

Senate Bill 282

In The Senate

January 26, 1981	Introduced and referred to Committee on State Administration.
January 28, 1981	Referred to Committee on Legislative Administration.
February 20, 1981	Committee recommend bill do pass as amended.
February 21, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading indefinitely postponed.

1 *State* BILL NO. *282*  
 2 INTRODUCED BY *Over, Hofferma, Johnson*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A  
 5 LEGISLATIVE ENERGY AND NATURAL RESOURCES POLICY REVIEW  
 6 COMMITTEE; PROVIDING FOR THE DUTIES AND POWERS OF THE  
 7 COMMITTEE; ESTABLISHING PROCEDURES UNDER WHICH THE COMMITTEE  
 8 FUNCTIONS; AND AMENDING SECTION 2-4-402, MCA."  
 9

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

11 NEW SECTION. Section 1. Short title. [Sections 1  
 12 through 14] may be cited as the "Legislative Energy and  
 13 Natural Resources Policy Review Act of 1981".

14 NEW SECTION. Section 2. Purpose. It is the purpose of  
 15 [sections 1 through 14] to establish a mechanism for  
 16 continual legislative determination and oversight of  
 17 policies concerning the development, use, and conservation  
 18 of natural resources and energy in this state. In a period  
 19 of rapidly changing needs, priorities, and economic  
 20 conditions, continual and diligent legislative consideration  
 21 of present and future policies affecting the state's energy  
 22 and natural resources is essential to maintain the viability  
 23 of the state's economy.

24 NEW SECTION. Section 3. Definitions. As used in  
 25 [sections 1 through 14], the following definitions apply:

1 (1) "Committee" means the legislative energy and  
 2 natural resources policy review committee established in  
 3 [section 4].

4 (2) "Person" means a person, firm, corporation,  
 5 partnership, association, or other organization or entity.

6 NEW SECTION. Section 4. Energy and natural resources  
 7 policy review committee -- appointment, composition, terms,  
 8 and officers. (1) There is a legislative energy and natural  
 9 resources policy review committee.

10 (2) The committee consists of the legislative members  
 11 of the environmental quality council appointed under  
 12 5-16-101(2).

13 (3) The governor or his designated representative is  
 14 an ex officio member of the committee and shall participate  
 15 in committee meetings as a nonvoting member.

16 (4) Qualifications, term of office, and filling of  
 17 vacancies for the committee are as provided in 5-16-102  
 18 through 5-16-104.

19 (5) The committee shall elect one of its members as  
 20 chairman and may elect other officers it considers  
 21 necessary.

22 NEW SECTION. Section 5. Committee staff, meetings,  
 23 and compensation. (1) The committee may retain employees,  
 24 consultants, or counsel as necessary to carry out the  
 25 provisions of [sections 1 through 14], within the limits of

1 legislative appropriations.

2 (2) The committee shall meet as often as may be  
3 necessary during and between legislative sessions.

4 (3) Committee members are entitled to receive  
5 compensation and expenses as provided in 5-2-302.

6 NEW SECTION. Section 6. Duties of the committee. The  
7 committee shall:

8 (1) develop resource policy guidelines during the  
9 legislative interim when such a policy is needed due to  
10 changes in the state's economic or social conditions that  
11 impact energy and natural resource considerations and when  
12 no such policy has been directly established by the  
13 legislature;

14 (2) review for conformance with legislative intent all  
15 existing and proposed rules filed with the secretary of  
16 state by:

17 (a) the department of natural resources and  
18 conservation;

19 (b) the department of state lands;

20 (c) the department of fish, wildlife, and parks;

21 (d) the department of health and environmental  
22 sciences relating to its environmental sciences function; or

23 (e) other agencies, whenever those rules substantially  
24 affect energy and natural resource policies;

25 (3) review legislation dealing with energy and natural

1 resources proposed by state agencies and, when requested, by  
2 legislators, to insure a consistent and coordinated policy  
3 direction for the state;

4 (4) act as an intermediary and factfinding review  
5 authority for persons who contest the validity of rules or  
6 legislation;

7 (5) insure that valid and appropriate rules are  
8 properly enforced by state agencies;

9 (6) review and report to the legislature on the impact  
10 of federal policies, statutes, and regulations dealing with  
11 the state's energy and natural resources.

12 NEW SECTION. Section 7. Development of resource  
13 policy guidelines. (1) The committee shall develop a  
14 statement of policy concerning the development and use of  
15 energy and natural resources based on current state and  
16 federal laws and a determination of legislative intent of  
17 those laws. This determination is admissible in any court  
18 proceeding involving the validity of the law.

19 (2) At each meeting, the committee shall review the  
20 current status of availability of energy and natural  
21 resources in the state. The committee shall also identify  
22 significant changes in the state's economic or social  
23 conditions that impact energy and natural resource  
24 considerations. If current laws and rules do not adequately  
25 address a problem or situation requiring action by state

1 government, the committee shall develop necessary resource  
2 policy guidelines. Agencies or individuals may also request  
3 policy guidelines from the committee.

4 (3) All policy guidelines made by the committee during  
5 an interim shall be developed as legislation prior to each  
6 legislative session for consideration by the legislature.

7 NEW SECTION. Section 8. Review of rules. (1) The  
8 committee shall review all existing and proposed rules of  
9 the departments prescribed in subsection (2) of [section 6],  
10 as well as any other existing and proposed rules that  
11 substantially affect energy and natural resource policies.

12 (2) The committee may:

13 (a) prepare written recommendations for the adoption,  
14 amendment, or rejection of a rule and submit the  
15 recommendations to the applicable department whenever a  
16 rulemaking hearing will not be held in accordance with the  
17 provisions of 2-4-302 through 2-4-305;

18 (b) prepare recommendations for the adoption,  
19 amendment, or rejection of a rule and submit oral or written  
20 testimony at a rulemaking hearing;

21 (c) require that a rulemaking hearing be held in  
22 accordance with the provisions of 2-4-302 through 2-4-305;

23 (d) recommend to the legislature the repeal,  
24 amendment, or adoption of a rule as provided in 2-4-412.

25 NEW SECTION. Section 9. Legislative intent -- poll.

1 (1) If the legislature is not in session, the committee may  
2 poll the members of the legislature by mail to determine  
3 whether a proposed rule that it has reviewed under [section  
4 8] is consistent with the intent of the legislature.

5 (2) If 20 or more legislators object in writing to any  
6 rule of the applicable department, the committee shall poll  
7 the members of the legislature.

8 (3) The poll shall include an opportunity for the  
9 applicable department to present a written justification for  
10 the rule to the members of the legislature.

11 NEW SECTION. Section 10. Evidentiary value of  
12 legislative poll. (1) The results of a poll conducted by the  
13 committee are admissible in a court proceeding involving the  
14 validity of a rule.

15 (2) If the results of the poll show that the majority  
16 of the members of both houses find a rule contrary to the  
17 intent of the legislature, the rule shall be conclusively  
18 presumed to be contrary to the legislative intent in a court  
19 proceeding involving its validity.

20 NEW SECTION. Section 11. Review of proposed  
21 legislation. (1) All agency bills dealing with energy and  
22 natural resources issues must be prepared in draft form and  
23 submitted to the committee for review and comment by  
24 September 1 preceding a regular legislative session.  
25 Legislators may submit proposed legislation or notices of

1 intent to request legislation dealing with energy and  
2 natural resources.

3 (2) The committee shall:

4 (a) identify duplication and consolidate bills when  
5 possible;

6 (b) request all sponsors to include a statement of the  
7 intent of a bill;

8 (c) provide sponsors with recommended changes;

9 (d) submit the committee's recommendations about  
10 legislation it has reviewed to the legislature.

11 NEW SECTION. Section 12. Intermediary and factfinding  
12 function. (1) The committee shall act as an intermediary and  
13 factfinding review authority for persons who contest the  
14 validity of rules or legislation dealing with energy or  
15 natural resources.

16 (2) The committee shall accept written complaints from  
17 any person concerning statutes, rules, programs, or  
18 enforcement of them that the complainant believes are  
19 arbitrary or inconsistent with legislative intent.

20 (3) The committee shall review all complaints and  
21 initiate the appropriate action within 60 days of receipt of  
22 the complaint.

23 (4) The committee shall submit a statement of its  
24 findings, together with relevant documentation, to the  
25 responsible agency.

1 (5) The responsible agency shall respond within 30  
2 days. The committee may extend this time period upon  
3 petition by the agency. If no response is received within  
4 the designated time period, the rule or program in question  
5 shall be submitted to the legislature in a poll under  
6 [section 9] to determine legislative intent.

7 (6) Following a review of the response, the committee  
8 shall meet with the responsible agency personnel to discuss  
9 remedial action.

10 (7) The agency shall then submit a plan to the  
11 committee to comply with the committee's recommendations.

12 (8) If the committee finds that a statute in question  
13 under this section needs revision, it shall submit remedial  
14 legislation to the legislature at its next session.

15 (9) (a) The committee may hold any hearings it  
16 determines necessary to resolve disputes under this section.

17 (b) The committee has the subpoena powers authorized  
18 for the environmental quality council in 75-1-312.

19 (10) The committee shall diligently attempt to resolve  
20 informally disputes arising under this section.

21 (11) No agency against which a complaint is brought  
22 under this section may retaliate in any manner against a  
23 person bringing the complaint.

24 NEW SECTION. Section 13. Review of enforcement of  
25 state policies. (1) Following review of applicable rules

1 under [section 8], the committee shall identify areas in  
2 which appropriate statutes are not being properly enforced.

3 (2) The committee may act on behalf of the legislature  
4 when it is not in session to compel enforcement of the  
5 applicable statute in district court.

6 NEW SECTION. Section 14. Review of federal policies,  
7 statutes, and regulations. (1) The committee shall review  
8 and report to the legislature on the impact of federal  
9 policies, statutes, and regulations dealing with the state's  
10 energy and natural resources.

11 (2) The committee may comment on federal policies,  
12 statutes, and regulations when appropriate.

13 Section 15. Section 2-4-402, MCA, is amended to read:

14 "2-4-402. Powers of the committee -- duty to review  
15 rules. (1) The committee shall review all proposed rules  
16 filed with the secretary of state.

17 (2) Rules proposed by the department ~~departments~~ of  
18 ~~revenue, natural resources and conservation, state lands,~~  
19 ~~fish, wildlife, and parks, health and environmental~~  
20 ~~sciences, the environmental sciences division, and other~~  
21 ~~agencies as determined by the legislative energy and natural~~  
22 ~~resources policy review committee established in [section 4]~~  
23 may be reviewed only in regard to the procedural  
24 requirements of the Montana Administrative Procedure Act.

25 (3) The committee may:

1 (a) prepare written recommendations for the adoption,  
2 amendment, or rejection of a rule and submit those  
3 recommendations to the department proposing the rule when a  
4 rulemaking hearing will not be held in accordance with the  
5 provisions of 2-4-302 through 2-4-305;

6 (b) prepare recommendations for the adoption,  
7 amendment, or rejection of a rule and submit oral or written  
8 testimony at a rulemaking hearing;

9 (c) require that a rulemaking hearing be held in  
10 accordance with the provisions of 2-4-302 through 2-4-305;

11 (d) institute, intervene in, or otherwise participate  
12 in proceedings involving this chapter in the state and  
13 federal courts and administrative agencies;

14 (e) review the incidence and conduct of administrative  
15 proceedings under this chapter."

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

-End-

Approved by Comm.  
on Leg. Admin.

SENATE BILL NO. 282

INTRODUCED BY DOVER, HAFFERMAN, JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH REQUIRE THE ENVIRONMENTAL QUALITY COUNCIL TO ACT AS A LEGISLATIVE ENERGY AND NATURAL RESOURCES POLICY REVIEW COMMITTEE; PROVIDING FOR THE ADDITIONAL DUTIES AND POWERS OF THE COMMITTEE COUNCIL; ESTABLISHING ADDITIONAL PROCEDURES UNDER WHICH THE COMMITTEE COUNCIL FUNCTIONS; AND AMENDING SECTIONS 2-4-402 AND 75-1-301, MCA."

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

NEW SECTION. Section 1. Short title. [Sections 1 through 11] may be cited as the "Legislative Energy and Natural Resources Policy Review Act of 1981".

NEW SECTION. Section 2. Purpose. It is the purpose of [sections 1 through 11] to establish a mechanism for continual legislative determination and oversight of policies concerning the development, use, and conservation of natural resources and energy in this state. In a period of rapidly changing needs, priorities, and economic conditions, continual and diligent legislative consideration of present and future policies affecting the state's energy

and natural resources is essential to maintain the viability of the state's economy while also ensuring adequate protection of the physical environment.

NEW SECTION. Section 3. Duties of the council concerning energy and natural resource policies. The council shall:

(1) review and keep informed of energy and natural resource issues of importance to the state;

(2) review for conformance with legislative intent all existing and proposed rules filed with the secretary of state by:

(a) the department of natural resources and conservation;

(b) the department of state lands;

(c) the department of fish, wildlife, and parks;

(d) the department of health and environmental sciences relating to its environmental sciences function; or

(e) other agencies, whenever those rules substantially affect energy and natural resource policies;

(3) review and report to the legislature on the impact of federal policies, statutes, and regulations dealing with the state's energy and natural resources.

NEW SECTION. Section 4. Additional powers of the council. In addition to its other powers under this part, the council may:

SECOND READING

1 (1) review and comment, upon request, on legislation  
2 dealing with energy and natural resources proposed by state  
3 agencies and legislators to facilitate a consistent and  
4 coordinated policy direction for the state;

5 (2) act as an intermediary and factfinding review  
6 authority for persons who contest the validity of rules or  
7 legislation.

8 NEW SECTION. Section 5. Review of resource issues.  
9 The council shall review and keep informed of energy and  
10 natural resource issues of importance to the state. If  
11 current laws and rules do not adequately address a program  
12 or situation requiring action by state government in the  
13 area of energy and natural resources, the council may  
14 develop appropriate remedial recommendations to be submitted  
15 to the legislature for its consideration at the next regular  
16 or special legislative session.

17 NEW SECTION. Section 6. Review of rules. (1) The  
18 council shall review all existing and proposed rules of the  
19 department as prescribed in subsection (2) of [section 3],  
20 as well as any other existing and proposed rules that  
21 substantially affect energy and natural resource policies.

22 (2) The council may:

23 (a) prepare written recommendations for the adoption,  
24 amendment, or rejection of a rule and submit the  
25 recommendations to the applicable department whenever a

1 rulemaking hearing will not be held in accordance with the  
2 provisions of 2-4-302 through 2-4-305;

3 (b) prepare recommendations for the adoption,  
4 amendment, or rejection of a rule and submit oral or written  
5 testimony at a rulemaking hearing;

6 (c) require that a rulemaking hearing be held in  
7 accordance with the provisions of 2-4-302 through 2-4-305;

8 (d) recommend to the legislature the repeal,  
9 amendment, or adoption of a rule as provided in 2-4-412.

10 NEW SECTION. Section 7. Legislative intent -- poll.

11 (1) If the legislature is not in session, the council may  
12 poll the members of the legislature by mail to determine  
13 whether a proposed rule that it has reviewed under [section  
14 6] is consistent with the intent of the legislature.

15 (2) If 20 or more legislators object in writing to any  
16 rule of the applicable department, the council shall poll  
17 the members of the legislature.

18 (3) The poll shall include an opportunity for the  
19 applicable department to present a written justification for  
20 the rule to the members of the legislature.

21 NEW SECTION. Section 8. Evidentiary value of  
22 legislative poll. (1) The results of a poll conducted by the  
23 council are admissible in a court proceeding involving the  
24 validity of a rule.

25 (2) If the results of the poll show that the majority

1 of the members of both houses find a rule contrary to the  
 2 intent of the legislature, the rule shall be conclusively  
 3 presumed to be contrary to the legislative intent in a court  
 4 proceeding involving its validity.

5 NEW SECTION. Section 9. Review of proposed  
 6 legislation. (1) All agency bills dealing with energy and  
 7 natural resources issues may be prepared in draft form and  
 8 submitted to the council for review and comment by September  
 9 1 preceding a regular legislative session. Legislators may  
 10 submit proposed legislation or notices of intent to request  
 11 legislation dealing with energy and natural resources.

12 (2) The council shall:

13 (a) identify duplication and consolidate bills when  
 14 possible;

15 (b) request all sponsors to ensure that the  
 16 legislative intent of a bill is clear;

17 (c) provide sponsors with recommended changes;

18 (d) submit the council's recommendations about  
 19 legislation it has reviewed to the legislature.

20 NEW SECTION. Section 10. Intermediary and factfinding  
 21 function. (1) The council may act as an intermediary and  
 22 factfinding review authority for persons who contest the  
 23 validity of rules or legislation dealing with energy or  
 24 natural resources.

25 (2) The council may accept written complaints from any

1 person concerning statutes, rules, programs, or enforcement  
 2 of them that the complainant believes are arbitrary or  
 3 inconsistent with legislative intent.

4 (3) The council shall review all complaints within 60  
 5 days of receipt of the complaint.

6 (4) The council shall submit a statement of its  
 7 findings, together with relevant documentation, to the  
 8 responsible agency.

9 (5) The responsible agency shall respond within 30  
 10 days. The council may extend this time period upon petition  
 11 by the agency. If no response is received within the  
 12 designated time period, the rule or program in question  
 13 shall be submitted to the legislature in a poll under  
 14 [section 7] to determine legislative intent.

15 (6) Following a review of the response, the council  
 16 shall meet with the responsible agency personnel to discuss  
 17 possible remedial action.

18 (7) Upon request of the council, the agency shall then  
 19 submit a plan to the council to comply with the committee's  
 20 recommendations.

21 (8) If the council finds that a statute in question  
 22 under this section needs revision, it may submit remedial  
 23 legislation to the legislature at its next session.

24 (9) The council may hold any hearings it determines  
 25 necessary to resolve disputes under this section.

1 (10) The council shall diligently attempt to resolve  
2 informally disputes arising under this section.

3 (11) No agency against which a complaint is brought  
4 under this section may retaliate in any manner against a  
5 person bringing the complaint.

6 NEW SECTION. Section 11. Review of federal policies,  
7 statutes, and regulations. (1) The council shall review and  
8 report to the legislature on the impact of federal policies,  
9 statutes, and regulations dealing with the state's energy  
10 and natural resources.

11 (2) The council may comment on its own behalf on  
12 federal policies, statutes, and regulations when  
13 appropriate.

14 Section 12. Section 2-4-402, MCA, is amended to read:  
15 "2-4-402. Powers of the committee -- duty to review  
16 rules. (1) The committee shall review all proposed rules  
17 filed with the secretary of state.

18 (2) Rules proposed by the department departments of  
19 revenue, natural resources and conservation, state lands,  
20 fish, wildlife, and parks, health and environmental  
21 sciences, the environmental sciences division, and other  
22 agencies as determined by the environmental quality council  
23 established in 5-16-101 may be reviewed only in regard to  
24 the procedural requirements of the Montana Administrative  
25 Procedure Act.

1 (3) The committee may:

2 (a) prepare written recommendations for the adoption,  
3 amendment, or rejection of a rule and submit those  
4 recommendations to the department proposing the rule when a  
5 rulemaking hearing will not be held in accordance with the  
6 provisions of 2-4-302 through 2-4-305;

7 (b) prepare recommendations for the adoption,  
8 amendment, or rejection of a rule and submit oral or written  
9 testimony at a rulemaking hearing;

10 (c) require that a rulemaking hearing be held in  
11 accordance with the provisions of 2-4-302 through 2-4-305;

12 (d) institute, intervene in, or otherwise participate  
13 in proceedings involving this chapter in the state and  
14 federal courts and administrative agencies;

15 (e) review the incidence and conduct of administrative  
16 proceedings under this chapter."

17 Section 13. Section 75-1-301, MCA, is amended to read:  
18 "75-1-301. ~~Definition of council~~ Definitions. In As  
19 used in this part the following definitions apply:

20 (1) "Council Council" means the environmental quality  
21 council provided for in 5-16-101.

22 (2) "Person" means a person, firm, corporation,  
23 partnership, association, or other organization or entity."

24 Section 14. Codification instruction. Sections [1  
25 through 11] are intended to be codified as an integral part

1 of Title 75, chapter 1, part 3, and the provisions of Title  
2 75, chapter 1, part 3, apply to sections [1 through 11].

3 Section 15. Severability. If a part of this act is  
4 invalid, all valid parts that are severable from the invalid  
5 part remain in effect. If a part of this act is invalid in  
6 one or more of its applications, the part remains in effect  
7 in all valid applications that are severable from the  
8 invalid applications.

-End-