

SENATE BILL NO. 102

INTRODUCED BY D. ANKNEY

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AIR QUALITY FEES; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COLLECT AND USE REGISTRATION FEES FOR THE ADMINISTRATION OF AIR QUALITY PERMITTING AND REGISTRATION; ALLOWING LOCAL AIR QUALITY PROGRAMS TO COLLECT AND USE REGISTRATION FEES FOR THE ADMINISTRATION OF LOCAL AIR QUALITY PERMITTING AND REGISTRATION; AND AMENDING SECTIONS 75-2-220, 75-2-221, AND 75-2-301, MCA."

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

Section 1. Section 75-2-220, MCA, is amended to read:

"75-2-220. Fees -- special assessments -- late payment assessments -- credit. (1) ~~Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant~~ A person required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department ~~a fee~~ fees set by the board pursuant to 75-2-111 that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting or registration requirements in this chapter, including:

(a) reviewing and acting upon ~~the~~ a permit application or a registration or modifying, amending, or updating a permit or registration;

(b) implementing and enforcing the terms and conditions of ~~the~~ a permit issued pursuant to this chapter or an administrative rule or other regulatory requirement adopted pursuant to this chapter. This ~~amount~~ does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable ~~regulations~~ rules or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental

1 compliance assistance program; and

2 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42
3 U.S.C. 7661, et seq.

4 (2) ~~In recovering the costs described in subsection (1), the department may assess an application For~~
5 a permit or registration fee based on ~~estimated actual~~ emissions, ~~or an annual fee~~ the fee must be based on
6 ~~actual~~ emissions of air pollutants regulated under this chapter, including but not limited to volatile organic
7 compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401,
8 et seq., and each air pollutant subject to a national primary ambient air quality standard.

9 (3) The board shall by rule provide for the annual ~~adjustment~~ review of all fees assessed for persons
10 holding an operating permit ~~applications issued~~ under 75-2-217 and 75-2-218 to ~~account for changes to the~~
11 ~~consumer price index~~ ensure the collection of revenue sufficient to cover the costs of administering the operating
12 permit requirements of this chapter, as required by Subchapter V of the federal Clean Air Act.

13 (4) In addition to the ~~fee~~ fees required under subsection (1), the board may order the assessment of
14 additional fees required to fund specific activities of the department that are directed at a particular geographic
15 area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or
16 ambient monitoring, modeling analysis or demonstrations, ~~or~~ and emissions inventories or tracking. Additional
17 assessments may be levied only on those sources that are within or are believed by the department to be
18 impacting the geographic area. Before the board may require the fees, it shall first determine, after opportunity
19 for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter,
20 that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an
21 equitable manner, and that the department has obtained the necessary appropriation. The contested case
22 provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the
23 board under this subsection.

24 (5) (a) If the ~~applicant or~~ permitholder or registrant fails to pay in a timely manner a fee required under
25 subsection (1), in addition to the fee, the department may:

26 (i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided
27 in 15-1-216; or

28 (ii) revoke the permit or registration consistent with those procedures established under this chapter for
29 permit revocation.

30 (b) Within 1 year of revocation, the department may reissue the revoked permit or registration after the

1 ~~applicant or~~ permit holder or registrant has paid all outstanding fees required under subsections (1) and (4),
2 including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the
3 department may modify the terms and conditions of the permit as necessary to account for changes in air quality
4 occurring since revocation.

5 (c) The board shall by rule provide for the implementation of this subsection (5), including criteria for
6 imposition of the sanctions described in this subsection (5).

7 (6) The board may by rule allow the reduction of a fee required under this section for an operating permit
8 or permit renewal to account for the financial resources of a category of small business stationary sources.

9 (7) As a condition of the continuing validity of a permit issued by the department under this chapter prior
10 to October 1, 1993, the board may by rule require the permit holder to pay the fees under subsections (1) and (4).

11 (8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act
12 and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may,
13 as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under
14 subsections (1) and (4).

15 (9) (a) The department shall give written notice of the fee to be assessed and the basis for the
16 department's fee assessment under this section to the owner or operator of the air pollutant source. The owner
17 or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written
18 notice.

19 (b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.
20 An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

21 (c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of
22 the notice required in subsection (9)(a).

23 (d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part
24 6, apply to a hearing before the board under this subsection (9).

25 ~~(10) The department may not charge more than one fee annually to a source of air pollutants for the costs~~
26 ~~identified in subsection (1).~~

27 ~~(11)~~(10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must
28 be reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not
29 increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-225.
30 The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover the

1 reasonable costs, both direct and indirect, of developing and administering the permitting and registration
2 requirements of this chapter."

3

4 **Section 2.** Section 75-2-221, MCA, is amended to read:

5 **"75-2-221. Deposit of air quality permitting and registration fees.** (1) All money collected by the
6 department pursuant to 75-2-111 and 75-2-220 must be deposited in an account in the state special revenue fund
7 to be appropriated by the legislature to the department for the development and administration of the permitting
8 and registration requirements of this chapter.

9 (2) Upon request, the expenditure by the department of funds in this account may be audited by a
10 qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the
11 audit."

12

13 **Section 3.** Section 75-2-301, MCA, is amended to read:

14 **"75-2-301. Local air pollution control programs -- consistency with state and federal regulations**
15 **-- procedure for public notice and comment required.** (1) After public hearing, a municipality or county may
16 establish and administer a local air pollution control program if the program is consistent with this chapter and
17 is approved by the board.

18 (2) If a local air pollution control program established by a county encompasses all or part of a
19 municipality, the county and each municipality shall approve the program in accordance with subsection (1).

20 (3) (a) Except as provided in subsection (5), the board by order may approve a local air pollution control
21 program that:

22 (i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with,
23 more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215,
24 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

25 (ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate
26 administrative and judicial processes; and

27 (iii) provides for administrative organization, staff, financial resources, and other resources necessary
28 to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution
29 control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration
30 fees collected by a local air pollution control program must be deposited in a county special revenue fund to be

1 used by the local air pollution control program for administration of local air pollution control program permitting
2 or registration activities.

3 (b) Board approval of a rule, ordinance, or local law that is more stringent than the comparable state law
4 is subject to the provisions of subsection (4).

5 (4) (a) A local air pollution control program may, subject to approval by the board, adopt a rule,
6 ordinance, or local law to implement this chapter that is more stringent than comparable state or federal
7 regulations or guidelines only if:

8 (i) a public hearing is held;

9 (ii) public comment is allowed; and

10 (iii) the board or the local air pollution control program makes a written finding after the public hearing and
11 comment period that is based on evidence in the record that the proposed local standard or requirement:

12 (A) protects public health or the environment of the area;

13 (B) can mitigate harm to the public health or the environment; and

14 (C) is achievable with current technology.

15 (b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed
16 scientific studies contained in the record that form the basis for the board's or the local air pollution control
17 program's conclusion. The written finding must also include information from the hearing record regarding costs
18 to the regulated community that are directly attributable to the proposed local standard or requirement.

19 (c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January
20 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or
21 federal regulations or guidelines may petition the board or the local air pollution control program to review the rule,
22 ordinance, or local law.

23 (ii) If the board or local air pollution control program determines that the rule, ordinance, or local law is
24 more stringent than state or federal regulations or guidelines, the board or local air pollution control program shall
25 either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow
26 the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months
27 after receiving the petition.

28 (5) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local
29 air pollution control program the authority to control any air pollutant source that:

30 (a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter

1 1, part 2;

2 (b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter
3 20; or

4 (c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this
5 chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air
6 pollution control program prior to January 1, 1991.

7 (6) If the board finds that the location, character, or extent of particular concentrations of population, air
8 pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these ~~make~~
9 makes impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control
10 program, the board may determine the boundaries within which the program is necessary and require it as the
11 only acceptable alternative to direct state administration.

12 (7) If the board has reason to believe that any part of an air pollution control program in force under this
13 section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or
14 is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing
15 on the matter.

16 (8) If, after the hearing, the board determines that any part of the program is inadequate to prevent and
17 control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter,
18 it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

19 (9) If the jurisdiction fails to take these measures within the time required, the department shall
20 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
21 applicable board order, that are necessary to correct the deficiencies found by the board. The department's
22 control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the
23 affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

24 (10) If the board finds that the control of a particular air pollutant source because of its complexity or
25 magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and
26 economically performed at the state level, it may direct the department to assume and retain control over that air
27 pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection
28 may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size
29 of the communities in which they are located.

30 (11) A jurisdiction in which the department administers all or part of its air pollution control program under

1 subsection (9) may, with the approval of the board, establish or resume an air pollution control program that
2 meets the requirements of subsection (3).

3 (12) A municipality or county may administer all or part of its air pollution control program in cooperation
4 with one or more municipalities or counties of this state or of other states.

5 (13) Local air pollution control programs established under this section shall provide procedures for public
6 notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local
7 laws adopted pursuant to this section. The procedures must comply with the following requirements:

8 (a) The local air pollution control program shall create and maintain a list of interested persons who wish
9 to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control
10 program.

11 (b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air
12 pollution control program shall give written notice of its intended action.

13 (c) The notice required under subsection (13)(b) must include:

14 (i) a statement of the terms or substance of the intended action or a description of the subjects and
15 issues affected by the intended action;

16 (ii) an explanation of the procedure for a person to be included on the list of interested persons
17 established pursuant to subsection (13)(a);

18 (iii) an explanation of the procedures and deadlines for presentation of oral or written comments related
19 to the intended action;

20 (iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

21 (v) the rationale for the intended action. The rationale must:

22 (A) include an explanation of why the intended action is reasonably necessary to implement the goals
23 and purposes of the local air pollution control program;

24 (B) specifically address those intended actions for which there are no similar state or federal regulations
25 or guidelines; and

26 (C) be written in plain, easily understood language.

27 (d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local
28 law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

29 (e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law
30 to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests

1 to be included on the list.

2 (f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law
3 request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the
4 public on the intended action.

5 (g) The local air pollution control program shall prepare a written response to all comments submitted
6 in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed
7 rule, ordinance, or local law.

8 (h) A person who submits a written comment on a proposed action or who attends a public hearing in
9 regard to a proposed action must be informed of the final action."

10 - END -