

Senate Bill 430

In The Senate

February 11, 1981	Introduced and referred to Committee on State Administration.
	Fiscal note requested.
February 13, 1981	Referred to Committee on Natural Resources.
February 16, 1981	Fiscal note returned.
April 23, 1981	Died in Committee.

1 *Senate* BILL NO. 430
 2 INTRODUCED BY *Seating Graham*-----
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO TRANSFER FROM THE
 5 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE
 6 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION THE
 7 REGULATORY FUNCTIONS RELATING TO AIR AND WATER QUALITY;
 8 PUBLIC WATER SUPPLY; SANITATION IN SUBDIVISIONS; MAJOR
 9 FACILITY SITING; MINE OVERBURDEN, WASTE, AND TAILINGS
 10 DISPOSAL; AND OTHER MISCELLANEOUS FUNCTIONS; TO TRANSFER
 11 FROM THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE
 12 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION THE
 13 FUNCTIONS OF SETTING AIR AND WATER QUALITY STANDARDS,
 14 CLASSIFYING WATERCOURSES, MAJOR FACILITY SITING, AND HEARING
 15 APPEALS FROM DECISIONS OF THE DEPARTMENT; TO GENERALLY
 16 REVISE THE LAWS TO CONFORM TO THE TRANSFER; REPEALING
 17 SECTION 75-5-502, MCA."

18
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. Section 1. Board of health and
 21 environmental sciences -- functions transferred to
 22 department of natural resources and conservation. (1) The
 23 following functions of the board of health and environmental
 24 sciences are transferred to the department of natural
 25 resources and conservation:

1 (a) those functions specified in Title 75, chapter 2,
 2 relating to air quality, including classifying air
 3 contaminant sources, setting emission levels, granting
 4 permits for construction and variances, approving local air
 5 pollution control programs, and conducting enforcement
 6 hearings;

7 (b) those functions specified in Title 75, chapter 5,
 8 relating to water quality, including adopting
 9 classifications and standards for state waters; granting,
 10 modifying, or denying discharge permits; setting standards
 11 of performance; conducting enforcement hearings; and setting
 12 local charges for sewage systems;

13 (c) those functions specified in Title 75, chapter 6,
 14 relating to public water supplies, including standards for
 15 contaminant levels, licensing laboratories, and construction
 16 of public water systems;

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

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

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

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

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

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

10 NEW SECTION. Section 2. Department of health and
 11 environmental sciences -- functions transferred to the
 12 department of natural resources and conservation. (1) The
 13 following functions of the department of health and
 14 environmental sciences are transferred to the department of
 15 natural resources and conservation:

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

18 (b) those functions specified in Title 75, chapter 2,
 19 relating to air quality, including issuance of permits and
 20 enforcement and administration of, and study and testing
 21 necessary to implement, air quality laws, rules, and orders;

22 (c) those functions specified in Title 75, chapter 5,
 23 relating to water quality, including issuance of permits and
 24 enforcement and administration of, and study, monitoring,
 25 and testing necessary to implement, water quality laws,

1 rules, and orders;

2 (d) those functions specified in Title 75, chapter 6,
 3 relating to public water supplies, including distribution,
 4 treatment, and investigative and administrative assistance
 5 to local governments;

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

9 (f) those functions specified in 76-3-505 and Title
 10 76, chapter 4, part 1, relating to state regulation of
 11 subdivisions, including sanitary standards, fees, and
 12 enforcement.

13 (2) Unless inconsistent with this act, any reference
 14 in the sections listed in subsection (1) to the "department
 15 of health and environmental sciences" or "department" or
 16 "director" (of health and environmental sciences) is changed
 17 to the "department of natural resources and conservation" or
 18 "department" (of natural resources and conservation). The
 19 code commissioner shall conform internal references and
 20 grammar, including redundancies, to these changes.

21 NEW SECTION. Section 3. Transfer of board and
 22 advisory councils. (1) The board of water and wastewater
 23 operators, the air pollution control advisory council, and
 24 the water pollution control advisory council, created in
 25 Title 2, chapter 15, part 21, are reallocated from the

1 department of health and environmental sciences to the
2 department of natural resources and conservation.

3 (2) Sections 2-15-2105 through 2-15-2107 shall be
4 renumbered to be integral parts of Title 2, chapter 15, part
5 33.

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

8 Section 4. Section 2-15-2103, MCA, is amended to 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 5. Section 2-15-2105, MCA, is amended to read:

18 "2-15-2105. Board of water and wastewater operators.
19 (1) There is a board of water and wastewater operators.

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

23 (a) two members who are employed water supply system
24 or water treatment plant operators holding valid
25 certificates. One of these members shall hold a certificate

1 by examination of the highest class issued by the department
2 ~~of--health--and--environmental--sciences.~~ There is no
3 restriction on the classification of the certificate held by
4 the other operator.

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

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

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

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

25 (3) Members, except the ex officio voting member from

1 the department of ~~health and environmental sciences~~, shall
2 serve for a term of 6 years.

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

5 Section 6. Section 2-15-2107, MCA, is amended to read:

6 "2-15-2107. Water pollution control advisory council.

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

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

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

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

15 (c) the director of agriculture;

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

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

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

22 (iii) a livestock feeder;

23 (iv) a representative of municipal government;

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

1 (vi) a representative from labor;

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

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

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

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

10 Section 7. Section 15-6-135, MCA, is amended to read:

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

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

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

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

24 (i) is retired from full employment; and

25 (ii) whose total income from all sources is not more

1 than \$7,000 for a single person or \$8,000 for a married
2 couple;

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

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

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

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

1 the county tax appeal board and the state tax appeal board.

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

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

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

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

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

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

1 (5) New industrial property does not include:

2 (a) property used by retail or wholesale merchants,

3 commercial services of any type, agriculture, trades, or

4 professions;

5 (b) a plant that will create adverse impact on

6 existing state, county, or municipal services; or

7 (c) property used or employed in any industrial plant

8 that has been in operation in this state for 3 years or

9 longer.

10 (6) Class five property is taxed at 3% of its market

11 value."

12 Section 8. Section 75-2-421, MCA, is amended to read:

13 "75-2-421. Persons subject to noncompliance penalties

14 -- exemptions. (1) Except as provided in subsection (2), the

15 department shall assess and collect a noncompliance penalty

16 from any person who owns or operates:

17 (a) a stationary source (other than a primary

18 nonferrous smelter which has received a nonferrous smelter

19 order under 42 U.S.C. 7419) which is not in compliance with

20 any emission limitation specified in an order of the board

21 ~~department~~, emission standard, or compliance schedule under

22 the state implementation plan approved by the federal

23 environmental protection agency;

24 (b) a stationary source which is not in compliance

25 with an emission limitation, emission standard, standard of

1 performance, or other requirement under 42 U.S.C. 7411 or 42

2 U.S.C. 7412; or

3 (c) any source referred to in subsections (1)(a) or

4 (1)(b) which has been granted an exemption, extension, or

5 suspension under subsection (2) or which is covered by a

6 compliance order, or a primary nonferrous smelter which has

7 received a primary nonferrous smelter order under 42 U.S.C.

8 7419, if such source is not in compliance with any interim

9 emission control requirement or schedule of compliance under

10 such extension, order, or suspension.

11 (2) Notwithstanding the requirements of subsection

12 (1), the department may, after notice and opportunity for a

13 public hearing, exempt any source from the requirements of

14 75-2-421 through 75-2-429 with respect to a particular

15 instance of noncompliance which:

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

17 in duration;

18 (b) is caused by conditions beyond the reasonable

19 control of the source and is of no demonstrable advantage to

20 the source; or

21 (c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the

22 federal Clean Air Act.

23 ~~(3) Any person who is jointly or severally adversely~~

24 ~~affected by the department's decision may request, within 15~~

25 ~~days after the department renders its decision, upon~~

1 ~~affidavit setting forth the grounds therefore a hearing~~
 2 ~~before the boards. A hearing shall be held under the~~
 3 ~~provisions of the Montana Administrative Procedure Act."~~

4 Section 9. Section 75-5-202, MCA, is amended to read:

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

10 Section 10. Section 75-5-403, MCA, is amended to read:

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

1 his permit shall be effective until 20 days after he has
 2 received notice of the final action of the board department.

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

7 Section 11. Section 75-5-611, MCA, is amended to read:

8 "75-5-611. Violation of chapter -- notice and hearing.
 9 (1) When the department has reason to believe that a
 10 violation of this chapter or a rule made under it has
 11 occurred, it may have written notice served personally or by
 12 mail on the alleged violator or his agent. The notice shall
 13 state the provision alleged to be violated, the facts
 14 alleged to constitute the violation, the nature of
 15 corrective action which the department requires, and the
 16 time within which the action is to be taken. For the
 17 purposes of this chapter, service by mail is complete on the
 18 date of mailing.

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

1 The ~~board~~ ~~department~~ may set a later date for hearing at the
2 request of the alleged violator if the alleged violator
3 shows good cause for delay.

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

11 (4) If a hearing is held under this section, it shall
12 be public and shall, if the ~~board~~ ~~department~~ considers it
13 practicable, be held in a county in which the violation is
14 alleged to have occurred.

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

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

1 (7) In addition to or instead of issuing an order, the
2 ~~board--may-direct~~ the department to ~~may~~ initiate appropriate
3 action for recovery of a penalty under 75-5-631, 75-5-632,
4 75-5-633, or 75-5-635."

5 Section 12. Section 75-5-621, MCA, is amended to read:
6 "75-5-621. Emergencies. (1) Notwithstanding any other
7 provisions of this chapter, if the department finds that a
8 person is committing or is about to commit an act in
9 violation of this chapter or an order or rule issued under
10 it which, if it occurs or continues, will cause substantial
11 pollution the harmful effects of which will not be remedied
12 immediately after the commission or cessation of the act,
13 the department shall order the person to stop, avoid, or
14 moderate the act so that the substantial injury will not
15 occur. The order shall be effective immediately upon receipt
16 by the person to whom it is directed, unless the department
17 provides otherwise.

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

21 (3) Upon issuing such an order, the department shall
22 fix a place and time for a hearing ~~before-the-board~~, not
23 later than 5 days thereafter unless the person to whom the
24 order is directed shall request a later time. The department
25 may deny a request for a later time if it finds that the

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

14 Section 13. Section 75-5-641, MCA, is amended to read:

15 "75-5-641. Appeals from ~~board department~~ orders --
 16 review by district court. (1) An appeal of ~~an a final~~ order
 17 of the ~~board department~~ shall be in the district court of
 18 the county in which the alleged source of pollution is
 19 located.

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

24 (3) The attorney general shall represent the ~~board~~
 25 ~~department~~ if requested, or the department may appoint

1 special counsel for the proceedings, subject to the approval
 2 of the attorney general.

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

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

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

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

17 Section 14. Section 75-20-216, MCA, is amended to
 18 read:

19 "75-20-216. Study, evaluation, and report on proposed
 20 facility -- assistance by other agencies. (1) After receipt
 21 of an application, the department ~~and department-of-health~~
 22 shall within 90 days notify the applicant in writing that:

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

25 (b) the application is not in compliance and list the

1 deficiencies therein; and upon correction of these
 2 deficiencies and resubmission by the applicant, the
 3 department ~~and--department--of--health~~ shall within 30 days
 4 notify the applicant in writing that the application is in
 5 compliance and is accepted as complete.

6 (2) Upon receipt of an application complying with
 7 75-20-211 through 75-20-215, and this section, the
 8 department shall commence an intensive study and evaluation
 9 of the proposed facility and its effects, considering all
 10 applicable criteria listed in 75-20-301 and 75-20-503, ~~and~~
 11 ~~the--department--of--health--shall--commence--a--study~~ to enable it
 12 ~~or--the--board--of--health~~ to issue a decision, opinion, order,
 13 certification, or permit as provided in subsection (3). The
 14 department ~~and--department--of--health~~ shall use, to the extent
 15 ~~they--consider--it--considers~~ applicable, valid and useful
 16 existing studies and reports submitted by the applicant or
 17 compiled by a state or federal agency.

18 (3) The department ~~of--health~~ shall within 1 year
 19 following the date of acceptance of an application, and the
 20 ~~board--of--health~~ if applicable a hearing is held, within an
 21 additional 6 months, issue any decision, opinion, order,
 22 certification, or permit required by state or federal air
 23 and water quality laws and this chapter. The department of
 24 ~~health--and--the--board--of--health~~ shall determine compliance
 25 with air and water quality standards and implementation

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

1 review and comment. A final decision by the department of
 2 ~~health--or--board-of-health on air and water quality permits~~
 3 is subject to appellate review pursuant to the air and water
 4 quality statutes administered by the department of--health
 5 ~~and-board-of-health.~~

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

22 (5) The departments of highways; community affairs;
 23 fish, wildlife, and parks; state lands; revenue; and public
 24 service regulation shall report to the department
 25 information relating to the impact of the proposed site on

1 each department's area of expertise. The report may include
 2 opinions as to the advisability of granting, denying, or
 3 modifying the certificate. The department shall allocate
 4 funds obtained from filing fees to the departments making
 5 reports to reimburse them for the costs of compiling
 6 information and issuing the required report."

7 Section 15. Section 75-20-218, MCA, is amended to
 8 read:

9 "75-20-218. Hearing date -- location -- department to
 10 act as staff -- hearings to be held jointly. (1) Upon
 11 receipt of the department's report submitted under
 12 75-20-216, the board shall set a date for a hearing to begin
 13 not more than 120 days after the receipt. Except for those
 14 hearings involving applications submitted for facilities as
 15 defined in (b) and (c) of 75-20-104(10), certification
 16 hearings shall be conducted by the board in the county seat
 17 of Lewis and Clark County or the county in which the
 18 facility or the greater portion thereof is to be located.

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

24 (3) At the request of the applicant, the duty
 25 ~~authorized--state--air-and-water-quality-agencies department~~

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

10 Section 16. Section 75-20-219, MCA, is amended to
 11 read:

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

1 certificate. After hearing, the board shall grant, deny, or
 2 modify the amendment with such conditions as it deems
 3 appropriate.

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

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

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

24 Section 17. Section 75-20-220, MCA, is amended to
 25 read:

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

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

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

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

23 (5) The hearing examiner shall require the active
 24 parties to submit, in writing, and serve upon the other
 25 active parties, all direct testimony which they propose and

1 any studies, investigations, reports, or other exhibits that
 2 any active party wishes the board to consider. These
 3 written exhibits and any documents that the board itself
 4 wishes to use or rely on shall be submitted and served in
 5 like manner, at least 20 days prior to the date set for the
 6 hearing. For good cause shown, the hearing examiner may
 7 allow the introduction of new evidence at any time.

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

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

17 (8) The hearing examiner shall issue a prehearing
 18 order specifying the issues of fact and of law, identifying
 19 the witnesses of the active parties, naming the public
 20 witnesses and other interested parties who have submitted
 21 written testimony in lieu of appearance, outlining the order
 22 in which the hearing shall proceed, setting forth those
 23 section 75-20-301 criteria as to which no issue of fact or
 24 law has been raised which are to be conclusively presumed
 25 and are not subject to further proof except for good cause

1 shown, and any other special rules to expedite the hearing
2 which the hearing examiner shall adopt with the approval of
3 the board.

4 (9) At the conclusion of the hearing, the hearing
5 examiner shall declare the hearing closed and shall, within
6 60 days of that date, prepare and submit to the board and in
7 the case of a conjunctive hearing, within 90 days to the
8 board and the ~~board-of-health department~~ proposed findings
9 of fact, conclusions of law, and a recommended decision.

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

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

22 NEW SECTION. Section 18. Mining overburden, wastes,
23 and tailings. The department of natural resources and
24 conservation shall require that all mining overburden,
25 wastes, and tailings be treated, stored, and disposed of in

1 accordance with all requirements imposed pursuant to federal
2 law and may adopt rules necessary for this purpose.

3 Section 19. Reorganization -- existing personnel,
4 rules, transactions. The provisions of 2-15-131 through
5 2-15-137 apply to the reorganization required by this act.

6 Section 20. Repealer. Section 75-5-502, MCA, is
7 repealed.

-End-

STATE OF MONTANA

REQUEST NO. 356-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 11, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 430 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

Description of Proposed Legislation

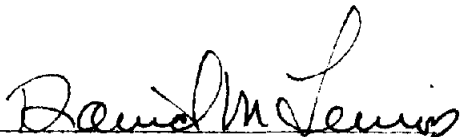
A bill for an act entitled: "An act to transfer from the Department of Health and Environmental Sciences to the Department of Natural Resources and Conservation the regulatory functions relating to air and water quality; public water supply; sanitation in subdivisions; major facility siting; mine overburden, waste, and tailings disposal; and other miscellaneous functions to transfer from the Health and Environmental Sciences to the Department of Natural Resources and Conservation the functions of setting air and water quality standards, classifying watercourses, major facility siting, and hearing appeals from decisions of the Department; to generally revise the laws to conform to the transfer.

Assumptions

1. The Bureaus will stay housed where they are currently located in the renovated Cogswell Building.
2. The rent for these facilities would not be charged to the Montana State Department of Health and Environmental Sciences.
3. All legal, support staff accountants, and clerical personnel are transferred along with the professional staff.
4. Grant activity and current dollar levels transferred to local health agencies will continue.
5. If the Bureaus are requested to move, then the Department of Natural Resources and Conservation will be appropriated funds to:
 - a. pay for the physical move of approximately 75 staff members, equipment, files, etc.
 - b. pay for all telephone and data system hookups
 - c. pay for rule hearings to transfer the necessary rules
 - d. pay for the printing of rules, pamphlets, forms, and other material required by these functional units
 - e. pay for laboratory support provided by the Montana State Department of Health and Environmental Sciences
6. The Department of Administration will be billing the Department of Natural Resources and Conservation for the space occupied by the bureaus involved in this legislation

Fiscal Impact

Assuming that all FTE are transferred to DNRC, and that the full appropriations would follow that move, there is no fiscal impact.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-16-81