

HOUSE BILL NO. 161

INTRODUCED BY S. DICKENSON

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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5 A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE FILING FEE PROVISIONS OF THE MONTANA
6 MAJOR FACILITY SITING ACT; ELIMINATING CERTAIN FEE CAPS AND SCHEDULES; PROVIDING THAT
7 THE FEE MUST BE ADEQUATE TO PAY THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S COST OF
8 REVIEWING AN APPLICATION; REQUIRING PAYMENT OF AN INSTALLMENT BEFORE APPLICATION
9 REVIEW IS COMMENCED; REQUIRING THE DEPARTMENT TO JUSTIFY TO THE APPLICANT ANY
10 INCREASED COST ASSOCIATED WITH PREPARING AN ENVIRONMENTAL IMPACT STATEMENT;
11 CREATING AN APPLICANT OBJECTION PROCESS FOR INCREASED ENVIRONMENTAL REVIEW COSTS;
12 ELIMINATING THE REQUIREMENT THAT THE STATE PAY INTEREST ON RETURNED FEES; AMENDING
13 SECTIONS 75-20-204, 75-20-215, AND 75-20-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
14 AND AN APPLICABILITY DATE."

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

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18 **Section 1.** Section 75-20-204, MCA, is amended to read:
19 **"75-20-204. Facilities subject to federal energy regulatory commission jurisdiction.** (1) For a facility
20 that is subject to the jurisdiction of the federal energy regulatory commission, the department shall file a state
21 recommendation with the commission.

22 (2) A person making application to the federal energy regulatory commission shall file with the
23 department notice of and a copy of the federal application regarding any facility subject to subsection (1). The
24 state recommendation must be based on its study of the federal application and other material gained through
25 intervention in the federal proceeding.

26 (3) A person subject to the provisions of subsection (2) shall pay a fee, determined in accordance with
27 75-20-215, to the department at the time that an application is filed with the federal energy regulatory commission.
28 The fee must be used by the department to carry out its responsibilities to develop a state recommendation and
29 participate as a party in any necessary federal proceeding to assert the state recommendation. ~~The fee may not~~
30 ~~exceed one-half the amount that could be assessed under 75-20-215. A fee prescribed by 75-20-215 may not~~



1 ~~be assessed against a person paying a fee under this section.~~

2 (4) A person who fails to file a timely notice of and a copy of the federal application with the department,
3 preventing the department from timely compliance with this section and with the rules, statutes, or procedures
4 governing the proceedings before the federal energy regulatory commission, is subject to the provisions of
5 75-20-408."

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7 **Section 2.** Section 75-20-215, MCA, is amended to read:

8 **"75-20-215. Filing fee -- accountability -- refund -- use.** (1) (a) A filing fee must be deposited in the
9 state special revenue fund for the use of the department in administering Title 75, chapter 1, and this chapter.
10 The applicant shall pay to the department a filing fee ~~as provided in this section based upon~~ in an amount
11 determined by the department to be necessary to pay:

12 (i) the department's estimated costs of processing the application under this chapter; and

13 (ii) the estimated cost to reimburse other state agencies pursuant to 75-20-216(6). ~~The fee may not~~
14 ~~exceed the following scale based upon the estimated cost of the facility:~~

15 ~~—— (i) 6% of any estimated cost up to \$1 million; plus~~

16 ~~—— (ii) 1% of any estimated cost over \$1 million and up to \$5 million; plus~~

17 ~~—— (iii) 0.8% of any estimated cost over \$5 million and up to \$10 million; plus~~

18 ~~—— (iv) 0.5% of any estimated cost over \$10 million and up to \$20 million; plus~~

19 ~~—— (v) 0.25% of any estimated cost over \$20 million and up to \$100 million; plus~~

20 ~~—— (vi) 0.125% of any estimated cost over \$100 million and up to \$500 million; plus~~

21 ~~—— (vii) 0.05% of any estimated cost over \$500 million and up to \$1 billion; plus~~

22 ~~—— (viii) 0.025% of any estimated cost over \$1 billion.~~

23 ~~—— (b) The department may allow in its discretion a credit against the fee payable under this section for the~~
24 ~~development of information or providing of services required under this chapter or required for preparation of an~~
25 ~~environmental impact statement or assessment under the Montana or national environmental policy acts. The~~
26 ~~applicant may submit the information to the department, together with an accounting of the expenses incurred~~
27 ~~in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data~~
28 ~~and determine the amount that may be credited against the filing fee payable under this section. Upon 30 days'~~
29 ~~notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary~~
30 ~~to carry out its responsibilities under this chapter.~~

1 (b) (i) The department shall determine the application fee after consulting with the applicant. To facilitate
2 the consultation, the department shall identify and consult with the applicant regarding the data and information
3 that must be gathered and the studies that must be conducted. If the department determines that it will hire a
4 contractor under subsection (1)(b)(ii), the applicant may request that the amount of the fee not be determined until
5 the contractor has been selected.

6 (ii) If the department determines that it will hire a third-party contractor to prepare an analysis of the
7 application, including an analysis conducted pursuant to Title 75, chapter 1, the department shall prepare a list
8 of no fewer than four contractors acceptable to the department and the department shall provide the applicant
9 with a copy of the list. If fewer than four acceptable contractors are available, the department shall include all
10 acceptable contractors on the list. The applicant shall provide the department with a list of at least 50% of the
11 contractors from the department's list. The department shall select its contractor from the list provided by the
12 applicant.

13 (2) ~~(a)~~ The department may contract with an applicant for the development of information, provision of
14 services, and payment of fees required under this chapter. The contract may continue an agreement entered into
15 pursuant to 75-20-106. The contract must include a requirement to make installment payments as provided in
16 subsection (3). Payments made to the department under a contract must be credited against the fee payable
17 pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee
18 must be sufficient to enable the department, the board, and the agencies listed in 75-20-216(6) to carry out their
19 responsibilities under this chapter. The department may amend a contract to require additional payments for
20 necessary expenses after complying with the provisions of subsection (4), up to the limits set forth in subsection
21 (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds
22 the scale provided in subsection (1)(a).

23 ~~(b)(3) (a) If a contract is not entered into, the~~ The applicant shall pay the filing fee in installments in
24 accordance with a schedule of installments developed by the department, provided that an installment may not
25 exceed 20% of the total filing fee provided for in subsection (1).

26 (b) The time for review of the application under this part and other laws administered by the department
27 in 75-20-216 or 75-20-231 is tolled for any period for which the department has not received an advance
28 installment payment.

29 (4) (a) If the department determines that the actual cost of preparing the environmental impact statement
30 will exceed the cost determined under subsection (1), the department shall submit the proposed increase in costs

1 and a justification to the applicant.

2 (b) If the applicant does not agree with the increased costs proposed by the department, the applicant
3 may object and may also provide the department with a written statement providing the reason that payment of
4 the increased cost is not justified or, if applicable, the reason that a portion of the increased cost is not justified.
5 An applicant who has objected and submitted a written statement may also request an informal review as
6 provided in subsection (4)(c).

7 (c) (i) An applicant who has objected and submitted a written statement under subsection (4)(b) may
8 submit a written request to the director of the department requesting a meeting to discuss the proposed increase.
9 The written request must sufficiently state the issues to allow the department to prepare for the meeting. Following
10 the meeting, the director shall make a decision in writing and notify the applicant.

11 (ii) If issues remain unresolved after the director's decision, the applicant may submit a written request
12 to appear before the board to discuss the remaining issues. The written request must sufficiently state the issues
13 to allow the department and the board to prepare for the meeting. The board may render an advisory
14 recommendation to the department or determine that it will not render an advisory recommendation.

15 (iii) The department may not charge the applicant for any activities associated with the review under this
16 subsection (4).

17 (iv) The period of time between the request for director or board review and the completion of the
18 director's or board's review may not be included for purposes of determining compliance with the time limits in
19 75-20-216 or 75-20-231.

20 (d) (i) If the applicant does not request an informal review under subsection (4)(c) or if the department
21 director, following an informal review, determines that a fee increase is justified, the applicant shall pay the
22 increased fee as provided in subsection (4)(d)(ii).

23 (ii) If the applicant has provided a written statement pursuant to subsection (4)(b), the applicant shall pay
24 all of the undisputed costs and 75% of the disputed increased cost. The department is responsible for 25% of
25 the disputed increased cost. If the applicant did not provide the written statement pursuant to subsection (4)(b),
26 the applicant shall pay all increased costs.

27 ~~(3)(5)~~ (5) The estimated cost of upgrading an existing transmission substation may not be included in the
28 estimated cost of a proposed facility for the purpose of calculating a filing fee.

29 ~~(4) If an application consists of a combination of two or more facilities, the filing fee must be based on~~
30 ~~the total estimated cost of the combined facilities.~~

1 (6) The department is not required to review an application for completeness pursuant to 75-20-216 until
 2 the first installment is paid pursuant to subsection (3) of this section.

3 (7) Upon completion of the necessary work to act on an application, the department shall make an
 4 accounting to the applicant of the funds expended and refund all unexpended funds without interest. If the board
 5 or a court later remand an application to the department for further work, the department may determine a new
 6 fee and the applicant shall pay the new fee pursuant to subsection (1).

7 ~~(5) The applicant is entitled to an accounting of money expended and to a refund with interest at the rate~~
 8 ~~of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities~~
 9 ~~under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted~~
 10 ~~by all parties to the certification proceedings.~~

11 ~~(6)(8)~~ The revenue derived from filing fees must be used:
 12 (a) by the department in compiling the information required for rendering a decision on a certificate; and
 13 (b) for carrying out its ~~the department's~~ and the board's other responsibilities under this chapter; and
 14 (c) to reimburse state agencies listed in 75-20-216(6) for those agencies' costs incurred in complying
 15 with the requirements of 75-20-216(6)."

16
 17 **Section 3.** Section 75-20-216, MCA, is amended to read:

18 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.**

19 (1) ~~After~~ Except as provided in 75-20-215, after receipt of an application, the department shall within 30 days
 20 notify the applicant in writing that:

21 (a) the application is in compliance and is accepted as complete; or
 22 (b) the application is not in compliance and shall list the deficiencies. Upon correction of these
 23 deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing
 24 that the application is in compliance and is accepted as complete.

25 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this
 26 section, the department shall commence an evaluation of the proposed facility and its effects, considering all
 27 applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as
 28 provided in subsection (3) of this section. The department shall use, to the extent that it considers applicable,
 29 valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

30 (3) Except as provided in 75-1-205(4), 75-1-208(4)(b), 75-20-215, and 75-20-231, the department shall

1 issue, within 9 months following the date of acceptance of an application, any decision, opinion, order,
 2 certification, or permit required under the laws, other than those contained in this chapter, administered by the
 3 department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under
 4 those laws. Nevertheless, the department retains authority to make the determination required under
 5 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection
 6 process. Prior to the issuance of a preliminary decision by the board and pursuant to rules adopted by the
 7 department, the department shall provide an opportunity for public review and comment.

8 (4) Except as provided in 75-1-205(4), 75-1-208(4)(b), 75-20-215, and 75-20-231, within 9 months
 9 following acceptance of an application for a facility, the department shall issue a report that must contain the
 10 department's studies, evaluations, and recommendations; and other pertinent documents resulting from its study
 11 and evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental
 12 Policy Act may be included in the department findings if compelling evidence indicates that adverse environmental
 13 impacts are likely to result ~~due to~~ because of the construction and operation of a proposed facility. If the
 14 application is for a combination of two or more facilities, the department shall issue its report within the greater
 15 of the lengths of time provided for in this subsection for either of the facilities.

16 (5) For projects subject to joint review by the department and a federal land management agency, the
 17 department's certification decision may be timed to correspond to the record of decision issued by the
 18 participating federal agency.

19 (6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation;
 20 revenue; and public service regulation shall report to the department information relating to the impact of the
 21 proposed site on each department's area of expertise. The report may include opinions as to the advisability of
 22 granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to
 23 the departments making reports to reimburse them for the costs of compiling information and issuing the required
 24 report."

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26 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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28 NEW SECTION. Section 5. Applicability. [This act] applies to applications filed after [the effective date
 29 of this act].

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