

SENATE BILL NO. 381

INTRODUCED BY L. JONES, MEHLHOFF, COOK, OSMUNDSON, HOLLANDSWORTH, J. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PAYMENT OF ROYALTIES TO LANDOWNERS BY OWNERS OR OPERATORS OF MERCHANT TRANSMISSION LINES; PROVIDING THAT ROYALTIES ARE BASED ON THE NUMBER OF INSERTION POINTS USED FOR POLES, STRUCTURES, AND OTHER CONNECTIONS OF TRANSMISSION LINES ON PRIVATE LAND; PROVIDING FOR A ROYALTY AMOUNT; ~~CREATING A ROYALTY ADVISORY BOARD~~; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

(1) "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION AS PROVIDED IN TITLE 69, CHAPTER 1, PART 1.

~~(1)~~(2) "Insertion point" means a physical connection that is made to the earth by a pole, each leg of a tower structure, a guy wire anchor, or any other object used to support electric transmission wires for a merchant transmission line.

~~(2)~~(3) "Merchant transmission line" means a transmission facility that transmits electricity for which costs are not established and recovered by a MONTANA regulatory authority and for which the owner or operator of the transmission facility THAT IS NOT A FEDERAL POWER MARKETING AGENCY OR A UTILITY QUALIFYING AS AN ELECTRIC COOPERATIVE PURSUANT TO TITLE 35, CHAPTER 18, charges rates and assumes market risks for transmitting electricity for third parties. The transmission facility must meet the current criteria used for evaluating merchant transmission projects by the federal energy regulatory commission. A merchant transmission line consists of a single transmission line with specified termination points constructed and entered into service as a single unit.

NEW SECTION. Section 2. Landowner royalty payments -- merchant transmission lines. (1) ~~For the shared compensation arising from use of their land for facilitating the transmission of electrical energy, the~~ THE owners of property ~~subject to an easement or right-of-way for the operation of~~ LAND UPON WHICH a merchant transmission line IS CONSTRUCTED must be paid an annual royalty by the owner or operator of the merchant

1 transmission line. THE ROYALTY MUST BE BASED ON THE NUMBER OF INSERTION POINTS ON EACH LANDOWNER'S
 2 PROPERTY. The owner or operator shall ~~pay an amount~~ COMPUTE AN INSERTION POINT ROYALTY VALUE THAT IS equal
 3 to 1% of the total gross ~~operating~~ ANNUAL revenue ~~generated~~ RECEIVED by THE OWNER OR OPERATOR OF the
 4 merchant transmission line ~~during each~~ IN THE PRIOR calendar year ~~and shall pay an amount equal to 0.05% of~~
 5 ~~the total gross revenue of the merchant transmission line to the department of revenue for deposit in the state~~
 6 ~~general fund for operation of the royalty advisory board provided for in [section 3].~~ DIVIDED BY THE TOTAL NUMBER
 7 OF INSERTION POINTS ON THE LINE REGARDLESS OF WHETHER THE INSERTION POINTS ARE LOCATED WITHIN OR OUTSIDE
 8 THE STATE.

9 (2) (A) The owner or operator of a merchant transmission line shall pay to each private landowner an
 10 annual royalty fee based upon THE INSERTION POINT ROYALTY VALUE MULTIPLIED BY the number of insertion points
 11 located on the property owner's land in Montana. ~~The royalty payment for each insertion point is equal to the~~
 12 ~~amount of royalty to be paid on the line as determined in subsection (1) divided by the total number of insertion~~
 13 ~~points located on private land for the merchant transmission line during the same calendar year.~~ The royalty fee
 14 must be paid on a calendar-year basis, and the payment must be made to each owner no later than April 1 of
 15 each year for royalties due for the previous calendar year.

16 (B) THE OWNER OR OPERATOR IS ENTITLED TO OFFSET AGAINST ANY ROYALTIES OTHERWISE DUE A LANDOWNER
 17 UNDER THIS SECTION ANY ANNUAL PAYMENTS MADE TO THE LANDOWNER, OR THE LANDOWNER'S PREDECESSOR IN
 18 INTEREST, IN THE PRIOR CALENDAR YEAR, UNDER AN EASEMENT AGREEMENT, RIGHT-OF-WAY AGREEMENT, OR SIMILAR
 19 AGREEMENT, RELATING TO THE CONSTRUCTION OF THE LINE ON THE LANDOWNER'S PROPERTY.

20 (3) (A) THE OWNER OR OPERATOR SHALL PAY AN AMOUNT EQUAL TO 0.05% OF THE TOTAL GROSS ANNUAL
 21 REVENUE RECEIVED ON EACH MERCHANT TRANSMISSION LINE TO THE COMMISSION FOR DEPOSIT IN THE STATE GENERAL
 22 FUND FOR THE ADMINISTRATION OF [SECTIONS 1 THROUGH 3].

23 (B) THE OWNER OR OPERATOR OF EACH MERCHANT TRANSMISSION LINE SHALL FILE WITH THE COMMISSION A
 24 REPORT LISTING THE NAMES OF ALL PROPERTY OWNERS WITH INSERTION POINTS ON THEIR PROPERTY, THE LOCATION OF
 25 THE PROPERTY, AND THE NUMBER OF INSERTION POINTS ON THE PROPERTY IN THE MANNER PRESCRIBED BY THE
 26 COMMISSION.

27 ~~——— (3) The department of revenue shall audit the owner or operator of the merchant transmission line after~~
 28 ~~the first year the line is in service and not less than once every 3 years after the first audit. The department shall~~
 29 ~~determine whether the owner or operator has correctly determined the total gross operating revenue of the line~~
 30 ~~and whether royalty distributions comply with the provisions of [sections 1 through 3]. The department shall use~~

1 generally accepted accounting principles in making the determination and may request the advice of the royalty
 2 advisory board in circumstances that are unique to the payment of royalties under [sections 1 through 3].

3
 4 ~~NEW SECTION. Section 3. Royalty advisory board. (1) There is a merchant transmission line
 5 advisory board.~~

6 ~~(2) (a) The board consists of seven members who are appointed as follows:~~

7 ~~(i) five members are appointed by the governor, including:~~

8 ~~(A) a person who when appointed to the board is a qualified structural engineer;~~

9 ~~(B) a person with expertise in electric transmission;~~

10 ~~(C) a person who represents the agricultural industry;~~

11 ~~(D) a person who is a certified public accountant; and~~

12 ~~(E) a member of the public at large;~~

13 ~~(ii) one member, who may be a legislator, is appointed by the president of the senate; and~~

14 ~~(iii) one member, who may be a legislator, is appointed by the speaker of the house of representatives.~~

15 ~~(b) The board is attached to the department of revenue for administrative purposes only as provided in
 16 2-15-121.~~

17 ~~(c) Members of the board must be compensated in accordance with 2-18-501 through 2-18-503 for each
 18 day in board attendance.~~

19 ~~(3) The board shall meet at least twice annually and may meet at other times when requested by the
 20 director of revenue.~~

21 ~~(4) The board shall advise the department of revenue relating to circumstances that are unique to
 22 payment of royalties under [sections 1 through 3], what constitutes insertion points, and other matters necessary
 23 to provide an equitable royalty payment system.~~

24
 25 NEW SECTION. SECTION 3. COMPLAINT AGAINST MERCHANT LINE. (1) A LANDOWNER WHO MAY BE ENTITLED
 26 TO A ROYALTY PAYMENT UNDER [SECTIONS 1 THROUGH 3] WHO ALLEGES THE NONPAYMENT OR UNDERPAYMENT OF
 27 ROYALTIES DUE UNDER [SECTIONS 1 THROUGH 3] MAY INSTITUTE A CONTESTED CASE PROCEEDING BEFORE THE
 28 COMMISSION FOR PURPOSES OF CHALLENGING THE SUFFICIENCY OF THE ROYALTY PAYMENT. THE COMPLAINT BEFORE
 29 THE COMMISSION, AND ANY SUBSEQUENT COURT ENFORCEMENT OF THE COMMISSION'S ORDER, IS THE LANDOWNER'S
 30 EXCLUSIVE REMEDY FOR THE UNDERPAYMENT OR NONPAYMENT OF ROYALTIES.

1 (2) UPON RECEIPT OF A COMPLAINT FROM A LANDOWNER UNDER THIS SECTION, THE COMMISSION SHALL
2 DETERMINE IF THE ROYALTY PAYMENT BEING CHALLENGED WAS CORRECTLY COMPUTED AND PAID IN ACCORDANCE WITH
3 [SECTIONS 1 THROUGH 3]. THE COMMISSION'S DETERMINATION IS BINDING UPON ALL PARTIES TO THE PROCEEDING UNLESS
4 SUCCESSFULLY CHALLENGED IN A PETITION FOR JUDICIAL REVIEW.

5 (3) A LANDOWNER MAY NOT FILE A COMPLAINT WITH THE COMMISSION UNDER [SECTIONS 1 THROUGH 3] MORE
6 THAN 3 CALENDAR YEARS AFTER THE PAYMENT BEING CHALLENGED WAS DUE.

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8 NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified
9 as an integral part of Title 69, chapter 4, and the provisions of Title 69, chapter 4, apply to [sections 1 through 3].

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11 NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2011.

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13 NEW SECTION. Section 6. Applicability. [This act] applies to merchant transmission lines that
14 commence service after July 1, 2011.

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