

SENATE BILL NO. 258

INTRODUCED BY S. BROWN

BY REQUEST OF THE OFFICE OF THE GOVERNOR

IN THE SENATE

January 23, 1981	Introduced and referred to Committee on Natural Resources.
February 21, 1981	Committee recommend bill do pass as amended. Report adopted.
February 24, 1981	Bill printed and placed on members' desks. Second reading, do pass.
February 25, 1981	On motion rules suspended. Bill placed on calendar for third reading this day. Third reading, passed. Ayes, 46; Noes, 3. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on State Administration.
March 27, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1981	Second reading, concurred in as amended. On motion rules suspended and bill placed on third reading this day.

March 30, 1981

On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.

March 31, 1981

Third reading, concurred in as amended. Ayes, 95; Noes, 1.

#### IN THE SENATE

April 1, 1981

Returned from House with amendments.

April 3, 1981

Second reading, amendments not concurred in.

April 7, 1981

On motion Free Conference Committee requested and appointed.

April 15, 1981

Free Conference Committee reported.

April 17, 1981

Second reading, Free Conference Committee report adopted.

Third reading, Free Conference Committee report adopted. Ayes, 49; Noes, 0. Transmitted to House.

#### IN THE HOUSE

April 21, 1981

Free Conference Committee report adopted.

#### IN THE SENATE

April 22, 1981

Returned from House. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *258*  
 2 INTRODUCED BY STEVE BROWN  
 3 BY REQUEST OF THE OFFICE OF THE GOVERNOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO TRANSFER FORESTRY  
 6 FUNCTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND  
 7 CONSERVATION TO THE DEPARTMENT OF STATE LANDS; TO TRANSFER  
 8 THE MINE SITING AND RECLAMATION FUNCTIONS OF THE DEPARTMENT  
 9 OF STATE LANDS TO THE DEPARTMENT OF NATURAL RESOURCES AND  
 10 CONSERVATION; AMENDING SECTIONS 75-10-103, 75-10-203,  
 11 76-13-104, 76-13-106, 76-13-109, 80-8-110, 82-4-103,  
 12 82-4-223, 82-4-303, 82-4-306, 82-4-321, 82-4-421, AND  
 13 82-4-427, MCA."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. Section 1. Functions of department of  
 17 natural resources and conservation transferred to department  
 18 of state lands. (1) The functions of protecting natural  
 19 resources from fire in Title 76, chapter 11, part 1; of  
 20 protection of forest resources in Title 76, chapter 13; of  
 21 appraising, protecting, and selling state timberlands in  
 22 Title 77, chapter 5; and of recommending closing lands to  
 23 hunting and fishing in fire danger areas under 87-3-106 are  
 24 transferred from the department of natural resources and  
 25 conservation to the department of state lands.

1 (2) Unless inconsistent with this act, any reference  
 2 to "department of natural resources and conservation" in  
 3 those sections is changed to "department of state lands".

4 (3) Any corresponding internal references shall be  
 5 changed by the code commissioner.

6 NEW SECTION. Section 2. Functions of board of natural  
 7 resources and conservation transferred to board of land  
 8 commissioners. (1) The functions of the board of natural  
 9 resources and conservation in Title 76, chapter 13, relating  
 10 to protection of forest resources are transferred to the  
 11 board of land commissioners.

12 (2) Unless inconsistent with this act, any reference  
 13 in that chapter to "board of natural resources and  
 14 conservation" is changed to "board of land commissioners".

15 (3) Any corresponding internal references shall be  
 16 changed by the code commissioner.

17 NEW SECTION. Section 3. Functions of department of  
 18 state lands transferred to department of natural resources  
 19 and conservation. (1) The functions of the department of  
 20 state lands of recording certificates of location of mining  
 21 claims under 82-2-102 are transferred to the department of  
 22 natural resources and conservation.

23 (2) Unless inconsistent with this act, any reference  
 24 to "department of state lands" in that section is changed to  
 25 "department of natural resources and conservation".

1 (3) Any corresponding internal references shall be  
2 changed by the code commissioner.

3 NEW SECTION. Section 4. Functions of board of land  
4 commissioners transferred to department of natural resources  
5 and conservation. (1) The functions of the board of land  
6 commissioners and commissioner of state lands in Title 82,  
7 chapter 4, concerning mine siting and reclamation are  
8 transferred to the department of natural resources and  
9 conservation and the director of that department.

10 (2) Unless inconsistent with this act, any reference  
11 to "board of land commissioners", "board", "department of  
12 state lands", or "department" is changed to "department of  
13 natural resources and conservation" or "department" (meaning  
14 the department of natural resources and conservation). Any  
15 reference to "commissioner of state lands" or "commission"  
16 is changed to "director of the department of natural  
17 resources and conservation" or "director" (meaning the  
18 director of natural resources and conservation).

19 (3) Any corresponding internal references shall be  
20 changed by the code commissioner.

21 Section 5. Section 75-10-103, MCA, is amended to read:

22 "75-10-103. Definitions. Unless the context clearly  
23 requires otherwise, in this part the following definitions  
24 apply:

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

1 environmental sciences provided for in 2-15-2104.

2 (2) "Department" means the department of health and  
3 environmental sciences provided for in Title 2, chapter 15,  
4 part 21.

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

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

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

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

1 entity, whether organized for profit or not.

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

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

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

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

23 Section 6. Section 75-10-203, MCA, is amended to read:

24 "75-10-203. Definitions. Unless the context requires  
25 otherwise, in this part the following definitions apply:

1 (1) "Board" means the board of health and  
2 environmental sciences provided for in 2-15-2104.

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

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

13 (4) "Hazardous waste" means any waste or combination  
14 of wastes of a solid, liquid, contained gaseous, or  
15 semisolid form which may cause or contribute to an increase  
16 in mortality or an increase in serious illness, taking into  
17 account the toxicity of the waste, its persistence and  
18 degradability in nature, its potential for assimilation or  
19 concentration in tissue, and other factors that may  
20 otherwise cause or contribute to adverse acute or chronic  
21 effects on the health of persons or other living organisms.  
22 Hazardous wastes include but are not limited to those which  
23 are toxic, radioactive, corrosive, flammable, irritants,  
24 strong sensitizers, or which generate pressure through  
25 decomposition, heat, or other means, excluding wood chips

1 and wood used for manufacturing or fuel purposes.

2 (5) "Hazardous waste management" means the management  
3 of the storage, transport, treatment, recycling, recovery,  
4 or disposal of hazardous wastes.

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

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

11 (8) "Resource recovery facility" means a facility at  
12 which solid waste is processed for the purpose of  
13 extracting, converting to energy, or otherwise separating  
14 and preparing solid waste for reuse.

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

19 (10) "Solid waste" means all putrescible and  
20 nonputrescible wastes, including but not limited to garbage;  
21 rubbish; refuse; hazardous wastes; ashes; sludge from sewage  
22 treatment plants, water supply treatment plants, or air  
23 pollution control facilities; construction and demolition  
24 wastes; dead animals, including offal; discarded home and  
25 industrial appliances; and wood products or wood byproducts

1 and inert materials. "Solid waste" does not mean municipal  
2 sewage, industrial wastewater effluents, mining wastes  
3 regulated under the mining and reclamation laws administered  
4 by the department of ~~state~~ natural resources and  
5 conservation, slash and forest debris regulated under laws  
6 administered by the department of ~~natural resources and~~  
7 conservation state lands, or marketable wood byproducts.

8 (11) "Solid waste management system" means a system  
9 which controls the storage, treatment, recycling, recovery,  
10 or disposal of solid waste.

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

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

17 (14) "Treatment" means a method, technique, or process,  
18 including neutralization, designed to change the physical,  
19 chemical, or biological character or composition of any  
20 solid waste so as to neutralize the waste or so as to render  
21 it nonhazardous, safer for transport, amenable for recovery,  
22 amenable for storage, or reduced in volume."

23 Section 7. Section 76-13-104, MCA, is amended to read:  
24 "76-13-104. Functions of department. (1) The  
25 department may give technical and practical advice

1 concerning forest, range, water, and soil conservation and  
2 the establishment and maintenance of woodlots, windbreaks,  
3 shelterbelts, and forest fire protection.

4 (2) The department shall cooperate with all public and  
5 other agencies in the development, protection, and  
6 conservation of the forest, range, and water resources in  
7 this state.

8 ~~(3) The department shall assist the department of~~  
9 ~~state lands in the protection, economic development, and use~~  
10 ~~of the state forests and forest land held by the state for~~  
11 ~~the purposes and benefit of the common schools and state~~  
12 ~~institutions."~~

13 Section 8. Section 76-13-106, MCA, is amended to read:

14 "76-13-106. Cooperation between department of state  
15 lands and county. The ~~department of state lands and the~~  
16 county governing body shall cooperate with the department to  
17 the extent legally permissible in providing means and  
18 methods of safeguarding the forest land lying within the  
19 state and in preventing fire nuisance thereon. The  
20 ~~department of state lands and the~~ county governing body  
21 shall list forest lands under their ~~its~~ jurisdiction with  
22 the department for forest protection. The money the state  
23 and counties become liable for under this section shall be  
24 paid from funds provided by law for the protection of the  
25 forest lands owned by the state and counties."

1 Section 9. Section 76-13-109, MCA, is amended to read:  
2 "76-13-109. Rules -- limitation on rulemaking  
3 authority. ~~(1)~~ The board may adopt and enforce through the  
4 department reasonable rules for the purpose of enforcing and  
5 accomplishing the provisions and purposes of this part and  
6 part 2.

7 ~~(2) These rules may not conflict with the powers of~~  
8 ~~the board of land commissioners."~~

9 Section 10. Section 80-8-110, MCA, is amended to read:

10 "80-8-110. Cooperation with other agencies. (1) The  
11 department of agriculture may cooperate with agencies of  
12 this state or its subdivisions or with any agency of any  
13 other state or the federal government for the purpose of  
14 carrying out the provisions of this chapter, securing  
15 uniformity of rules, and entering into reciprocal licensing  
16 and certification agreements with other states.

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

24 (3) For the purpose of this section, "solid waste"  
25 means all putrescible and nonputrescible wastes including

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

14 (4) For the purpose of this section, "hazardous waste"  
 15 means any waste or combination of wastes of a solid, liquid,  
 16 contained gaseous, or semisolid form which may cause or  
 17 contribute to an increase in mortality or an increase in  
 18 serious illness, taking into account the toxicity of the  
 19 waste, its persistence and degradability in nature, its  
 20 potential for assimilation or concentration in tissue, and  
 21 other factors that may otherwise cause or contribute to  
 22 adverse acute or chronic effects on the health of persons or  
 23 other living organisms. Hazardous wastes include but are not  
 24 limited to those which are toxic, radioactive, corrosive,  
 25 flammable, irritants, strong sensitizers, or which generate

1 pressure through decomposition, heat, or other means,  
 2 excluding wood chips and wood used for manufacturing or fuel  
 3 purposes."

4 Section 11. Section 82-4-103, MCA, is amended to read:  
 5 "82-4-103. Definitions. When used in this part, unless  
 6 a different meaning clearly appears from the context the  
 7 following definitions apply:

8 ~~(1) "Board" means the board of land commissioners as~~  
 9 ~~provided for in Article X, section 4, of the constitution of~~  
 10 ~~this state.~~

11 ~~(2)(1) "Department" means the department of state~~  
 12 ~~lands natural resources and conservation provided for in~~  
 13 ~~Title 2, chapter 15, part 32 33.~~

14 ~~(2) "Director" means the director of natural resources~~  
 15 ~~and conservation.~~

16 (3) "Mineral" means mineral as defined in  
 17 82-4-203(12).

18 (4) "New mine" means a strip- or underground-mining  
 19 operation proposed for an area of land which the department  
 20 determines, because of distance from an existing strip-mine  
 21 or underground-mine operation or their respective facilities  
 22 or because of important differences in topography, soils,  
 23 wildlife, geologic structure, aquifers, or vegetation from  
 24 an existing strip-mine or underground-mine operation, does  
 25 not constitute an expansion of an existing operation.



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

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

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

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

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

1 removed or displaced in order to recover the mineral.

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

7 Section 12. Section 82-4-223, MCA, is amended to read:

8 "82-4-223. Permit fee and surety bond. (1) An  
9 application fee of \$50 shall be paid before the permit  
10 required in this part shall be issued.

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

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

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

16 Section 13. Section 82-4-303, MCA, is amended to read:

17 "82-4-303. Definitions. As used in this part, unless  
 18 the context indicates otherwise, the following definitions  
 19 apply:

20 (1) "Abandonment of surface or underground mining" may  
 21 be presumed when it is shown that continued operation will  
 22 not resume.

23 ~~(2) "Board" means the board of land commissioners or~~  
 24 ~~such state employee or state agency as may succeed to its~~  
 25 ~~powers and duties under this part~~

1 ~~(3)(2) "Department" means the department of state~~  
 2 ~~lands natural resources and conservation.~~

3 ~~(3) "Director" means the director of natural resources~~  
 4 ~~and conservation.~~

5 (4) "Disturbed land" means that area of land or  
 6 surface water disturbed, beginning at the date of the  
 7 issuance of the permit, and it comprises that area from  
 8 which the overburden or minerals have been removed and  
 9 tailings ponds, waste dumps, roads, conveyor systems, leach  
 10 dumps, and all similar excavations or covering resulting  
 11 from the operation and which have not been previously  
 12 reclaimed under the reclamation plan.

13 (5) "Exploration" means all activities conducted on or  
 14 beneath the surface of lands resulting in material  
 15 disturbance of the surface for the purpose of determining  
 16 the presence, location, extent, depth, grade, and economic  
 17 viability of mineralization in those lands, if any, other  
 18 than mining for production and economic exploitation, as  
 19 well as all roads made for the purpose of facilitating  
 20 exploration, except as noted in 82-4-305 and 82-4-310.

21 (6) "Mineral" means any ore, rock, or substance, other  
 22 than oil, gas, bentonite, clay, coal, sand, gravel,  
 23 phosphate rock, or uranium, taken from below the surface or  
 24 from the surface of the earth for the purpose of milling,  
 25 concentration, refinement, smelting, manufacturing, or other

1 subsequent use or processing or for stockpiling for future  
2 use, refinement, or smelting.

3 (7) "Mining" commences at such time as the operator  
4 first mines ores or minerals in commercial quantities for  
5 sale, beneficiation, refining, or other processing or  
6 disposition or first takes bulk samples for metallurgical  
7 testing in excess of aggregate of 10,000 short tons.

8 (8) "Person" means any person, corporation, firm,  
9 association, partnership, or other legal entity engaged in  
10 exploration for or development or mining of minerals on or  
11 below the surface of the earth.

12 (9) "Reclamation plan" means the operator's written  
13 proposal, as required and approved by the board ~~department~~,  
14 for reclamation of the land that will be disturbed, which  
15 proposal shall include, to the extent practical at the time  
16 of application for an operating permit:

17 (a) a statement of the proposed subsequent use of the  
18 land after reclamation;

19 (b) plans for surface gradient restoration to a  
20 surface suitable for the proposed subsequent use of the land  
21 after reclamation is completed and the proposed method of  
22 accomplishment;

23 (c) the manner and type of revegetation or other  
24 surface treatment of disturbed areas;

25 (d) procedures proposed to avoid foreseeable

1 situations of public nuisance, endangerment of public  
2 safety, damage to human life or property, or unnecessary  
3 damage to flora and fauna in or adjacent to the area;

4 (e) the method of disposal of mining debris;

5 (f) the method of diverting surface waters around the  
6 disturbed areas where necessary to prevent pollution of  
7 those waters or unnecessary erosion;

8 (g) the method of reclamation of stream channels and  
9 stream banks to control erosion, siltation, and pollution;

10 (h) such maps and other supporting documents as may be  
11 reasonably required by the department; and

12 (i) a time schedule for reclamation that meets the  
13 requirements of 82-4-336.

14 (10) (a) "Small miner" means a person, firm, or  
15 corporation that engages in the business of mining, that  
16 does not remove from the earth during any calendar year  
17 material in excess of 36,500 tons in the aggregate, that  
18 holds no operating permit under 82-4-335, and that conducts:

19 (i) operations resulting in not more than 5 acres of  
20 the earth's surface being disturbed and unreclaimed; or

21 (ii) two operations which disturb and leave unreclaimed  
22 less than 5 acres per operation if the respective mining  
23 properties are:

24 (A) the only operations engaged in by the person,  
25 firm, or corporation;

1 (B) at least 1 mile apart at their closest point; and  
 2 (C) not operated simultaneously except during seasonal  
 3 transitional periods not to exceed 30 days.

4 (b) For the purpose of this definition only, the  
 5 department shall, in computing the area covered by the  
 6 operation, exclude access or haulage roads that are required  
 7 by a local, state, or federal agency having jurisdiction  
 8 over that road to be constructed to certain specifications  
 9 if that public agency notifies the department in writing  
 10 that it desires to have the road remain in use and will  
 11 maintain it after mining or exploration ceases.

12 (11) "Surface mining" means all or any part of the  
 13 process involved in mining of minerals by removing the  
 14 overburden and mining directly from the mineral deposits  
 15 thereby exposed, including but not limited to open-pit  
 16 mining of minerals naturally exposed at the surface of the  
 17 earth, mining by the auger method, and all similar methods  
 18 by which earth or minerals exposed at the surface are  
 19 removed in the course of mining. Surface mining does not  
 20 include the extraction of oil, gas, bentonite, clay, coal,  
 21 sand, gravel, phosphate rock, or uranium or excavation or  
 22 grading conducted for on-site farming, on-site road  
 23 construction, or other on-site building construction.

24 (12) "Underground mining" means all methods of mining  
 25 other than surface mining.

1 (13) "Unit of surface-mined area" means that area of  
 2 land and surface water included within an operating permit  
 3 actually disturbed by surface mining during each 12-month  
 4 period of time, beginning at the date of the issuance of the  
 5 permit, and it comprises and includes the area from which  
 6 overburden or minerals have been removed, the area covered  
 7 by mining debris, and all additional areas used in surface  
 8 mining or underground mining operations which by virtue of  
 9 such use are thereafter susceptible to erosion in excess of  
 10 the surrounding undisturbed portions of land.

11 (14) "Vegetative cover" means the type of vegetation,  
 12 grass, shrubs, trees, or any other form of natural cover  
 13 considered suitable at time of reclamation."

14 Section 14. Section 82-4-306, MCA, is amended to read:  
 15 "82-4-306. Confidentiality of application information.  
 16 Any and all information obtained by the ~~board or by the~~  
 17 ~~director or his staff~~ department by virtue of applications  
 18 for exploration licenses and all information obtained from  
 19 small miners is confidential between the ~~board~~ department  
 20 and the applicant, except as to the name of the applicant  
 21 and the county of proposed operation; provided that all  
 22 activities conducted subsequent to exploration and other  
 23 associated facilities shall be public information and  
 24 conducted under a development or operating permit. It is  
 25 further provided that any information obtained by the ~~board~~

1 ~~or by the director or his staff~~ department by virtue of such  
 2 applications is properly admissible in any hearing conducted  
 3 by ~~the director, the board, appeals board,~~ department or in  
 4 any judicial proceeding to which the ~~director~~ department and  
 5 the applicant are parties and is not confidential when a  
 6 violation of the part or rules has been determined by the  
 7 department or by judicial order. Failure to comply with the  
 8 secrecy provisions of this part shall be punishable by a  
 9 fine of up to \$1,000."

10 Section 15. Section 82-4-321, MCA, is amended to read:

11 "82-4-321. Administration. The ~~board~~ department is  
 12 charged with the responsibility of administering this part.  
 13 In order to implement its terms and provisions, the ~~board~~  
 14 department shall from time to time promulgate such rules as  
 15 the ~~board~~ department shall deem necessary. ~~The board may~~  
 16 ~~delegate such powers, duties and functions to the~~  
 17 ~~department as it deems necessary for the performance of its~~  
 18 ~~duties as administrator of this part.~~ The ~~board~~ department  
 19 shall employ experienced, qualified persons in the field of  
 20 mined-land reclamation who, for the purpose of this part,  
 21 are referred to as supervisors."

22 Section 16. Section 82-4-421, MCA, is amended to read:

23 "82-4-421. Administration -- delegation of functions.  
 24 The ~~board~~ department is the administrator of this part, and  
 25 it has all the power necessary to implement and enforce it.

1 ~~The board may delegate to the commissioner of state lands~~  
 2 ~~such powers, duties, and functions under this part as it~~  
 3 ~~considers necessary for the performance of its duties."~~

4 Section 17. Section 82-4-427, MCA, is amended to read:

5 "82-4-427. ~~Board hearing~~ Hearing. (1) A person who is  
 6 aggrieved by a final decision of the ~~commissioner of state~~  
 7 ~~lands~~ department is entitled to a hearing before the ~~board~~  
 8 department.

9 (2) The Montana Administrative Procedure Act governs  
 10 hearings ~~before the board~~ and judicial review of decisions  
 11 ~~of the board~~ under this part."

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

18 Section 19. Transition. The provisions of 2-15-131  
 19 through 2-15-137 apply to the transfer of functions under  
 20 this act.

-End-

Approved by Committee  
on Natural Resources

SENATE BILL NO. 258

INTRODUCED BY S. BROWN

BY REQUEST OF THE OFFICE OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO TRANSFER FORESTRY FUNCTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE DEPARTMENT OF STATE LANDS; TO TRANSFER THE MINE SITING AND RECLAMATION FUNCTIONS OF THE DEPARTMENT OF STATE LANDS AND THE BOARD OF LAND COMMISSIONERS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS ~~75-10-103, 75-10-203, 76-13-104, 76-13-106, 76-13-109, 88-8-110, 82-4-103, 82-4-223, 82-4-303, 82-4-306, 82-4-321, 82-4-421, AND 82-4-427, MCA, TO TRANSFER FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION THE REGULATORY FUNCTIONS RELATING TO AIR AND WATER QUALITY, PUBLIC WATER SUPPLY, SANITATION IN SUBDIVISIONS, MAJOR FACILITY SITING, SOLID WASTE, AND OTHER MISCELLANEOUS FUNCTIONS; TO TRANSFER THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES' RULEMAKING AUTHORITY TO THE BOARD OF NATURAL RESOURCES AND CONSERVATION; TO TRANSFER THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' RULEMAKING AUTHORITY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; TO TRANSFER THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES' CONTESTED CASE AUTHORITY TO THE DEPARTMENT OF NATURAL~~

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

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

NEW SECTION. Section 1. Functions of department of natural resources and conservation transferred to department of state lands. (1) The functions of protecting natural resources from fire in Title 76, chapter 11, part 1; of protection of forest resources in Title 76, chapter 13; of appraising, protecting, and selling state timberlands in Title 77, chapter 5; and of recommending closing lands to hunting and fishing in fire danger areas under 87-3-106 are transferred from the department of natural resources and conservation to the department of state lands.

(2) Unless inconsistent with this act, any reference to "department of natural resources and conservation" in those sections is changed to "department of state lands".

(3) Any corresponding internal references shall be changed by the code commissioner.

NEW SECTION. Section 2. Functions of board of natural resources and conservation transferred to board of land commissioners. (1) The functions of the board of natural

1 resources and conservation in Title 76, chapter 13, relating  
2 to protection of forest resources are transferred to the  
3 board of land commissioners.

4 (2) Unless inconsistent with this act, any reference  
5 in that chapter to "board of natural resources and  
6 conservation" is changed to "board of land commissioners".

7 (3) Any corresponding internal references shall be  
8 changed by the code commissioner.

9 NEW SECTION. Section 3. Functions of department of  
10 state lands transferred to department of natural resources  
11 and conservation. (1) The functions of the department of  
12 state lands of recording certificates of location of mining  
13 claims under 82-2-102 are transferred to the department of  
14 natural resources and conservation.

15 (2) Unless inconsistent with this act, any reference  
16 to "department of state lands" in that section is changed to  
17 "department of natural resources and conservation".

18 (3) Any corresponding internal references shall be  
19 changed by the code commissioner.

20 NEW SECTION. Section 4. Functions of board of land  
21 commissioners transferred to department of natural resources  
22 and conservation. (1) The functions of the board of land  
23 commissioners and commissioner of state lands in Title 82,  
24 chapter 4, concerning mine siting and reclamation are  
25 transferred to the department of natural resources and

1 conservation and the director of that department.

2 (2) Unless inconsistent with this act, any reference  
3 to "board of land commissioners", "board", "department of  
4 state lands", or "department" is changed to "department of  
5 natural resources and conservation" or "department" (meaning  
6 the department of natural resources and conservation). Any  
7 reference to "commissioner of state lands" or "commissioner"  
8 is changed to "director of the department of natural  
9 resources and conservation" or "director" (meaning the  
10 director of natural resources and conservation).

11 (3) Any corresponding internal references shall be  
12 changed by the code commissioner.

13 Section 5. Section 75-10-103, MCA, is amended to read:  
14 "75-10-103. Definitions. Unless the context clearly  
15 requires otherwise, in this part the following definitions  
16 apply:

17 (1) "Board" means the board of health--and  
18 environmental-sciences NATURAL RESOURCES AND CONSERVATION  
19 provided for in ~~2-15-2104~~ 2-15-3302.

20 (2) "Department" means the department of health-and  
21 environmental-sciences NATURAL RESOURCES AND CONSERVATION  
22 provided for in Title 2, chapter 15, part ~~21~~ 33.

23 (3) "Front-end organizational funds" means the state  
24 money to be loaned to local governments for initial  
25 operating capital, site evaluation and negotiation, final

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1 design engineering and cost estimates, construction contract  
2 documents, final contract negotiations with energy users,  
3 material markets, and waste suppliers, contract negotiations  
4 with private operational managers, and financial and legal  
5 consultations.

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

13 (5) "Local government" means a county, incorporated  
14 city or town, or refuse disposal district organized under  
15 the laws of this state.

16 (6) "Person" means any individual, firm, partnership,  
17 company, association, corporation, city, town, local  
18 governmental entity, or any other state, federal, or private  
19 entity, whether organized for profit or not.

20 (7) "Resource recovery facility" means any facility at  
21 which solid waste is processed for the purpose of  
22 extracting, converting to energy, or otherwise separating  
23 and preparing solid waste for reuse.

24 (8) "Solid waste" means all putrescible and  
25 nonputrescible wastes, including but not limited to garbage,

1 rubbish, refuse, hazardous wastes, ashes, sludge from sewage  
2 treatment plants, water supply treatment plants, or air  
3 pollution control facilities; septic tank and cesspool  
4 pumpings; construction and demolition wastes; dead animals,  
5 including offal; discarded home and industrial appliances;  
6 wood wastes and inert materials; but does not include  
7 municipal sewage, industrial wastewater effluents, or mining  
8 wastes as regulated under the mining and reclamation laws  
9 administered by the department of state--lands natural  
10 resources and conservation.

11 (9) "Solid waste management system" means any system  
12 which controls the storage, treatment, recycling, recovery,  
13 or disposal of solid waste.

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

16 Section 6. Section 75-10-203, MCA, is amended to read:  
17 "75-10-203. Definitions. Unless the context requires  
18 otherwise, in this part the following definitions apply:

19 (1) "Board" means the board of health---and  
20 environmental--sciences NATURAL RESOURCES AND CONSERVATION  
21 provided for in ~~2-15-2104~~ 2-15-3302.

22 (2) "Department" means the department of health--and  
23 environmental--sciences NATURAL RESOURCES AND CONSERVATION  
24 provided for in Title 2, chapter 15, part ~~21~~ 33.

25 (3) "Dispose" or "disposal" means the discharge,



1 injection, deposit, dumping, spilling, leaking, or placing  
 2 of any solid waste or hazardous waste into or onto the land  
 3 so that the solid waste or hazardous waste or any  
 4 constituent of it may enter the environment or be emitted  
 5 into the air or discharged into any waters, including  
 6 groundwaters.

7 (4) "Hazardous waste" means any waste or combination  
 8 of wastes of a solid, liquid, contained gaseous, or  
 9 semisolid form which may cause or contribute to an increase  
 10 in mortality or an increase in serious illness, taking into  
 11 account the toxicity of the waste, its persistence and  
 12 degradability in nature, its potential for assimilation or  
 13 concentration in tissue, and other factors that may  
 14 otherwise cause or contribute to adverse acute or chronic  
 15 effects on the health of persons or other living organisms.  
 16 Hazardous wastes include but are not limited to those which  
 17 are toxic, radioactive, corrosive, flammable, irritants,  
 18 strong sensitizers, or which generate pressure through  
 19 decomposition, heat, or other means, excluding wood chips  
 20 and wood used for manufacturing or fuel purposes.

21 (5) "Hazardous waste management" means the management  
 22 of the storage, transport, treatment, recycling, recovery,  
 23 or disposal of hazardous wastes.

24 (6) "Person" means an individual, firm, partnership,  
 25 company, association, corporation, city, town, local

1 governmental entity, or any other governmental or private  
 2 entity, whether organized for profit or not.

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

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

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

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

1 conservation state lands, or marketable wood byproducts.

2 (11) "Solid waste management system" means a system  
3 which controls the storage, treatment, recycling, recovery,  
4 or disposal of solid waste.

5 (12) "Storage" means the actual or intended containment  
6 of wastes, either on a temporary basis or for a period of  
7 years.

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

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

17 Section 7. Section 76-13-104, MCA, is amended to read:

18 "76-13-104. Functions of department. (1) The  
19 department may give technical and practical advice  
20 concerning forest, range, water, and soil conservation and  
21 the establishment and maintenance of woodlots, windbreaks,  
22 shelterbelts, and forest fire protection.

23 (2) The department shall cooperate with all public and  
24 other agencies in the development, protection, and  
25 conservation of the forest, range, and water resources in

1 this state.

2 ~~(3) The department shall assist the department of~~  
3 ~~state lands in the protection, economic development, and use~~  
4 ~~of the state forests and forest land held by the state for~~  
5 ~~the purposes and benefit of the common schools and state~~  
6 ~~institutions."~~

7 Section 8. Section 76-13-106, MCA, is amended to read:

8 "76-13-106. Cooperation between department of state  
9 lands and county. The ~~department of state lands and the~~  
10 county governing body shall cooperate with the department to  
11 the extent legally permissible in providing means and  
12 methods of safeguarding the forest land lying within the  
13 state and in preventing fire nuisance thereon. The  
14 ~~department of state lands and the~~ county governing body  
15 shall list forest lands under their its jurisdiction with  
16 the department for forest protection. The money the state  
17 and counties become liable for under this section shall be  
18 paid from funds provided by law for the protection of the  
19 forest lands owned by the state and counties."

20 Section 9. Section 76-13-109, MCA, is amended to read:

21 "76-13-109. Rules -- limitation on rulemaking  
22 authority. ~~††~~ The board may adopt and enforce through the  
23 department reasonable rules for the purpose of enforcing and  
24 accomplishing the provisions and purposes of this part and  
25 part 2.

~~(2) These rules may not conflict with the powers of the board of land commissioners.~~

Section 10. Section 80-8-110, MCA, is amended to read:

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

(2) The department of agriculture and the department of health and environmental sciences shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert

materials. Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state ~~lands~~ natural resources and conservation, slash and forest debris regulated under laws administered by the department of ~~natural resources and conservation~~ state lands, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes."

Section 11. Section 82-4-103, MCA, is amended to read:

"82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context the

1 following definitions apply:

2 ~~(1) "Board" means the board of land commissioners as~~  
3 ~~provided for in Article X, section 4, of the constitution of~~  
4 ~~this state.~~

5 ~~(2)(1) "Department" means the department of state~~  
6 ~~lands natural resources and conservation provided for in~~  
7 ~~Title 2, chapter 15, part 32 33.~~

8 ~~(2) "Director" means the director of natural resources~~  
9 ~~and conservation.~~

10 (3) "Mineral" means mineral as defined in  
11 82-4-203(12).

12 (4) "New mine" means a strip- or underground-mining  
13 operation proposed for an area of land which the department  
14 determines, because of distance from an existing strip-mine  
15 or underground-mine operation or their respective facilities  
16 or because of important differences in topography, soils,  
17 wildlife, geologic structure, aquifers, or vegetation from  
18 an existing strip-mine or underground-mine operation, does  
19 not constitute an expansion of an existing operation.

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

24 (6) "Operator" means a person who intends to operate a  
25 new strip mine or new underground mine involving the removal

1 of more than 10,000 cubic yards of mineral or overburden.

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

5 (8) "Preparatory work" means all on-site disturbances,  
6 excluding prospecting, associated with the initiation of a  
7 new strip mine or underground mine, including but not  
8 limited to the construction of railroad spurs or loops,  
9 buildings to house mining operations, roads, storage and  
10 train load-out facilities, transmission lines, erection of  
11 draglines and loading shovels, and other associated  
12 facilities.

13 (9) "Strip mining" means any part of the process  
14 followed in the production of mineral by the open-cut method,  
15 including mining by the auger method or any similar method  
16 which penetrates a mineral deposit and removes mineral  
17 directly through a series of openings made by a machine  
18 which enters the deposit from a surface excavation or any  
19 other method or process in which the strata or overburden is  
20 removed or displaced in order to recover the mineral.

21 (10) "Underground mining" means any part of the process  
22 followed in the production of a mineral such that vertical  
23 or horizontal shafts, slopes, drifts, or incline planes  
24 connected with excavations penetrating the mineral stratum  
25 or strata are utilized."

1 Section 12. Section 82-4-223, MCA, is amended to read:  
 2 "82-4-223. Permit fee and surety bond. (1) An  
 3 application fee of \$50 shall be paid before the permit  
 4 required in this part shall be issued.  
 5 (2) Before a permit may be issued, the operator shall  
 6 file with the department a bond payable to the state of  
 7 Montana with surety satisfactory to the department in the  
 8 penal sum to be determined by the ~~board, on the~~  
 9 ~~recommendation of the commissioner,~~ department of not less  
 10 than \$200 for each acre or fraction thereof of the area of  
 11 land affected, with a minimum bond of \$10,000, conditioned  
 12 upon the faithful performance of the requirements set forth  
 13 in this part and of the rules ~~of the board adopted under~~  
 14 this part. The operator may elect to deposit cash,  
 15 negotiable bonds, or negotiable certificates of deposit of  
 16 any bank organized or transacting business in the United  
 17 States. The cash deposit or market value of such securities  
 18 shall be equal to or greater than the amount of the bond  
 19 required for the bonded area. The level of bonding shall be  
 20 relative to the degree of disturbance projected by the  
 21 original permit and the annual report. A political  
 22 subdivision or agency of the state need not file a bond  
 23 unless required to do so by the board department. The board  
 24 department shall adjust the amount of bond required if the  
 25 cost of reclamation changes.

1 (3) In determining the amount of the bond, the board  
 2 department shall take into consideration the character and  
 3 nature of the overburden, the future suitable use of the  
 4 land involved, and the cost of backfilling, grading,  
 5 highwall reduction, subsidence stabilization, water control,  
 6 topsoiling, and reclamation to be required, but in no event  
 7 shall the bond be less than the total estimated cost to the  
 8 state of completing the work described in the reclamation  
 9 plan."

10 Section 13. Section 82-4-303, MCA, is amended to read:  
 11 "82-4-303. Definitions. As used in this part, unless  
 12 the context indicates otherwise, the following definitions  
 13 apply:

14 (1) "Abandonment of surface or underground mining" may  
 15 be presumed when it is shown that continued operation will  
 16 not resume.

17 ~~(2) "Board" means the board of land commissioners or~~  
 18 ~~such state employee or state agency as may succeed to its~~  
 19 ~~powers and duties under this part.~~

20 ~~(3) (2) "Department" means the department of state~~  
 21 ~~lands natural resources and conservation.~~

22 ~~(3) "Director" means the director of natural resources~~  
 23 ~~and conservation.~~

24 (4) "Disturbed land" means that area of land or  
 25 surface water disturbed, beginning at the date of the

1 issuance of the permit, and it comprises that area from  
2 which the overburden or minerals have been removed and  
3 tailings ponds, waste dumps, roads, conveyor systems, leach  
4 dumps, and all similar excavations or covering resulting  
5 from the operation and which have not been previously  
6 reclaimed under the reclamation plan.

7 (5) "Exploration" means all activities conducted on or  
8 beneath the surface of lands resulting in material  
9 disturbance of the surface for the purpose of determining  
10 the presence, location, extent, depth, grade, and economic  
11 viability of mineralization in those lands, if any, other  
12 than mining for production and economic exploitation, as  
13 well as all roads made for the purpose of facilitating  
14 exploration, except as noted in 82-4-305 and 82-4-310.

15 (6) "Mineral" means any ore, rock, or substance, other  
16 than oil, gas, bentonite, clay, coal, sand, gravel,  
17 phosphate rock, or uranium, taken from below the surface or  
18 from the surface of the earth for the purpose of milling,  
19 concentration, refinement, smelting, manufacturing, or other  
20 subsequent use or processing or for stockpiling for future  
21 use, refinement, or smelting.

22 (7) "Mining" commences at such time as the operator  
23 first mines ores or minerals in commercial quantities for  
24 sale, beneficiation, refining, or other processing or  
25 disposition or first takes bulk samples for metallurgical

1 testing in excess of aggregate of 10,000 short tons.

2 (8) "Person" means any person, corporation, firm,  
3 association, partnership, or other legal entity engaged in  
4 exploration for or development or mining of minerals on or  
5 below the surface of the earth.

6 (9) "Reclamation plan" means the operator's written  
7 proposal, as required and approved by the board department,  
8 for reclamation of the land that will be disturbed, which  
9 proposal shall include, to the extent practical at the time  
10 of application for an operating permit:

11 (a) a statement of the proposed subsequent use of the  
12 land after reclamation;

13 (b) plans for surface gradient restoration to a  
14 surface suitable for the proposed subsequent use of the land  
15 after reclamation is completed and the proposed method of  
16 accomplishment;

17 (c) the manner and type of revegetation or other  
18 surface treatment of disturbed areas;

19 (d) procedures proposed to avoid foreseeable  
20 situations of public nuisance, endangerment of public  
21 safety, damage to human life or property, or unnecessary  
22 damage to flora and fauna in or adjacent to the area;

23 (e) the method of disposal of mining debris;

24 (f) the method of diverting surface waters around the  
25 disturbed areas where necessary to prevent pollution of

1 those waters or unnecessary erosion;

2 (g) the method of reclamation of stream channels and  
3 stream banks to control erosion, siltation, and pollution;

4 (h) such maps and other supporting documents as may be  
5 reasonably required by the department; and

6 (i) a time schedule for reclamation that meets the  
7 requirements of 82-4-336.

8 (10) (a) "Small miner" means a person, firm, or  
9 corporation that engages in the business of mining, that  
10 does not remove from the earth during any calendar year  
11 material in excess of 36,500 tons in the aggregate, that  
12 holds no operating permit under 82-4-335, and that conducts:

13 (i) operations resulting in not more than 5 acres of  
14 the earth's surface being disturbed and unreclaimed; or

15 (ii) two operations which disturb and leave unreclaimed  
16 less than 5 acres per operation if the respective mining  
17 properties are:

18 (A) the only operations engaged in by the person,  
19 firm, or corporation;

20 (B) at least 1 mile apart at their closest point; and

21 (C) not operated simultaneously except during seasonal  
22 transitional periods not to exceed 30 days.

23 (b) For the purpose of this definition only, the  
24 department shall, in computing the area covered by the  
25 operation, exclude access or haulage roads that are required

1 by a local, state, or federal agency having jurisdiction  
2 over that road to be constructed to certain specifications  
3 if that public agency notifies the department in writing  
4 that it desires to have the road remain in use and will  
5 maintain it after mining or exploration ceases.

6 (11) "Surface mining" means all or any part of the  
7 process involved in mining of minerals by removing the  
8 overburden and mining directly from the mineral deposits  
9 thereby exposed, including but not limited to open-pit  
10 mining of minerals naturally exposed at the surface of the  
11 earth, mining by the auger method, and all similar methods  
12 by which earth or minerals exposed at the surface are  
13 removed in the course of mining. Surface mining does not  
14 include the extraction of oil, gas, bentonite, clay, coal,  
15 sand, gravel, phosphate rock, or uranium or excavation or  
16 grading conducted for on-site farming, on-site road  
17 construction, or other on-site building construction.

18 (12) "Underground mining" means all methods of mining  
19 other than surface mining.

20 (13) "Unit of surface-mined area" means that area of  
21 land and surface water included within an operating permit  
22 actually disturbed by surface mining during each 12-month  
23 period of time, beginning at the date of the issuance of the  
24 permit, and it comprises and includes the area from which  
25 overburden or minerals have been removed, the area covered

1 by mining debris, and all additional areas used in surface  
2 mining or underground mining operations which by virtue of  
3 such use are thereafter susceptible to erosion in excess of  
4 the surrounding undisturbed portions of land.

5 (14) "Vegetative cover" means the type of vegetation,  
6 grass, shrubs, trees, or any other form of natural cover  
7 considered suitable at time of reclamation."

8 Section 14. Section 82-4-306, MCA, is amended to read:

9 "82-4-306. Confidentiality of application information-

10 Any and all information obtained by the board ~~or by the~~  
11 ~~director or his staff~~ department by virtue of applications  
12 for exploration licenses and all information obtained from  
13 small miners is confidential between the board department  
14 and the applicant, except as to the name of the applicant  
15 and the county of proposed operation; provided that all  
16 activities conducted subsequent to exploration and other  
17 associated facilities shall be public information and  
18 conducted under a development or operating permit. It is  
19 further provided that any information obtained by the board  
20 ~~or by the director or his staff~~ department by virtue of such  
21 applications is properly admissible in any hearing conducted  
22 by the ~~director, the board, appeals board,~~ department or in  
23 any judicial proceeding to which the ~~director~~ department and  
24 the applicant are parties and is not confidential when a  
25 violation of the part or rules has been determined by the

1 department or by judicial order. Failure to comply with the  
2 secrecy provisions of this part shall be punishable by a  
3 fine of up to \$1,000."

4 Section 15. Section 82-4-321, MCA, is amended to read:

5 "82-4-321. Administration. The board department is  
6 charged with the responsibility of administering this part.  
7 In order to implement its terms and provisions, the board  
8 department shall from time to time promulgate such rules as  
9 the board department shall deem necessary. ~~The board may~~  
10 ~~delegate such powers, duties, and functions to the~~  
11 ~~department as it deems necessary for the performance of its~~  
12 ~~duties as administrator of this part.~~ The board department  
13 shall employ experienced, qualified persons in the field of  
14 mined-land reclamation who, for the purpose of this part,  
15 are referred to as supervisors."

16 Section 16. Section 82-4-421, MCA, is amended to read:

17 "82-4-421. Administration -- delegation of functions.  
18 The board department is the administrator of this part, and  
19 it has all the power necessary to implement and enforce it.  
20 ~~The board may delegate to the commissioner of state lands~~  
21 ~~such powers, duties, and functions under this part as it~~  
22 ~~considers necessary for the performance of its duties."~~

23 Section 17. Section 82-4-427, MCA, is amended to read:

24 "82-4-427. Board hearing Hearing. (1) A person who is  
25 aggrieved by a final decision of the commissioner of state



1 ~~lands department~~ is entitled to a hearing before the board  
2 ~~department.~~

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

6 SECTION 18. BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES  
7 -- FUNCTIONS TRANSFERRED TO BOARD OF NATURAL RESOURCES AND  
8 CONSERVATION. (1) THE FOLLOWING FUNCTIONS OF THE BOARD OF  
9 HEALTH AND ENVIRONMENTAL SCIENCES ARE TRANSFERRED TO THE  
10 BOARD OF NATURAL RESOURCES AND CONSERVATION:

11 (A) THOSE RULEMAKING FUNCTIONS SPECIFIED IN 75-2-201  
12 THROUGH 75-2-204, 75-2-301, AND 75-2-428 RELATING TO AIR  
13 QUALITY, INCLUDING CLASSIFYING AIR CONTAMINANT SOURCES,  
14 SETTING EMISSION LEVELS, AND APPROVING LOCAL AIR POLLUTION  
15 CONTROL PROGRAMS;

16 (B) THOSE RULEMAKING FUNCTIONS SPECIFIED IN 75-5-201,  
17 75-5-301 THROUGH 75-5-305, 75-5-307, AND 75-5-401 RELATING  
18 TO WATER QUALITY, INCLUDING ADOPTING CLASSIFICATIONS AND  
19 STANDARDS FOR STATE WATERS AND SETTING STANDARDS OF  
20 PERFORMANCE; AND

21 (C) THE RULEMAKING FUNCTIONS SPECIFIED IN 75-10-106  
22 AND 75-10-111 RELATING TO MANAGEMENT OF MATERIAL RECYCLING.

23 (2) UNLESS INCONSISTENT WITH THIS ACT, ANY REFERENCE  
24 IN THE SECTIONS LISTED IN SUBSECTION (1) AND IN 75-2-103,  
25 75-2-105, 75-2-422, 75-5-103, 75-5-105, 75-5-106, 75-6-102,

1 75-6-107, 75-6-112, 75-6-113, 75-10-112, AND 75-10-501  
2 TO "BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES" OR  
3 "BOARD OF HEALTH" OR "BOARD" (OF HEALTH AND ENVIRONMENTAL  
4 SCIENCES) IS CHANGED TO "BOARD OF NATURAL RESOURCES AND  
5 CONSERVATION" OR "BOARD" (OF NATURAL RESOURCES AND  
6 CONSERVATION).

7 (3) THE CODE COMMISSIONER SHALL CONFORM INTERNAL  
8 REFERENCES AND GRAMMAR, INCLUDING REDUNDANCIES, TO THE  
9 CHANGES MADE BY THIS SECTION.

10 SECTION 19. BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES  
11 -- FUNCTIONS TRANSFERRED TO DEPARTMENT OF NATURAL RESOURCES  
12 AND CONSERVATION. (1) THE FOLLOWING FUNCTIONS OF THE BOARD  
13 OF HEALTH AND ENVIRONMENTAL SCIENCES ARE TRANSFERRED TO THE  
14 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION:

15 (A) THOSE FUNCTIONS SPECIFIED IN 75-5-514, 75-5-515,  
16 75-5-614, AND 75-5-641 RELATING TO WATER QUALITY, INCLUDING  
17 CONDUCTING ENFORCEMENT HEARINGS AND SETTING LOCAL CHARGES  
18 FOR SEWAGE SYSTEMS;

19 (B) THOSE FUNCTIONS SPECIFIED IN 75-10-223, 75-10-224,  
20 AND 75-10-515 RELATING TO MANAGEMENT OF MATERIAL RECYCLING  
21 AND MOTOR VEHICLE RECYCLING AND DISPOSAL;

22 (C) THOSE FUNCTIONS SPECIFIED IN TITLE 75, CHAPTER 20,  
23 RELATING TO MAJOR FACILITY SITING, INCLUDING EMISSION AND  
24 DISCHARGE PERMITS; AND

25 (D) THOSE FUNCTIONS SPECIFIED IN TITLE 76, CHAPTER 4,

1 PART 1, RELATING TO STATE REGULATION OF SUBDIVISIONS,  
 2 INCLUDING CONDUCTING HEARINGS ON DECISIONS RELATED TO WATER  
 3 SUPPLY AND SEWAGE DISPOSAL.

4 (2) UNLESS INCONSISTENT WITH THIS ACT, ANY REFERENCE  
 5 IN THE SECTIONS LISTED IN SUBSECTION (1) TO:

6 (A) "BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES" OR  
 7 "BOARD OF HEALTH" OR "BOARD" MEANING "BOARD OF HEALTH AND  
 8 ENVIRONMENTAL SCIENCES" IS CHANGED TO "DEPARTMENT OF NATURAL  
 9 RESOURCES AND CONSERVATION" OR "DEPARTMENT" (OF NATURAL  
 10 RESOURCES AND CONSERVATION); AND

11 (B) "CHAIRMAN" IS CHANGED TO "DIRECTOR".

12 (3) THE CODE COMMISSIONER SHALL CONFORM INTERNAL  
 13 REFERENCES AND GRAMMAR, INCLUDING REDUNDANCIES, TO THE  
 14 CHANGES MADE BY THIS SECTION.

15 SECTION 20. DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
 16 SCIENCES -- FUNCTIONS TRANSFERRED TO THE DEPARTMENT OF  
 17 NATURAL RESOURCES AND CONSERVATION. (1) THE FOLLOWING  
 18 FUNCTIONS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
 19 SCIENCES ARE TRANSFERRED TO THE DEPARTMENT OF NATURAL  
 20 RESOURCES AND CONSERVATION:

21 (A) THOSE FUNCTIONS SPECIFIED IN TITLE 37, CHAPTER 42,  
 22 RELATING TO WATER TREATMENT PLANT OPERATORS;

23 (B) THOSE FUNCTIONS SPECIFIED IN 75-2-301, 75-2-403,  
 24 75-2-412, 75-2-413, 75-2-422, 75-2-424, AND 75-2-427  
 25 RELATING TO AIR QUALITY, INCLUDING ISSUANCE OF PERMITS AND

1 ENFORCEMENT AND ADMINISTRATION OF AND STUDY AND TESTING  
 2 NECESSARY TO IMPLEMENT AIR QUALITY LAWS, RULES, AND ORDERS;

3 (C) THOSE FUNCTIONS SPECIFIED IN 75-5-211 THROUGH  
 4 75-5-213, 75-5-221, 75-5-402, 75-5-511, 75-5-513, 75-5-601,  
 5 75-5-602, 75-5-612, 75-5-613, 75-5-616, 75-5-622, 75-5-635,  
 6 AND 75-5-636 RELATING TO WATER QUALITY, INCLUDING ISSUANCE  
 7 OF PERMITS AND ENFORCEMENT AND ADMINISTRATION OF AND STUDY,  
 8 MONITORING, AND TESTING NECESSARY TO IMPLEMENT WATER QUALITY  
 9 LAWS, RULES, AND ORDERS;

10 (D) THOSE FUNCTIONS SPECIFIED IN 75-6-104, 75-6-105,  
 11 75-6-107, AND 75-6-111 THROUGH 75-6-113 RELATING TO PUBLIC  
 12 WATER SUPPLIES, INCLUDING DISTRIBUTION, TREATMENT, AND  
 13 INVESTIGATIVE AND ADMINISTRATIVE ASSISTANCE TO LOCAL  
 14 GOVERNMENTS;

15 (E) THE ADMINISTRATIVE, ENFORCEMENT, RULEMAKING, AND  
 16 REGULATORY FUNCTIONS SPECIFIED IN 75-10-104, 75-10-105,  
 17 75-10-111, 75-10-121, 75-10-122, 75-10-124, 75-10-204,  
 18 75-10-205, 75-10-211, 75-10-221, 75-10-222, 75-10-224,  
 19 75-10-225, 75-10-231, 75-10-232, 75-10-503, 75-10-511,  
 20 75-10-513 THROUGH 75-10-515, 75-10-521, 75-10-522,  
 21 75-10-531, 75-10-533, 75-10-534, AND 75-10-541 RELATING TO  
 22 MANAGEMENT OF MATERIAL RECYCLING AND MOTOR VEHICLE RECYCLING  
 23 AND DISPOSAL;

24 (F) THOSE FUNCTIONS SPECIFIED IN TITLE 75, CHAPTER 20,  
 25 RELATING TO MAJOR FACILITY SITING, INCLUDING EMISSION AND

1 DISCHARGE PERMITS; AND  
 2 (1) THOSE FUNCTIONS SPECIFIED IN 76-3-505 AND TITLE  
 3 76, CHAPTER 4, PART 1, RELATING TO STATE REGULATION OF  
 4 SUBDIVISIONS, INCLUDING SANITARY STANDARDS, FEES, AND  
 5 ENFORCEMENT.  
 6 (2) UNLESS INCONSISTENT WITH THIS ACT, ANY REFERENCE  
 7 IN THE SECTIONS LISTED IN SUBSECTION (1) AND IN 75-2-103,  
 8 75-2-105, 75-5-103, 75-5-105, 75-5-106, 75-5-401, 75-6-102,  
 9 75-10-103, 75-10-106, 75-10-113, 75-10-203, AND 75-10-501 TO  
 10 THE "DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES" OR  
 11 "DEPARTMENT" OR "DIRECTOR" (OF HEALTH AND ENVIRONMENTAL  
 12 SCIENCES) IS CHANGED TO THE "DEPARTMENT OF NATURAL RESOURCES  
 13 AND CONSERVATION" OR "DEPARTMENT" (OF NATURAL RESOURCES AND  
 14 CONSERVATION). THE CODE COMMISSIONER SHALL CONFORM INTERNAL  
 15 REFERENCES AND GRAMMAR, INCLUDING REDUNDANCIES, TO THESE  
 16 CHANGES.  
 17 SECTION 21. TRANSFER OF BOARD AND ADVISORY COUNCILS.  
 18 (1) THE BOARD OF WATER AND WASTEWATER OPERATORS, THE AIR  
 19 POLLUTION CONTROL ADVISORY COUNCIL, AND THE WATER POLLUTION  
 20 CONTROL ADVISORY COUNCIL, CREATED IN TITLE 2, CHAPTER 15,  
 21 PART 21, ARE REALLOCATED FROM THE DEPARTMENT OF HEALTH AND  
 22 ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF NATURAL  
 23 RESOURCES AND CONSERVATION.  
 24 (2) SECTIONS 2-15-2105 THROUGH 2-15-2107 SHALL BE  
 25 RENUMBERED TO BE INTEGRAL PARTS OF TITLE 2, CHAPTER 15, PART

1 33.  
 2 (3) THE CODE COMMISSIONER SHALL CHANGE INTERNAL  
 3 REFERENCES TO BOTH SECTION NUMBERS AND NAMES ACCORDINGLY.  
 4 SECTION 22. SECTION 2-15-2103, MCA, IS AMENDED TO  
 5 READ:  
 6 "2-15-2103. Division of environmental sciences --  
 7 functions. There is a division of environmental sciences  
 8 within the department. The department shall assign all  
 9 functions performed by the department relating to air  
 10 ~~pollution--control,--water--pollution---control,~~ radiation  
 11 control, pesticides control, environmental sanitation, solid  
 12 waste disposal, industrial hygiene, and related areas to the  
 13 division."  
 14 SECTION 23. SECTION 2-15-2105, MCA, IS AMENDED TO  
 15 READ:  
 16 "2-15-2105. Board of water and wastewater operators.  
 17 (1) There is a board of water and wastewater operators.  
 18 (2) The board consists of seven members. Except as  
 19 provided in subsection (2)(e) of this section, the members  
 20 shall be appointed by the governor. The members are:  
 21 (a) two members who are employed water supply system  
 22 or water treatment plant operators holding valid  
 23 certificates. One of these members shall hold a certificate  
 24 by examination of the highest class issued by the department  
 25 ~~of--health--and--environmental---sciences.~~ There is no

1 restriction on the classification of the certificate held by  
2 the other operator.

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

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

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

19 ~~the administrator of the division of environmental~~  
20 ~~sciences of the department of health and environmental~~  
21 ~~sciences or a qualified member of his staff appointed by the~~  
22 ~~administrator the department's staff.~~

23 (3) Members, except the ex officio voting member from  
24 the department of health and environmental sciences, shall  
25 serve for a term of 6 years.

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

3 SECTION 24, SECTION 2-15-2107, MCA, IS AMENDED TO

4 READ:

5 "2-15-2107. Water pollution control advisory council.

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

7 (2) The council consists of eleven members. The  
8 members are:

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

10 (b) the administrator of the water resources division  
11 of the department of natural resources and conservation  
12 director of the department of health and environmental  
13 sciences;

14 (c) the director of agriculture;

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

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

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

21 (iii) a livestock feeder;

22 (iv) a representative of municipal government;

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

25 (vi) a representative from labor;

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

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

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

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

9 SECTION 25. SECTION 15-6-135, MCA, IS AMENDED TO READ:

10 "15-6-135. Class five property -- description --  
11 taxable percentage. (1) Class five property includes:

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

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

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

23 (i) is retired from full employment; and

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

1 couple;

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

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

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

15 (b) ~~The department's determination [as to air~~  
16 ~~pollution equipment] may be appealed to the board of health~~  
17 ~~and environmental sciences and~~ Any person liable for taxes  
18 on property determined by the department not to be air or  
19 water pollution equipment is entitled to a hearing before  
20 the department of natural resources and conservation. The  
21 determination of the department may not be appealed to  
22 either a county tax appeal board or the state tax appeal  
23 board. However, the appraised value of the equipment as  
24 determined by the department of revenue may be appealed to  
25 the county tax appeal board and the state tax appeal board.

1 (3) "New industrial property" means any new industrial  
2 plant, including land, buildings, machinery, and fixtures,  
3 used by new industries during the first 3 years of their  
4 operation. The property may not have been assessed within  
5 the state of Montana prior to July 1, 1961.

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

12 (b) New industry includes only those industries that:

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

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

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

25 (5) New industrial property does not include:

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

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

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

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

11 SECTION 26. SECTION 75-2-104, MCA, IS AMENDED TO READ:

12 "75-2-104. Limitations -- personal cause of action  
13 unabridged. Nothing in this chapter shall be construed to:

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

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

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

23 (4) abridge, limit, impair, create, enlarge, or  
24 otherwise affect substantively or procedurally the right of  
25 a person to damages or other relief on account of injury to

1 persons or property and to maintain an action or other  
2 appropriate proceeding."

3 SECTION 27. SECTION 75-2-111, MCA, IS AMENDED TO READ:

4 "75-2-111. Powers of board. The board shall:

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

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

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

21 ~~(4)~~ (2) by rule require access to records relating to  
22 emissions;

23 ~~(5)~~ (3) by rule adopt a schedule of fees required for  
24 permits under this chapter.†

25 ~~(6) have the power to issue orders under and in~~

1 ~~accordance with 42 U.S.C. 7419."~~

2 SECTION 28. SECTION 75-2-112, MCA, IS AMENDED TO READ:

3 "75-2-112. Powers and responsibilities of department.

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

6 (2) The department shall:

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

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

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

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

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

25 ~~(f)~~ (f) prepare and develop a comprehensive plan for

1 the prevention, abatement, and control of air pollution in  
2 this state;

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

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

13 ~~(f)~~(i) encourage and conduct studies, investigations,  
14 and research relating to air contamination and air pollution  
15 and their causes, effects, prevention, abatement, and  
16 control;

17 ~~(g)~~(j) determine, by means of field studies and  
18 sampling, the degree of air contamination and air pollution  
19 in the state;

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

25 ~~(i)~~(l) collect and disseminate information and conduct

1 educational and training programs relating to air  
2 contamination and air pollution;

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

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

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

21 (3) The department may assess fees to the applicant  
22 for the analysis of the environmental impact of an  
23 application to redesignate the classification of any area,  
24 except those areas within the exterior boundaries of a  
25 reservation of a federally recognized Indian tribe, under



1 the classifications established by 42 U.S.C. 7470 through  
2 7479 (prevention of significant deterioration of air  
3 quality). The determination of whether or not a fee will be  
4 assessed is to be on a case-by-case basis."

5 SECTION 29. SECTION 75-2-211, MCA, IS AMENDED TO READ:

6 "75-2-211. Permits for construction, installation,  
7 alteration, or use. (1) The department shall provide for the  
8 issuance, suspension, revocation, and renewal of a permit  
9 issued under this section.

10 (2) Not later than 180 days before construction begins  
11 of any machine, equipment, device, or facility which the  
12 board department finds may directly or indirectly cause or  
13 contribute to air pollution or which is intended primarily  
14 to prevent or control the emission of air pollutants and not  
15 later than 120 days before installation, alteration, or use  
16 begins, the owner or operator shall file with the department  
17 the appropriate permit application on forms available from  
18 the department and pay to the department a fee sufficient to  
19 cover:

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

22 (b) the reasonable costs of implementing and enforcing  
23 the terms and conditions of such permit if the permit is  
24 granted (not including any court costs or other costs  
25 associated with any enforcement action). The fee shall be

1 deposited in an earmarked revenue fund to be used by the  
2 department for administration of this section.

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

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

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

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

21 (7) Where an application for a permit requires the  
22 compilation of an environmental impact statement under the  
23 Montana Environmental Policy Act, the department shall  
24 notify the applicant in writing within 180 days of the  
25 receipt of a filed application, as defined in subsection

1 (5), of the approval or denial of the application. However,  
 2 where an application does not require the compilation of an  
 3 environmental impact statement, the department shall notify  
 4 the applicant in writing within 60 days of the receipt of a  
 5 filed application, as defined in subsection (5), of the  
 6 approval or denial of the application. Notification of  
 7 approval or denial may be served personally or by registered  
 8 or certified mail on the applicant or his agent.

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

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

23 SECTION 30. SECTION 75-2-212, MCA, IS AMENDED TO READ:

24 "75-2-212. Variances -- renewals -- filing fees. (1) A  
 25 person who owns or is in control of a plant, building,

1 structure, process, or equipment may apply to the board  
 2 department for an exemption or partial exemption from rules  
 3 governing the quality, nature, duration, or extent of  
 4 emissions of air pollutants. The application shall be  
 5 accompanied by such information and data as the board  
 6 department may require. The board department may grant an  
 7 exemption or partial exemption if it finds that:

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

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

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

19 (3) No exemption or partial exemption may be granted  
 20 pursuant to this section for a period to exceed 1 year, but  
 21 the exemption or partial exemption may be renewed for like  
 22 periods if no complaint is made to the board department  
 23 because of it or if, after the complaint has been made and  
 24 duly considered at a public hearing held by the board  
 25 department on due notice, the board it finds that renewal is

1 justified. No renewal may be granted except on application  
 2 therefor. An application shall be made at least 60 days  
 3 before the expiration of the exemption or partial exemption.  
 4 Immediately before application for renewal the applicant  
 5 shall give public notice of his application in accordance  
 6 with rules of the board department. A renewal pursuant to  
 7 this subsection shall be on the same grounds and subject to  
 8 the same limitations and requirements as provided in  
 9 subsection (1).

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

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

22 (6) A person who owns or is in control of a plant,  
 23 building, structure, process, or equipment (hereinafter  
 24 called a facility) who applies to the board department for  
 25 an exemption or partial exemption or a renewal of an

1 exemption or partial exemption from a rule governing the  
 2 quality, nature, duration, or extent of emissions of air  
 3 pollutants shall submit with the application for variance a  
 4 sum of not less than \$500 or 2% of the cost of the equipment  
 5 to bring the facility into compliance with the rule for  
 6 which a variance is sought, whichever is greater, but not to  
 7 exceed \$80,000. The department shall prepare a statement of  
 8 actual costs, and funds in excess of this shall be returned  
 9 to the applicant. The person requesting the variance shall  
 10 describe the facility in sufficient detail, with  
 11 accompanying estimates of cost and verifying materials, to  
 12 permit the department to determine with reasonable accuracy  
 13 the sum of the fee. For a renewal of an exemption or partial  
 14 exemption, if no public hearing, environmental impact  
 15 statement, or appreciable investigation by the department is  
 16 necessary, the minimum filing fee shall apply or the fee may  
 17 be waived by the department. The filing fee shall be  
 18 deposited in the earmarked revenue fund provided for in  
 19 17-2-102. It is the intent of the legislature that the  
 20 revenues derived from the filing fees shall be used by the  
 21 department to:

22 (a) compile the information required for rendering a  
 23 decision on the request;

24 (b) compile the information necessary for any  
 25 environmental impact statements;

1 (c) offset the costs of a public hearing, printing, or  
2 mailing; and

3 (d) carry out its other responsibilities under this  
4 chapter."

5 SECTION 31. SECTION 75-2-401, MCA, IS AMENDED TO READ:

6 "75-2-401. Enforcement. (1) When the department  
7 believes that a violation of this chapter or a rule made  
8 under it has occurred, it may cause written notice to be  
9 served personally or by registered or certified mail on the  
10 alleged violator or his agent. The notice shall specify the  
11 provision of this chapter or rule alleged to be violated and  
12 the facts alleged to constitute a violation and may include  
13 an order to take necessary corrective action within a  
14 reasonable period of time stated in the order. The order  
15 becomes final unless, within 30 days after the notice is  
16 received, the person named requests in writing a hearing  
17 before the board department. On receipt of the request, the  
18 board department shall schedule a hearing.

19 (2) If, after a hearing held under subsection (1) of  
20 this section, the board department finds that violations  
21 have occurred, it shall either affirm or modify an order  
22 previously issued or issue an appropriate order for the  
23 prevention, abatement, or control of the emissions involved  
24 or for the taking of other corrective action it considers  
25 appropriate. An order issued as part of a notice or after a

1 hearing may prescribe the date by which the violation shall  
2 cease and may prescribe time limits for particular action in  
3 preventing, abating, or controlling the emissions. If,  
4 after hearing on an order contained in a notice, the board  
5 department finds that no violation is occurring, it shall  
6 rescind the order.

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

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

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

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

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

22 SECTION 32. SECTION 75-2-402, MCA, IS AMENDED TO READ:

23 "75-2-402. Emergency procedure. (1) Any other law to  
24 the contrary notwithstanding, if the department finds that a  
25 generalized condition of air pollution exists and that it

1 creates an emergency requiring immediate action to protect  
 2 human health or safety, the department shall order persons  
 3 causing or contributing to the air pollution to immediately  
 4 reduce or discontinue the emission of air contaminants. Upon  
 5 issuance of this order, the department shall fix a place and  
 6 time within 24 hours for a hearing to be held before the  
 7 board. Within 24 hours after the commencement of the hearing  
 8 and without adjournment, the board department shall affirm,  
 9 modify, or set aside the its order of the department.

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

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

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

1 to this section."

2 SECTION 33. SECTION 75-2-411, MCA, IS AMENDED TO READ:

3 "75-2-411. Judicial review. (1) A person aggrieved by  
 4 an order of the board department or local control authority  
 5 may apply for rehearing upon one or more of the following  
 6 grounds and upon no other grounds:

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

9 (b) the order was procured by fraud;

10 (c) the order is contrary to the evidence;

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

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

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

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

24 (b) The appeal shall be taken by serving a written  
 25 notice of appeal upon the ~~chairman of the board~~ department.

1 which service shall be made by the delivery of a copy of the  
 2 notice to ~~the chairman~~ it and by filing the original with  
 3 the clerk of the court to which the appeal is taken.  
 4 Immediately after service upon the ~~board~~ department, the  
 5 ~~board~~ it shall certify to the district court the entire  
 6 record and proceedings, including all testimony and evidence  
 7 taken by the ~~board~~ department. Immediately upon receiving  
 8 the certified record, the district court shall fix a day for  
 9 filing of briefs and hearing arguments on the cause and  
 10 shall cause a notice of the same to be served upon the ~~board~~  
 11 department and the appellant.

12 (c) The court shall hear and decide the cause upon the  
 13 record of the ~~board~~ department. The court shall determine  
 14 whether or not the ~~board~~ department regularly pursued its  
 15 authority, whether or not the findings of the ~~board~~  
 16 department were supported by substantial competent evidence,  
 17 and whether or not the ~~board~~ department made errors of law  
 18 prejudicial to the appellant.

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

25 SECTION 34. SECTION 75-2-421, MCA, IS AMENDED TO READ:

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

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

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

16 (c) any source referred to in subsections (1)(a) or  
 17 (1)(b) which has been granted an exemption, extension, or  
 18 suspension under subsection (2) or which is covered by a  
 19 compliance order, or a primary nonferrous smelter which has  
 20 received a primary nonferrous smelter order under 42 U.S.C.  
 21 7419, if such source is not in compliance with any interim  
 22 emission control requirement or schedule of compliance under  
 23 such extension, order, or suspension.

24 (2) Notwithstanding the requirements of subsection  
 25 (1), the department may, after notice and opportunity for a

1 public hearing, exempt any source from the requirements of  
2 75-2-421 through 75-2-429 with respect to a particular  
3 instance of noncompliance which:

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

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

9 (c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the  
10 Federal Clean Air Act.

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

17 SECTION 35. SECTION 75-2-425, MCA, IS AMENDED TO READ:

18 "75-2-425. Notice of noncompliance -- challenge. (1)  
19 The department shall give a brief but reasonably specific  
20 notice of noncompliance to each person who owns or operates  
21 a source subject to 75-2-421(1) which is not in compliance  
22 as provided in that subsection, within 30 days after the  
23 department has discovered the noncompliance.

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

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

8 (b) submit to the board department a petition within  
9 45 days after the issuance of such notice, challenging such  
10 notice of noncompliance or alleging entitlement to an  
11 exemption under 75-2-421(2) with respect to a particular  
12 source.

13 (3) Each person to whom notice of noncompliance is  
14 given shall pay the department the amount determined under  
15 75-2-422 as the appropriate penalty unless there has been a  
16 final determination granting a petition filed pursuant to  
17 subsection (2)(b)."

18 SECTION 36. SECTION 75-2-426, MCA, IS AMENDED TO READ:

19 "75-2-426. Hearing on challenge. (1) The board  
20 department shall provide a hearing on the record and make a  
21 decision (including findings of fact and conclusions of law)  
22 not later than 90 days after the receipt of any petition  
23 under 75-2-425(2)(b) with respect to such source.

24 (2) If the petition is denied, the petitioner shall  
25 submit the material required by 75-2-425(2)(a) to the

1 department within 45 days of the date of decision."

2 SECTION 37. SECTION 75-5-202, MCA, IS AMENDED TO READ:

3 "75-5-202. Board~~---hearings~~ Hearings. The board  
4 department shall hold hearings necessary for the proper  
5 administration of this chapter ~~err-in-the-case-of-permit~~  
6 ~~issuance---hearings,---delegate---this---function---to---the~~  
7 ~~department."~~

8 SECTION 38. SECTION 75-5-403, MCA, IS AMENDED TO READ:

9 "75-5-403. Denial or modification of permit. (1) If  
10 the department denies an application for a permit or  
11 modifies a permit, the department shall give written notice  
12 of its action to the applicant or holder and he may request  
13 a hearing before the board department, in the manner stated  
14 in 75-5-611, for the purpose of petitioning the board  
15 department to reverse or modify the its action of~~--the~~  
16 ~~department~~. Such hearing shall be held within 30 days after  
17 receipt of written request. After the hearing, the board  
18 department shall affirm, modify, or reverse the its action  
19 ~~of-the-department~~. If the holder does not request a hearing  
20 ~~before--the--board~~, modification of a permit shall be  
21 effective 30 days after receipt of notice by the holder  
22 unless the department specifies a later date. If the holder  
23 does request a hearing ~~before-the-board~~, no order modifying  
24 his permit shall be effective until 20 days after he has  
25 received notice of the final action of the board department.

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

5 SECTION 39. SECTION 75-5-404, MCA, IS AMENDED TO READ:

6 "75-5-404. Suspension or revocation of permit --  
7 procedure. If the department suspends or revokes a permit  
8 because it has reason to believe that the holder has  
9 violated this chapter, the department may specify that the  
10 suspension or revocation is effective immediately if the  
11 department finds that the violation is likely to continue  
12 and will cause pollution, the harmful effects of which will  
13 not be remedied immediately on the cessation of the  
14 violation. Upon petition by the holder of the permit, the  
15 board department shall grant the holder a hearing, to be  
16 conducted in the manner specified in 75-5-611, and shall  
17 issue an order affirming, modifying, or reversing the action  
18 of the department. The order of the board shall be effective  
19 immediately unless the board it directs otherwise."

20 SECTION 40. SECTION 75-5-501, MCA, IS AMENDED TO READ:

21 "75-5-501. Board Department to control state matching  
22 funds for construction of water pollution control  
23 facilities. (1) The board department shall control funds  
24 appropriated by the state for the purpose of providing  
25 matching funds to local governments for the construction of



1 water pollution control facilities.

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

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

11 SECTION 41. SECTION 75-5-611, MCA, IS AMENDED TO READ:

12 \*75-5-611. Violation of chapter -- notice and hearing.

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

23 (2) In a notice given under subsection (1) of this  
24 section, the department may require the alleged violator to  
25 appear before the board department for a public hearing and

1 to answer the charges made against him. The hearing shall be  
2 held no sooner than 15 days after service of the notice,  
3 except that the board department may set an earlier date for  
4 hearing if it is requested to do so by the alleged violator.  
5 The board department may set a later date for hearing at the  
6 request of the alleged violator if the alleged violator  
7 shows good cause for delay.

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

15 (4) If a hearing is held under this section, it shall  
16 be public and shall, if the board department considers it  
17 practicable, be held in a county in which the violation is  
18 alleged to have occurred.

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

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

5 (7) In addition to or instead of issuing an order, the  
6 board--may direct the department to may initiate appropriate  
7 action for recovery of a penalty under 75-5-631, 75-5-632,  
8 75-5-633, or 75-5-635."

9 SECTION 42. SECTION 75-5-621, MCA, IS AMENDED TO READ:

10 "75-5-621. Emergencies. (1) Notwithstanding any other  
11 provisions of this chapter, if the department finds that a  
12 person is committing or is about to commit an act in  
13 violation of this chapter or an order or rule issued under  
14 it which, if it occurs or continues, will cause substantial  
15 pollution the harmful effects of which will not be remedied  
16 immediately after the commission or cessation of the act,  
17 the department shall order the person to stop, avoid, or  
18 moderate the act so that the substantial injury will not  
19 occur. The order shall be effective immediately upon receipt  
20 by the person to whom it is directed, unless the department  
21 provides otherwise.

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

25 (3) Upon issuing such an order, the department shall

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

18 SECTION 43. SECTION 75-5-641, MCA, IS AMENDED TO READ:

19 "75-5-641. Appeals from board department orders --  
20 review by district court. (1) An appeal of an a final order  
21 of the board department shall be in the district court of  
22 the county in which the alleged source of pollution is  
23 located.

24 (2) A person interested in the order may intervene, in  
25 the manner provided by the rules of civil procedure, if he

1 shows good cause. An intervenor is a party for the purposes  
2 of this chapter.

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

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

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

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

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

21 SECTION 44. SECTION 75-6-103, MCA, IS AMENDED TO READ:

22 "75-6-103. Duties of the board. (1) The board  
23 department has general supervision over all state waters  
24 which are directly or indirectly being used by a person for  
25 a public water supply system or domestic purposes or as a

1 source of ice.

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

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

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

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

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

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

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

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

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

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

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

3 SECTION 45. SECTION 75-6-106, MCA, IS AMENDED TO READ:

4 "75-6-106. Licensing of laboratories. (1) No  
5 laboratory analysis of water taken from a public water  
6 supply system or any report of such an analysis required by  
7 this part or a rule adopted under this part may be accepted  
8 by the department ~~or-board~~ unless the analysis or report is  
9 made by the laboratory of the department or by a laboratory  
10 licensed by the department for such purposes. The department  
11 shall issue a license to any laboratory that can meet  
12 criteria for licensing established in the rules adopted by  
13 the board.

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

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

20 SECTION 46. SECTION 75-20-216, MCA, IS AMENDED TO  
21 READ:

22 "75-20-216. Study, evaluation, and report on proposed  
23 facility -- assistance by other agencies. (1) After receipt  
24 of an application, the department ~~and-department--of--health~~  
25 shall within 90 days notify the applicant in writing that:

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

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

9 (2) Upon receipt of an application complying with  
10 75-20-211 through 75-20-215, and this section, the  
11 department shall commence an intensive study and evaluation  
12 of the proposed facility and its effects, considering all  
13 applicable criteria listed in 75-20-301 and 75-20-503, ~~and~~  
14 ~~the-department-of-health-shall-commence-a-study~~ to enable it  
15 ~~or--the-board-of-health~~ to issue a decision, opinion, order,  
16 certification, or permit as provided in subsection (3). The  
17 department ~~and-department-of-health~~ shall use, to the extent  
18 ~~they--consider~~ it considers applicable, valid and useful  
19 existing studies and reports submitted by the applicant or  
20 compiled by a state or federal agency.

21 (3) The department ~~of--health~~ shall within 1 year  
22 following the date of acceptance of an application, and the  
23 ~~board--of-health~~, if ~~applicable~~ a hearing is held, within an  
24 additional 6 months, issue any decision, opinion, order,  
25 certification, or permit required by state or federal air

1 and water quality laws and this chapter. The department of  
 2 ~~health and the board of health~~ shall determine compliance  
 3 with air and water quality standards and implementation  
 4 plans for the primary and reasonable alternate locations in  
 5 their its decision, opinion, order, certification, or  
 6 permit. The decision, opinion, order, certification, or  
 7 permit, with or without conditions, is conclusive on all  
 8 matters of air and water quality impacts under the federal  
 9 and state air and water quality statutes that the department  
 10 ~~of health and board of health administer~~ administers, and  
 11 any of the criteria specified in 75-20-503(3) and (4) that  
 12 are a part of the determinations made under federal and  
 13 state air and water quality statutes. Although the decision,  
 14 opinion, order, certification, or permit issued under this  
 15 subsection is conclusive, the board retains authority to  
 16 make the determination required under 75-20-301(2)(c). ~~The~~  
 17 ~~decision, opinion, order, certification, or permit of the~~  
 18 ~~department of health or the board of health satisfies the~~  
 19 ~~review requirements by these agencies and shall be~~  
 20 ~~acceptable in lieu of an environmental impact statement~~  
 21 ~~under the Montana Environmental Policy Act.~~ A copy of the  
 22 decision, opinion, order, certification, or permit shall be  
 23 served upon ~~the department and~~ the board and shall be  
 24 utilized as part of their final site selection process.  
 25 Prior to the issuance of a preliminary decision by ~~the~~

1 ~~department of health and pursuant to rules adopted by the~~  
 2 ~~board of health on air and water quality permits,~~ the  
 3 department of ~~health~~ shall provide an opportunity for public  
 4 review and comment. A final decision by the department of  
 5 ~~health or board of health on air and water quality permits~~  
 6 is subject to appellate review pursuant to the air and water  
 7 quality statutes administered by the department of ~~health~~  
 8 ~~and board of health.~~

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

25 (5) The departments of highways; community affairs;

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

10 SECTION 47. SECTION 75-20-218, MCA, IS AMENDED TO

11 READ:

12 "75-20-218. Hearing date -- location -- department to  
 13 act as staff -- hearings to be held jointly. (1) Upon  
 14 receipt of the department's report submitted under  
 15 75-20-216, the board shall set a date for a hearing to begin  
 16 not more than 120 days after the receipt. Except for those  
 17 hearings involving applications submitted for facilities as  
 18 defined in (b) and (c) of 75-20-104(10), certification  
 19 hearings shall be conducted by the board in the county seat  
 20 of Lewis and Clark County or the county in which the  
 21 facility or the greater portion thereof is to be located.

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

1 as the board considers necessary and appropriate.

2 (3) At the request of the applicant, the ~~duty~~  
 3 ~~authorized-state-air-and-water-quality--agencies~~ department  
 4 shall hold any required permit hearings required under the  
 5 state air and water quality laws ~~administered--by--those~~  
 6 ~~agencies~~ in conjunction with the board certification  
 7 hearing. In such a conjunctive hearing the time periods  
 8 established for reviewing an application and for issuing a  
 9 decision on certification of a proposed facility under this  
 10 chapter supersede the time periods specified in other the  
 11 state air and water quality laws administered by the ~~duty~~  
 12 ~~authorized-state-air-and-water-quality-agencies~~ department."

13 SECTION 48. SECTION 75-20-219, MCA, IS AMENDED TO

14 READ:

15 "75-20-219. Amendments to a certificate. (1) Within 30  
 16 days after notice of an amendment to a certificate is given  
 17 as set forth in 75-20-213(1) including notice to all active  
 18 parties to the original proceeding, the department shall  
 19 determine whether the proposed change in the facility would  
 20 result in any material increase in any environmental impact  
 21 of the facility or a substantial change in the location of  
 22 all or a portion of the facility other than as provided in  
 23 the alternates set forth in the original application. If the  
 24 department determines that the proposed change would result  
 25 in any material increase in any environmental impact of the

1 facility or a substantial change in the location of all or a  
2 portion of the facility, the board shall hold a hearing in  
3 the same manner as a hearing is held on an application for a  
4 certificate. After hearing, the board shall grant, deny, or  
5 modify the amendment with such conditions as it deems  
6 appropriate.

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

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

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

1 ~~or-board-of-health."~~

2 SECTION 49. SECTION 75-20-220, MCA, IS AMENDED TO

3 READ:

4 "75-20-220. Hearing examiner -- restrictions --  
5 duties. (1) If the board appoints a hearing examiner to  
6 conduct any certification proceedings under this chapter,  
7 the hearing examiner may not be a member of the board, ~~or~~ an  
8 employee of the department, ~~or a member or employee of the~~  
9 ~~department of health or board of health.~~ A hearing examiner,  
10 if any, shall be appointed by the board within 20 days after  
11 the department's report has been filed with the board. If a  
12 hearing is held before the ~~board of health~~ department under  
13 air and water quality laws, the board and the ~~board of~~  
14 ~~health~~ department shall mutually agree on the appointment of  
15 a hearing examiner to preside at both hearings.

16 (2) A prehearing conference shall be held following  
17 notice within 60 days after the department's report has been  
18 filed with the board.

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

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

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

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

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

20 (8) The hearing examiner shall issue a prehearing  
21 order specifying the issues of fact and of law, identifying  
22 the witnesses of the active parties, naming the public  
23 witnesses and other interested parties who have submitted  
24 written testimony in lieu of appearance, outlining the order  
25 in which the hearing shall proceed, setting forth those

1 section 75-20-301 criteria as to which no issue of fact or  
2 law has been raised which are to be conclusively presumed  
3 and are not subject to further proof except for good cause  
4 shown, and any other special rules to expedite the hearing  
5 which the hearing examiner shall adopt with the approval of  
6 the board.

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

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

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

25 SECTION 50. SECTION 76-4-106, MCA, IS AMENDED TO READ:



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1 "76-4-106. Cooperation with other governmental  
2 agencies. (1) The department may require the use of records  
3 of all state, county, and municipal agencies and may seek  
4 the assistance of those agencies.

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

10 SECTION 51. SECTION 2-15-3302, MCA, IS AMENDED TO  
11 READ:

12 "2-15-3302. Board of natural resources and  
13 conservation -- composition -- quasi-judicial. (1) There is  
14 a board of natural resources and conservation.

15 (2) The board is composed of seven members, appointed  
16 by the governor as prescribed in 2-15-124, informed and  
17 experienced in the subjects of natural resources and  
18 conservation. One member shall be a medical doctor licensed  
19 by the board of medical examiners and at least one member  
20 shall be an engineer licensed by the board of professional  
21 engineers and land surveyors.

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

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

1 (5) In addition to carrying out its functions as  
2 provided by law, the board shall act in an advisory capacity  
3 to the department in all other matters."

4 SECTION 52. TRANSITION FOR CONTESTED CASES. ANY  
5 CONTESTED CASE FILED BEFORE OCTOBER 1, 1982 WITH THE BOARD  
6 OF HEALTH SHALL BE CONCLUDED WITH THE BOARD OF HEALTH UNLESS  
7 BOTH PARTIES TO THE ACTION STIPULATE IN WRITING THAT THE  
8 ACTION MAY BE TRANSFERRED TO THE DEPARTMENT OF NATURAL  
9 RESOURCES AND CONSERVATION.

10 Section 53. Severability. If a part of this act is  
11 invalid, all valid parts that are severable from the invalid  
12 part remain in effect. If a part of this act is invalid in  
13 one or more of its applications, the part remains in effect  
14 in all valid applications that are severable from the  
15 invalid applications.

16 Section 54. Transition. The provisions of 2-15-131  
17 through 2-15-137 apply to the transfer of functions under  
18 this act.

19 SECTION 55. EFFECTIVE DATES. (1) THE EFFECTIVE DATE  
20 FOR SECTIONS 1 THROUGH 17 IS OCTOBER 1, 1981.

21 (2) THE EFFECTIVE DATE FOR SECTIONS 18 THROUGH 50 IS  
22 OCTOBER 1, 1982.

23 (3) THE EFFECTIVE DATE FOR SECTION 51 IS JANUARY 1,  
24 1983.

25 SECTION 56. REPEALER. SECTION 75-5-202, MCA, IS

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1 REPEALED.

-End-

1                   SENATE BILL NO. 258  
2                   INTRODUCED BY S. BROWN  
3                   BY REQUEST OF THE OFFICE OF THE GOVERNOR  
4  
5   A BILL FOR AN ACT ENTITLED: "AN ACT TO TRANSFER FORESTRY  
6   FUNCTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND  
7   CONSERVATION TO THE DEPARTMENT OF STATE LANDS; TO TRANSFER  
8   THE MINE SITING AND RECLAMATION FUNCTIONS OF THE DEPARTMENT  
9   OF STATE LANDS AND THE BOARD OF LAND COMMISSIONERS TO THE  
10  DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING  
11  SECTIONS ~~75-10-103, 75-10-203, 76-13-104, 76-13-106,~~  
12  ~~76-13-109, 80-8-110, 82-4-103, 82-4-223, 82-4-303, 82-4-306,~~  
13  ~~82-4-321, 82-4-421, AND 82-4-427, MCA,~~ TO TRANSFER FROM THE  
14  DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE  
15  DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION THE  
16  REGULATORY FUNCTIONS RELATING TO AIR AND WATER QUALITY,  
17  PUBLIC WATER SUPPLY, SANITATION IN SUBDIVISIONS, MAJOR  
18  FACILITY SITING, SOLID WASTE, AND OTHER MISCELLANEOUS  
19  FUNCTIONS; TO TRANSFER THE BOARD OF HEALTH AND ENVIRONMENTAL  
20  SCIENCES' RULEMAKING AUTHORITY TO THE BOARD OF NATURAL  
21  RESOURCES AND CONSERVATION; TO TRANSFER THE DEPARTMENT OF  
22  HEALTH AND ENVIRONMENTAL SCIENCES' RULEMAKING AUTHORITY TO  
23  THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; TO  
24  TRANSFER THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES'  
25  CONTESTED CASE AUTHORITY TO THE DEPARTMENT OF NATURAL

There are no changes in SB 258, and due to length will not be rerun. Please refer to yellow copy for complete text.

SENATE BILL NO. 258  
INTRODUCED BY S. BROWN

BY REQUEST OF THE OFFICE OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO TRANSFER FORESTRY FUNCTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE DEPARTMENT OF STATE LANDS; ~~TO TRANSFER THE MINE-SITING AND RECLAMATION FUNCTIONS OF THE DEPARTMENT OF STATE LANDS AND THE BOARD OF LAND COMMISSIONERS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 75-10-103, 75-10-203, 76-13-104, 76-13-106, 76-13-109, 80-8-110, 82-4-103, 82-4-223, 82-4-303, 82-4-306, 82-4-321, 82-4-421, AND 82-4-427, MCA, TO TRANSFER FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION THE REGULATORY FUNCTIONS RELATING TO AIR AND WATER QUALITY, PUBLIC WATER SUPPLY, SANITATION IN SUBDIVISIONS, MAJOR FACILITY SITING, SOLID WASTE, AND OTHER MISCELLANEOUS FUNCTIONS; TO TRANSFER THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES' RULEMAKING AUTHORITY TO THE BOARD OF NATURAL RESOURCES AND CONSERVATION; TO TRANSFER THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' RULEMAKING AUTHORITY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; TO TRANSFER THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES' CONTESTED EASE AUTHORITY TO THE DEPARTMENT OF NATURAL~~

~~RESOURCES AND CONSERVATION; TO REQUIRE THAT THE MEMBERSHIP OF THE BOARD OF NATURAL RESOURCES INCLUDE ONE ENGINEER AND ONE MEDICAL DOCTOR; TO GENERALLY REVISE THE LAWS TO CONFORM TO THE TRANSFER; REPEALING SECTION 75-5-502, MCA; AMENDING SECTIONS 75-10-203, 76-13-104, 76-13-106, 76-13-109, AND 80-8-110, MCA; AND PROVIDING AN EFFECTIVE DATE.~~

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

NEW SECTION. Section 1. Functions of department of natural resources and conservation transferred to department of state lands. (1) The functions of protecting natural resources from fire in Title 76, chapter 11, part 1; of protection of forest resources in Title 76, chapter 13; of appraising, protecting, and selling state timberlands in Title 77, chapter 5; and of recommending closing lands to hunting and fishing in fire danger areas under 87-3-106 are transferred from the department of natural resources and conservation to the department of state lands.

(2) Unless inconsistent with this act, any reference to "department of natural resources and conservation" in those sections is changed to "department of state lands".

(3) Any corresponding internal references shall be changed by the code commissioner.

NEW SECTION. Section 2. Functions of board of natural resources and conservation transferred to board of land

1 commissioners. (1) The functions of the board of natural  
 2 resources and conservation in Title 76, chapter 13, relating  
 3 to protection of forest resources are transferred to the  
 4 board of land commissioners.

5 (2) Unless inconsistent with this act, any reference  
 6 in that chapter to "board of natural resources and  
 7 conservation" is changed to "board of land commissioners".

8 (3) Any corresponding internal references shall be  
 9 changed by the code commissioner.

10 ~~NEW SECTION. Section 3. Functions of department of~~  
 11 ~~state lands transferred to department of natural resources~~  
 12 ~~and conservation. (1) The functions of the department of~~  
 13 ~~state lands of recording certificates of location of mining~~  
 14 ~~claims under 82-2-102 are transferred to the department of~~  
 15 ~~natural resources and conservation.~~

16 (2) Unless inconsistent with this act, any reference  
 17 to "department of state lands" in that section is changed to  
 18 "department of natural resources and conservation".

19 (3) Any corresponding internal references shall be  
 20 changed by the code commissioner.

21 ~~NEW SECTION. Section 4. Functions of board of land~~  
 22 ~~commissioners transferred to department of natural resources~~  
 23 ~~and conservation. (1) The functions of the board of land~~  
 24 ~~commissioners and commissioner of state lands in Title 82,~~  
 25 ~~chapter 4, concerning mine siting and reclamation are~~

1 transferred to the department of natural resources and  
 2 conservation and the director of that department.

3 (2) Unless inconsistent with this act, any reference  
 4 to "board of land commissioners" or "board" or "department of  
 5 state lands" or "department" is changed to "department of  
 6 natural resources and conservation" or "department" (meaning  
 7 the department of natural resources and conservation). Any  
 8 reference to "commissioner of state lands" or "commission"  
 9 is changed to "director of the department of natural  
 10 resources and conservation" or "director" (meaning the  
 11 director of natural resources and conservation).

12 (3) Any corresponding internal references shall be  
 13 changed by the code commissioner.

14 Section 5. Section 75-10-103, NEA, is amended to read  
 15 "75-10-103. Definitions. Unless the context clearly  
 16 requires otherwise, in this part the following definitions  
 17 apply:

18 (1) "Board" means the board of health and  
 19 environmental sciences NATURAL RESOURCES AND CONSERVATION  
 20 provided for in 2-15-2104 ~~2-15-3302~~.

21 (2) "Department" means the department of health and  
 22 environmental sciences NATURAL RESOURCES AND CONSERVATION  
 23 provided for in Title 2, chapter 15, part 21 ~~33~~.

24 (3) "Front-end organizational funds" means the state  
 25 money to be loaned to local governments for initial

operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, materials markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

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

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

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

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

(8) "Solid waste" means all putrescible and

nonputrescible wastes, including but not limited to garbage, rubbish, refuse, hazardous wastes, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities, septic tank and cesspool pumpings, construction and demolition wastes, dead animals including offal, discarded home and industrial appliances, wood wastes, and inert materials, but does not include municipal sewage, industrial wastewater effluents, or mining wastes as regulated under the mining and reclamation laws administered by the department of state lands natural resources and conservation.

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

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

Section 3. Section 75-10-203, MCA, is amended to read:  
"75-10-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences NATURAL RESOURCES AND CONSERVATION HEALTH AND ENVIRONMENTAL SCIENCES provided for in 2-15-2104 2-15-3302 2-15-2104.

(2) "Department" means the department of health and environmental sciences NATURAL RESOURCES AND CONSERVATION

1 HEALTH AND ENVIRONMENTAL SCIENCES provided for in Title 2,  
2 chapter 15, part ~~21~~ 21.

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

10 (4) "Hazardous waste" means any waste or combination  
11 of wastes of a solid, liquid, contained gaseous, or  
12 semisolid form which may cause or contribute to an increase  
13 in mortality or an increase in serious illness, taking into  
14 account the toxicity of the waste, its persistence and  
15 degradability in nature, its potential for assimilation or  
16 concentration in tissue, and other factors that may  
17 otherwise cause or contribute to adverse acute or chronic  
18 effects on the health of persons or other living organisms.  
19 Hazardous wastes include but are not limited to those which  
20 are toxic, radioactive, corrosive, flammable, irritants,  
21 strong sensitizers, or which generate pressure through  
22 decomposition, heat, or other means, excluding wood chips  
23 and wood used for manufacturing or fuel purposes.

24 (5) "Hazardous waste management" means the management  
25 of the storage, transport, treatment, recycling, recovery,

1 or disposal of hazardous wastes.

2 (6) "Person" means an individual, firm, partnership,  
3 company, association, corporation, city, town, local  
4 governmental entity, or any other governmental or private  
5 entity, whether organized for profit or not.

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

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

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

16 (10) "Solid waste" means all putrescible and  
17 nonputrescible wastes, including but not limited to garbage;  
18 rubbish; refuse; hazardous wastes; ashes; sludge from sewage  
19 treatment plants, water supply treatment plants, or air  
20 pollution control facilities; construction and demolition  
21 wastes; dead animals, including offal; discarded home and  
22 industrial appliances; and wood products or wood byproducts  
23 and inert materials. "Solid waste" does not mean municipal  
24 sewage, industrial wastewater effluents, mining wastes  
25 regulated under the mining and reclamation laws administered

1 by the department of ~~state lands~~ natural resources and  
 2 conservation STATE LANDS, slash and forest debris regulated  
 3 under laws administered by the department of ~~natural~~  
 4 ~~resources and conservation~~ state lands, or marketable wood  
 5 byproducts.

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

9 (12) "Storage" means the actual or intended containment  
 10 of wastes, either on a temporary basis or for a period of  
 11 years.

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

15 (14) "Treatment" means a method, technique, or process,  
 16 including neutralization, designed to change the physical,  
 17 chemical, or biological character or composition of any  
 18 solid waste so as to neutralize the waste or so as to render  
 19 it nonhazardous, safer for transport, amenable for recovery,  
 20 amenable for storage, or reduced in volume."

21 Section 4. Section 76-13-104, MCA, is amended to read:

22 "76-13-104. Functions of department. (1) The  
 23 department may give technical and practical advice  
 24 concerning forest, range, water, and soil conservation and  
 25 the establishment and maintenance of woodlots, windbreaks,

1 shelterbelts, and forest fire protection.

2 (2) The department shall cooperate with all public and  
 3 other agencies in the development, protection, and  
 4 conservation of the forest, range, and water resources in  
 5 this state.

6 ~~(3) The department shall assist the department of~~  
 7 ~~state lands in the protection, economic development, and use~~  
 8 ~~of the state forests and forest land held by the state for~~  
 9 ~~the purposes and benefit of the common schools and state~~  
 10 ~~institutions."~~

11 Section 5. Section 76-13-106, MCA, is amended to read:

12 "76-13-106. Cooperation between department of state  
 13 lands and county. The ~~department of state lands and the~~  
 14 county governing body shall cooperate with the department to  
 15 the extent legally permissible in providing means and  
 16 methods of safeguarding the forest land lying within the  
 17 state and in preventing fire nuisance thereon. The  
 18 ~~department of state lands and the~~ county governing body  
 19 shall list forest lands under their its jurisdiction with  
 20 the department for forest protection. The money the state  
 21 and counties become liable for under this section shall be  
 22 paid from funds provided by law for the protection of the  
 23 forest lands owned by the state and counties."

24 Section 6. Section 76-13-109, MCA, is amended to read:

25 "76-13-109. Rules -- limitation on rulemaking



1 authority. f) The board may adopt and enforce through the  
2 department reasonable rules for the purpose of enforcing and  
3 accomplishing the provisions and purposes of this part and  
4 part 2.

5 ~~(2) These rules may not conflict with the powers of~~  
6 ~~the board of land commissioners."~~

7 Section 7. Section 80-8-110, MCA, is amended to read:

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

15 (2) The department of agriculture and the department  
16 of health and environmental sciences shall enter into a  
17 memorandum of agreement concerning the inspection,  
18 regulation, and responsibilities of persons or activities  
19 that may be involved in the management, disposal, storage,  
20 transportation, treatment, recycling, or recovery of  
21 hazardous wastes and the disposal of solid wastes.

22 (3) For the purpose of this section, "solid waste"  
23 means all putrescible and nonputrescible wastes including  
24 but not limited to garbage; rubbish; refuse; hazardous  
25 wastes; ashes; sludge from sewage treatment plants, water

1 supply treatment plants, or air pollution control  
2 facilities; construction and demolition wastes; dead  
3 animals, including offal; discarded home and industrial  
4 appliances; and wood products or wood byproducts and inert  
5 materials. Solid waste does not mean municipal sewage,  
6 industrial wastewater effluents, mining wastes regulated  
7 under the mining and reclamation laws administered by the  
8 department of state lands ~~natural resources and conservation~~  
9 STATE LANDS, slash and forest debris regulated under laws  
10 administered by the department of ~~natural resources and~~  
11 conservation state lands, or marketable wood byproducts.

12 (4) For the purpose of this section, "hazardous waste"  
13 means any waste or combination of wastes of a solid, liquid,  
14 contained gaseous, or semisolid form which may cause or  
15 contribute to an increase in mortality or an increase in  
16 serious illness, taking into account the toxicity of the  
17 waste, its persistence and degradability in nature, its  
18 potential for assimilation or concentration in tissue, and  
19 other factors that may otherwise cause or contribute to  
20 adverse acute or chronic effects on the health of persons or  
21 other living organisms. Hazardous wastes include but are not  
22 limited to those which are toxic, radioactive, corrosive,  
23 flammable, irritants, strong sensitizers, or which generate  
24 pressure through decomposition, heat, or other means,  
25 excluding wood chips and wood used for manufacturing or fuel

1 purposes."

2 Section 11. Section 82-4-103, NEA, is amended to read:  
3 "82-4-103. Definitions. When used in this part  
4 unless a different meaning clearly appears from the context  
5 the following definitions apply:

6 (1) "Board" means the board of land commissioners as  
7 provided for in Article X, section 4, of the constitution of  
8 this state.

9 (2) ~~(1)~~ "Department" means the department of state  
10 lands natural resources and conservation provided for in  
11 title 2, chapter 15, part 32 ~~33~~.

12 (2) "Director" means the director of natural resources  
13 and conservation.

14 (3) "Mineral" means mineral as defined in  
15 82-4-203(12).

16 (4) "New mine" means a strip or underground mining  
17 operation proposed for an area of land which the department  
18 determines, because of distance from an existing strip mine  
19 or underground mine operation or their respective facilities  
20 or because of important differences in topography, soils,  
21 wildlife, geologic structures, aquifers, or vegetation from  
22 an existing strip mine or underground mine operation, does  
23 not constitute an expansion of an existing operation.

24 (5) "Operation" means all of the premises, facilities,  
25 railroad, loops, roads, power lines, and equipment used in

1 the process of producing and removing mineral from a  
2 designated strip mine or underground mine area.

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

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

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

17 (9) "Strip mining" means any part of the process  
18 followed in the production of mineral by the open-cut method,  
19 including mining by the auger method or any similar method  
20 which penetrates a mineral deposit and removes mineral  
21 directly through a series of openings made by a machine  
22 which enters the deposit from a surface excavation or any  
23 other method or process in which the strata or overburden is  
24 removed or displaced in order to recover the mineral.

25 (10) "Underground mining" means any part of the process

1 followed in the production of a mineral such that vertical  
2 or horizontal shafts, slopes, drifts, or incline planes  
3 connected with excavations penetrating the mineral stratum  
4 or strata are utilized."

5 Section 12, Section 82-4-223, MCA, is amended to read  
6 "82-4-223. Permit fee and surety bonds. (1) An  
7 application fee of \$50 shall be paid before the permit  
8 required in this part shall be issued.

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

1 subdivision or agency of the state need not file a bond  
2 unless required to do so by the board department. The board  
3 department shall adjust the amount of bond required if the  
4 cost of reclamation changes.

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

14 Section 13, Section 82-4-303, MCA, is amended to read  
15 "82-4-303. Definitions. As used in this part, unless  
16 the context indicates otherwise, the following definitions  
17 apply:

18 (1) "Abandonment of surface or underground mining" may  
19 be presumed when it is shown that continued operation will  
20 not resume.

21 (2) "Board" means the board of land commissioners or  
22 such state employee or state agency as may succeed to its  
23 powers and duties under this part.

24 (3) (2) "Department" means the department of state  
25 lands natural resources and conservation.

1 ~~{3}--"Director" means the director of natural resources~~  
2 ~~and conservations~~

3 ~~{4}--"Disturbed land" means that area of land or~~  
4 ~~surface water disturbed, beginning at the date of the~~  
5 ~~issuance of the permit, and it comprises that area from~~  
6 ~~which the overburden or minerals have been removed and~~  
7 ~~tailings ponds, waste dumps, roads, conveyor systems, leach~~  
8 ~~dumps, and all similar excavations or covering resulting~~  
9 ~~from the operation and which have not been previously~~  
10 ~~reclaimed under the reclamation plan.~~

11 ~~{5}--"Exploration" means all activities conducted on or~~  
12 ~~beneath the surface of lands resulting in material~~  
13 ~~disturbance of the surface for the purpose of determining~~  
14 ~~the presence, location, extent, depth, grade, and economic~~  
15 ~~viability of mineralization in those lands, if any, other~~  
16 ~~than mining for production and economic exploitation, as~~  
17 ~~well as all roads made for the purpose of facilitating~~  
18 ~~exploration, except as noted in 82-4-305 and 82-4-319.~~

19 ~~{6}--"Mineral" means any ore, rock, or substance other~~  
20 ~~than oil, gas, bentonite, clay, coal, sand, gravel,~~  
21 ~~phosphate rock, or uranium, taken from below the surface or~~  
22 ~~from the surface of the earth for the purpose of milling,~~  
23 ~~concentration, refinement, smelting, manufacturing, or other~~  
24 ~~subsequent use or processing or for stockpiling for future~~  
25 ~~use, refinement, or smelting.~~

1 ~~{7}--"Mining" commences at such time as the operator~~  
2 ~~first mines ores or minerals in commercial quantities for~~  
3 ~~sale, beneficiation, refining, or other processing, or~~  
4 ~~disposition, or first takes bulk samples for metallurgical~~  
5 ~~testing in excess of aggregate of 10,000 short tons.~~

6 ~~{8}--"Person" means any person, corporation, firm,~~  
7 ~~association, partnership, or other legal entity engaged in~~  
8 ~~exploration for or development or mining of minerals on or~~  
9 ~~below the surface of the earth.~~

10 ~~{9}--"Reclamation plan" means the operator's written~~  
11 ~~proposal, as required and approved by the board department,~~  
12 ~~for reclamation of the land that will be disturbed, which~~  
13 ~~proposal shall include, to the extent practical at the time~~  
14 ~~of application for an operating permit:~~

15 ~~(a) a statement of the proposed subsequent use of the~~  
16 ~~land after reclamation;~~

17 ~~(b) plans for surface gradient restoration to a~~  
18 ~~surface suitable for the proposed subsequent use of the land~~  
19 ~~after reclamation is completed and the proposed method of~~  
20 ~~accomplishment;~~

21 ~~(c) the manner and type of revegetation or other~~  
22 ~~surface treatment of disturbed areas;~~

23 ~~(d) procedures proposed to avoid foreseeable~~  
24 ~~situations of public nuisance, endangerment of public~~  
25 ~~safety, damage to human life or property, or unnecessary~~

1 damage to flora and fauna in or adjacent to the ore  
 2 (e) the method of disposal of mining debris  
 3 (f) the method of diverting surface waters around the  
 4 disturbed areas where necessary to prevent pollution of  
 5 these waters or unnecessary erosion  
 6 (g) the method of reclamation of stream channels and  
 7 stream banks to control erosion siltation and pollution  
 8 (h) such maps and other supporting documents as may be  
 9 reasonably required by the department; and  
 10 (i) a time schedule for reclamation that meets the  
 11 requirements of 82-4-336  
 12 (18) (a) "Small miner" means a person, firm, or  
 13 corporation that engages in the business of mining that  
 14 does not remove from the earth during any calendar year  
 15 material in excess of 36,500 tons in the aggregate that  
 16 holds no operating permit under 82-4-335, and that conducts  
 17 (i) operations resulting in not more than 5 acres of  
 18 the earth's surface being disturbed and unreclaimed; or  
 19 (ii) two operations which disturb and leave unreclaimed  
 20 less than 5 acres per operation if the respective mining  
 21 properties are  
 22 (A) the only operations engaged in by the person,  
 23 firm or corporation  
 24 (B) at least 1 mile apart at their closest points; and  
 25 (E) not operated simultaneously except during seasons

1 transitional periods not to exceed 30 days  
 2 (b) For the purpose of this definition only, the  
 3 department shall, in computing the area covered by the  
 4 operation, exclude access or haulage roads that are required  
 5 by a local, state, or federal agency having jurisdiction  
 6 over that road to be constructed to certain specifications  
 7 if that public agency notifies the department in writing  
 8 that it desires to have the road remain in use and will  
 9 maintain it after mining or exploration ceases  
 10 (11) "Surface mining" means all or any part of the  
 11 process involved in mining of minerals by removing the  
 12 overburden and mining directly from the mineral deposits  
 13 thereby exposed, including but not limited to open pit  
 14 mining of minerals naturally exposed at the surface of the  
 15 earth, mining by the auger method, and all similar methods  
 16 by which earth or minerals exposed at the surface are  
 17 removed in the course of mining. Surface mining does not  
 18 include the extraction of oil, gas, bentonite, clay, coal,  
 19 sand, gravel, phosphate rock, or uranium, or excavation or  
 20 grading conducted for on-site farming, on-site road  
 21 construction, or other on-site building construction  
 22 (12) "Underground mining" means all methods of mining  
 23 other than surface mining  
 24 (13) "Unit of surface mined area" means that area of  
 25 land and surface water included within an operating permit

1 ~~actually disturbed by surface mining during each 12-month~~  
 2 ~~period of time, beginning at the date of the issuance of the~~  
 3 ~~permit, and it comprises and includes the area from which~~  
 4 ~~overburden or minerals have been removed, the area covered~~  
 5 ~~by mining debris, and all additional areas used in surface~~  
 6 ~~mining or underground mining operations which by virtue of~~  
 7 ~~such use are thereafter susceptible to erosion in excess of~~  
 8 ~~the surrounding undisturbed portions of land.~~

9 ~~(14) "Vegetative cover" means the type of vegetation,~~  
 10 ~~grass, shrubs, trees, or any other form of natural cover~~  
 11 ~~considered suitable at time of reclamation."~~

12 ~~Section 14, Section 82-4-386, MCA, is amended to read:~~

13 ~~"82-4-386--Confidentiality of application information.~~  
 14 ~~Any and all information obtained by the board or by the~~  
 15 ~~director or his staff department by virtue of applications~~  
 16 ~~for exploration, licenses and all information obtained from~~  
 17 ~~small miners is confidential between the board department~~  
 18 ~~and the applicant, except as to the name of the applicant~~  
 19 ~~and the county of proposed operation, provided that all~~  
 20 ~~activities conducted subsequent to exploration and other~~  
 21 ~~associated facilities shall be public information and~~  
 22 ~~conducted under a development or operating permit. It is~~  
 23 ~~further provided that any information obtained by the board~~  
 24 ~~or by the director or his staff department by virtue of such~~  
 25 ~~applications is properly admissible in any hearing conducted~~

1 ~~by the director, the board, appeals board, department or in~~  
 2 ~~any judicial proceeding to which the director department and~~  
 3 ~~the applicant are parties and is not confidential when a~~  
 4 ~~violation of the part or rules has been determined by the~~  
 5 ~~department or by judicial order, failure to comply with the~~  
 6 ~~secrecy provisions of this part shall be punishable by a~~  
 7 ~~fine of up to \$1,000."~~

8 ~~Section 15, Section 82-4-321, MCA, is amended to read:~~

9 ~~"82-4-321--Administration--The board department is~~  
 10 ~~charged with the responsibility of administering this part,~~  
 11 ~~in order to implement its terms and provisions, the board~~  
 12 ~~department shall from time to time promulgate such rules as~~  
 13 ~~the board department shall deem necessary. The board may~~  
 14 ~~delegate such powers, duties, and functions to the~~  
 15 ~~department as it deems necessary for the performance of its~~  
 16 ~~duties as administrator of this part. The board department~~  
 17 ~~shall employ experienced, qualified persons in the field of~~  
 18 ~~mined land reclamation, who, for the purpose of this part,~~  
 19 ~~are referred to as supervisors."~~

20 ~~Section 16, Section 82-4-421, MCA, is amended to read:~~

21 ~~"82-4-421--Administration--delegation of functions.~~  
 22 ~~The board department is the administrator of this part, and~~  
 23 ~~it has all the power necessary to implement and enforce its~~  
 24 ~~The board may delegate to the commissioner of state lands~~  
 25 ~~such powers, duties, and functions under this part as it~~

1 considers necessary for the performance of its duties." 1

2 Section 17. Section 02-4-427, MEA, is amended to read 2

3 "02-4-427. Board hearing HEARING. (1) A person who is 3

4 aggrieved by a final decision of the commissioner of state 4

5 lands department is entitled to a hearing before the board 5

6 department. 6

7 (2) The Montana Administrative Procedure Act governs 7

8 hearings before the board and judicial review of decisions 8

9 of the board under this part." 9

10 SECTION 18. BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES 10

11 ---FUNCTIONS TRANSFERRED TO BOARD OF NATURAL RESOURCES AND 11

12 CONSERVATION. (1) THE FOLLOWING FUNCTIONS OF THE BOARD OF 12

13 HEALTH AND ENVIRONMENTAL SCIENCES ARE TRANSFERRED TO THE 13

14 BOARD OF NATURAL RESOURCES AND CONSERVATION: 14

15 (A) THOSE RULEMAKING FUNCTIONS SPECIFIED IN 75-2-201 15

16 THROUGH 75-2-204, 75-2-301, AND 75-2-428 RELATING TO AIR 16

17 QUALITY, INCLUDING CLASSIFYING AIR CONTAMINANT SOURCES, 17

18 SETTING EMISSION LEVELS, AND APPROVING LOCAL AIR POLLUTION 18

19 CONTROL PROGRAMS; 19

20 (B) THOSE RULEMAKING FUNCTIONS SPECIFIED IN 75-5-201 20

21 75-5-301 THROUGH 75-5-305, 75-5-307, AND 75-5-601 RELATING 21

22 TO WATER QUALITY, INCLUDING ADOPTING CLASSIFICATIONS AND 22

23 STANDARDS FOR STATE WATERS AND SETTING STANDARDS OF 23

24 PERFORMANCE; AND 24

25 (C) THE RULEMAKING FUNCTIONS SPECIFIED IN 75-10-106 25

1 ~~AND 75-10-111 RELATING TO MANAGEMENT OF MATERIAL RECYCLING.~~ 1

2 ~~(2) UNLESS INCONSISTENT WITH THIS ACT, ANY REFERENCE~~ 2

3 ~~IN THE SECTIONS LISTED IN SUBSECTION (1) AND IN 75-2-103,~~ 3

4 ~~75-2-105, 75-2-422, 75-5-103, 75-5-105, 75-5-106, 75-6-102,~~ 4

5 ~~75-6-107, 75-6-112, 75-6-113, 75-10-112, AND 75-10-501 TO~~ 5

6 ~~"BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES" OR "BOARD OF~~ 6

7 ~~HEALTH" OR "BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES" IS~~ 7

8 ~~CHANGED TO "BOARD OF NATURAL RESOURCES AND CONSERVATION" OR~~ 8

9 ~~"BOARD OF NATURAL RESOURCES AND CONSERVATION."~~ 9

10 ~~(3) THE CODE COMMISSIONER SHALL CONFORM INTERNAL~~ 10

11 ~~REFERENCES AND GRAMMAR, INCLUDING REDUNDANCIES, TO THE~~ 11

12 ~~CHANGES MADE BY THIS SECTION.~~ 12

13 SECTION 19. BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES 13

14 ---FUNCTIONS TRANSFERRED TO DEPARTMENT OF NATURAL RESOURCES 14

15 AND CONSERVATION. (1) THE FOLLOWING FUNCTIONS OF THE BOARD 15

16 OF HEALTH AND ENVIRONMENTAL SCIENCES ARE TRANSFERRED TO THE 16

17 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION: 17

18 (A) THOSE FUNCTIONS SPECIFIED IN 75-5-514, 75-5-515, 18

19 75-5-614, AND 75-5-641 RELATING TO WATER QUALITY, INCLUDING 19

20 CONDUCTING ENFORCEMENT HEARINGS AND SETTING LOCAL CHARGES 20

21 FOR SEWAGE SYSTEMS; 21

22 (B) THOSE FUNCTIONS SPECIFIED IN 75-10-223, 75-10-224, 22

23 AND 75-10-515 RELATING TO MANAGEMENT OF MATERIAL RECYCLING 23

24 AND MOTOR VEHICLE RECYCLING AND DISPOSAL; 24

25 (C) THOSE FUNCTIONS SPECIFIED IN TITLE 75, CHAPTER 20, 25

1 ~~RELATING TO MAJOR FACILITY SITING, INCLUDING EMISSION AND~~  
2 ~~DISCHARGE PERMITS, AND~~  
3 ~~(D) THOSE FUNCTIONS SPECIFIED IN TITLE 76, CHAPTER 4,~~  
4 ~~PART 1, RELATING TO STATE REGULATION OF SUBDIVISIONS,~~  
5 ~~INCLUDING CONDUCTING HEARINGS ON DECISIONS RELATED TO WATER~~  
6 ~~SUPPLY AND SEWAGE DISPOSAL,~~  
7 ~~(2) UNLESS INCONSISTENT WITH THIS ACT, ANY REFERENCE~~  
8 ~~IN THE SECTIONS LISTED IN SUBSECTION (1) TO:~~  
9 ~~(A) "BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES" OR~~  
10 ~~"BOARD OF HEALTH" OR "BOARD" MEANING "BOARD OF HEALTH AND~~  
11 ~~ENVIRONMENTAL SCIENCES" IS CHANGED TO "DEPARTMENT OF NATURAL~~  
12 ~~RESOURCES AND CONSERVATION" OR "DEPARTMENT" (OF NATURAL~~  
13 ~~RESOURCES AND CONSERVATION); AND~~  
14 ~~(B) "CHAIRMAN" IS CHANGED TO "DIRECTOR";~~  
15 ~~(3) THE CODE COMMISSIONER SHALL CONFORM INTERNAL~~  
16 ~~REFERENCES AND GRAMMAR, INCLUDING REDUNDANCIES, TO THE~~  
17 ~~CHANGES MADE BY THIS SECTION,~~  
18 ~~SECTION 20, DEPARTMENT OF HEALTH AND ENVIRONMENTAL~~  
19 ~~SCIENCES, FUNCTIONS TRANSFERRED TO THE DEPARTMENT OF~~  
20 ~~NATURAL RESOURCES AND CONSERVATION; (1) THE FOLLOWING~~  
21 ~~FUNCTIONS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL~~  
22 ~~SCIENCES ARE TRANSFERRED TO THE DEPARTMENT OF NATURAL~~  
23 ~~RESOURCES AND CONSERVATION:~~  
24 ~~(A) THOSE FUNCTIONS SPECIFIED IN TITLE 37, CHAPTER 42,~~  
25 ~~RELATING TO WATER TREATMENT PLANT OPERATORS;~~

1 ~~(D) THOSE FUNCTIONS SPECIFIED IN 75-2-301, 75-2-403,~~  
2 ~~75-2-412, 75-2-413, 75-2-422, 75-2-424, AND 75-2-427~~  
3 ~~RELATING TO AIR QUALITY, INCLUDING ISSUANCE OF PERMITS AND~~  
4 ~~ENFORCEMENT AND ADMINISTRATION OF AND STUDY AND TESTING~~  
5 ~~NECESSARY TO IMPLEMENT AIR QUALITY LAWS, RULES, AND ORDERS;~~  
6 ~~(E) THOSE FUNCTIONS SPECIFIED IN 75-5-211 THROUGH~~  
7 ~~75-5-213, 75-5-221, 75-5-402, 75-5-511, 75-5-513, 75-5-601,~~  
8 ~~75-5-602, 75-5-612, 75-5-613, 75-5-616, 75-5-622, 75-5-635,~~  
9 ~~AND 75-5-636 RELATING TO WATER QUALITY, INCLUDING ISSUANCE~~  
10 ~~OF PERMITS AND ENFORCEMENT AND ADMINISTRATION OF AND STUDY~~  
11 ~~MONITORING, AND TESTING NECESSARY TO IMPLEMENT WATER QUALITY~~  
12 ~~LAWS, RULES, AND ORDERS;~~  
13 ~~(D) THOSE FUNCTIONS SPECIFIED IN 75-6-104, 75-6-105,~~  
14 ~~75-6-107, AND 75-6-111 THROUGH 75-6-113 RELATING TO PUBLIC~~  
15 ~~WATER SUPPLIES, INCLUDING DISTRIBUTION, TREATMENT, AND~~  
16 ~~INVESTIGATIVE AND ADMINISTRATIVE ASSISTANCE TO LOCAL~~  
17 ~~GOVERNMENTS;~~  
18 ~~(E) THE ADMINISTRATIVE ENFORCEMENT, RULEMAKING, AND~~  
19 ~~REGULATORY FUNCTIONS SPECIFIED IN 75-10-104, 75-10-105,~~  
20 ~~75-10-111, 75-10-121, 75-10-122, 75-10-124, 75-10-204,~~  
21 ~~75-10-205, 75-10-211, 75-10-221, 75-10-222, 75-10-224,~~  
22 ~~75-10-225, 75-10-231, 75-10-232, 75-10-503, 75-10-511,~~  
23 ~~75-10-513, THROUGH 75-10-515, 75-10-521, 75-10-522,~~  
24 ~~75-10-531, 75-10-533, 75-10-534, AND 75-10-541 RELATING TO~~  
25 ~~MANAGEMENT OF MATERIAL RECYCLING AND MOTOR VEHICLE RECYCLING~~



1 ~~AND DISPOSAL;~~

2 ~~(F) THOSE FUNCTIONS SPECIFIED IN TITLE 75, CHAPTER 20,~~

3 ~~RELATING TO MAJOR FACILITY SITING, INCLUDING EMISSION AND~~

4 ~~DISCHARGE PERMITS, AND~~

5 ~~(G) THOSE FUNCTIONS SPECIFIED IN 76-3-505 AND TITLE~~

6 ~~76, CHAPTER 4, PART 1, RELATING TO STATE REGULATION OF~~

7 ~~SUBDIVISIONS, INCLUDING SANITARY STANDARDS, FEES, AND~~

8 ~~ENFORCEMENT.~~

9 ~~(2) UNLESS INCONSISTENT WITH THIS ACT, ANY REFERENCE~~

10 ~~IN THE SECTIONS LISTED IN SUBSECTION (1) AND IN 75-2-103,~~

11 ~~75-2-105, 75-5-103, 75-5-105, 75-5-106, 75-5-401, 75-6-102,~~

12 ~~75-10-103, 75-10-106, 75-10-113, 75-10-203, AND 75-10-501 TO~~

13 ~~THE "DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES" OR~~

14 ~~"DEPARTMENT" OR "DIRECTOR" OF HEALTH AND ENVIRONMENTAL~~

15 ~~SCIENCES, IS CHANGED TO THE "DEPARTMENT OF NATURAL RESOURCES~~

16 ~~AND CONSERVATION" OR "DEPARTMENT" OF NATURAL RESOURCES AND~~

17 ~~CONSERVATION; THE CODE COMMISSIONER SHALL CONFORM INTERNAL~~

18 ~~REFERENCES AND GRAMMAR, INCLUDING REDUNDANCIES, TO THESE~~

19 ~~CHANGES.~~

20 ~~SECTION 21, TRANSFER OF BOARD AND ADVISORY COUNCILS.~~

21 ~~(1) THE BOARD OF WATER AND WASTEWATER OPERATORS, THE AIR~~

22 ~~POLLUTION CONTROL ADVISORY COUNCIL, AND THE WATER POLLUTION~~

23 ~~CONTROL ADVISORY COUNCIL, CREATED IN TITLE 2, CHAPTER 15,~~

24 ~~PART 21, ARE REALLOCATED FROM THE DEPARTMENT OF HEALTH AND~~

25 ~~ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF NATURAL~~

1 ~~RESOURCES AND CONSERVATION.~~

2 ~~(2) SECTIONS 2-15-2105 THROUGH 2-15-2107 SHALL BE~~

3 ~~RENUMBERED TO BE INTEGRAL PARTS OF TITLE 2, CHAPTER 15, PART~~

4 ~~33.~~

5 ~~(3) THE CODE COMMISSIONER SHALL CHANGE INTERNAL~~

6 ~~REFERENCES TO BOTH SECTION NUMBERS AND NAMES ACCORDINGLY.~~

7 ~~SECTION 22, SECTION 2-15-2103, MCA, IS AMENDED TO~~

8 ~~READ:~~

9 ~~"2-15-2103 - Division of environmental sciences - - -~~

10 ~~functions. - - - There is a division of environmental sciences~~

11 ~~within the department. The department shall assign all~~

12 ~~functions performed by the department relating to air~~

13 ~~pollution control, water pollution control, radiation~~

14 ~~control, pesticides control, environmental sanitation, solid~~

15 ~~waste disposal, industrial hygiene, and related areas to the~~

16 ~~division."~~

17 ~~SECTION 23, SECTION 2-15-2105, MCA, IS AMENDED TO~~

18 ~~READ:~~

19 ~~"2-15-2105 - Board of water and wastewater operators.~~

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

21 ~~(2) The board consists of seven members. Except as~~

22 ~~provided in subsection (2)(e) of this section, the members~~

23 ~~shall be appointed by the governor. The members are:~~

24 ~~(a) two members who are employed water supply system~~

25 ~~or water treatment plant operators holding valid~~

1 certificates. One of these members shall hold a certificate  
 2 by examination of the highest class issued by the department  
 3 of health and environmental sciences. There is no  
 4 restriction on the classification of the certificate held by  
 5 the other operators.

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

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

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

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

1 (3) Members, except the ex-officio voting member from  
 2 the department of health and environmental sciences, shall  
 3 serve for a term of 6 years.

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

6 ~~SECTION 24~~ ~~SECTION 2-15-2107~~ ~~NEA~~ ~~15~~ ~~AMENDED TO~~  
 7 READ:

8 "2-15-2107. Water pollution control advisory council.

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

10 (2) The council consists of eleven members. The  
 11 members are:

- 12 (a) the director of fish, wildlife, and parks;
- 13 (b) the administrator of the water resources division
- 14 of the department of natural resources and conservation
- 15 director of the department of health and environmental
- 16 sciences;

17 (c) the director of agriculture;

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

- 20 (i) a representative of industry concerned with the
- 21 disposal of inorganic wastes;
- 22 (ii) a representative of industry concerned with the
- 23 disposal of organic wastes;
- 24 (iii) a livestock feeder;
- 25 (iv) a representative of municipal government;

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

3 (vi) a representative from tobacco

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

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

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

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

12 ~~SECTION 25 - SECTION 15-6-135 MCA IS AMENDED TO READ:~~

13 "15-6-135. Class five property - description -  
14 taxable percentages - (1) Class five property includes:

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

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

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

1 (i) is retired from full employment; and

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

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

7 (e) any personal or real property used primarily in  
8 the production of gasohol during construction and for the  
9 first 3 years of its operation;

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

18 (b) The department's determination [as to air  
19 pollution equipment] may be appealed to the board of health  
20 and environmental sciences and any person liable for taxes  
21 on property determined by the department not to be air or  
22 water pollution equipment is entitled to a hearing before  
23 the department of natural resources and conservation. The  
24 determination of the department may not be appealed to  
25 either a county tax appeal board or the state tax appeal

1 board. However, the appraised value of the equipment as  
2 determined by the department of revenue may be appealed to  
3 the county tax appeal board and the state tax appeal board.

4 (3) "New industrial property" means any new industrial  
5 plants, including land, buildings, machinery, and fixtures,  
6 used by new industries during the first 3 years of their  
7 operations. The property may not have been assessed within  
8 the state of Montana prior to July 1, 1961.

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

15 (b) New industry includes only those industries that  
16 (i) manufacture, mine, produce, process, or  
17 fabricate materials;

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

23 (iii) engage in the mechanical or chemical  
24 transformation of materials or substances into new products  
25 in the manner defined as manufacturing in the 1972 standard

1 Industrial Classification Manual prepared by the United  
2 States office of management and budget.

3 (5) New industrial property does not include  
4 (a) property used by retail or wholesale merchants,  
5 commercial services of any type, agriculture, trades, or  
6 professions;

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

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

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

14 SECTION 26 - SECTION 75-2-104, MCA, IS AMENDED TO READ:

15 "75-2-104 - Limitations - personal cause of action  
16 unbridged. Nothing in this chapter shall be construed to

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

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

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

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

~~SECTION 27. SECTION 75-2-111, MCA, IS AMENDED TO READ:~~

~~"75-2-111. Powers of boards. The board shall:~~

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

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

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

~~(4)(2) by rule require access to records relating to emissions;~~

~~(5)(3) by rule adopt a schedule of fees required for permits under this chapter;~~

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

~~SECTION 28. SECTION 75-2-112, MCA, IS AMENDED TO READ:~~

~~"75-2-112. Powers and responsibilities of departments:~~

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

~~(2) The department shall:~~

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

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

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

~~(4)(d) by appropriate administrative and judicial proceedings, enforce orders issued by the board department;~~

~~(b)(e) secure necessary scientific, technical,~~

1 administrative, and operational services, including  
2 laboratory facilities, by contract or otherwise;

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

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

8 (e)(h) encourage local units of government to handle  
9 air pollution problems within their respective jurisdictions  
10 on a cooperative basis and provide technical and  
11 consultative assistance for this, if local programs are  
12 financed with public funds, the department may contract with  
13 the local government to share the cost of the program.  
14 However, the state share may not exceed 30% of the total  
15 costs.

16 (f)(i) encourage and conduct studies, investigations,  
17 and research relating to air contamination and air pollution  
18 and their causes, effects, prevention, abatement, and  
19 control;

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

23 (h)(k) make a continuing study of the effects of the  
24 emission of air contaminants from motor vehicles on the  
25 quality of the outdoor atmosphere of this state and make

1 recommendations to appropriate public and private bodies  
2 with respect to this;

3 (i)(l) collect and disseminate information and conduct  
4 educational and training programs relating to air  
5 contamination and air pollution;

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

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

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

24 (3) The department may assess fees to the applicant  
25 for the analysis of the environmental impact of an

1 application to redesignate the classification of any area  
 2 except those areas within the exterior boundaries of a  
 3 reservation of a federally recognized Indian tribe under  
 4 the classifications established by 42 USC 7470 through  
 5 7479 (prevention of significant deterioration of air  
 6 quality). The determination of whether or not a fee will be  
 7 assessed is to be on a case-by-case basis.

8 ~~SECTION 29. SECTION 75-2-211, MCA, IS AMENDED TO READ:~~

9 "75-2-211. Permits for construction, installation,  
 10 alteration, or use. (1) The department shall provide for  
 11 the issuance, suspension, revocation, and renewal of a  
 12 permit issued under this section.

13 (2) Not later than 180 days before construction begins  
 14 of any machine, equipment, device, or facility which the  
 15 board ~~department~~ finds may directly or indirectly cause or  
 16 contribute to air pollution or which is intended primarily  
 17 to prevent or control the emission of air pollutants and not  
 18 later than 120 days before installation, alteration, or use  
 19 begins, the owner or operator shall file with the department  
 20 the appropriate permit application on forms available from  
 21 the department and pay to the department a fee sufficient to  
 22 cover:

23 (a) the reasonable costs of reviewing and acting upon  
 24 the application for such permits and

25 (b) the reasonable costs of implementing and enforcing

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

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

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

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

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

24 (7) Where an application for a permit requires the  
 25 compilation of an environmental impact statement under the

1 Montana--Environmental--Policy--Act--the--department--shall  
 2 notify--the--applicant--in--writing--within--180--days--of--the  
 3 receipt--of--a--filed--application--as--defined--in--subsection  
 4 (5)--of--the--approval--or--denial--of--the--applications--However  
 5 where--an--application--does--not--require--the--completion--of--an  
 6 environmental--impact--statement--the--department--shall--notify  
 7 the--applicant--in--writing--within--60--days--of--the--receipt--of--a  
 8 filed--application--as--defined--in--subsection--(5)--of--the  
 9 approval--or--denial--of--the--applications--Notification--of  
 10 approval--or--denial--may--be--served--personally--or--by--registered  
 11 or--certified--mail--on--the--applicant--or--his--agent--

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

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

1 ~~SECTION 38--SECTION 75-2-212--MCA--IS--AMENDED--TO--READ--~~

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

11 ~~(a)--the--emissions--occurring--or--proposed--to--occur--do~~  
 12 ~~not--constitute--a--danger--to--public--health--or--safety--and~~

13 ~~(b)--compliance--with--the--rules--from--which--exemption--is~~  
 14 ~~sought--would--produce--hardship--without--equal--or--greater~~  
 15 ~~benefits--to--the--public--~~

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

22 ~~(3)--No--exemption--or--partial--exemption--may--be--granted~~  
 23 ~~pursuant--to--this--section--for--a--period--to--exceed--1--year--but~~  
 24 ~~the--exemption--or--partial--exemption--may--be--renewed--for--like~~  
 25 ~~periods--if--no--complaint--is--made--to--the--board department~~



1 because of it or if, after the complaint has been made and  
 2 duly considered at a public hearing held by the board  
 3 department on due notice, the board it finds that renewal is  
 4 justified. No renewal may be granted except on application  
 5 therefor. An application shall be made at least 60 days  
 6 before the expiration of the exemption or partial exemption,  
 7 immediately before application for renewal the applicant  
 8 shall give public notice of his application in accordance  
 9 with rules of the board department. A renewal pursuant to  
 10 this subsection shall be on the same grounds and subject to  
 11 the same limitations and requirements as provided in  
 12 subsection (1).

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

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

25 (6) A person who owns or is in control of a plant,

1 building, structure, process, or equipment (hereinafter  
 2 called a facility) who applies to the board department for  
 3 an exemption or partial exemption or a renewal of an  
 4 exemption or partial exemption from a rule governing the  
 5 quality, nature, duration, or extent of emissions of air  
 6 pollutants shall submit with the application for variance a  
 7 sum of not less than \$500 or 2% of the cost of the equipment  
 8 to bring the facility into compliance with the rule for  
 9 which a variance is sought, whichever is greater, but not to  
 10 exceed \$80,000. The department shall prepare a statement of  
 11 actual costs, and funds in excess of this shall be returned  
 12 to the applicant. The person requesting the variance shall  
 13 describe the facility in sufficient detail with  
 14 accompanying estimates of cost and verifying materials to  
 15 permit the department to determine with reasonable accuracy  
 16 the sum of the fees for a renewal of an exemption or partial  
 17 exemption, if no public hearing, environmental impact  
 18 statement, or appreciable investigation by the department is  
 19 necessary, the minimum filing fee shall apply or the fee may  
 20 be waived by the department. The filing fee shall be  
 21 deposited in the earmarked revenue fund provided for in  
 22 17-2-102. It is the intent of the legislature that the  
 23 revenues derived from the filing fees shall be used by the  
 24 department to

25 (a) compile the information required for rendering a

1 decision on the request;

2 (b) compile the information necessary for any

3 environmental impact statements;

4 (c) offset the costs of a public hearing, printing, or

5 mailing; and

6 (d) carry out its other responsibilities under this

7 chapter."

8 ~~SECTION 31. SECTION 75-2-401, MCA, IS AMENDED TO READ:~~

9 ~~"75-2-401. Enforcement. (1) When the department~~

10 ~~believes that a violation of this chapter or a rule made~~

11 ~~under it has occurred, it may cause written notice to be~~

12 ~~served personally or by registered or certified mail on the~~

13 ~~alleged violator or his agent. The notice shall specify the~~

14 ~~provision of this chapter or rule alleged to be violated and~~

15 ~~the facts alleged to constitute a violation and may include~~

16 ~~an order to take necessary corrective action within a~~

17 ~~reasonable period of time stated in the order. The order~~

18 ~~becomes final unless, within 30 days after the notice is~~

19 ~~received, the person named requests in writing a hearing~~

20 ~~before the board department. On receipt of the request, the~~

21 ~~board department shall schedule a hearing.~~

22 ~~(2) If, after a hearing held under subsection (1) of~~

23 ~~this section, the board department finds that violations~~

24 ~~have occurred, it shall either affirm or modify an order~~

25 ~~previously issued or issue an appropriate order for the~~

1 prevention, abatement, or control of the emissions involved

2 or for the taking of other corrective action it considers

3 appropriate. An order issued as part of a notice or after a

4 hearing may prescribe the date by which the violation shall

5 cease and may prescribe time limits for particular action in

6 preventing, abating, or controlling the emissions. If

7 after hearing on an order contained in a notice, the board

8 department finds that no violation is occurring, it shall

9 rescind the order.

10 (3) Instead of issuing the order provided for in

11 subsection (1), the department may either:

12 (a) require that the alleged violators appear before

13 the board department for a hearing at a time and place

14 specified in the notice and answer the charges complained

15 of; or

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

17 (4) This chapter does not prevent the board or

18 department from making efforts to obtain voluntary

19 compliance through warnings, conferences, or any other

20 appropriate means.

21 (5) In connection with a hearing held under this

22 section, the board department may and on application by a

23 party shall compel the attendance of witnesses and the

24 production of evidence on behalf of the parties."

25 ~~SECTION 32. SECTION 75-2-402, MCA, IS AMENDED TO READ:~~

1       ~~75-2-402~~ Emergency procedures (1) Any other law to  
 2 the contrary notwithstanding, if the department finds that a  
 3 generalized condition of air pollution exists and that it  
 4 creates an emergency requiring immediate action to protect  
 5 human health or safety, the department shall order persons  
 6 causing or contributing to the air pollution to immediately  
 7 reduce or discontinue the emission of air contaminants. Upon  
 8 issuance of this order, the department shall fix a place and  
 9 time within 24 hours for a hearing to be held before the  
 10 board. Within 24 hours after the commencement of the hearing  
 11 and without adjournment, the board department shall affirm  
 12 modify or set aside the its order of the department.

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

22       (3) This section does not limit any power which the  
 23 governor or any other officer may have to declare an  
 24 emergency and act on the basis of this declaration, whether  
 25 the power is conferred by statute or constitutional

1 provisions or inheres in the office.

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

5       ~~SECTION 33~~ ~~SECTION 75-2-411~~ ~~MC41-15~~ ~~AMENDED TO READ:~~

6       ~~75-2-411~~ Judicial reviews (1) A person aggrieved by  
 7 an order of the board department or local control authority  
 8 may apply for rehearing upon one or more of the following  
 9 grounds and upon no other grounds:

10       (a) the board department or local control authority  
 11 acted without or in excess of its power;

12       (b) the order was procured by fraud;

13       (c) the order is contrary to the evidence;

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

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

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

21       (3) (a) Within 30 days after the application for  
 22 rehearing is denied or, if the application is granted,  
 23 within 30 days after the decision on the rehearing, a party  
 24 aggrieved thereby may appeal to the district court of the  
 25 judicial district of the state which is the situs of

1 property affected by the order.

2 (b) The appeal shall be taken by serving a written  
3 notice of appeal upon the chairman of the board department  
4 which service shall be made by the delivery of a copy of the  
5 notice to the chairman it and by filing the original with  
6 the clerk of the court to which the appeal is taken.  
7 Immediately after service upon the board department the  
8 board it shall certify to the district court the entire  
9 record and proceedings including all testimony and evidence  
10 taken by the board department immediately upon receiving  
11 the certified record. The district court shall fix a day for  
12 filing of briefs and hearing arguments on the cause and  
13 shall cause a notice of the same to be served upon the board  
14 department and the appellant.

15 (c) The court shall hear and decide the cause upon the  
16 record of the board department. The court shall determine  
17 whether or not the board department regularly pursued its  
18 authority whether or not the findings of the board  
19 department were supported by substantial competent evidence  
20 and whether or not the board department made errors of law  
21 prejudicial to the appellant.

22 (4) Either the board department or the person  
23 aggrieved may appeal from the decision of the district court  
24 to the supreme court. The proceedings before the supreme  
25 court shall be limited to a review of the record of the

1 hearing before the board department and of the district  
2 court's review of that record."

3 ~~SECTION 34~~ ~~SECTION 75-2-421~~ ~~MCA~~ ~~IS AMENDED TO READ:~~

4 ~~"75-2-421. Persons subject to noncompliance penalties~~  
5 ~~exemptions. (1) Except as provided in subsection (2) of~~  
6 ~~the department shall assess and collect a noncompliance~~  
7 ~~penalty from any person who owns or operates:~~

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

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

19 (c) any source referred to in subsections (1)(a) or  
20 (1)(b) which has been granted an exemption, extension, or  
21 suspension under subsection (2) or which is covered by a  
22 compliance order or a primary nonferrous smelter which has  
23 received a primary nonferrous smelter order under 42 U.S.C.  
24 7419, if such source is not in compliance with any interim  
25 emission control requirement or schedule of compliance under

1 such extension, order, or suspension.

2 (2) Notwithstanding the requirements of subsection

3 (1), the department may, after notice and opportunity for a

4 public hearing, exempt any source from the requirements of

5 75-2-421 through 75-2-429 with respect to a particular

6 instance of noncompliance which:

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

8 in duration;

9 (b) is caused by conditions beyond the reasonable

10 control of the source and is of no demonstrable advantage to

11 the source; or

12 (c) is exempt under 42 U.S.C. 7428(a)(2)(B) of the

13 Federal Clean Air Act.

14 (3) Any person who is jointly or severally adversely

15 affected by the department's decision may request, within 15

16 days after the department renders its decision, upon

17 affidavit setting forth the grounds therefor, a hearing

18 before the board. A hearing shall be held under the

19 provisions of the Montana Administrative Procedure Act.

20 ~~SECTION 35. SECTION 75-2-425, MCA, IS AMENDED TO READ:~~

21 ~~"75-2-425. Notice of noncompliance challenge. (1)~~

22 ~~The department shall give a brief but reasonably specific~~

23 ~~notice of noncompliance to each person who owns or operates~~

24 ~~a source subject to 75-2-421(1) which is not in compliance~~

25 ~~as provided in that subsection, within 30 days after the~~

1 department has discovered the noncompliance.

2 (2) Each person to whom notice has been given pursuant

3 to subsection (1) shall:

4 (a) calculate the amount of penalty owed (determined

5 in accordance with 75-2-422(1)) and the schedule of payments

6 (determined in accordance with 75-2-423) for each source

7 and, within 45 days after issuance of the notice of

8 noncompliance, submit that calculation and proposed

9 schedule, together with the information necessary for an

10 independent verification thereof, to the department; or

11 (b) submit to the board department a petition within

12 45 days after the issuance of such notice, challenging such

13 notice of noncompliance or alleging entitlement to an

14 exemption under 75-2-421(2) with respect to a particular

15 source.

16 (3) Each person to whom notice of noncompliance is

17 given shall pay the department the amount determined under

18 75-2-422 as the appropriate penalty unless there has been a

19 final determination granting a petition filed pursuant to

20 subsection (2)(b).

21 ~~SECTION 36. SECTION 75-2-426, MCA, IS AMENDED TO READ:~~

22 ~~"75-2-426. Hearing on challenges. (1) The board~~

23 ~~department shall provide a hearing on the record and make a~~

24 ~~decision (including findings of fact and conclusions of law)~~

25 ~~not later than 90 days after the receipt of any petition~~

1 under 75-2-425(2)(b) with respect to such sources.

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

5 ~~SECTION 37 -- SECTION 75-5-202, MCA, IS AMENDED TO READ:~~

6 "75-5-202 -- Board hearings HEARINGS -- The board  
7 department shall hold hearings necessary for the proper  
8 administration of this chapter or, in the case of permit  
9 issuance, hearings, delegate this function to the  
10 department."

11 ~~SECTION 38 -- SECTION 75-5-403, MCA, IS AMENDED TO READ:~~

12 "75-5-403 -- Denial or modification of permits -- (1) If  
13 the department denies an application for a permit or  
14 modifies a permit, the department shall give written notice  
15 of its action to the applicant or holder and he may request  
16 a hearing before the board department, in the manner stated  
17 in 75-5-611, for the purpose of petitioning the board  
18 department to reverse or modify the its action of the  
19 department. Such hearing shall be held within 30 days after  
20 receipt of written requests. After the hearing, the board  
21 department shall affirm, modify, or reverse the its action  
22 of the department. If the holder does not request a hearing  
23 before the board, modification of a permit shall be  
24 effective 30 days after receipt of notice by the holder  
25 unless the department specifies a later date. If the holder

1 does request a hearing before the board, no order modifying  
2 his permit shall be effective until 20 days after he has  
3 received notice of the final action of the board department.

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

8 ~~SECTION 39 -- SECTION 75-5-404, MCA, IS AMENDED TO READ:~~

9 "75-5-404 -- Suspension or revocation of permit --  
10 procedure -- If the department suspends or revokes a permit  
11 because it has reason to believe that the holder has  
12 violated this chapter, the department may specify that the  
13 suspension or revocation is effective immediately if the  
14 department finds that the violation is likely to continue  
15 and will cause pollution, the harmful effects of which will  
16 not be remedied immediately on the cessation of the  
17 violation. Upon petition by the holder of the permit, the  
18 board department shall grant the holder a hearing, to be  
19 conducted in the manner specified in 75-5-611, and shall  
20 issue an order affirming, modifying, or reversing the action  
21 of the department. The order of the board shall be effective  
22 immediately unless the board it directs otherwise."

23 ~~SECTION 40 -- SECTION 75-5-501, MCA, IS AMENDED TO READ:~~

24 "75-5-501 -- Board DEPARTMENT to control state matching  
25 funds for construction of water pollution control

1 facilities--(1) The board department shall control funds  
2 appropriated by the state for the purpose of providing  
3 matching funds to local governments for the construction of  
4 water pollution control facilities.

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

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

14 SECTION 41. SECTION 75-5-611, MCA, IS AMENDED TO READ:

15 "75-5-611. Violation of chapter--notice and hearing.

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

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

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

18 (4) If a hearing is held under this section, it shall  
19 be public and shall, if the board department considers it  
20 practicable, be held in a county in which the violation is  
21 alleged to have occurred.

22 (5) After a hearing or on failure of an alleged  
23 violator to make a timely request for a hearing, the board  
24 department may issue an appropriate order for the  
25 prevention, abatement, or control of pollution. It shall

1 state the date or dates by which a violation shall cease and  
2 may prescribe timetables for necessary action in preventing,  
3 abating or controlling the pollution.

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

8 (7) In addition to or instead of issuing an order, the  
9 board may direct the department to may initiate appropriate  
10 action for recovery of a penalty under 75-5-631, 75-5-632,  
11 75-5-633 or 75-5-635.

12 ~~SECTION 42. SECTION 75-5-621, MCA, IS AMENDED TO READ:~~

13 "75-5-621. Emergencies. (1) Notwithstanding any other  
14 provisions of this chapter, if the department finds that a  
15 person is committing or is about to commit an act in  
16 violation of this chapter or an order or rule issued under  
17 it which, if it occurs or continues, will cause substantial  
18 pollution the harmful effects of which will not be remedied  
19 immediately after the commission or cessation of the act,  
20 the department shall order the person to stop, avoid, or  
21 moderate the act so that the substantial injury will not  
22 occur. The order shall be effective immediately upon receipt  
23 by the person to whom it is directed, unless the department  
24 provides otherwise.

25 (2) Notice of the order shall conform to the

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

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

21 ~~SECTION 43. SECTION 75-5-641, MCA, IS AMENDED TO READ:~~

22 "75-5-641. Appeals from board DEPARTMENT orders --  
23 review by district courts. (1) An appeal of an a final order  
24 of the board department shall be in the district court of  
25 the county in which the alleged source of pollution is



1 located.

2 {2}--A person interested in the order may intervene in

3 the manner provided by the rules of civil procedure if he

4 shows good cause. An intervenor is a party for the purposes

5 of this chapter.

6 {3}--The attorney general shall represent the board

7 department if requested, or the department may appoint

8 special counsel for the proceedings, subject to the approval

9 of the attorney general.

10 {4}--The initiation of an action for review or the

11 taking of an appeal does not stay the effectiveness of any

12 order of the board department unless the court finds that

13 there is probable cause to believe:

14 (a)--that refusal to grant a stay will cause serious

15 harm to the affected party; and

16 (b)--that any violation found by the board department

17 will not continue or, if it does continue, any harmful

18 effects on state waters will be remedied immediately on the

19 cessation of the violation.

20 {5}--If a court does not stay the effectiveness of an

21 order of the board department, it may enforce compliance

22 with that order by issuing a temporary restraining order or

23 an injunction at the request of the board department.

24 ~~SECTION 44a--SECTION 75-6-103, NEAY 15 AMENDED TO READ:~~

25 ~~"75-6-103--Duties of the board. (1) The board~~

1 department has general supervision over all state waters

2 which are directly or indirectly being used by a person for

3 a public water supply system or domestic purposes or as a

4 source of ice.

5 {2}--The board shall adopt rules and standards

6 concerning:

7 (a)--maximum contaminant levels for waters that are or

8 will be used for a public water supply system;

9 (b)--fees for services rendered by the department in

10 analyzing water and conducting inspections;

11 (c)--monitoring, recordkeeping, and reporting by

12 persons who own or operate a public water supply system;

13 (d)--requiring public notice to all users of a public

14 water supply system when a person has been granted a

15 variance or exemption or is in violation of this part or a

16 rule or order issued pursuant to this part;

17 (e)--the issuance of licenses by the department to

18 laboratories that conduct analysis of public water supply

19 systems;

20 (f)--the siting, construction, operation, and

21 modification of a public water supply system;

22 (g)--the collection and analysis of samples of water

23 used for drinking or domestic purposes;

24 (h)--the issuance of variances and exemptions as

25 authorized by the federal Safe Drinking Water Act and this

1 part and  
 2 (1) any other requirement necessary for the protection  
 3 of public health as described in this part.  
 4 (3) The board department may issue orders necessary to  
 5 fully implement the provisions of this part.  
 6 SECTION 45 - SECTION 75-6-106 - MCA - IS AMENDED TO READ:  
 7 75-6-106 - Licensing of laboratories - (1) - No  
 8 laboratory analysis of water taken from a public water  
 9 supply system or any report of such an analysis required by  
 10 this part or a rule adopted under this part may be accepted  
 11 by the department or board unless the analysis or report is  
 12 made by the laboratory of the department or by a laboratory  
 13 licensed by the department for such purposes. The department  
 14 shall issue a license to any laboratory that can meet  
 15 criteria for licensing established in the rules adopted by  
 16 the board.  
 17 (2) An application for a license under this section  
 18 shall be made on forms furnished by the department.  
 19 (3) A person aggrieved by a decision of the department  
 20 to grant, deny, or revoke a license may appeal the  
 21 department's decision to the board department as provided in  
 22 the Montana Administrative Procedure Act.  
 23 SECTION 46 - SECTION 75-20-216 - MCA - IS AMENDED TO  
 24 READ:  
 25 75-20-216 - Study, evaluation, and report on proposed

1 facility assistance by other agencies. (1) After receipt  
 2 of an application, the department and department of health  
 3 shall within 90 days notify the applicant in writing that  
 4 (a) the application is in compliance and is accepted  
 5 as complete, or  
 6 (b) the application is not in compliance and list the  
 7 deficiencies therein, and upon correction of these  
 8 deficiencies and resubmission by the applicant, the  
 9 department and department of health shall within 30 days  
 10 notify the applicant in writing that the application is in  
 11 compliance and is accepted as complete.  
 12 (2) Upon receipt of an application complying with  
 13 75-20-211 through 75-20-215 and this section, the  
 14 department shall commence an intensive study and evaluation  
 15 of the proposed facility and its effects, considering all  
 16 applicable criteria listed in 75-20-301 and 75-20-503, and  
 17 the department of health shall commence a study to enable it  
 18 or the board of health to issue a decision, opinion, order,  
 19 certification, or permit as provided in subsection (3). The  
 20 department and department of health shall use, to the extent  
 21 they consider it considers applicable, valid and useful  
 22 existing studies and reports submitted by the applicant or  
 23 compiled by a state or federal agency.  
 24 (3) The department of health shall within 1 year  
 25 following the date of acceptance of an application, and the

1 board--of--health--if--applicable ~~a hearing is held~~ within an  
 2 additional 6 months, issue any decision, opinion, order,  
 3 certification, or permit required by state or federal air  
 4 and water quality laws and this chapter. The department of  
 5 health and the board of health shall determine compliance  
 6 with air and water quality standards and implementation  
 7 plans for the primary and reasonable alternate locations in  
 8 their ~~its~~ decision, opinion, order, certification, or  
 9 permits. The decision, opinion, order, certification, or  
 10 permit, with or without conditions, is conclusive on all  
 11 matters of air and water quality impacts under the federal  
 12 and state air and water quality statutes that the department  
 13 of health and board of health administer ~~administers~~, and  
 14 any of the criteria specified in 75-28-503(3) and (4) that  
 15 are a part of the determinations made under federal and  
 16 state air and water quality statutes. Although the decision,  
 17 opinion, order, certification, or permit issued under this  
 18 subsection is conclusive, the board retains authority to  
 19 make the determination required under 75-28-301(2)(c). The  
 20 decision, opinion, order, certification, or permit of the  
 21 department of health or the board of health satisfies the  
 22 review requirements by those agencies and shall be  
 23 acceptable in lieu of an environmental impact statement  
 24 under the Montana Environmental Policy Act. A copy of the  
 25 decision, opinion, order, certification, or permit shall be

1 served upon the department and the board and shall be  
 2 utilized as part of their final site selection process.  
 3 Prior to the issuance of a preliminary decision by the  
 4 department of health and pursuant to rules adopted by the  
 5 board of health ~~on air and water quality permits~~, the  
 6 department of health shall provide an opportunity for public  
 7 review and comments. A final decision by the department of  
 8 health or board of health ~~on air and water quality permits~~  
 9 is subject to appellate review pursuant to the air and water  
 10 quality statutes administered by the department of health  
 11 and board of health.

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

lengths of time provided for in this subsection for either of the facilities.

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

SECTION 47 - SECTION 75-20-218 - MEA - IS - AMENDED - TO

READ:

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

(2) Except as provided in 75-20-221(2), the department

shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the duty authorized state air and water quality agencies department shall hold any required permit hearings required under the state air and water quality laws administered by those agencies in conjunction with the board certification hearings. In such a conjunctive hearing, the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other the state air and water quality laws administered by the duty authorized state air and water quality agencies department.

SECTION 48 - SECTION 75-20-219 - MEA - IS - AMENDED - TO

READ:

75-20-219 - Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1) including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as

1 provided in the alternates set forth in the original  
 2 application. If the department determines that the proposed  
 3 change would result in any material increase in any  
 4 environmental impact of the facility or a substantial change  
 5 in the location of all or a portion of the facility, the  
 6 board shall hold a hearing in the same manner as a hearing  
 7 is held on an application for a certificate. After hearing,  
 8 the board shall grant, deny, or modify the amendment with  
 9 such conditions as it deems appropriate.

10 (2) In those cases where the department determines  
 11 that the proposed change in the facility would not result in  
 12 any material increase in any environmental impact or would  
 13 not be a substantial change in the location of all or a  
 14 portion of the facility, the board shall automatically grant  
 15 the amendment either as applied for or upon such terms or  
 16 conditions as the board considers appropriate unless the  
 17 department's determination is appealed to the board within  
 18 15 days after notice of the department's determination is  
 19 given.

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

23 (4) If an amendment is required to a certificate which  
 24 would affect, amend, alter or modify a decision, opinion,  
 25 order, certification, or permit issued by the department of

1 health or board of health under the state air and water  
 2 quality statutes, such amendment must be processed under the  
 3 applicable statutes administered by the department of health  
 4 or board of health.

5 SECTION 49, SECTION 75-20-220, MCA, IS AMENDED TO

6 READ:

7 "75-20-220. Hearing examiner restrictions  
 8 duties. (1) If the board appoints a hearing examiner to  
 9 conduct any certification proceedings under this chapter,  
 10 the hearing examiner may not be a member of the board or an  
 11 employee of the department or a member or employee of the  
 12 department of health or board of health. A hearing examiner  
 13 if any, shall be appointed by the board within 20 days after  
 14 the department's report has been filed with the board. If a  
 15 hearing is held before the board of health department under  
 16 air and water quality laws, the board and the board of  
 17 health department shall mutually agree on the appointment of  
 18 a hearing examiner to preside at both hearings.

19 (2) A prehearing conference shall be held following  
 20 notice within 60 days after the department's report has been  
 21 filed with the board.

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

24 (4) The prehearing conference shall be directed toward  
 25 a determination of the issues presented by the application.

1 the department's report and an identification of the  
2 witnesses and documentary exhibits to be presented by the  
3 active parties who intend to participate in the hearing.

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

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

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

23 (8) The hearing examiner shall issue a prehearing  
24 order specifying the issues of fact and of law, identifying  
25 the witnesses of the active parties, naming the public

1 witnesses and other interested parties who have submitted  
2 written testimony in lieu of appearance, outlining the order  
3 in which the hearing shall proceed, setting forth those  
4 section 75-20-301 criteria as to which no issue of fact or  
5 law has been raised which are to be conclusively presumed  
6 and are not subject to further proof except for good cause  
7 shown, and any other special rules to expedite the hearing  
8 which the hearing examiner shall adopt with the approval of  
9 the board.

10 (9) At the conclusion of the hearing, the hearing  
11 examiner shall declare the hearing closed and shall, within  
12 60 days of that date, prepare and submit to the board and in  
13 the case of a conjunctive hearing, within 90 days to the  
14 board and the board of health department proposed findings  
15 of fact, conclusions of law and a recommended decision.

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

23 (11) The board or hearing examiner may waive all or a  
24 portion of the procedures set forth in subsections (2)  
25 through (8) of this section to expedite the hearing for a

1 facility when the department has recommended approval of a  
2 facility and no objections have been filed.

3 ~~SECTION 50. SECTION 76-4-186, MCA, IS AMENDED TO READ:~~

4 "76-4-186. Cooperation with other governmental  
5 agencies. (1) The department may require the use of records  
6 of all state, county, and municipal agencies and may seek  
7 the assistance of those agencies.

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

13 ~~SECTION 51. SECTION 2-15-3302, MCA, IS AMENDED TO~~  
14 ~~READ:~~

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

18 (2) The board is composed of seven members, appointed  
19 by the governor as prescribed in 2-15-124, informed and  
20 experienced in the subjects of natural resources and  
21 conservation. One member shall be a medical doctor licensed  
22 by the board of medical examiners and at least one member  
23 shall be an engineer licensed by the board of professional  
24 engineers and land surveyors.

25 (3) The board is designated as a quasi-judicial board

1 for purposes of 2-15-124.

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

4 (5) In addition to carrying out its functions as  
5 provided by law, the board shall act in an advisory capacity  
6 to the department in all other matters.

7 ~~SECTION 52. TRANSITION FOR CONTESTED CASES. ANY~~  
8 ~~CONTESTED CASE FILED BEFORE OCTOBER 1, 1982 WITH THE BOARD~~  
9 ~~OF HEALTH SHALL BE CONCLUDED WITH THE BOARD OF HEALTH UNLESS~~  
10 ~~BOTH PARTIES TO THE ACTION STIPULATE IN WRITING THAT THE~~  
11 ~~ACTION MAY BE TRANSFERRED TO THE DEPARTMENT OF NATURAL~~  
12 ~~RESOURCES AND CONSERVATION.~~

13 Section 8. Severability. If a part of this act is  
14 invalid, all valid parts that are severable from the invalid  
15 part remain in effect. If a part of this act is invalid in  
16 one or more of its applications, the part remains in effect  
17 in all valid applications that are severable from the  
18 invalid applications.

19 Section 9. Transition. The provisions of 2-15-131  
20 through 2-15-137 apply to the transfer of functions under  
21 this act.

22 ~~SECTION 55. EFFECTIVE DATES. (1) THE EFFECTIVE DATE~~  
23 ~~FOR SECTIONS 1 THROUGH 17 IS OCTOBER 1, 1981.~~

24 (2) THE EFFECTIVE DATE FOR SECTIONS 18 THROUGH 50 IS  
25 ~~OCTOBER 1, 1982.~~

1 ~~131--THE--EFFECTIVE--DATE--FOR--SECTION--51--15--JANUARY--1,~~

2 ~~1983.~~

3 ~~SECTION--56--REPEALER--SECTION--75--5--202--MCA--15~~

4 ~~REPEALED.~~

5 ~~SECTION 10. EFFECTIVE DATE. THIS ACT IS EFFECTIVE~~

6 ~~JULY 1, 1981.~~

-End-



FREE CONFERENCE COMMITTEE  
ON SENATE BILL NO. 258

(Report No. 1, April 14, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 258, met April 14, 1981, and considered:

House State Administration Committee Amendments to the third reading copy, dated March 27, 1981, and;

House Committee of the Whole Amendments to the third reading copy, dated March 30, 1981, and recommend as follows:

That the Senate accede to Standing Committee amendment nos. 1 through 13;

That the Senate accede to Committee of the Whole amendment no. 1;

That the reference copy of Senate Bill No. 258 be further amended as specified in CLERICAL INSTRUCTION nos. 1 and 2;

That the reference copy of Senate Bill No. 258 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Free Conference Committee Report on Senate Bill No. 258 be adopted.

CLERICAL INSTRUCTIONS:

1. Title, line 4 on page 2.

Following: "TRANSFER;"

Insert: "TO REQUEST THAT THE GOVERNOR MAKE RECOMMENDATIONS TO THE MEMBERS OF THE 1983 LEGISLATURE;"

2. Page 72.

Following: line 12.

Insert: "Section 8. Recommendation for transfer of functions from the department of state lands, the board of land commissioners, and the department and board of health and environmental sciences to the department and board of natural resources and conservation. The members of the 1981 legislature of Montana request that the governor of Montana submit recommendations to the members of the

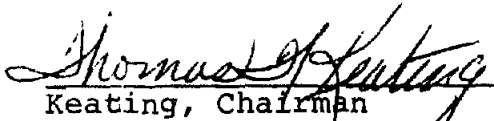
(CONTINUED)


FREE CONFERENCE COMMITTEE ON SENATE BILL NO. 258  
Report No. 1  
Page Two

1983 legislature concerning the transfers necessary in order to coordinate and facilitate the permitting process of those appropriate functions from the department of state lands and the board of land commissioners to the department of natural resources and conservation and from the department and board of health and environmental sciences to the department and board of natural resources and conservation."

Renumber: subsequent sections.

FOR THE SENATE:


  
Keating, Chairman

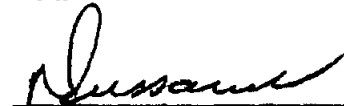
  
Dover

  
S. Brown

FOR THE HOUSE:

  
Winslow, Chairman

  
Feda

  
Dussault

## HOUSE AMENDMENTS TO SB 258

1. Title, lines 7 through 10.  
Following: "LANDS;" on line 7  
Strike: "TO" through "CONSERVATION;" on line 10
2. Title, page 1, line 13 through line 3, page 2.  
Following: "MCA;" on line 13, page 1  
Strike: "TO" through "DOCTOR;" on line 3, page 2
3. Title, line 4, page 2.  
Following: "TRANSFER;"  
Strike: "REPEALING SECTION 75-5-502, MCA;"
4. Title, line 5, page 2.  
Following: "PROVIDING"  
Insert: "AN"  
Following: "EFFECTIVE"  
Strike: "DATES"  
Insert: "DATE"
5. Page 3, line 9 through line 15 on page 6.  
Following: line 8  
Strike: Sections 3 through 5 in their entirety.  
Re-number: subsequent sections
6. Page 6, line 20.  
Following: "sciences"  
Strike: "NATURAL RESOURCES AND CONSERVATION"  
Insert: "health and environmental sciences"
7. Page 6, line 21.  
Following: "2-15-2104"  
Strike: "2-15-3302"  
Insert: "2-15-2104"
8. Page 6, line 23.  
Following: "sciences"  
Strike: "NATURAL RESOURCES AND CONSERVATION"  
Insert: "health and environmental sciences"
9. Page 6, line 24.  
Following: "21"  
Strike: "33"  
Insert: "21"
10. Page 8, lines 23 and 24.  
Following: "lands"  
Strike: "natural resources and conservation"  
Insert: "state lands"

(continued)

11. Page 12, lines 4 and 5.

Following: "lands"

Strike: "natural resources and conservation"

Insert: "state lands"

12. Page 12, line 23 through line 9, page 72.

Following: line 22

Strike: sections 11 through 52 in their entirety.

Renumber: subsequent sections

13. Page 72, line 19 through line 1, page 73.

Following: line 18

Strike: sections 55 and 56 in their entirety.

Insert: "Section 10. Effective date. This act is effective July 1, 1981."