 19 legislature of the state;

20 (3) public buildings and grounds for the use of any
 21 county, city or town, or school district; canals, aqueducts,
 22 flumes, ditches, or pipes conducting water, heat, or gas for
 23 the use of the inhabitants of any county, city, or town;
 24 raising the banks of streams, removing obstructions
 25 therefrom, and widening, deepening, or straightening their

1 channels; roads, streets, and alleys and all other public
 2 uses for the benefit of any county, city, or town or the
 3 inhabitants thereof, which may be authorized by the
 4 legislature; but the mode of apportioning and collecting the
 5 costs of such improvements shall be such as may be provided
 6 in the statutes or ordinances by which the same may be
 7 authorized;

8 (4) wharves, docks, piers, chutes, booms, ferries,
 9 bridges, of all kinds, private roads, plank and turnpike
 10 roads, railroads, canals, ditches, flumes, aqueducts, and
 11 pipes for public transportation, supplying mines, mills, and
 12 smelters for the reduction of ores and farming neighborhoods
 13 with water and drainage and reclaiming lands and for
 14 floating logs and lumber on streams not navigable and sites
 15 for reservoirs necessary for collecting and storing water.
 16 However, such reservoir sites must possess a public use
 17 demonstrable to the district court as the highest and best
 18 use of the land.

19 (5) roads, tunnels, ditches, flumes, pipes, and
 20 dumping places for working mines, mills, or smelters for the
 21 reduction of ores; also outlets, natural or otherwise, for
 22 the flow, deposit, or conduct of tailings or refuse matter
 23 from mines, mills, and smelters for the reduction of ores;
 24 also an occupancy in common by the owners or the possessors
 25 of different mines of any place for the flow, deposit, or

1 conduct of tailings or refuse matter from their several
 2 mines, mills, or smelters for reduction of ores and sites
 3 for reservoirs necessary for collecting and storing water.
 4 However, such reservoir sites must possess a public use
 5 demonstrable to the district court as the highest and best
 6 use of the land.

7 (6) private roads leading from highways to residences
 8 or farms;

9 (7) telephone or electric light lines;

10 (8) telegraph lines;

11 (9) sewerage of any city, county, or town or any
 12 subdivision thereof, whether incorporated or unincorporated,
 13 or of any settlement consisting of not less than 10 families
 14 or of any public buildings belonging to the state or to any
 15 college or university;

16 (10) tramway lines;

17 (11) electric power lines;

18 (12) logging railways;

19 (13) temporary logging roads and banking grounds for
 20 the transportation of logs and timber products to public
 21 streams, lakes, mills, railroads, or highways for such time
 22 as the court or judge may determine; provided, the grounds
 23 of state institutions be excepted;

24 (14) underground reservoirs suitable for storage of
 25 natural gas;

1 (15) to mine and extract ores, metals, or minerals
 2 owned by the plaintiff located beneath or upon the surface
 3 of property where the title to said surface vests in others.
 4 However, the use of the surface for strip mining or open pit
 5 mining of coal (i.e., any mining method or process in which
 6 the strata or overburden is removed or displaced in order to
 7 extract the coal) is not a public use, and eminent domain
 8 may not be exercised for this purpose;

9 (16) to restore and reclaim lands strip- or
 10 underground-mined for coal and not reclaimed in accordance
 11 with Title 82, chapter 4, part 2, and to abate or control
 12 adverse affects of strip or underground mining on those
 13 lands;

14 (17) to decontaminate, decommission, or reclaim
 15 byproduct material and disposal sites in accordance with
 16 Title 75, chapter 3, part 2."

17 Section 14. Codification instruction. Sections 6
 18 through 10 and section 1 of Initiative 84, as amended by
 19 this act, are intended to be codified as an integral part of
 20 Title 75, chapter 3, and the provisions of Title 75, chapter
 21 3, apply to sections 6 through 10 and section 1 of
 22 Initiative 84, as amended by this act.

23 Section 15. Saving clause. This act does not affect
 24 rights and duties that matured, penalties that were
 25 incurred, or proceedings that were begun before the

1 effective date of this act.

2 Section 16. Severability. If a part of this act is
 3 invalid, all valid parts that are severable from the invalid
 4 part remain in effect. If a part of this act is invalid in
 5 one or more of its applications, the part remains in effect
 6 in all valid applications that are severable from the
 7 invalid applications.

8 SECTION 17. COORDINATION. IF SENATE BILL 258 [LC
 9 1003] IS PASSED AND APPROVED, ANY REFERENCE IN THIS ACT TO
 10 "DEPARTMENT OF STATE LANDS" IS CHANGED TO "DEPARTMENT OF
 11 NATURAL RESOURCES AND CONSERVATION".

12 ~~SECTION 18. EFFECTIVE DATE AND REFERENDUM. THIS ACT~~
 13 ~~IS EFFECTIVE ON PASSAGE AND APPROVAL.~~

14 SECTION 19. REFERENDUM. THE QUESTION OF WHETHER THIS
 15 ACT SHALL BECOME EFFECTIVE OR SHALL BE REPLACED BY THE
 16 PROVISIONS OF INITIATIVE 84 SHALL BE SUBMITTED TO THE
 17 ELECTORS OF THE STATE OF MONTANA AT THE GENERAL ELECTION TO
 18 BE HELD NOVEMBER 2, 1982. THE QUESTION SHALL BE SUBMITTED
 19 BY PRINTING ON THE BALLOT THE FULL TITLE OF THIS ACT AND THE
 20 FOLLOWING:

21 FOR PROVIDING FOR A STATE REGULATORY SYSTEM FOR THE
 22 DISPOSAL AND MAINTENANCE OF URANIUM MILL TAILINGS.

23 AGAINST PROVIDING FOR A STATE REGULATORY SYSTEM FOR
 24 THE DISPOSAL AND MAINTENANCE OF URANIUM MILL
 25 TAILINGS.

HB 0652/03

1 SECTION 19. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
2 PASSAGE AND APPROVAL BY THE ELECTORS OF THE STATE OF
3 MONTANA.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 652

3 HOUSE NATURAL RESOURCES COMMITTEE

4
5 A statement of intent is required for this bill because
6 it delegates certain rulemaking and licensing authority to
7 the department of health and environmental sciences and the
8 department of state lands. House Bill 652 is intended to
9 enable Montana to exercise licensing and enforcement
10 authority over the disposal of "byproduct material" in the
11 state. This enabling legislation, in the form of amendments
12 to Montana's existing radiation control statutes and to
13 Initiative 84, approved by the voters in November, 1980,
14 would conform Montana's statutes to the pattern of federal
15 regulation of these materials under the federal Uranium Mill
16 Tailings Radiation Control Act of 1978 (P.L. 95-604).

17 States may exercise regulatory authority over byproduct
18 material disposal by obtaining "agreement status" with the
19 federal government. House Bill 652 amends Section
20 75-3-201(3)(c) to clarify that the scope of the department
21 of health's rulemaking power extends to and covers the new
22 responsibilities conferred by the bill. The bill also allows
23 the department of state lands to provide for licensing and
24 permitting for reclamation purposes of uranium and
25 thorium mills and tailing disposal sites according to Title

1 82, chapter 4, and 75-3-202. THE DEPARTMENT IS GIVEN
2 RULEMAKING AUTHORITY FOR ESTABLISHING A FEE STRUCTURE FOR
3 ISSUING LICENSES WHICH INCLUDES AN APPLICATION FEE AND AN
4 ANNUAL LICENSE FEE. FEE STRUCTURES ARE ESTABLISHED SOLELY TO
5 COVER THE DEPARTMENT'S COST OF INSPECTION, REVIEW, AND
6 APPROVAL OF LICENSE REVISIONS. THE DEPARTMENT OF HEALTH AND
7 THE department of state lands may also promulgate standards
8 for the reclamation of disposal sites according to Title 82,
9 chapter 4, and [section 7]. RULEMAKING AUTHORITY IS GIVEN TO
10 THE DEPARTMENT OF HEALTH OR THE DEPARTMENT OF STATE LANDS TO
11 REGULATE THE PROCESSING OF EXEMPT ORES. IN REGULATING THIS
12 PROCESSING, THE DEPARTMENT IS DIRECTED TO TAKE SUCH MEASURES
13 AS ARE NECESSARY TO PROTECT THE PUBLIC'S HEALTH. The
14 standards and requirements to be adopted by the department
15 of health and environmental sciences and by the department
16 of state lands shall be sufficient to fully protect the
17 public without posing an impediment to rational and
18 controlled development.

HOUSE BILL NO. 652

INTRODUCED BY CONROY, MARKS, CURTISS, RYAN, FEDA,

FABREGA, MOORE, GRAHAM, BURNETT, DEVLIN, BOYLAN,

McLANE, AKLESTAD, PISTORIA, LEE, DAILY, ANDREASON,

COZZENS, MEYER, C. SMITH, UNDERDAL, SIVERTSEN, ABRAMS,

SCHULTZ, BENNETT, D. BROWN, PAVLOVICH, KANDUCH, MATSKO,

IVERSON, HAFFERMAN, GALT, HEALY, DOVER, TEAGUE, MANLEY,

HAZELBAKER, KEYSER, BRIGGS, SEIFERT, ROTH, ELLERD, KROPP

A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE THE PROHIBITION OF DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS IN THE STATE OF MONTANA ENACTED BY INITIATIVE 84 AND PROVIDING INSTEAD FOR A STATE REGULATORY SYSTEM; PROVIDING FOR THE CONTROL AND CONDEMNATION OF LAND USED FOR DISPOSAL OF MILL TAILINGS FROM URANIUM AND THORIUM ORE PROCESSING; PROVIDING THAT STATE STANDARDS MAY BE NO MORE STRINGENT THAN FEDERAL STANDARDS; AND TO REVISE REVISING THE LAWS CONCERNING RADIATION CONTROL; AMENDING SECTIONS 75-3-102, 75-3-103 AS AMENDED BY INITIATIVE 84, 75-3-104, 75-3-201, 75-3-202, 75-3-302 AS AMENDED BY INITIATIVE 84, 75-3-303 AS AMENDED BY INITIATIVE 84, 75-30-102, MCA, AND SECTION 1 OF INITIATIVE 84; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING FOR A REFERENDUM."

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

Section 1. Section 75-3-102, MCA, is amended to read:

"75-3-102. Purpose. It is the purpose of this chapter to provide a program:

(1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials; and

(4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public;

(5) for the control of mill tailings from uranium and thorium ore processing, both at active mill operations and after termination of active operations, in order to stabilize and control the tailings in a safe and environmentally sound manner, minimize or eliminate radiation health hazards to the public, and eliminate to the

1 maximum extent practicable the need for long-term
 2 maintenance and monitoring."

3 Section 2. Section 75-3-103, MCA, is amended to read:
 4 "75-3-103. Definitions. The definitions used in this
 5 chapter are intended to be consistent with those used in
 6 Title 10 CFR, parts 1-199, and Title 49 CFR, parts
 7 173.389-173.399. Unless the context requires otherwise, in
 8 this chapter the following definitions apply:

9 (1) "Byproduct material" means:
 10 (a) any radioactive material (except special nuclear
 11 material) yielded in or made radioactive by exposure to the
 12 radiation incident to the process of producing or utilizing
 13 special nuclear material; and

14 (b) the tailings or wastes produced by the extraction
 15 or concentration of uranium or thorium from any ore
 16 processed primarily for its source material content,
 17 including discrete surface wastes resulting from a uranium
 18 solution extraction process, but excluding underground ore
 19 bodies depleted by such solution extraction operations.

20 (2) "CFR" means the Code of Federal Regulations
 21 published by the United States Government Printing Office,
 22 Washington, D.C.

23 (2)(3) "Department" means the department of health and
 24 environmental sciences.

25 (3)(4) "Disposal" means burial in soil, release

1 through the sanitary sewerage system, incineration, or
 2 permanent long-term storage with no intention of or
 3 provision for subsequent removal.

4 (4)(5) "General license" means a license effective
 5 pursuant to rules promulgated by the department ~~OR~~
 6 ~~DEPARTMENT---OF---STATE---LANDS~~ without the filing of an
 7 application to transfer, acquire, own, possess, or use
 8 quantities of or devices or equipment utilizing quantities
 9 of byproduct, source, special nuclear materials, or other
 10 radioactive material occurring naturally or produced
 11 artificially. General licenses are effective without the
 12 filing of applications with the department ~~OR-DEPARTMENT-OF~~
 13 ~~STATE-LANDS~~ or the issuing of licensing documents to the
 14 user.

15 (5)(6) "Ionizing radiation" means gamma rays and
 16 x-rays, alpha and beta particles, high-speed electrons,
 17 neutrons, protons, and other nuclear particles, but not
 18 sound or radio waves or visible, infrared, or ultraviolet
 19 light.

20 (6)(7) "Large quantity radioactive material" is that
 21 quantity of radioactive material defined in 49 CFR
 22 173.389(b).

23 (7)(8) "Person" means an individual, corporation,
 24 partnership, firm, association, trust, estate, public or
 25 private institution, group, agency, political subdivision or

1 agency thereof, and any legal successor, representative,
2 agent, or agency of the foregoing, other than the United
3 States nuclear regulatory commission, any successor thereto,
4 or federal agencies licensed by the nuclear regulatory
5 commission.

6 ~~{8}~~{9} "Registration" means the registering with the
7 department ~~OR-DEPARTMENT-OF-STATE-LANDS~~ by the legal owner,
8 user, or authorized representative of sources of ionizing
9 radiation in the manner prescribed by rule.

10 ~~{9}~~{10} "Source material" means uranium, thorium, or
11 any other material which the department or the United States
12 nuclear regulatory commission declares by order to be source
13 material or ores containing one or more of the foregoing
14 materials in such concentration as the department or the
15 nuclear regulatory commission declares by order to be source
16 material after the nuclear regulatory commission has
17 determined the material in such concentration to be source
18 material.

19 ~~{10}~~{11} "Special nuclear material" means plutonium,
20 uranium 233, uranium enriched in the isotope 233 or in the
21 isotope 235, and any other material which the department or
22 the United States nuclear regulatory commission or any
23 successor thereto declares by order to be special nuclear
24 material or any material artificially enriched by any of the
25 foregoing but does not include source material.

1 ~~{11}~~{12} "Specific license" means a license issued
2 after application to use, manufacture, produce, transfer,
3 receive, acquire, own, or possess quantities of or devices
4 or equipment utilizing quantities of byproduct, special
5 nuclear materials, or other radioactive material occurring
6 naturally or produced artificially.

7 {13} "Surety" means:

8 {a} cash deposits;

9 {b} surety bonds;

10 {c} certificates of deposit;

11 {d} deposits of government securities;

12 {e} letters of credit; and

13 {f} other surety mechanisms considered acceptable by
14 the department."

15 Section 3. Section 75-3-104, MCA, is amended to read:
16 "75-3-104. Exemptions -- sources, diagnosis, and
17 therapy. (1) This chapter does not apply to the following
18 sources or conditions:

19 (a) electrical equipment that is not intended
20 primarily to produce radiation and that, by nature of
21 design, does not produce radiation at the point of nearest
22 approach at a weekly rate higher than one-tenth the
23 appropriate limit for any critical organ exposed. The
24 production testing or production servicing of such equipment
25 is not exempt.

1 (b) radiation machines during process of manufacture
2 or in storage or transit;

3 (c) any radioactive material while being transported
4 in conformity with regulations adopted by the nuclear
5 regulatory commission or any successor thereto or the
6 interstate commerce commission and specifically applicable
7 to the transportation of such radioactive materials.

8 (2) No exemptions under this section are granted for
9 those quantities or types of activities that do not comply
10 with the established rules promulgated by the nuclear
11 regulatory commission or by any successor thereto.

12 ~~{3}--The--provisions--of--this--chapter--may--not--be
13 construed-to-limit-the-kind-or-amount-of-radiation-that--may
14 be--intentionally--applied--to--a--person--for--diagnostic-or
15 therapeutic-purposes-by-or-under-the-direction-of-a-licensed
16 practitioner-of-the-healing-arts."~~

17 Section 4. Section 75-3-201, MCA, is amended to read:
18 "75-3-201. State radiation control agency. (1) The
19 department is the state radiation control agency.

20 (2) Under the laws of this state, the department may
21 employ, compensate, and prescribe the powers and duties of
22 the individuals which are necessary to carry out this
23 chapter.

24 (3) The department may for the protection of the
25 occupational and public health and safety:

1 (a) develop and conduct programs for evaluation and
2 control of hazards associated with the use of sources of
3 ionizing radiation;

4 (b) develop programs and adopt rules with due regard
5 for compatibility with federal programs for licensing and
6 regulation of byproduct, source, radioactive waste, and
7 special nuclear materials and other radioactive materials.
8 These rules shall cover equipment and facilities, methods
9 for transporting, handling, and storage of radioactive
10 materials, permissible levels of exposure, technical
11 qualifications of personnel, required notification of
12 accidents and other incidents involving radioactive
13 materials, survey methods and results, methods of disposal
14 of radioactive materials, posting and labeling of areas and
15 sources, and methods and effectiveness of controlling
16 individuals in posted and restricted areas.

17 (c) adopt rules relating to control of other sources
18 of ionizing radiation; implement the provisions of this
19 chapter; these rules shall cover equipment and facilities,
20 permissible levels of exposure to personnel, posting of
21 areas, surveys, and records.

22 (d) advise, consult, and cooperate with other agencies
23 of the state, the federal government, other states,
24 interstate agencies, political subdivisions, and groups
25 concerned with control of sources of ionizing radiation;

1 (e) accept and administer loans, grants, or other
2 funds or gifts, conditional or otherwise, in furtherance of
3 its functions, from the federal government and from other
4 sources, public or private;

5 (f) encourage, participate in, or conduct studies,
6 investigations, training, research, and demonstrations
7 relating to control of sources of ionizing radiation;

8 (g) collect and disseminate information relating to
9 control of sources of ionizing radiation, including:

10 (i) maintenance of a file of all license applications,
11 issuances, denials, amendments, transfers, renewals,
12 modifications, suspensions, and revocations;

13 (ii) maintenance of a file of registrants possessing
14 sources of ionizing radiation requiring registration under
15 this chapter and any administrative or judicial action
16 pertaining thereto;

17 (iii) maintenance of a file of all rules relating to
18 regulation of sources of ionizing radiation, pending or
19 adopted, and proceedings thereon."

20 Section 5. Section 75-3-202, MCA, is amended to read:

21 "75-3-202. Licensing and registration. (1) The
22 department shall provide by rule for general or specific
23 licensing of persons to receive, possess, or transfer
24 radioactive materials and devices or equipment utilizing
25 such materials. HOWEVER, THE DEPARTMENT OF STATE LANDS MAY,

1 IN LIEU OF THE DEPARTMENT, PROVIDE FOR LICENSING--AND
2 PERMITTING FOR RECLAMATION PURPOSES OF URANIUM AND THORIUM
3 MILLS AND TAILING DISPOSAL SITES PURSUANT TO TITLE 82,
4 CHAPTER 4 AND THIS SECTION. The rules shall provide for
5 amendment, suspension, or revocation of licenses pursuant to
6 75-3-401 and 75-3-403.

7 (2) Each application for a specific license shall be
8 in writing and shall state such information as the
9 department by rule may determine to be necessary to decide
10 the technical, insurance, and financial qualifications or
11 any other qualification of the applicant as the department
12 considers reasonable and necessary to protect the
13 occupational and public health and safety. The department
14 may, at any time after the filing of the application and
15 before the expiration of the license, require further
16 written statements and may make such inspections as the
17 department considers necessary in order to determine whether
18 the license should be granted, denied, modified, suspended,
19 or revoked. All applications and statements shall be signed
20 by the applicant or licensee. The department may require an
21 application or statement to be made under oath or
22 affirmation.

23 (3) Each license shall be in such form and contain
24 such terms and conditions as the department may by rule
25 prescribe.

1 (4) No license issued pursuant to the provisions of
2 this chapter and no right to possess or utilize sources of
3 ionizing radiation granted by any license may be assigned or
4 in any manner disposed of.

5 (5) The terms and conditions of all licenses shall be
6 subject to amendment, revision, or modification by rules or
7 orders issued in accordance with the provisions of this
8 chapter.

9 (6) The department may require registration and
10 inspection of persons dealing with sources of ionizing
11 radiation which do not require a specific license and may
12 require compliance with specific safety standards to be
13 promulgated by the department.

14 (7) The department is authorized to exempt certain
15 users from the licensing or registration requirements set
16 forth in this section when the department makes a finding
17 that the exemption of the users will not constitute a
18 significant risk to the health and safety of the public.

19 (8) Rules promulgated pursuant to this chapter may
20 provide for recognition of such other state or federal
21 licenses as the department considers desirable, subject to
22 such registration requirements as the department prescribes.

23 (9) The department OR DEPARTMENT OF STATE LANDS may
24 charge reasonable fees for its radiation control services,
25 including but not limited to those for the issuance of

1 categories of specific licenses consistent with the
2 categories established by the United States nuclear
3 regulatory commission or any successor thereto, and for
4 inspections of licensees. FEES FOR THE ISSUANCE OF URANIUM
5 OR THORIUM MILLING OR CONCENTRATION LICENSES SHALL BE
6 SUFFICIENT TO COVER THE DEPARTMENT'S OR DEPARTMENT OF STATE
7 LANDS' FULL COSTS OF PROCESSING AN APPLICATION. THE
8 DEPARTMENT SHALL ESTABLISH A FEE STRUCTURE FOR SUCH MILLING
9 OR CONCENTRATION LICENSES WHICH INCLUDES AN APPLICATION FEE
10 AND AN ANNUAL LICENSE MAINTENANCE FEE. THE MAINTENANCE FEE
11 SHALL BE SET AT A LEVEL WHICH, TAKING ACCOUNT OF THE NATURE
12 AND SIZE OF THE VARIOUS TYPES OF LICENSES AND ACTIVITIES,
13 WILL DEFRAY THE DEPARTMENT'S COSTS OF INSPECTIONS, REVIEW,
14 AND APPROVAL OF LICENSE REVISIONS."

15 NEW SECTION. Section 6. Ownership of disposal sites
16 and byproduct material. (1) Prior to or following the
17 expiration of any radioactive materials license issued after
18 July 1, 1981, the department OR DEPARTMENT OF STATE LANDS
19 may condemn the title to any land, other than land held in
20 trust by the United States for any Indian tribe or owned by
21 an Indian tribe and subject to a restriction against
22 alienation imposed by the United States, or any interest
23 therein, which is used for the disposal of byproduct
24 material pursuant to the license, and the title to the
25 byproduct itself, pursuant to Title 70, chapter 30.

1 Condemnation is not allowed if the United States nuclear
 2 regulatory commission or any successor thereto determines,
 3 prior to the expiration of the license, that condemnation
 4 and transfer of either or both the land and byproduct
 5 material is not necessary to protect the public health,
 6 safety, or welfare.

7 (2) If the department OR DEPARTMENT OF STATE LANDS
 8 condemns any interest in land or byproduct material pursuant
 9 to this section:

10 (a) the land or material must be maintained by the
 11 department OR DEPARTMENT OF STATE LANDS in a manner to
 12 protect the public health, safety, and welfare;

13 (b) the department OR DEPARTMENT OF STATE LANDS is
 14 authorized to undertake such monitoring, maintenance, and
 15 emergency measures as necessary to protect the public
 16 health, safety, and welfare;

17 (c) the transfer of title to the land or byproduct
 18 material does not relieve any licensee of liability for
 19 fraudulent or negligent acts done prior to condemnation.

20 NEW SECTION. Section 7. Standards for
 21 decontamination. (1) The department shall promulgate
 22 standards for the decontamination, decommissioning, and
 23 reclamation of any site at which ores were processed
 24 primarily for their source material content and which sites
 25 were used for disposal of byproduct material. HOWEVER, THE

1 DEPARTMENT OF STATE LANDS, IN LIEU OF THE DEPARTMENT, MAY
 2 PROMULGATE STANDARDS FOR THE RECLAMATION OF SUCH DISPOSAL
 3 SITES PURSUANT TO TITLE 82, CHAPTER 4, AND THIS SECTION.

4 (2) Any radioactive material license issued or renewed
 5 after July 1, 1981, for any activity that results in the
 6 production of byproduct material must contain such terms and
 7 provisions as the department determines necessary to insure
 8 that, prior to the expiration of the license, the licensee
 9 will comply with the decontamination, decommissioning, and
 10 reclamation standards of the department.

11 NEW SECTION. Section 8. Surety requirements. (1) Upon
 12 the condemnation of any land used for the disposal of
 13 byproduct material, the condemnation of byproduct material,
 14 or the condemnation of both such land and material, the
 15 department OR DEPARTMENT OF STATE LANDS shall:

16 (a) require that an adequate surety, as determined by
 17 the department, be provided by the licensee in order to
 18 ensure the completion of all decontamination,
 19 decommissioning, and reclamation of sites, structures, and
 20 equipment used in conjunction with generation or disposal of
 21 byproduct material; and

22 (b) determine whether any long-term maintenance or
 23 monitoring of the land or byproduct material is necessary.
 24 If the maintenance or monitoring is found necessary, the
 25 licensee must make available to the department OR DEPARTMENT

1 OF STATE LANDS the funds necessary to assure the maintenance
2 and monitoring and funds necessary to ensure compliance with
3 standards adopted by the United States nuclear regulatory
4 commission relating to reclamation and long-term management
5 of the disposal site or byproduct material, or both.

6 (2) The funds required by this section shall include,
7 but are not limited to, sums collected for long-term
8 surveillance, and, if necessary, maintenance, but do not
9 include money held as surety where no default has occurred
10 and the reclamation or other bonded activity has been
11 performed.

12 NEW SECTION. Section 9. Requirements for persons
13 exempt from licensing. The department OR DEPARTMENT OF STATE
14 LANDS may, by rule or order, require persons processing ores
15 primarily for their source material content but exempt from
16 licensing under this chapter to conduct monitoring, perform
17 remedial work, and comply with such measures as the
18 department considers necessary or desirable to protect
19 health or minimize danger to life or property.

20 NEW SECTION. Section 10. Maximum state limitations.
21 No rule, standard, or other requirement adopted by the
22 department and no license, license term or condition,
23 registration, exemption, or other grant or limitation of
24 authority conferred by the department under [sections 6
25 through 9] may be more stringent or restrictive or impose a

1 greater financial burden upon any person than the federal
2 rule, standard, license, license condition, registration,
3 exemption, or grant or limitation of authority which would
4 have been applied absent a state program applying [sections
5 6 through 9] under any agreement or approval by any agency
6 of the United States.

7 Section 10. Section 1 of Initiative 84 is amended to
8 read as follows:

9 "New Section 1. There is a new MCA section that reads
10 as follows:

11 "Policy. It is the policy of the state of Montana, in
12 furtherance of its responsibility to protect the public
13 health and safety, under the police powers of the state and
14 for protection of the constitutional right to a healthy
15 environment, to prohibit PROVIDE FOR THE REGULATION OF the
16 disposal of certain radioactive material."

17 Section 11. Section 75-3-302, MCA, is amended to read:

18 "75-3-302. Disposal of large quantities of radioactive
19 material prohibited -- exceptions--and exclusion. (1) No
20 person may dispose of in Montana large quantity radioactive
21 material PRODUCED IN MONTANA, byproduct material, or special
22 nuclear material within the state of Montana, except as
23 authorized by a license issued by the United States or by
24 the department OR DEPARTMENT OF STATE LANDS. NO PERSON MAY
25 DISPOSE IN MONTANA OF LARGE QUANTITY RADIOACTIVE MATERIAL

1 ~~PRODUCED IN OTHER STATES, EXCEPT THAT BYPRODUCT MATERIAL~~
 2 ~~PRODUCED IN OTHER STATES AND POSSESSED, USED, AND~~
 3 ~~TRANSPORTED FOR EDUCATIONAL PURPOSES, SCIENTIFIC RESEARCH~~
 4 ~~AND DEVELOPMENT, MEDICAL RESEARCH, DIAGNOSIS AND TREATMENT,~~
 5 ~~GEOPHYSICAL SURVEYING, AND OTHER PURPOSES LICENSED BY THE~~
 6 ~~UNITED STATES NUCLEAR REGULATORY COMMISSION OR THE~~
 7 ~~DEPARTMENT IS EXEMPTED FROM THIS PART DURING THE PERIOD OF~~
 8 ~~POSSESSION, USE, AND TRANSPORTATION PRIOR TO DISPOSAL,~~
 9 ~~HIGH-LEVEL RADIOACTIVE MATERIAL, BYPRODUCT MATERIAL AS~~
 10 ~~DEFINED IN 75-3-103(1)(A), OR SPECIAL NUCLEAR MATERIAL,~~
 11 ~~WITHIN THE STATE OF MONTANA. BYPRODUCT MATERIAL (EXCEPT~~
 12 ~~LARGE QUANTITY RADIOACTIVE MATERIAL) POSSESSED, USED, AND~~
 13 ~~TRANSPORTED FOR EDUCATIONAL PURPOSES; SCIENTIFIC RESEARCH~~
 14 ~~AND DEVELOPMENT; MEDICAL RESEARCH, DIAGNOSIS, AND TREATMENT;~~
 15 ~~GEOPHYSICAL SURVEYING; AND SIMILAR USES LICENSED BY THE~~
 16 ~~UNITED STATES NUCLEAR REGULATORY COMMISSION OR THE~~
 17 ~~DEPARTMENT ARE EXEMPT FROM THIS SECTION.~~

18 ~~(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION,~~
 19 ~~THE DISPOSAL IN MONTANA OF BYPRODUCT MATERIAL, AS DEFINED IN~~
 20 ~~75-3-103(1)(B), PRODUCED IN MONTANA, IS AUTHORIZED IF DONE~~
 21 ~~PURSUANT TO A LICENSE ISSUED BY THE UNITED STATES OR BY THE~~
 22 ~~DEPARTMENT.~~

23 ~~(3) FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION,~~
 24 ~~"RADIOACTIVE MATERIAL" MEANS ANY MATERIAL, OR COMBINATION OF~~
 25 ~~MATERIALS, WHICH SPONTANEOUSLY EMITS IONIZING RADIATION AND~~

1 ~~FOR WHICH A SPECIFIC LICENSE IS REQUIRED BY THE UNITED~~
 2 ~~STATES OR BY THE DEPARTMENT.~~

3 ~~(4) FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION,~~
 4 ~~DISPOSAL OF LARGE QUANTITY RADIOACTIVE MATERIAL MEANS THE~~
 5 ~~DISPOSAL FROM A SINGLE SHIPMENT, CONTAINER, OR VEHICLE OF A~~
 6 ~~QUANTITY OF RADIOACTIVE MATERIAL THAT WOULD EXCEED THE~~
 7 ~~LIMITS SPECIFIED IN 49 C.F.R. 173.389.~~

8 ~~(5) FOR PURPOSES OF SUBSECTION (1), "HIGH-LEVEL~~
 9 ~~RADIOACTIVE MATERIAL" MEANS RADIOACTIVE MATERIAL CONSISTING~~
 10 ~~OF SPENT NUCLEAR FUEL OR THE HIGHLY RADIOACTIVE WASTE~~
 11 ~~RESULTING FROM THE REPROCESSING OF SPENT NUCLEAR FUEL.~~

12 ~~(2) Byproduct material (except large quantity~~
 13 ~~radioactive material) possessed, used, and transported for~~
 14 ~~educational purposes, scientific research, and development,~~
 15 ~~medical research, diagnosis, and treatment, geophysical~~
 16 ~~surveying, and similar uses licensed by the United States~~
 17 ~~nuclear regulatory commission, shall be exempted from this~~
 18 ~~part, provided that such material is being or has been~~
 19 ~~lawfully disposed of within Montana upon [the effective date~~
 20 ~~of this Act].~~

21 ~~(3)(2)(6) Nothing in this part precludes the~~
 22 ~~construction of a nuclear facility approved under the~~
 23 ~~requirements of the Montana Major Facility Siting Act, or~~
 24 ~~the mining of any raw ore, provided that such activity is~~
 25 ~~not inconsistent with this part."~~

1 Section 12. Section 75-3-303, MCA, is amended to read:

2 *75-3-303. Penalty. A person who knowingly or
3 purposely disposes of large quantity radioactive material,
4 byproduct material, or special nuclear material within
5 Montana in violation of 75-3-302 shall be fined an amount
6 not more than \$5,000 or be imprisoned for not more than two
7 years, or both, for each offense. A person who negligently
8 disposes of large quantity radioactive material, byproduct
9 material, or special nuclear material within Montana in
10 violation of 75-3-302 shall be fined not more than \$1,000
11 for each offense. In this part, each day of violation
12 constitutes a separate offense.*

13 Section 13. Section 70-30-102, MCA, is amended to
14 read:

15 *70-30-102. Public uses enumerated. Subject to the
16 provisions of this chapter, the right of eminent domain may
17 be exercised in behalf of the following public uses:

18 (1) all public uses authorized by the government of
19 the United States;

20 (2) public buildings and grounds for the use of the
21 state and all other public uses authorized by the
22 legislature of the state;

23 (3) public buildings and grounds for the use of any
24 county, city or town, or school district; canals, aqueducts,
25 flumes, ditches, or pipes conducting water, heat, or gas for

1 the use of the inhabitants of any county, city, or town;
2 raising the banks of streams, removing obstructions
3 therefrom, and widening, deepening, or straightening their
4 channels; roads, streets, and alleys and all other public
5 uses for the benefit of any county, city, or town or the
6 inhabitants thereof, which may be authorized by the
7 legislature; but the mode of apportioning and collecting the
8 costs of such improvements shall be such as may be provided
9 in the statutes or ordinances by which the same may be
10 authorized;

11 (4) wharves, docks, piers, chutes, booms, ferries,
12 bridges, of all kinds, private roads, plank and turnpike
13 roads, railroads, canals, ditches, flumes, aqueducts, and
14 pipes for public transportation, supplying mines, mills, and
15 smelters for the reduction of ores and farming neighborhoods
16 with water and drainage and reclaiming lands and for
17 floating logs and lumber on streams not navigable and sites
18 for reservoirs necessary for collecting and storing water.
19 However, such reservoir sites must possess a public use
20 demonstrable to the district court as the highest and best
21 use of the land.

22 (5) roads, tunnels, ditches, flumes, pipes, and
23 dumping places for working mines, mills, or smelters for the
24 reduction of ores; also outlets, natural or otherwise, for
25 the flow, deposit, or conduct of tailings or refuse matter

1 from mines, mills, and smelters for the reduction of ores;
 2 also an occupancy in common by the owners or the possessors
 3 of different mines of any place for the flow, deposit, or
 4 conduct of tailings or refuse matter from their several
 5 mines, mills, or smelters for reduction of ores and sites
 6 for reservoirs necessary for collecting and storing water.
 7 However, such reservoir sites must possess a public use
 8 demonstrable to the district court as the highest and best
 9 use of the land.

10 (6) private roads leading from highways to residences
 11 or farms;

12 (7) telephone or electric light lines;

13 (8) telegraph lines;

14 (9) sewerage of any city, county, or town or any
 15 subdivision thereof, whether incorporated or unincorporated,
 16 or of any settlement consisting of not less than 10 families
 17 or of any public buildings belonging to the state or to any
 18 college or university;

19 (10) tramway lines;

20 (11) electric power lines;

21 (12) logging railways;

22 (13) temporary logging roads and banking grounds for
 23 the transportation of logs and timber products to public
 24 streams, lakes, mills, railroads, or highways for such time
 25 as the court or judge may determine; provided, the grounds

1 of state institutions be excepted;

2 (14) underground reservoirs suitable for storage of
 3 natural gas;

4 (15) to mine and extract ores, metals, or minerals
 5 owned by the plaintiff located beneath or upon the surface
 6 of property where the title to said surface vests in others.
 7 However, the use of the surface for strip mining or open pit
 8 mining of coal (i.e., any mining method or process in which
 9 the strata or overburden is removed or displaced in order to
 10 extract the coal) is not a public use, and eminent domain
 11 may not be exercised for this purpose;

12 (16) to restore and reclaim lands strip- or
 13 underground-mined for coal and not reclaimed in accordance
 14 with Title 82, chapter 4, part 2, and to abate or control
 15 adverse affects of strip or underground mining on those
 16 lands;

17 (17) to decontaminate, decommission, or reclaim
 18 byproduct material and disposal sites in accordance with
 19 Title 75, chapter 3, part 2."

20 Section 14. Codification instruction. Sections 6
 21 through 10 and section 1 of Initiative 84, as amended by
 22 this act, are intended to be codified as an integral part of
 23 Title 75, chapter 3, and the provisions of Title 75, chapter
 24 3, apply to sections 6 through 10 and section 1 of
 25 Initiative 84, as amended by this act.

1 Section 15. Saving clause. This act does not affect
2 rights and duties that matured, penalties that were
3 incurred, or proceedings that were begun before the
4 effective date of this act.

5 Section 16. Severability. If a part of this act is
6 invalid, all valid parts that are severable from the invalid
7 part remain in effect. If a part of this act is invalid in
8 one or more of its applications, the part remains in effect
9 in all valid applications that are severable from the
10 invalid applications.

11 SECTION 17. COORDINATION. IF SENATE BILL 258 [LC
12 1003] IS PASSED AND APPROVED, ANY REFERENCE IN THIS ACT TO
13 "DEPARTMENT OF STATE LANDS" IS CHANGED TO "DEPARTMENT OF
14 NATURAL RESOURCES AND CONSERVATION".

15 ~~SECTION 18. EFFECTIVE DATE AND REFERENDUM. THIS ACT~~
16 ~~IS EFFECTIVE ON PASSAGE AND APPROVAL.~~

17 SECTION 18. REFERENDUM. THE QUESTION OF WHETHER THIS
18 ACT SHALL BECOME EFFECTIVE OR SHALL BE REPLACED BY THE
19 PROVISIONS OF INITIATIVE 04 SHALL BE SUBMITTED TO THE
20 ELECTORS OF THE STATE OF MONTANA AT THE GENERAL ELECTION TO
21 BE HELD NOVEMBER 2, 1982. THE QUESTION SHALL BE SUBMITTED BY
22 PRINTING ON THE BALLOT THE FULL TITLE OF THIS ACT AND THE
23 FOLLOWING:

24 ~~FOR PROVIDING FOR A STATE REGULATORY SYSTEM FOR THE~~
25 ~~DISPOSAL AND MAINTENANCE OF URANIUM MILL TAILINGS.~~

1 ~~AGAINST PROVIDING FOR A STATE REGULATORY SYSTEM FOR~~
2 ~~THE DISPOSAL AND MAINTENANCE OF URANIUM MILL~~
3 ~~TAILINGS.~~

4 FOR ALLOWING DISPOSAL IN MONTANA OF URANIUM MILL
5 TAILINGS AS AN EXCEPTION TO THE BAN ON DISPOSAL OF
6 RADIOACTIVE WASTE AND PROVIDING A REGULATORY SYSTEM.

7 AGAINST ALLOWING DISPOSAL IN MONTANA OF URANIUM MILL
8 TAILINGS AS AN EXCEPTION TO THE BAN ON DISPOSAL OF
9 RADIOACTIVE WASTE AND PROVIDING A REGULATORY SYSTEM.

10 Section 19. Effective date. This act is effective on
11 passage and approval by the electors of the state of
12 Montana.

-End-

BRT

April 14, 1981

FREE CONFERENCE COMMITTEE
ON HOUSE BILL NO. 652
REPORT NO. 1

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on House Bill No. 652, met April 14, 1981, and considered:

Senate Committee on Natural Resources Amendments dated March 26, 1981,

Senate Committee on Natural Resources Amendments on the Statement of Intent dated March 25, 1981,

Senate Committee of the Whole Amendments dated March 31, 1981, and,

recommend as follows:

Having had under consideration Senate Committee on Natural Resources Amendments dated March 26, 1981,

That the Senate recede from amendments 1 through 6;

Having had under consideration Senate Committee on Natural Resources Amendments on the Statement of Intent dated March 25, 1981,

That the Senate recede from amendments 1 through 4;

Having had under consideration Senate Committee of the Whole Amendments dated March 31, 1981,

That the Senate recede from amendments 1 through 3;

And further that House Bill No. 652, reference bill, be amended as follows:

CLERICAL INSTRUCTIONS:

1. Title, line 13.
Strike: "INSTEAD"
Following: "A"
Strike: "STATE"
2. Title, line 17.
Following: "AND"
Strike: "TO REVISE"
Insert: "REVISING"

CONTINUED ON PAGE 2

Chairman.

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April 14, 1981

PAGE 2
FREE CONFERENCE COMMITTEE REPORT NO. 1
ON HB 652

3. Title, lines 18 and 19.
Following: "75-3-103"
Strike: "AS AMENDED BY INITIATIVE 84"
4. Title, lines 19 and 20.
Following: "75-3-302"
Strike: "AS AMENDED BY INITIATIVE 84"
5. Title, lines 20 and 21.
Following: "75-3-303"
Strike: "AS AMENDED BY INITIATIVE 84"
6. Title, line 21.
Following: "INITIATIVE 84;"
Strike: "AND"
7. Title, line 22.
Following: "AN"
Strike: "IMMEDIATE"
Following: "DATE"
Insert: " ; "
8. Page 16, line 21 through line 8 on page 17.
Following: the first "material" on line 21
Strike: the remainder of line 21 through line 8 on page 17
Insert: ", high-level radioactive material, byproduct material as defined in section 75-3-103(1)(a), or special nuclear material, within the state of Montana.
(2) Notwithstanding subsection (1) of this section, the disposal in Montana of byproduct material, as defined in section 75-3-103(1)(b), produced in Montana, is authorized if done pursuant to a license issued by the United States or by the department.
(3) For purposes of subsection (1) of this section "radioactive material" means any material, or combination of materials, which spontaneously emits ionizing radiation and for which a specific license is required by the United States or by the department.
(4) For purposes of subsection (1) of this section, "disposal" means the deposit of any container or vehicle content.
(5) For purposes of subsection (1), "high-level radioactive material" means radioactive material consisting of spent nuclear fuel or the highly radioactive waste resulting from the reprocessing of spent nuclear fuel."
Renumber: subsequent subsections

CONTINUED ON PAGE 3


Chairman.

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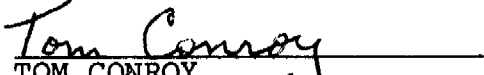
PAGE 3
FREE CONFERENCE COMMITTEE REPORT NO. 1
ON HB 652

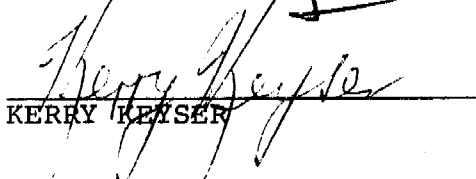
- 9. Page 22, line 14.
Following: "SECTION"
Strike: "19"
Insert: "18"
- 10. Page 22, lines 15 and 16.
Following: "EFFECTIVE"
Strike: "OR SHALL BE REPLACED BY THE PROVISIONS OF INITIATIVE 84"
- 11. Page 22, lines 21 through 25.
Strike: lines 21 through 25 in their entirety
Insert:
 - "FOR excepting uranium and thorium mill tailings produced in Montana from the ban on disposal of most radioactive waste and providing a regulatory system.
 - AGAINST excepting uranium and thorium mill tailings produced in Montana from the ban on disposal of most radioactive waste and providing a regulatory system."

And that the Free Conference Committee Report on House Bill No. 652 be adopted.

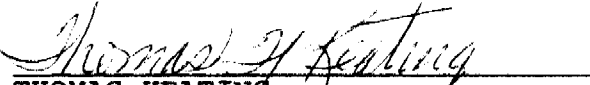
FOR THE HOUSE:

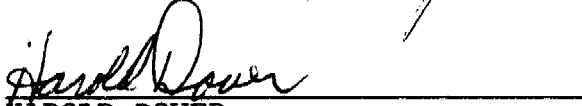

DENNIS IVERSON



TOM CONROY


KERRY KEISER

FOR THE SENATE:


THOMAS KEATING


HAROLD DOVER


FRED VANVALKENBURG

ON HOUSE BILL NO. 652

REPORT NO. 2

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on House Bill No. 652, met April 21, 1981, and considered:

Senate Committee on Natural Resources Amendments dated March 26, 1981,

Senate Committee on Natural Resources Amendments on the Statement of Intent dated March 25, 1981,

Senate Committee of the Whole Amendments dated March 31, 1981, and,

recommend as follows:

Having had under consideration Senate Committee on Natural Resources Amendments dated March 26, 1981,

That the House accede to amendments 1 through 6;

Having had under consideration Senate Committee on Natural Resources Amendments on the Statement of Intent dated March 25, 1981,

That the House accede to amendments 1 through 4;

Having had under consideration Senate Committee of the Whole Amendments dated March 31, 1981,

That the House accede to amendments 1 through 3;

And further that House Bill No. 652, reference bill, be amended as follows: CLERICAL INSTRUCTIONS

1. Title, line 13.
Strike: "INSTEAD"
Following: "A"
Strike: "STATE"
2. Title, line 17.
Following: "AND"
Strike: "TO REVISE"
Insert: "REVISING"

PAGE 2

FREE CONFERENCE COMMITTEE REPORT NO. 2
ON HB 652

3. Title, lines 18 and 19.
Following: "75-3-103"
Strike: "AS AMENDED BY INITIATIVE 84"
4. Title, lines 19 and 20.
Following: "75-3-302"
Strike: "AS AMENDED BY INITIATIVE 84"
5. Title, lines 20 and 21.
Following: "75-3-303"
Strike: "AS AMENDED BY INITIATIVE 84"
6. Title, line 21.
Following: "INITIATIVE 84;"
Strike: "AND"
7. Title, line 22.
Following: "AN"
Strike: "IMMEDIATE"
Following: "DATE"
Insert: " ;"
8. Page 16, line 21 through line 8 on page 17.
Following: the first "material" on line 21
Strike: the remainder of line 21 through line 8 on page 17
Insert: ", high-level radioactive material, byproduct material as defined in section 75-3-103(1)(a), or special nuclear material, within the state of Montana. Byproduct material (except large quantity radioactive material) possessed, used, and transported for educational purposes; scientific research and development; medical research, diagnosis, and treatment; geophysical surveying, and similar uses licensed by the United States nuclear regulatory commission or the department are exempt from this section.
(2) Notwithstanding subsection (1) of this section, the disposal in Montana of byproduct material, as defined in section 75-3-103(1)(b), produced in Montana, is authorized if done pursuant to a license issued by the United States or by the department.
(3) For purposes of subsection (1) of this section "radioactive material" means any material, or combination of materials, which spontaneously emits ionizing radiation and for which a specific license is required by the United States or by the department.
(4) For purposes of subsection (1) of this section, disposal of large quantity radioactive material means the disposal from a single shipment, container, or vehicle of a quantity of radioactive material that would exceed the limits specified in 49 C.F.R. 172.389.

PAGE 3
FREE CONFERENCE COMMITTEE REPORT NO. 2
ON HB 652

(5) For purposes of subsection (1), "high-level radioactive material" means radioactive material consisting of spent nuclear fuel or the highly radioactive waste resulting from the reprocessing of spent nuclear fuel."

Renumber: subsequent subsections


- 9. Page 22, line 14.
Following: "SECTION"
Strike: "19"
Insert: "18"
- 10. Page 22, lines 15 and 16.
Following: "EFFECTIVE"
Strike: "OR SHALL BE REPLACED BY THE PROVISIONS OF INITIATIVE 84"
- 11. Page 22, lines 21 through 25.
Strike: lines 21 through 25 in their entirety
Insert:

"FOR excepting uranium and thorium mill tailings produced in Montana from the ban on disposal of most radioactive waste and providing a regulatory system.
AGAINST excepting uranium and thorium mill tailings produced in Montana from the ban on disposal of most radioactive waste and providing a regulatory system."

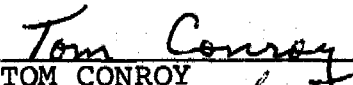
And that the Free Conference Committee Report on House Bill No. 652 be adopted.


FOR THE HOUSE:

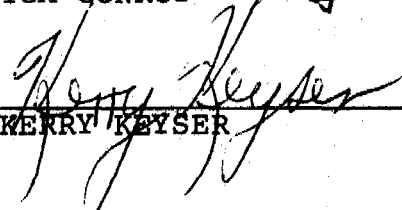
FOR THE SENATE:

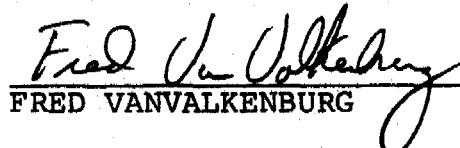

DENNIS IVERSON

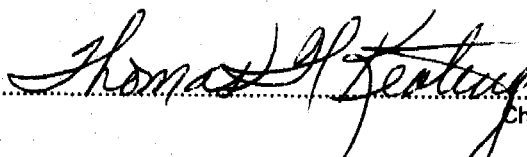

THOMAS KEATING


TOM CONROY


HAROLD DOVER


KERRY KEYSER


FRED VANVALKENBURG


Chairman.

CORRECTED

APRIL 23, 1981 19 81

FREE CONFERENCE COMMITTEE

ON HOUSE BILL NO. 652

REPORT NO. 2

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on House Bill No. 652, met April 21, 1981, and considered:

Senate Committee on Natural Resources Amendments dated March 26, 1981,

Senate Committee on Natural Resources Amendments on the Statement of Intent dated March 25, 1981,

Senate Committee of the Whole Amendments dated March 31, 1981, and,

recommend as follows:

Having had under consideration Senate Committee on Natural Resources Amendments dated March 26, 1981,

That the House accede to amendments 1 through 6;

Having had under consideration Senate Committee on Natural Resources Amendments on the Statement of Intent dated March 25, 1981,

That the House accede to amendments 1 through 4;

Having had under consideration Senate Committee of the Whole Amendments dated March 31, 1981,

That the House accede to amendments 1 through 3;

And further that House Bill No. 652, reference bill, be amended as follows: CLERICAL INSTRUCTIONS

1. Title, line 13.
Strike: "INSTEAD"
Following: "A"
Strike: "STATE"
2. Title, line 17.
Following: "AND"
Strike: "TO REVISE"
Insert: "REVISING"

CONTINUED ON PAGE 2

PAGE 2

FREE CONFERENCE COMMITTEE REPORT NO. 2

ON HB 652

3. Title, lines 18 and 19.
Following: "75-3-103"
Strike: "AS AMENDED BY INITIATIVE 84"
4. Title, lines 19 and 20.
Following: "75-3-302"
Strike: "AS AMENDED BY INITIATIVE 84"
5. Title, lines 20 and 21.
Following: "75-3-303"
Strike: "AS AMENDED BY INITIATIVE 84"
6. Title, line 21.
Following: "INITIATIVE 84;"
Strike: "AND"
7. Title, line 22.
Following: "AN"
Strike: "IMMEDIATE"
Following: "DATE"
Insert: " ; "
8. Page 16, line 21 through line 8 on page 17.
Following: the first "material" on line 21
Strike: the remainder of line 21 through line 8 on page 17
Insert: ", high-level radioactive material, byproduct material as defined in section 75-3-103(1)(a), or special nuclear material, within the state of Montana. Byproduct material (except large quantity radioactive material) possessed, used, and transported for educational purposes; scientific research and development; medical research, diagnosis, and treatment; geophysical surveying, and similar uses licensed by the United States nuclear regulatory commission or the department are exempt from this section.
(2) Notwithstanding subsection (1) of this section, the disposal in Montana of byproduct material, as defined in section 75-3-103(1)(b), produced in Montana, is authorized if done pursuant to a license issued by the United States or by the department.
(3) For purposes of subsection (1) of this section "radioactive material" means any material, or combination of materials, which spontaneously emits ionizing radiation and for which a specific license is required by the United States or by the department.
(4) For purposes of subsection (1) of this section, disposal of large quantity radioactive material means the disposal from a single shipment, container, or vehicle of a quantity of radioactive material that would exceed the limits specified in 49 C.F.R. 172.389.

PAGE 3
FREE CONFERENCE COMMITTEE REPORT NO. 2
ON HB 652

(5) For purposes of subsection (1), "high-level radioactive material" means radioactive material consisting of spent nuclear fuel or the highly radioactive waste resulting from the reprocessing of spent nuclear fuel."

Renumber: subsequent subsections

- 9. Page 22, line 14.
Following: "SECTION"
Strike: "19"
Insert: "18"
- 10. Page 22, lines 15 and 16.
Following: "EFFECTIVE"
Strike: "OR SHALL BE REPLACED BY THE PROVISIONS OF INITIATIVE 84"
- 11. Page 22, lines 21 through 25.
Strike: lines 21 through 25 in their entirety
Insert:

"FOR allowing disposal in Montana of uranium mill tailings as an exception to the ban on disposal of radioactive waste and providing a regulatory system.



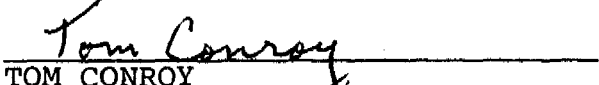
AGAINST allowing disposal in Montana of uranium mill tailings as an exception to the ban on disposal of radioactive waste and providing a regulatory system."

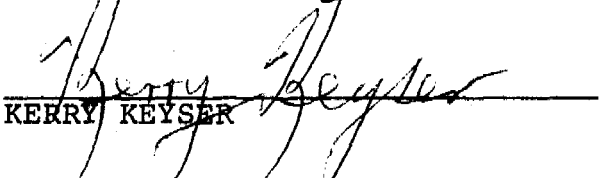


And that the Free Conference Committee Report on House Bill No. 652 be adopted.

FOR THE HOUSE:

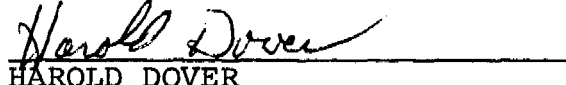

DENNIS IVERSON



TOM CONROY



KERRY KEYSER

FOR THE SENATE:


THOMAS KEATING


HAROLD DOVER


FRED VANVALKENBURG


Chairman.

March 26, 1981

SENATE STANDING COMMITTEE REPORT
(Natural Resources)

That House Bill No. 652 be amended as follows:

1. Page 4, lines 4 and 5
Following: "department" on line 4
Strike: "OR DEPARTMENT OF STATE LANDS" on lines 4 and 5
2. Page 4, lines 11 and 12
Following: "department" on line 11
Strike: "OR DEPARTMENT OF STATE LANDS" on lines 11 and 12
3. Page 5, line 6
Following: "department"
Strike: "OR DEPARTMENT OF STATE LANDS"
4. Page 9, line 25
Following: "FOR"
Strike: "LICENSING AND"
5. Page 12, line 3
Following: "ISSUANCE OF"
Insert: "uranium or thorium milling or concentration"
6. Page 12, line 5
Following: "APPLICATION."
Insert: "The department shall establish a fee structure for such milling or concentration licenses which includes an application fee and an annual license maintenance fee. The maintenance fee shall be set at a level which, taking account of the nature and size of the various types of license and activities, will defray the department's costs of inspections review and approval of license revisions."

March 25, 1981

That the Statement of Intent on House Bill No. 652 be amended as follows:

1. Statement of Intent, page 1, line 23

Following: "for"

Strike: "licensing and"

2. Statement of Intent, page 1, line 24

Following: "purposes"

Strike: "or"

Insert: "of"

3. Statement of Intent, page 2, line 1

Following: "75-3-202."

Strike: "The"

Insert: "The department is given rulemaking authority for establishing a fee structure for issuing licenses which includes an application fee and an annual license fee. Fee structures are established solely to cover the department's cost of inspection, review, and approval of license revisions. The department of health and the"

4. Statement of Intent, page 2, line 3

Following: "[section 7]."

Insert: "Rulemaking authority is given to the department of health or the department of state lands to regulate the processing of exempt ores. In regulating this processing, the department is directed to take such measures as are necessary to protect the public's health."

March 31, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 652, third reading copy, as follows:

1. Title, line 22.

Following: "DATE"

Insert: "AND PROVIDING FOR A REFERENDUM"

2. Page 22, line 3.

Following: "DATE"

Insert: "and referendum"

3. Page 22.

Following: line 2.

Strike: section 18 in its entirety.

Insert: "Section 18. Referendum. The question of whether this act shall become effective or shall be replaced by the provisions of Initiative 84 shall be submitted to the electors of the state of Montana at the general election to be held November 2, 1982. The question shall be submitted by printing on the ballot the full title of this act and the following:

FOR providing for a state regulatory system for the disposal and maintenance of uranium mill tailings.

AGAINST providing for a state regulatory system for the disposal and maintenance of uranium mill tailings.

Section 19. Effective date. This act is effective on passage and approval by the electors of the state of Montana."