

SENATE BILL NO. 384

INTRODUCED BY J. ESP

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO AQUATIC INVASIVE SPECIES FEES FOR HYDROELECTRIC FACILITIES; REVISING THE FEE; PROVIDING A TRANSFER OF MARIJUANA TAX FUNDS; PROVIDING A TRANSFER OF AMERICAN RESCUE PLAN ACT FUNDS; AMENDING SECTIONS 15-72-601, 69-3-308, AND 80-7-1004, MCA; REPEALING SECTION 15-72-601, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

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

Section 1. Section 15-72-601, MCA, is amended to read:

"15-72-601. Invasive species fee for hydroelectric facilities. (1) In recognition of the threat that invasive species pose to Montana's hydroelectric power structures and systems, a hydroelectric facility shall pay a quarterly invasive species fee ~~based on of \$397.88 per megawatt of~~ the facility's nameplate capacity authorized by the federal energy regulatory commission. ~~The quarterly invasive species fee for nameplate capacity of:~~

~~(a) at least 1.5 megawatts but less than 25 megawatts is \$274.95 per megawatt;~~

~~(b) at least 25 megawatts but less than 100 megawatts is \$549.90 per megawatt, and~~

~~(c) 100 megawatts or more is \$824.85 per megawatt.~~

(2) Every hydroelectric facility subject to the fee in subsection (1) shall file on forms provided by the department and pay within 30 days after the end of each quarterly period. The quarterly periods end March 31, June 30, September 30, and December 31 of each year.

(3) If the fee is not paid on or before the due date, a penalty and interest must be assessed as provided in 15-1-216. The department may waive the penalty pursuant to 15-1-216.

(4) The department may audit the records and other documents of a hydroelectric facility to ensure that the proper fee is paid and collected pursuant to this section.

(5) A hydroelectric facility that funds protection, mitigation, and enhancement measures pursuant to a

1 settlement approved by the federal energy regulatory commission may use any of those funds that are
 2 unobligated to pay, in whole or in part, the fee owed pursuant to subsection (1).

3 (6) Money collected pursuant to this section must be deposited in the invasive species account
 4 established in 80-7-1004.

5 (7) For the purposes of this section, "hydroelectric facility" means an operating facility located in
 6 Montana in a watercourse as that term is defined in 85-2-102 that produces electricity using water power and
 7 has more than 1.5 megawatts in nameplate capacity."
 8

9 **Section 2.** Section 69-3-308, MCA, is amended to read:

10 **"69-3-308. Disclosure of taxes and fees paid by customers of public utility -- automatic rate**
 11 **adjustment and tracking for taxes and fees.** (1) A public utility may separately disclose in a customer's bill
 12 the amount of state and local taxes and fees assessed against the public utility that the customer is paying.

13 (2) (a) (i) ~~Except as provided in 15-72-601,~~ The commission shall allow a public utility to file
 14 rate schedules containing provisions for the automatic adjustment and tracking of Montana state and local
 15 taxes and fees, except state income tax, paid by the public utility. The resulting rate schedule changes must
 16 include:

17 (A) adjustments for the net change in federal and state income tax liability caused by the deductibility
 18 of state and local taxes and fees;

19 (B) retroactive tax adjustments; and

20 (C) adjustments related to the resolution of property taxes paid under protest.

21 (ii) The rate schedules must include provisions for annual rate adjustments, including both tax
 22 increases and decreases.

23 (b) The amended rates must automatically go into effect on January 1 following the date of change in
 24 taxes paid on an interim basis, subject to any adjustments determined in subsection (2)(c).

25 (c) The amended rate schedule must be filed with the commission on or before the effective date of
 26 the change in taxes paid, and if the commission determines that the revised rate schedule is in error, the
 27 commission may, within 45 days of receipt of the revised rate schedule, ask for comment and order the public
 28 utility to address any errors or omissions including, if necessary, any refunds due customers.

1 (d) Failure of the commission to issue an order pursuant to subsection (2)(c) is considered approval
2 on the part of the commission.

3 (e) A public utility may challenge an order issued by the commission under subsection (2)(c) in
4 accordance with the provisions of 69-3-401 through 69-3-405."
5

6 **Section 3.** Section 80-7-1004, MCA, is amended to read:

7 **"80-7-1004. (Temporary) Invasive species account.** (1) There is an invasive species account in the
8 state special revenue fund. The account is administered by the department of fish, wildlife, and parks.

9 (2) Money transferred from any lawful source, including but not limited to fees collected pursuant to
10 15-65-121, 15-72-601, and 23-2-541, and gifts, grants, donations, securities, or other assets, public or private,
11 may be deposited in the account.

12 (3) Subject to subsection (4), money deposited in the account must be used for projects that prevent
13 or control any nonnative, aquatic invasive species pursuant to this part.

14 (4) Any private contribution deposited in the account for a particular purpose, as stated by the donor,
15 must be used exclusively for that purpose.

16 (5) At the end of each fiscal year, unreserved funds in the account, including any interest and
17 earnings, must be transferred to the invasive species trust fund established in 80-7-1016.

18 (6) The department of fish, wildlife, and parks may not recover indirect costs from the invasive
19 species account. (Terminates June 30, 2023--sec. 18, Ch. 356, L. 2019.)

20 **80-7-1004. (Effective July 1, 2023) Invasive species account.** (1) There is an invasive species
21 account in the state special revenue fund. The account is administered by the department of fish, wildlife, and
22 parks.

23 (2) Money transferred from any lawful source, including but not limited to fees collected pursuant to
24 15-65-121, ~~15-72-601~~, and 23-2-541, and gifts, grants, donations, securities, or other assets, public or private,
25 may be deposited in the account.

26 (3) Subject to subsection (4), money deposited in the account must be used for projects that prevent
27 or control any nonnative, aquatic invasive species pursuant to this part.

28 (4) Any private contribution deposited in the account for a particular purpose, as stated by the donor,

1 must be used exclusively for that purpose.

2 (5) At the end of each fiscal year, unreserved funds in the account, including any interest and
3 earnings, must be transferred to the invasive species trust fund established in 80-7-1016.

4 (6) The department of fish, wildlife, and parks may recover not more than 5% in indirect costs from
5 the invasive species account."
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7 **NEW SECTION. Section 4. Repealer.** The following section of the Montana Code Annotated is
8 repealed:

9 15-72-601. Invasive species fee for hydroelectric facilities.
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11 **NEW SECTION. Section 5. Transfer of funds – appropriation.** (1) Subject to subsections (2) and
12 (3), for the biennium beginning July 1, 2021, the state treasurer shall transfer \$1 million from the funds that
13 would otherwise be transferred to the department of fish, wildlife, and parks for wildlife habitat according to 16-
14 12-111(3) to the invasive species account established in 80-7-1004.

15 (2) Subject to subsection (3), if there are insufficient funds to complete the transfer authorized in
16 subsection (1), the department of fish, wildlife, and parks shall allocate the remaining balance of the \$1 million
17 transfer from federal special revenue funds appropriated in accordance with [House Bill No. 632] and received
18 under the American Rescue Plan Act that are available to be used for the purposes of Title 80, chapter 7, part
19 10.

20 (3) If there are insufficient federal special revenue funds available to allocate pursuant to subsection
21 (2), then the state treasurer shall transfer the remaining balance of the \$1 million from the state general fund to
22 the invasive species account established in 80-7-1004.
23

24 **NEW SECTION. Section 6. Effective dates.** (1) Except as provided in subsection (2), [this act] is
25 effective July 1, 2021.

26 (2) [Sections 2 through 4] are effective July 1, 2023.
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28 **NEW SECTION. Section 7. Applicability.** [Section 1] applies to quarterly periods beginning July 1,

1 2021.

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