

HOUSE BILL NO. 161
INTRODUCED BY S. DICKENSON
BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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

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

Section 1. Section 75-20-204, MCA, is amended to read:

"75-20-204. Facilities subject to federal energy regulatory commission jurisdiction. (1) For a facility that is subject to the jurisdiction of the federal energy regulatory commission, the department shall file a state recommendation with the commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) (i) The department shall determine the application fee after consulting with the applicant. To facilitate the consultation, the department shall identify and consult with the applicant regarding the data and information

that must be gathered and the studies that must be conducted. If the department determines that it will hire a contractor under subsection (1)(b)(ii), the applicant may request that the amount of the fee not be determined until the contractor has been selected.

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

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

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

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

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

(b) If the applicant does not agree with the increased costs proposed by the department, the applicant may object and may also provide the department with a written statement providing the reason that payment of

the increased cost is not justified or, if applicable, the reason that a portion of the increased cost is not justified. An applicant who has objected and submitted a written statement may also request an informal review as provided in subsection (4)(c).

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

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

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

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

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

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

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

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

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

(7) Upon completion of the necessary work to act on an application, the department shall make an accounting to the applicant of the funds expended and refund all unexpended funds without interest. If the board

or a court later remand an application to the department for further work, the department may determine a new fee and the applicant shall pay the new fee pursuant to subsection (1).

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

~~(6)~~(8) The revenue derived from filing fees must be used:

(a) by the department in compiling the information required for rendering a decision on a certificate; and

(b) for carrying out its ~~the~~ department's and the board's other responsibilities under this chapter; and

(c) to reimburse state agencies listed in 75-20-216(6) for those agencies' costs incurred in complying with the requirements of 75-20-216(6)."

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

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

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

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

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

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

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), 75-20-215, and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection

process. Prior to the issuance of a preliminary decision by the board and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

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

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

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

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

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

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