

1 HOUSE BILL NO. 695

2 INTRODUCED BY D. LOGE

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ENVIRONMENTAL LAWS; ~~ALLOWING~~
 5 ~~THE COLLECTION OF FEES FOR PUBLIC COMMENT ON ENVIRONMENTAL IMPACT STATEMENTS;~~
 6 ~~ALLOWING ARBITRATION FOR PUBLIC WATER SUPPLY DISPUTES AND REQUIRING A FEE;~~
 7 PROHIBITING THE PUBLIC SERVICE COMMISSION FROM DENYING CERTAIN POWER REPLACEMENT
 8 COSTS RESULTING FROM ENVIRONMENTAL REGULATION; PROHIBITING THE PROHIBITION OF
 9 NUCLEAR POWER FACILITIES UNDER CERTAIN CIRCUMSTANCES; PROVIDING RULEMAKING
 10 AUTHORITY; AND AMENDING SECTIONS 75-1-202, 75-1-203, 75-1-205, AND SECTION SECTIONS 69-3-
 11 331 AND 75-6-114, MCA."

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

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 15 **SECTION 1. SECTION 69-3-331, MCA, IS AMENDED TO READ:**

16 **"69-3-331. Cost tracking and recovery.** (1) ~~Except as provided in [section 2],~~ if the commission
 17 approves a cost-tracking adjustment for a public utility regulated in accordance with chapter 8 or under this
 18 chapter, the cost-tracking adjustment must provide for:

- 19 (a) identical treatment of public utilities subject to chapter 8 or this chapter;
 20 (b) 90% customer and 10% shareholder sharing of costs, if cost sharing is required; and
 21 (c) full recovery of costs incurred by a public utility as a result of qualifying small power production
 22 facility purchase requirements established in Title 69, chapter 3, part 6.
- 23 (2) A cost-tracking adjustment may not include a deadband.
- 24 (3) For the purposes of this section, "deadband" means a level of cost recovery variance, including
 25 levels of underrecoveries and overrecoveries to be borne by the public utility."

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 27 **NEW SECTION. SECTION 2. REPLACEMENT POWER COSTS -- PROHIBITION AGAINST DENIAL. THE**
 28 **COMMISSION SHALL ALLOW A UTILITY TO FULLY RECOVER REPLACEMENT POWER COSTS ARISING FROM THE OPERATION**

1 OF COAL-FIRED GENERATING UNITS IF THE REPLACEMENT COSTS ARE ATTRIBUTABLE TO POWER OUTAGES OR REDUCED
 2 GENERATION AT THE UNITS BECAUSE OF:

3 (1) TESTING OF THE GENERATING UNIT OR UNITS TO DETERMINE IF THE UNIT OR UNITS COMPLY WITH
 4 ENVIRONMENTAL REGULATIONS, LAWS, OR PERMIT REQUIREMENTS; OR

5 (2) WORK OR REPAIRS NECESSARY TO BRING THE GENERATING UNIT OR UNITS INTO COMPLIANCE WITH
 6 ENVIRONMENTAL REGULATIONS, LAWS, OR PERMIT REQUIREMENTS.

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 8 NEW SECTION. SECTION 3. NUCLEAR POWER FACILITIES -- DENIAL PROHIBITED -- CIRCUMSTANCES. THE
 9 STATE MAY NOT DENY A PERMIT OR APPLICATION FOR A NUCLEAR POWER FACILITY BECAUSE FEDERAL REGULATIONS DO
 10 NOT PROVIDE FOR A PERMANENT REPOSITORY FOR NUCLEAR WASTE.

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 12 **Section 1.** Section 75-1-202, MCA, is amended to read:

13 ~~"75-1-202. Agency rules to prescribe fees. (1) (a) Each agency of state government charged with~~
 14 ~~the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may~~
 15 ~~adopt rules prescribing fees that must be paid by a person, corporation, partnership, firm, association, or other~~
 16 ~~private entity when an application for a lease, permit, contract, license, or certificate will require an agency to~~
 17 ~~compile an environmental impact statement as prescribed by 75-1-201 and the agency has not made the~~
 18 ~~finding under 75-1-205 (1)(a).~~

19 ~~(b) An agency shall determine whether it will be necessary to compile an environmental impact~~
 20 ~~statement and assess a fee as prescribed by this section within any statutory timeframe for issuance of the~~
 21 ~~lease, permit, contract, license, or certificate or, if no statutory timeframe is provided, within 90 days.~~

22 ~~(c) Except as provided in 85-2-124, the fee assessed under this section may be used only to gather~~
 23 ~~data and information necessary to compile an environmental impact statement as defined in parts 1 through 3.~~

24 ~~(d) A fee may not be assessed if an agency intends only to file a negative declaration stating that the~~
 25 ~~proposed project will not have a significant impact on the human environment.~~

26 ~~(2) (a) Each agency of state government charged with the responsibility of issuing a lease, permit,~~
 27 ~~contract, license, or certificate may adopt rules prescribing fees that must be paid by a person, corporation,~~
 28 ~~partnership, firm, association, or other private entity when providing public comment as part of an~~

1 ~~environmental impact statement pursuant to 75-1-201.~~

2 ~~(b) Rules adopted pursuant to this subsection (2) must provide:~~

3 ~~(i) a process to prove that a third party is not paying the required fee;~~

4 ~~(ii) that comments provided without the required fee are not accepted; and~~

5 ~~(iii) a process for the agency to determine if payment of the fee constitutes a hardship. The agency~~
 6 ~~may waive all or a portion of the fee on proof by the commenter that payment of the fee constitutes a hardship.~~

7 ~~(c) Fees collected under this subsection (2) must be used to offset costs assessed pursuant to 75-1-~~
 8 ~~205. "~~

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10 **Section 2.** Section 75-1-203, MCA, is amended to read:

11 ~~"75-1-203. Fee schedule -- maximums. (1) In prescribing fees to be assessed against applicants for~~
 12 ~~a lease, permit, contract, license, or certificate as specified in 75-1-202 (1), an agency may adopt a fee~~
 13 ~~schedule that may be adjusted depending upon the size and complexity of the proposed project. A fee may not~~
 14 ~~be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency~~
 15 ~~incurring expenses in excess of \$2,501 to compile an environmental impact statement.~~

16 ~~(2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost~~
 17 ~~up to \$1 million, plus 1% of any estimated cost over \$1 million and up to \$20 million, plus 1/2 of 1% of any~~
 18 ~~estimated cost over \$20 million and up to \$100 million, plus 1/4 of 1% of any estimated cost over \$100 million~~
 19 ~~and up to \$300 million, plus 1/8 of 1% of any estimated cost in excess of \$300 million.~~

20 ~~(3) If an application consists of two or more facilities, the filing fee must be based on the total~~
 21 ~~estimated cost of the combined facilities. The estimated cost must be determined by the agency and the~~
 22 ~~applicant at the time the application is filed.~~

23 ~~(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least~~
 24 ~~every 2 years.~~

25 ~~(5) In calculating fees under this section, the agency may not include in the estimated project cost the~~
 26 ~~project sponsor's property or other interests already owned by the project sponsor at the time the application is~~
 27 ~~submitted. Any fee assessed may be based only on the projected cost of acquiring all of the information and~~
 28 ~~data needed for the environmental impact statement."~~

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2 **Section 3.** Section 75-1-205, MCA, is amended to read:

3 ~~"75-1-205. **Collection and use of fees and costs.** (1) A person who applies to a state agency for a~~
4 ~~permit, license, or other authorization that the agency determines requires preparation of an environmental~~
5 ~~impact statement is responsible for paying:~~

6 ~~(a) the agency's costs of preparing the environmental impact statement and conducting the~~
7 ~~environmental impact statement process if the agency makes a written determination, based on material~~
8 ~~evidence identified in the determination, that there will be a significant environmental impact or a potential for a~~
9 ~~significant environmental impact. If a customer fiscal impact analysis is required under 69-2-216, the applicant~~
10 ~~shall also pay the staff and consultant costs incurred by the office of consumer counsel in preparing the~~
11 ~~analysis.~~

12 ~~(b) a fee as provided in 75-1-202 (1) if the agency does not make the determination provided for in~~
13 ~~subsection (1)(a).~~

14 ~~(2) Costs payable under subsection (1) include:~~

15 ~~(a) the costs of generating, gathering, and compiling data and information that is not available from~~
16 ~~the applicant to prepare the draft environmental impact statement, any supplemental draft environmental impact~~
17 ~~statement, and the final environmental impact statement;~~

18 ~~(b) the costs of writing, reviewing, editing, printing, and distributing a reasonable number of copies of~~
19 ~~the draft environmental impact statement;~~

20 ~~(c) the costs of attending meetings and hearings on the environmental impact statement, including~~
21 ~~meetings and hearings held to determine the scope of the environmental impact statement; and~~

22 ~~(d) the costs of preparing, printing, and distributing a reasonable number of copies of any~~
23 ~~supplemental draft environmental impact statement and the final environmental impact statement, including the~~
24 ~~cost of reviewing and preparing responses to public comment.~~

25 ~~(3) Costs payable under subsection (1) include:~~

26 ~~(a) payments to contractors hired to work on the environmental impact statement;~~

27 ~~(b) salaries and expenses of an agency employee who is designated as the agency's coordinator for~~
28 ~~preparation of the environmental impact statement for time spent performing the activities described in~~

1 subsection (2) or for managing those activities; and

2 (c) ~~travel and per diem expenses for other agency personnel for attendance at meetings and hearings~~
3 ~~on the environmental impact statement.~~

4 (4) ~~(a) Whenever the agency makes the determination in subsection (1)(a), it shall notify the~~
5 ~~applicant of the cost of conducting the process to determine the scope of the environmental impact statement.~~
6 ~~The applicant shall pay that cost, and the agency shall then conduct the scoping process. The timeframe in 75-~~
7 ~~1-208 (4)(a)(i) and any statutory timeframe for a decision on the application are tolled until the applicant pays~~
8 ~~the cost of the scoping process.~~

9 (b) ~~If the agency decides to hire a third-party contractor to prepare the environmental impact~~
10 ~~statement, the agency shall prepare a list of no fewer than four contractors acceptable to the agency and shall~~
11 ~~provide the applicant with a copy of the list. If fewer than four acceptable contractors are available, the agency~~
12 ~~shall include all acceptable contractors on the list. The applicant shall provide the agency with a list of at least~~
13 ~~50% of the contractors from the agency's list. The agency shall select its contractor from the list provided by the~~
14 ~~applicant.~~

15 (c) ~~Upon completion of the scoping process and subject to subsection (1)(d), the agency and the~~
16 ~~applicant shall negotiate an agreement for the preparation of the environmental impact statement. The~~
17 ~~agreement must provide that:~~

18 (i) ~~the applicant shall pay the cost of the environmental impact statement as determined by the~~
19 ~~agency after consultation with the applicant. In determining the cost, the agency shall identify and consult with~~
20 ~~the applicant regarding the data and information that must be gathered and studies that must be conducted.~~

21 (ii) ~~the agency shall prepare the environmental impact statement within a reasonable time determined~~
22 ~~by the agency after consultation with the applicant and set out in the agreement. This timeframe supersedes~~
23 ~~any timeframe in statute or rule. If the applicant and the agency cannot agree on a timeframe, the agency shall~~
24 ~~prepare the environmental impact statement within any timeframe provided by statute or rule.~~

25 (iii) ~~the applicant shall make periodic advance payments to cover work to be performed;~~

26 (iv) ~~the agency may order work on the environmental impact statement to stop if the applicant fails to~~
27 ~~make advance payment as required by the agreement. The time for preparation of the environmental impact~~
28 ~~statement is tolled for any period during which a stop-work order is in effect for failure to make advance~~

1 payment.

2 (v) (A) if the agency determines that the actual cost of preparing the environmental impact statement
3 will exceed the cost set out in the agreement or that more time is necessary to prepare the environmental
4 impact statement, the agency shall submit proposed modifications to the agreement to the applicant;

5 (B) if the applicant does not agree to an extension of the time for preparation of the environmental
6 impact statement, the agency may initiate the informal review process under subsection (4)(d). Upon
7 completion of the informal review process, the agreement may be amended only with the consent of the
8 applicant.

9 (C) if the applicant does not agree with the increased costs proposed by the agency, the applicant
10 may refuse to agree to the modification and may also provide the agency with a written statement providing the
11 reason that payment of the increased cost is not justified or, if applicable, the reason that a portion of the
12 increased cost is not justified. The applicant may also request an informal review as provided in subsection
13 (4)(d). If the applicant provides a written statement pursuant to this subsection (4)(c)(v)(C), the agreement must
14 be amended to require the applicant to pay all undisputed increased cost and 75% of the disputed increased
15 cost and to provide that the agency is responsible for 25% of the disputed increased cost. If the applicant does
16 not provide the statement, the agreement must be amended to require the applicant to pay all increased costs.

17 (d) If the applicant does not agree with costs determined under subsection (4)(c)(i) or proposed under
18 subsection (4)(c)(v), the applicant may initiate the informal review process pursuant to 75-1-208 (3). If the
19 applicant does not agree to a time extension proposed by the agency under subsection (4)(c)(v), the agency
20 may initiate an informal review by an appropriate board under 75-1-208 (3). The period of time for completion of
21 the environmental impact statement provided in the agreement is tolled from the date of submission of a
22 request for a review by the appropriate board until the date of completion of the review by the appropriate
23 board. However, the agency shall continue to work on preparation of the environmental impact statement
24 during this period if the applicant has advanced money to pay for this work.

25 (5) All fees and costs collected under this part must be deposited in the state special revenue fund as
26 provided in 17-2-102. All fees and costs paid pursuant to this part must be used as provided in this part. Upon
27 completion of the necessary work, each agency shall make an accounting to the applicant of the funds
28 expended and refund all unexpended funds without interest. "

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Section 4. Section 75-6-114, MCA, is amended to read:

"75-6-114. Civil penalty. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this part or a rule, order, or condition of approval issued under this part, the person is subject to a civil penalty not to exceed \$10,000. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) When seeking penalties under this section, the department shall take into account the penalty factors in 75-1-1001 in determining an appropriate settlement or judgment, as appropriate.

(5) Civil penalties collected pursuant to this section must be deposited in the state general fund.

(6) The parties may agree to enter arbitration. Arbitration entered pursuant to this section is subject to the Uniform Arbitration Act, Title 27, chapter 5. THE PARTIES SHALL EACH PAY A \$50 FEE TO THE DEPARTMENT.

NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION. (1) [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 69, CHAPTER 3, PART 3, AND THE PROVISIONS OF TITLE 69, CHAPTER 3, PART 3, APPLY TO [SECTION 2].

(2) [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 10, AND THE PROVISIONS OF TITLE 75, CHAPTER 10, APPLY TO [SECTION 3].

- END -