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August 22, 2001

TO: Energy Policy Subcommittee Members

FR: Todd Everts

RE: An analysis of EQC's and the Transition Advisory Committee's Statutory Duties

The Subcommittee requested an analysis of the statutory duties of the Transition Advisory Committee and the Environmental Quality Council (EQC) statutory duties to determine potential gaps and/or potential duplication. This memorandum attempts to fulfill that request.

Brief Historical Context:

Environmental Quality Council

The EQC was created in 1971 by the Montana Environmental Policy Act. The EQC has been intimately involved in energy issues since 1972. The following list of reports illustrates the depth of that involvement over time:

- 1972 Gill, Thomas J. *Coal Development Potential in Montana (Final report)*. December 1, 1972.
- 1973 Mudge, Randall T. *Fundamentals of Energy Conservation in Buildings*. Bozeman, MT: Montana State University, School of Architecture, August 1973.
- 1973 Martin, Dana. *The Potential for Energy Conservation in Montana*. 1973.
- 1973 Stone, Albert W. *Underground Natural Resources: The Development of National Policy and Strip Mining of Coal: Unsettled Legal Problems in Montana*. (Review Draft of EQC Energy /Land Use Report No. 2) 1973.
- 1973 Anderson, Bob. *Water and Eastern Montana Coal Development*, November 1973.
- 1974 Enderlin, Walter I. *The Potential for Solar Energy in Montana*. March 1, 1974.
- 1974 Zarndt, F. *Solar Energy Potential in Montana*. September 1974.
- 1974 Finch, Tom. *The Use of Montana's Coal as an Energy Resource*. July 15, 1974.
- 1974 Martin, Dana Headapohl, *Montana Energy Policy Study: Draft Staff Report*. September 16, 1974.

- 1974 Stolz Jr., Gustav. *Oil and Gas Energy Resources of Montana*. July 15, 1974.
- 1974 Uman, Lawrence. *Energy Flow in Montana*. June 1974.
- 1974 Carlson, James H. *Geothermal Report*. September 26, 1974.
- 1975 Martin, Dana H. and Frizzell, Thomas W. *Montana Energy Policy Study*. (Final Report) February 12, 1975.
- 1975 Martin, Dana H., Thomas W. Frizzell and Richard L. Bourke. *Montana Energy Policy Study*. (Final Report--Revised Edition) June 1, 1975.
- 1975 *Oversight Hearing on Implementation of the Montana Strip Mining and Reclamation Act, April 14, 1975*. Reprinted May 1975.
- 1976 Bahls, Loren L. *An Ecological Analysis of the Montana Agricultural Experiment Station's Livestock Grazing Demonstration on Reseeded Surface Mine Spoils Near Colstrip, Montana*. October 1, 1976.
- 1976 Frizzell, Thomas W. *Montana's Natural Gas Supply Crisis*. November 1, 1976.
- 1976 *Montana State Legislature: Environmental Quality Council: In the Matter of a Public Hearing Regarding Montana's Natural Gas Supply Crisis: Transcript of Proceedings*. December 3, 1976.
- 1976 *Montana's Renewable Resources: Today and Tomorrow: Environmental Quality Council: Fifth Annual Report*. December 1976.
- 1977 Shore, Eileen and Schmidt, Deborah. *Energy and the 45th Legislature*. August 1977.
- 1978 Harbrecht, Bill. *Oil and Gas Leasing Program: Department of State Lands*. July 13, 1978.
- 1980 Robert A. Sencer, Ph.D. *Citizen Participation in Siting Energy Facilities in Montana: Final Report, Part I*. March 1, 1980.
- 1980 Robert A. Sencer, Ph.D. *Citizen Participation in Siting Energy Facilities in Montana: Final Report, Part II*. March 1, 1980.
- 1983 Schmidt, Deborah B. *Report to the 48th Montana Legislature on the Renewable Energy Grant and Loan Program*. January 1983.
- 1984 Zackheim, Hugh. *Small-Scale Hydro Development in Montana*. February 1, 1984.
- 1985 *A Guide to the Montana Major Facility Siting Act*. January 1985.
- 1985 *Report to the 49th Legislature on the Renewable Energy and Conservation Program*. January 1985.
- 1986 *Oil and Gas Industry Study*. January 17, 1986.
- 1986 *Comparison of Environmental Regulation of the Oil and Gas Industry in the Rocky Mountain States and Alberta*. July 1986.
- 1986 *Montana Environmental Policy Act Review of Oil and Gas Drilling Permits*. July 1986.
- 1987 *Report to the 50th Montana Legislature on the Renewable Energy and Conservation Program*. January 1987.
- 1993 Department of Natural Resources and Conservation and Gerald Mueller. *House Joint Resolution 31: Energy Policy Study, Montana Energy Data. Final Report to the 53rd Legislature of the State of Montana*. January 1993.
- 1993 Mueller, Gerald. *House Joint Resolution 31: Energy Study, Summary Report*. December 1992.

In addition to these publications, the EQC has produced trend information on energy in Montana and has conducted periodic oversight of agency implementation of energy policy. In 1993, the EQC was

given the task by the Montana Legislature in conjunction with the PSC and the Consumer Council to develop state energy policy. The Council expended a significant amount of effort in the 1993-94 interim in developing a state-wide energy policy statement. The 1995 Legislature enacted the EQC's recommendations. During the 1995-96 interim the EQC assigned a broad-based working group of stakeholders to make recommendations on transportation energy policy and on alternative transportation fuels. Again, the 1997 Legislature adopted the EQC's recommendations. Since that time, there has been little activity in terms of energy policy development. The EQC monitored and received updates on electric industry restructuring during the 1997-98 and 1999-2000 interims. EQC staff also staffed the Transition Advisory Committee on Electric Industry Restructuring during the 1997-98 and 1999-2000 interims.

Transition Advisory Council

The Transition Advisory Committee (TAC) was created by Senate Bill 390 (the Electric Industry Restructuring and Customer Choice Act) in 1997. It is composed of 12 voting members who are Montana state legislators -- six from each house. The voting membership is bipartisan. Additionally, there are 12 nonvoting advisory representatives that embody a cross section of parties interested in the electric deregulation process. The TAC is specifically charged with overseeing the restructuring process and customer choice policies and processes. Between 1997 and 2001, the TAC has produced ten publications on electric industry restructuring and has developed and introduced legislation on universal system benefit program credit implementation process, an extension of universal system benefit programs, and a clarification of what constitutes a credit for universal system benefit purposes.

Statutory Analysis:

SHORT ANSWER: In a nutshell, the EQC has very broad and encompassing statutory duties as it relates to energy policy but the EQC has a very defined energy policy development process specified in statute. The TAC has very specific duties outlined in statute that directly go to its oversight and policy making functions for electric industry restructuring. There is some potential for overlap and duplication. To avoid duplication, the EQC could fill the gaps in terms of energy information on a broader scale. The EQC has traditionally done this through its trends analysis and informational handbooks on energy issues. The EQC could analyze the adequacy of the State's energy policy to determine whether still meets the needs of Montanans. These suggestions are areas that would not necessarily conflict with the TAC's statutory duties and could potentially compliment and/or supplement the TAC's activities depending on the TAC's scope of analysis in implementing its own statutory duties. The best approach is to have open communication between the EQC and the TAC to avoid duplication and conflict.

LONG ANSWER:

Environmental Quality Council

The EQC's statutory duties are set out in 90-4-111 - 112 and 9-4-1001- 1003, 1010, and 1011 (See Appendix A). The heart of the EQC's policy development is found in the state energy policy goal statement and the state energy policy development process. The state energy policy goal statement notes that:

- (1) It is the policy of the state of Montana to promote energy conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens.
- (2) In pursuing this goal, it is the policy of the state of Montana to:
 - (a) recognize that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets;
 - (b) *maintain a continual process to review this energy policy statement and any future changes so that Montana's energy strategy will provide for a balance between a sustainable environment and a viable economy;* and
 - (c) adopt a state transportation energy policy as provided in 90-4-1010 and an alternative fuels policy and implementing guidelines as provided in 90-4-1011. (90-4-1001, emphasis added)

This policy goal statement calls for a continual process to review the energy policy statement. The process for revision of the state energy policy is outlined in 90-4-1003 as follows:

- (1) The department and the council, in cooperation with the consumer counsel and the public service commission, shall maintain a continual process to develop the components of a comprehensive state energy policy.
- (2) Because of limited state resources and the need to focus intensive effort on specific issues of importance, the development of a comprehensive state energy policy must occur on an incremental basis. As the need arises, the department, in cooperation with the appropriate state agencies and with extensive public involvement, shall identify and recommend to the council specific components of a state energy policy for development under the consensus process described in subsection (3).
- (3) (a) Upon selection of a specific energy policy component, the council shall assign to a working group composed of representatives of the parties with a stake in that specific component the task of developing consensus recommendations for that component of state energy policy.
 - (b) The working group must include the broadest possible representation of stakeholders in the issues to be included within the specific component of state energy policy.
 - (c) Whenever possible, the working group shall use a consensus process to develop

recommendations for a specific energy policy component to be submitted to the council. Recommendations that are not based upon consensus must be so noted by the working group. Upon consideration of the working group's recommendations, the council shall forward its recommendations to the legislature and to the appropriate state agencies for adoption.

(d) The department shall:

- (i) provide staff support to the working group, including policy analysis, data gathering, research, technical analysis, and administrative support;
- (ii) provide administrative coordination among the appropriate state agencies in the energy policy development process;
- (iii) prepare reports for and make recommendations to the council; and
- (iv) consult regularly with the council to coordinate each agency's activities.

(4) In carrying out their responsibilities under this section, the department and the council may contract with experts, consultants, and facilitators and may seek funding from a variety of private and public sources for technical and other assistance necessary to accomplish their responsibilities.

The energy policy development process outlined in 90-4-1003 is very specific as to who should be involved and how the process should be conducted. If the EQC proceeds to develop energy policy under this statutory authority, it must specifically follow the process outlined in 90-4-1003. The EQC also has conducted energy policy development under its general duties as outlined in 75-1-324 (See Appendix A). This allows the EQC greater flexibility in developing energy policy generally as it relates to those duties.

Transition Advisory Committee

The statutory duties of the TAC are very specific. The TAC shall:

- (1) Provide an annual report on the status of electric utility restructuring on or before November 1 to the Governor, the Speaker of the House, the President of the Senate, and the Public Service Commission (commission).
 - * The annual report made in the year 2000 must evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include legislative recommendations, if it appears appropriate, about the best means to further encourage the development of customer choice and meaningful market access for the benefit of smaller customers.
 - * The annual report made in the year 2000 must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.
- (2) Provide quarterly interim summary reports to the members of the legislature through January 1, 1999.
- (3) Analyze and report on the transition to effective competition in the competitive

electricity supply market.

- * The TAC must use but is not limited to the following criteria in evaluating effective competition:
 - (a) the level of demand for power supply choice and the availability of market prices for smaller customers;
 - (b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;
 - (c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and
 - (d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.
- (4) Recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.
- (5) Make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agency or private nonprofit entity as the fund administrator and administration guidelines for the funds including the means by which funds may be made available for use.
- (6) Monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th (2001) Legislature to adjust the funding level provided to coincide with the related activities of the region at that time.
- (7) On or before July 1, 2002, in coordination with the commission, conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th Legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.
- (8) On or before November 1, 2001, collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to Senate Bill 390 to utilities or their affiliates located outside the state of Montana. That information must be included in the report to the 58th (2001) Legislature.
- (9) On or before November 1, 1998, make recommendations to the governor and the legislature regarding the provision of low-income energy assistance programs in Montana by all energy providers.
- (10) Utilities must submit a report describing and analyzing the results of the pilot programs

must be submitted to the commission and the Transition Advisory Committee on or before July 1, 2000.

- (11) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission and the TAC. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the TAC. The annual report must include, but is not limited to:
- (a) the types of internal utility and customer programs being used to satisfy the provisions of Senate Bill 390;
 - (b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and
 - (c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

The TAC's central duties are to analyze and report on the transition to effective competition in the competitive electricity supply market, to recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers, and to reevaluate the ongoing need for universal system benefits programs. There is some potential for overlap and conflict with the EQC's general duties and energy policy development duties depending on the TAC's scope of analysis in fulfilling its own statutory duties. Potential areas of conflict could include but are not limited to renewable resources and conservation efforts. To date, the TAC has not analyzed these issues in depth except as they relate to the universal system benefits programs.

For my conclusion, see my short answer above.

Appendix A. EQC Energy Policy and General Duties Statutes

75-1-324. Duties of environmental quality council. The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

(10) perform the administrative rule review, program evaluation, and monitoring functions of an interim committee for the:

- (a) department of environmental quality;
- (b) department of fish, wildlife, and parks; and
- (c) department of natural resources and conservation.

90-4-111. Biennial report. The department shall monitor the grants awarded under 90-4-106 and 90-4-109 and shall, as requested, report its expenditures and other information concerning the implementation and effectiveness of specific projects or programs for which grants were awarded under this part to the environmental quality council.

History: En. 84-7413 by Sec. 8, Ch. 501, L 1975; R.C.M. 1935, 84-7413; amd. Sec. 2, Ch.

402, L. 1981; Sec. 90-4-107, MCA 1983; redes. 90-4-111 by Code Commissioner, 1985; amd. Sec. 3, Ch. 8, Sp. L. June 1986; amd. Sec. 63, Ch. 112, L. 1991; amd. Sec. 54, Ch. 349, L. 1993. Compiler's Comments:

1993 Amendment: Chapter 349 near beginning, before "report", substituted "requested" for "provided in 5-11-210" and at end substituted "environmental quality council" for "legislature".

1991 Amendment: Near beginning inserted reference to 5-11-210 and at end, after "legislature", deleted "at the beginning of each regular legislative session". Amendment effective March 20, 1991.

1986 Amendment: Near beginning inserted "under 90-4-106 and 90-4-109".

1981 Amendment: Inserted "shall monitor the grants awarded and" after "department"; and changed "other activities" to "other information concerning the implementation and effectiveness of specific projects or programs for which grants were awarded".

90-4-112. Oversight function of environmental quality council. The department shall submit periodic reports to the environmental quality council established in 5-16-101 for review and evaluation. The environmental quality council shall make such recommendations as it considers necessary to assure the greatest possible benefit of the program to the people of the state as a whole. Such recommendations may include proposals for legislation.

History: En. Sec. 3, Ch. 402, L. 1981; Sec. 90-4-108, MCA 1983; redes. 90-4-112 by Code Commissioner, 1985.

Cross References:

Environmental Quality Council, Title 5, ch. 16; Title 75, ch. 1, part 3.

90-4-1001. State energy policy goal statement. (1) It is the policy of the state of Montana to promote energy conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens.

(2) In pursuing this goal, it is the policy of the state of Montana to:

(a) recognize that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets;

(b) maintain a continual process to review this energy policy statement and any future changes so that Montana's energy strategy will provide for a balance between a sustainable environment and a viable economy; and

(c) adopt a state transportation energy policy as provided in 90-4-1010 and an alternative fuels policy and implementing guidelines as provided in 90-4-1011.

History: En. Sec. 1, Ch. 242, L. 1993; amd. Sec. 1, Ch. 311, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 311 inserted (2)(c) promoting as a state policy the adoption and implementation of a state transportation energy policy and an alternative fuels policy.

Preamble: The preamble attached to Ch. 311, L. 1995, provided: "WHEREAS, in section 90-4-1003, MCA, the Legislature adopted a process for the incremental development of a

comprehensive state energy policy; and

WHEREAS, under the provisions of that statute, the Department of Natural Resources and Conservation recommended to the Environmental Quality Council the development of a transportation energy policy as one component of a comprehensive state energy policy; and

WHEREAS, the Environmental Quality Council assigned a broad-based working group of stakeholders in the issues relating to development of a transportation energy policy to use a collaborative, consensus process to develop that policy; and

WHEREAS, these stakeholders included the Montana Department of Transportation, members of the Montana Highway Commission [now Transportation Commission], the Department of Natural Resources and Conservation, representatives of state and local governments, highway users, railroad interests, utilities, commercial transportation interests, environmental groups, agricultural producers, bicycle and pedestrian interests, transportation planners, and representatives of petroleum producers; and

WHEREAS, the collaborative working group met regularly over an 8-month period to develop the following transportation energy policy goal statement and to recommend a specific component of a transportation energy policy on alternative fuels, along with implementing guidelines."

90-4-1002. Definitions. As used in 90-4-1003, the following definitions apply:

(1) "Council" means the environmental quality council established in 5-16-101.

(2) "Department" means the department of environmental quality established in 2-15-3501.

History: En. Sec. 2, Ch. 242, L. 1993; amd. Sec. 494, Ch. 418, L. 1995; amd. Sec. 310, Ch. 42, L. 1997.

Compiler's Comments:

1997 Amendment: Chapter 42 in introduction, after "90-4-1003", deleted "and 90-4-1004". Amendment effective March 12, 1997.

1995 Amendment: Chapter 418 in definition of Department substituted "department of environmental quality established in 2-15-3501" for "department of natural resources and conservation established in 2-15-3301". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

90-4-1003. Energy policy development process. (1) The department and the council, in cooperation with the consumer counsel and the public service commission, shall maintain a continual process to develop the components of a comprehensive state energy policy.

(2) Because of limited state resources and the need to focus intensive effort on specific issues of importance, the development of a comprehensive state energy policy must occur on an incremental basis. As the need arises, the department, in cooperation with the appropriate state agencies and with extensive public involvement, shall identify and recommend to the council specific components of a state energy policy for development under the consensus process described in subsection (3).

(3) (a) Upon selection of a specific energy policy component, the council shall assign to a

working group composed of representatives of the parties with a stake in that specific component the task of developing consensus recommendations for that component of state energy policy.

(b) The working group must include the broadest possible representation of stakeholders in the issues to be included within the specific component of state energy policy.

(c) Whenever possible, the working group shall use a consensus process to develop recommendations for a specific energy policy component to be submitted to the council.

Recommendations that are not based upon consensus must be so noted by the working group. Upon consideration of the working group's recommendations, the council shall forward its recommendations to the legislature and to the appropriate state agencies for adoption.

(d) The department shall:

(i) provide staff support to the working group, including policy analysis, data gathering, research, technical analysis, and administrative support;

(ii) provide administrative coordination among the appropriate state agencies in the energy policy development process;

(iii) prepare reports for and make recommendations to the council; and

(iv) consult regularly with the council to coordinate each agency's activities.

(4) In carrying out their responsibilities under this section, the department and the council may contract with experts, consultants, and facilitators and may seek funding from a variety of private and public sources for technical and other assistance necessary to accomplish their responsibilities.

History: En. Sec. 3, Ch. 242, L. 1993.

90-4-1004. Terminated. Sec. 5, Ch. 242, L. 1993.

History: En. Sec. 4, Ch. 242, L. 1993.

90-4-1010. Transportation energy policy. It is the transportation energy policy of the state of Montana to promote actions that encourage the conservation of energy through the environmentally responsible management and planning of efficient transportation systems. This policy further recognizes that energy conservation must be balanced with the state's interest in establishing, preserving, and maintaining a safe, efficient transportation system that equitably meets the mobility needs of Montana's citizens and connects them to the nation's economy.

History: En. Sec. 2, Ch. 311, L. 1995.

Compiler's Comments:

Preamble: The preamble attached to Ch. 311, L. 1995, provided: "WHEREAS, in section 90-4-1003, MCA, the Legislature adopted a process for the incremental development of a comprehensive state energy policy; and

WHEREAS, under the provisions of that statute, the Department of Natural Resources and Conservation recommended to the Environmental Quality Council the development of a transportation energy policy as one component of a comprehensive state energy policy; and

WHEREAS, the Environmental Quality Council assigned a broad-based working group of stakeholders in the issues relating to development of a transportation energy policy to use a collaborative, consensus process to develop that policy; and

WHEREAS, these stakeholders included the Montana Department of Transportation, members

of the Montana Highway Commission [now Transportation Commission], the Department of Natural Resources and Conservation, representatives of state and local governments, highway users, railroad interests, utilities, commercial transportation interests, environmental groups, agricultural producers, bicycle and pedestrian interests, transportation planners, and representatives of petroleum producers; and

WHEREAS, the collaborative working group met regularly over an 8-month period to develop the following transportation energy policy goal statement and to recommend a specific component of a transportation energy policy on alternative fuels, along with implementing guidelines."

90-4-1011. Alternative fuels policy -- implementing guidelines. (1) The state of Montana encourages the use of alternative fuels and fuel blends to the extent that doing so produces environmental and economic benefits to the citizens of Montana.

(2) To implement the policy stated in subsection (1), the legislature recommends the following guidelines:

(a) All policies and programs should have in-state benefits.

(b) Policies and programs should be coordinated among the affected agencies.

(c) The state recognizes incentives as a temporary tool to implement the alternative fuels policy. Recipients of those incentives should develop a plan, including an educational component, to phase out the incentive. In determining incentives, the state should:

(i) consider incentives for the producer, retail, and consumer levels;

(ii) establish a logical link between revenue sources and incentives; and

(iii) encourage the use of self-sufficient markets.

(d) Any state alternative fuels program should have measurable benefits that are communicated to the public.

(e) State and local governments should be encouraged to set an example with their vehicle fleets in the use of alternative fuels and fuel blends.

(f) Consistent with the guidelines in subsections (2)(a) through (2)(e), the state encourages production of alternative fuels and fuel blends.

History: En. Sec. 3, Ch. 311, L. 1995.

Compiler's Comments:

Preamble: The preamble attached to Ch. 311, L. 1995, provided: "WHEREAS, in section 90-4-1003, MCA, the Legislature adopted a process for the incremental development of a comprehensive state energy policy; and

WHEREAS, under the provisions of that statute, the Department of Natural Resources and Conservation recommended to the Environmental Quality Council the development of a transportation energy policy as one component of a comprehensive state energy policy; and

WHEREAS, the Environmental Quality Council assigned a broad-based working group of stakeholders in the issues relating to development of a transportation energy policy to use a collaborative, consensus process to develop that policy; and

WHEREAS, these stakeholders included the Montana Department of Transportation, members of the Montana Highway Commission [now Transportation Commission], the Department of Natural

Resources and Conservation, representatives of state and local governments, highway users, railroad interests, utilities, commercial transportation interests, environmental groups, agricultural producers, bicycle and pedestrian interests, transportation planners, and representatives of petroleum producers; and

WHEREAS, the collaborative working group met regularly over an 8-month period to develop the following transportation energy policy goal statement and to recommend a specific component of a transportation energy policy on alternative fuels, along with implementing guidelines."

Appendix B: TAC Statutes

69-8-501. Transition advisory committee. (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of twelve voting members who are appointed as follows:

(a) The speaker of the house shall appoint six members from the house of representatives, not more than three of whom may be from one political party.

(b) The president of the senate shall appoint six members from the senate, not more than three of whom may be from one political party.

(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:

(a) The director of the department of environmental quality shall appoint one department representative.

(b) The legislative consumer committee shall appoint one representative.

(c) One representative of the cooperative utility industry is appointed as designated by the Montana electrical cooperative association.

(d) The public utilities in the state of Montana shall appoint one member.

(e) The commission shall appoint one member.

(f) The governor shall appoint the following nonvoting committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the nonindustrial retail electric consumer sector;

(iii) one representative from organized labor;

(iv) one representative from the community comprising environmental and conservation interests;

(v) one representative from a low-income program provider;

(vi) one representative of Montana's Indian tribes; and

(vii) one representative of the electric power market industry.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must be appointed within 60 days of May 2, 1997, to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

(8) The transition advisory committee on electric utility industry restructuring must dissolve on the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of

the senate, and the commission and shall provide quarterly interim summary reports to the members of the legislature through January 1, 1999.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market. The annual report made in the year 2000 must evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include legislative recommendations, if it appears appropriate, about the best means to further encourage the development of customer choice and meaningful market access for the benefit of smaller customers. The annual report for the year 2000 must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(14) The transition advisory committee shall make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agency or private, nonprofit entity as the fund administrator and administration guidelines for the funds, including the means by which funds may be made available for use.

(15) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in 69-8-402 to coincide with the related activities of the region at that time.

(16) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.

(17) On or before November 1, 2001, the transition advisory committee shall collect

information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to this chapter to utilities or their affiliates located outside the state of Montana. That information must be included in the report to the 58th legislature.

(18) On or before November 1, 1998, the transition advisory committee shall make recommendations to the governor and the legislature regarding the provision of low-income energy assistance programs in Montana by all energy providers.

History: En. Sec. 29, Ch. 505, L. 1997; amd. Sec. 1, Ch. 372, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 372 in (1) increased legislative membership from eight to twelve; and in (1)(a) and (1)(b) increased membership numbers reflecting the increase in number of legislative members. Amendment effective April 20, 1999.

1997 Appropriation: Section 45 (not codified), Ch. 505, L. 1997, provided: "(1) The legislative services division may accept gifts, grants, or other donations for the purpose of offsetting the costs of conducting the activities of the transition advisory committee under [section 29] [69-8-501] or the study required in [section 30] [69-8-502].

(2) A gift, grant, or other donation made by a public utility, as defined in 69-3-101(1)(a), (1)(c), or (1)(d), is a cost that is nonrecoverable from ratepayers and must be borne 100% by the shareholders of the company making the gift, grant, or donation.

(3) The legislative services division is appropriated up to \$200,000 of any gifts, grants, or other donations received under this section, and the appropriation is a biennial appropriation.

(4) If the amount of gifts, grants, or donations exceeds the amount appropriated under subsection (3), the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

(5) If the amount of the gifts, grants, and donations expended for conducting the activities of the transition advisory committee under [section 29] [69-8-501] or the study required in [section 30] [69-8-502] is less than the amount received as gifts, grants, or donations, the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received."