

HOUSE BILL NO. 798

INTRODUCED BY LAMBERT, SMALL-EASTMAN, PEASE, KASTEN, BALES, STAHL, ANKNEY,
 GEBHARDT, SMITH, KITZENBERG, J. PETERSON, OLSON, MCNUTT, PERRY, RIPLEY,
 COCCHIARELLA, HARRINGTON, HILBERT, CAMPBELL, VILLA, LAKE, COHENOUR, LARSON,
 REINHART

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ENERGY DEVELOPMENT IMPACT LAWS; CHANGING THE NAME OF THE COAL BOARD TO THE COAL, OIL, ~~AND GAS,~~ AND ENERGY DEVELOPMENT IMPACT BOARD; REVISING THE BOARD'S MEMBERSHIP; ALLOCATING FUNDS FROM FEDERAL LEASING FUNDS; AUTHORIZING THE COAL, OIL, ~~AND GAS,~~ AND ENERGY DEVELOPMENT IMPACT BOARD TO ISSUE GRANTS TO ASSIST LOCAL GOVERNMENTS WITH ENERGY DEVELOPMENT IMPACTS; PROVIDING A STATUTORY APPROPRIATION; CLARIFYING THE BASIS AND PRIORITIES FOR AWARDED GRANTS; CREATING THE OIL, GAS, AND ENERGY GENERATION LOCAL GOVERNMENT INFRASTRUCTURE IMPACT ASSISTANCE ACT; PROVIDING THE BOARD WITH RULEMAKING AUTHORITY; TRANSFERRING MONEY FROM THE GENERAL FUND; AMENDING SECTIONS 2-15-1821, 17-3-240, 17-7-502, 90-6-203, 90-6-204, 90-6-205, 90-6-206, 90-6-207, AND 90-6-1001, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 2-15-1821, MCA, is amended to read:

"2-15-1821. Coal, oil, and gas, AND ENERGY DEVELOPMENT impact board -- allocation -- composition.

(1) There is a coal, oil, ~~and gas,~~ AND ENERGY DEVELOPMENT impact board composed of seven members.

(2) The coal, oil, ~~and gas,~~ AND ENERGY DEVELOPMENT impact board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(3) The governor shall appoint ~~a seven-member~~ the coal, oil, and gas, AND ENERGY DEVELOPMENT impact board, as provided under 2-15-124, EXCEPT THAT ONE MEMBER OF THE BOARD NEED NOT BE AN ATTORNEY AND THE BOARD SHALL ELECT THE PRESIDING OFFICER.

~~———— (4) (a) Subject to subsections (4)(b) and (4)(c), the members of the coal board are selected as follows:~~

~~———— (i) two from the impact areas; and~~

~~———— (ii) two with expertise in education.~~

~~_____ (b) At least two but not more than four members must be appointed from each district provided for in 5-1-102.~~

~~_____ (c) In making the appointments, the governor shall consider people from the following fields:~~

~~_____ (i) business;~~

~~_____ (ii) engineering;~~

~~_____ (iii) public administration; and~~

~~_____ (iv) planning.~~

(4) (a) Subject to subsection (4)(b), the coal, oil, and gas, AND ENERGY DEVELOPMENT impact board must include among its members:

(i) ~~two~~ FOUR people who, when appointed to the board, separately represent each district provided for in 5-1-102(2); AT LEAST ONE PERSON, BUT NOT MORE THAN THREE OUT OF THE FOUR PEOPLE, MUST BE FROM EACH DISTRICT PROVIDED FOR IN 5-1-102(2).

(ii) ~~two people~~ ONE PERSON who, when appointed to the board, ~~are elected mayors~~ IS AN ELECTED MAYOR;

(iii) ~~two people~~ ONE PERSON who, when appointed to the board, ~~are elected county commissioners~~ IS AN ELECTED COUNTY COMMISSIONER; and

(iv) a person who, when appointed to the board, is an elected school district trustee or a school administrator.

(b) All members appointed to the board must reside in the designated coal impact area or live in a county that produces coal, oil, or gas."

Section 2. Section 17-3-240, MCA, is amended to read:

"17-3-240. Federal mineral leasing funds. (1) Except as provided in ~~subsection~~ subsections (2) and (3), money paid to the state pursuant to 30 U.S.C. 191 must be deposited in the state general fund.

(2) In ~~fiscal year 2005~~ and each ~~succeeding~~ fiscal year, 25% of all money received pursuant to subsection (1) must be deposited in the mineral impact account established in 17-3-241 and is dedicated to local governments.

(3) In fiscal year ~~2007~~ 2010 and each succeeding fiscal year, 25% of all money received pursuant to subsection (1) must be deposited in the oil, gas, and coal natural resource account established in 90-6-1001 and is dedicated to local governments.

~~(3)~~(4) On August 15 following the close of the fiscal year, the state treasurer shall distribute the revenue dedicated in ~~subsection~~ subsections (2) and (3). The distribution to the eligible counties under subsection (2) must

be based on the proportion that the total amount of revenue generated by mineral extraction in an eligible county bears to the total amount of money received by the state."

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 90-6-1001; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates

July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 4. Section 90-6-203, MCA, is amended to read:

"90-6-203. Definition of coal, oil, and gas, AND ENERGY DEVELOPMENT impact board. ~~"Board"~~ As used in this part, "board" means the coal, oil, and gas, AND ENERGY DEVELOPMENT impact board provided for in 2-15-1821."

Section 5. Section 90-6-204, MCA, is amended to read:

"90-6-204. Chairman Presiding officer, meetings, compensation, and facilities. (1) The board shall elect a ~~chairman~~ presiding officer from among its members.

(2) The board shall meet quarterly and may meet at other times as called by the ~~chairman~~ presiding officer or a majority of the members.

(3) Members are entitled to compensation as provided for in 2-15-124(7).

(4) The department of commerce ~~will~~ shall provide suitable office facilities and the necessary staff for the ~~coal~~ board."

Section 6. Section 90-6-205, MCA, is amended to read:

"90-6-205. Coal, oil, and gas, AND ENERGY DEVELOPMENT impact board -- general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from available funds;

(4) award grants, subject to 90-6-207, from available funds:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development or a major decline in coal mining or in the operation of coal-using energy complexes by enabling them to adequately provide governmental services and facilities that are needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex; and

(b) notwithstanding the provisions of 90-6-207, to the department of transportation, established in 2-15-2501, to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; ~~and~~

(5) award a grant to a local governmental unit for the purpose of paying for part or all of the credit that the local governmental unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board shall award the grant in accordance with 90-6-206.

(6) implement the provisions of [sections 10 through 16]."

Section 7. Section 90-6-206, MCA, is amended to read:

"90-6-206. Basis for awarding grants. (1) Grants must be awarded on the basis of:

- (a) need;
- (b) degree of severity of impact from an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex;
- (c) availability of funds; and
- (d) degree of local effort in meeting these needs.

(2) The board shall prepare a written statement of findings and conclusions regarding each grant application's consistency with these criteria. The board may establish guidelines for applicants describing how relative consistency with the criteria will be evaluated by the board.

~~(2)~~(3) In determining the degree of local effort, the board shall review the millage rates levied for the present fiscal year in relation to the average millage rates levied during the 3 years immediately preceding the year of application for assistance.

~~(3)~~(4) Millage rates for the present fiscal year that are lower than the average millage rate levied during the 3 years immediately preceding the year of application for assistance must be considered by the board to indicate the lack of local effort. The application under these circumstances may be rejected.

~~(4)~~(5) Further, in determining the degree of local effort, the board shall consider the possibility of requiring that local governmental unit to increase its bonded indebtedness to provide all or part of the governmental service or facility that is needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex.

~~(5)~~(6) To the extent that funds are needed to evaluate and plan for the impact needs caused by the increase or decrease in coal development or in the consumption of coal by a coal-using energy complex,

consideration of bond issues and millage levies may be waived.

(7) The board may review the need for community planning before the full impact is realized. Applicants may show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth or decline problems.

~~(6)(8)~~ To the extent that the applicant has no history of mill levies, subsections ~~(2) (3)~~ and ~~(3) (4)~~ do not apply."

Section 8. Section 90-6-207, MCA, is amended to read:

"90-6-207. Priorities for impact grants. (1) The department of commerce shall ~~biennially~~ annually designate a coal impact area that includes:

~~(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase or decrease in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);~~

~~(b)(a) each county and all local governmental units within each county in which:~~

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of environmental quality for a project within the county that has established or will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase or decrease by at least 1 million tons a year and that the new, expanded, or reduced production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) an air quality permit has been issued by the department of environmental quality for a new steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

~~(e)(b) each local governmental unit~~ county located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection ~~(1)(b)(i) (1)(a)(i), (1)(b)(ii) (1)(a)(ii), or (1)(b)(iv) (1)(a)(iv);~~ and

~~(d)(c) each local governmental unit~~ county in which:

(i) a mine that has produced 300,000 tons or more of coal a year has ceased all significant mining or is

scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under an air quality permit issued by the department of environmental quality and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

~~—— (a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and~~

~~—— (b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.~~

~~(3) Except as provided in 90-6-205(4)(b), the board may not award more than 50% of the funds appropriated to it each year for grants to governmental units and state agencies for meeting the needs caused by an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex to local governmental units other than those governmental units designated under subsection (1).~~

~~(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:~~

~~—— (a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;~~

~~—— (b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;~~

~~—— (c) one consecutive 3-year period ending with the current calendar year;~~

~~—— (d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and~~

~~—— (e) one consecutive 3-year period ending 2 calendar years after the current calendar year.~~

~~(5) Attention should be given by the board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth or decline problems:~~

~~(6)(3) All funds appropriated under this part are for use related to local impact, potential local impacts, and ancillary energy-related impacts to public facilities and services.~~

~~(7)(4) All designations based on an increase in coal development or in the consumption of coal by a coal-using energy complex made under subsection (1)(a), (1)(b), or (1)(c) must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated governmental unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local Local governmental units outside the designated coal impact area continue to be~~

eligible for coal impact grants of not more than 50% of the funds appropriated to the board for grants in circumstances in which an impact exists in a community or area directly affected by:

- (a) the operation of a coal mine or a coal-using energy complex; or
- (b) the cessation or reduction of coal mining activity or of the operation of a coal-using energy complex."

Section 9. Section 90-6-1001, MCA, is amended to read:

"90-6-1001. Oil, gas, and coal natural resource account. (1) There is an oil, gas, and coal natural resource account in the state special revenue fund. The collections allocated to the account from 15-35-108(7), and 15-36-331(2)(b), and 17-3-240(3) must be deposited in the account. WITHIN THE ACCOUNT, THERE IS ESTABLISHED A RESERVE AMOUNT FROM THE COLLECTIONS ALLOCATED FROM 15-35-108(7) AND 17-3-240(3), NOT TO EXCEED 5% OF THE TOTAL BIENNIAL APPROPRIATIONS BEGINNING JULY 1, 2007.

(2) Money deposited in the account from 15-35-108(7) and 17-3-240(3) must be used for impact grants awarded pursuant to 90-6-206 and [section 14].

(3) THE BOARD MAY USE THE RESERVE AMOUNT TO MITIGATE FUTURE ENERGY DEVELOPMENT IMPACTS THROUGH GRANTS TO FUND THE ANALYSIS OF ADDITIONAL ENERGY DEVELOPMENT AND EMERGENCIES RELATED TO PUBLIC INFRASTRUCTURE WITHIN A DESIGNATED ENERGY DEVELOPMENT IMPACT AREA AND TO MEET THE BOARD'S RESPONSIBILITIES.

(3)(4) Beginning July 1, 2007, the money TRANSFERRED TO THE ACCOUNT BY THE LEGISLATURE AND allocated to the account from 15-35-108(7) and 17-3-240(3) is statutorily appropriated, as provided in 17-7-502, to the coal, oil, and gas, AND ENERGY DEVELOPMENT impact board to be used as provided in this section.

(4)(5) Interest from money in the oil, gas, and coal natural resource account accrues to that account.

(5)(6) The board shall report to the legislature, as provided in 5-11-210, on the allocation of funds from this account.

(7) UP TO A MAXIMUM OF 1% OF THE FUNDS RECEIVED IN THIS ACCOUNT MAY BE USED BY THE BOARD FOR ADMINISTRATIVE PURPOSES."

NEW SECTION. Section 10. Short title. [Sections 10 through 16] may be cited as the "Oil, Gas, and Energy Generation Local Government Infrastructure Impact Assistance Act".

NEW SECTION. Section 11. Purpose. The purpose of [sections 10 through 16] is to assist local governmental units that have been required to expand the provision of public services as a consequence of

energy development impacts.

NEW SECTION. Section 12. Definitions. As used in [sections 10 through 16], the following definitions apply:

(1) "Board" means the coal, oil, and gas, AND ENERGY DEVELOPMENT impact board provided for in 2-15-1821.

(2) "Energy development impacts" means local government infrastructure impacts resulting from the development or the cessation of development of:

- (a) oil;
- (b) gas;
- (c) hydrocarbon electricity generation facilities; and
- (d) production of liquid hydrocarbon products.

NEW SECTION. Section 13. Applications for grants. (1) THE GOVERNING BODY OF A CITY, TOWN, COUNTY, OR SCHOOL DISTRICT, ANY OTHER LOCAL OR STATE GOVERNMENTAL TAXING UNIT, AND ANY FEDERALLY RECOGNIZED INDIAN TRIBE MAY APPLY FOR A GRANT TO ENABLE IT TO PROVIDE GOVERNMENTAL SERVICES THAT ARE NEEDED AS A DIRECT CONSEQUENCE OF AN INCREASE OR DECREASE IN:

(A) GENERAL ENERGY DEVELOPMENT ACTIVITY; OR

(B) OIL AND GAS DEVELOPMENT ACTIVITY.

(2) The board shall prescribe the form for applications.

~~(2)~~(3) Applicants shall describe the proposed expenditures.

NEW SECTION. Section 14. Basis for awarding energy development impact grants. Grants must be awarded to a local government unit on a basis of:

- (1) need;
- (2) severity of energy development impacts;
- (3) availability of funds; and
- (4) the extent of local effort and the ability of the local government unit to meet its needs.

NEW SECTION. Section 15. Expenditures for energy development impact grants. The board may commit itself to the expenditure of funds for more than 1 year for a single project.

NEW SECTION. Section 16. Board powers -- rulemaking. In addition to the board's powers provided in 90-6-205, the board may adopt rules to implement the provisions of [sections 10 through 16].

NEW SECTION. SECTION 17. TRANSFER OF FUNDS. THERE IS TRANSFERRED FROM THE GENERAL FUND TO THE ACCOUNT ESTABLISHED IN 90-6-1001 THE AMOUNT OF \$10 MILLION IN EACH YEAR OF THE 2009 BIENNIUM ONLY.

NEW SECTION. Section 18. Codification instruction. [Sections 10 through 16] are intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 10 through 16].

NEW SECTION. SECTION 19. CONTINGENT VOIDNESS. IF HOUSE BILL NO. 805, HOUSE BILL NO. 806, HOUSE BILL NO. 807, HOUSE BILL NO. 808, HOUSE BILL NO. 809, HOUSE BILL NO. 818, HOUSE BILL NO. 819, AND HOUSE BILL NO. 820 ARE NOT PASSED AND APPROVED, THEN [THIS ACT] IS VOID.

NEW SECTION. Section 20. Effective date. [This act] is effective July 1, 2007.

NEW SECTION. Section 21. Applicability. [This act] applies to vacancies on the coal, oil, ~~and gas,~~ AND ENERGY DEVELOPMENT impact board occurring after [the effective date of this act].

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