

HOUSE BILL NO. 447

INTRODUCED BY HUENNEKENS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 70-806 AND 70-821, R.C.M. 1947, PROVIDING THAT ALL FEES, TAXES, FINES, AND PENALTIES PAID UNDER THE MONTANA UTILITY SITING ACT OF 1973 BE DEPOSITED IN THE EARMARKED REVENUE FUND."

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

Section 1. Section 70-806, R.C.M. 1947, is amended to read as follows:

"70-806. Application for certification--filing and contents--fees--use-of--filing--fees--proof of service on municipalities--waiver of time requirement. (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 70-803 (3) (a), 70-803 (3) (b) (iv), 70-803 (3) (c), and 70-803 (3) (d) and at least nine (9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 70-803 (3) (b) (iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

(a) a description of the location and of the utility

facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the ~~state~~ general earmarked revenue fund for the use of the department in administering this chapter. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three percent (3%) of any estimated cost up to one million dollars (\$1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000) and

1 up to one hundred million dollars (\$100,000,000); plus
 2 one-quarter of one percent (0.25%) of any amount of
 3 estimated cost over one hundred million (\$100,000,000) and
 4 up to three hundred million dollars (\$300,000,000); plus
 5 one-tenth of one percent (0.1%) of any amount of estimated
 6 cost over three hundred million dollars (\$300,000,000). ~~It~~
 7 ~~is-the-intent-of-the-legislature-that-the-revenues-derived~~
 8 ~~from-the-filing-fee-be-used-by-the-department-in-compiling~~
 9 ~~the-information-required-for-rendering-a-decision-on-a~~
 10 ~~certificate-and-for-carrying-out-its-other-responsibilities~~
 11 ~~under-this-act.~~

12 (3) Each application shall be accompanied by proof of
 13 service of a copy of such application on the chief executive
 14 officer of each municipality and the head of each government
 15 agency, charged with the duty of protecting the environment
 16 or of planning land use, in the area in which any portion of
 17 such facility is to be located, both as primarily and as
 18 alternatively proposed. The copy of such application shall
 19 be accompanied by a notice specifying the date on or about
 20 which the application is to be filed.

21 (4) Each application shall also be accompanied by
 22 proof that public notice thereof was given to persons,
 23 residing in the municipalities entitled to receive notice
 24 under subsection (3) of this section, by the publication of
 25 a summary of the application, and the date on or about which

1 it is to be filed, in such newspapers as will serve
 2 substantially to inform such persons of the application.

3 (5) Inadvertent failure of service on, or notice to,
 4 any of the municipalities, government agencies or persons
 5 identified in subsections (3) and (4) of this section may be
 6 cured pursuant to orders of the department designed to
 7 afford them adequate notice to enable their effective
 8 participation in the proceeding. In addition, the department
 9 may, after filing, require the applicant to serve notice of
 10 the application or copies thereof or both upon such other
 11 persons, and file proof thereof, as the department may deem
 12 appropriate.

13 (6) An application for an amendment of a certificate
 14 shall be in such form and contain such information as the
 15 department shall prescribe. Notice of such an application
 16 shall be given as set forth in subsections (3) and (4) of
 17 this section.

18 (7) The board may waive compliance with the time limit
 19 of this section if an applicant makes a clear and convincing
 20 showing that an immediate need for a facility exists and
 21 that the applicant did not have knowledge that the need
 22 existed sufficiently in advance of the need to file an
 23 application within the time provided in subsection (1) of
 24 this section.

25 (8) The board may, in its discretion, waive the

STATE OF MONTANA

REQUEST NO. 208-75

FISCAL NOTE

Form BD-15

In compliance with a written request received February 11, 19 75, there is hereby submitted a Fiscal Note for House Bill 447 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide that all fees, taxes, fines, and penalties paid under the Montana Utility Siting Act of 1973 be deposited in the Earmarked Revenue Fund rather than the General Fund.

FISCAL IMPACT:

House Bill 447 merely amends certain sections to comply with the provisions of the Treasury Fund Structure Act (Section 79-410, R.C.M. 1947). That act states that monies specifically reserved by law for the purpose of conducting a specific governmental operation are to be deposited in the Earmarked Revenue Fund. House Bill 447, would reduce revenue to the General Fund by the amount collected under the Montana Utility Siting Act; however, since the revenue is restricted by the act for use by the Department of Natural Resources and Conservation and therefore not available for general appropriation, the revenue loss to the General Fund will equal the reduction in expenditures from the General Fund. Thus, there would be no impact on revenues or expenditures under the proposed law.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 12, 1975

Approved by Committee
on Taxation

HOUSE BILL NO. 447

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A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
70-806 AND 70-821, R.C.M. 1947, PROVIDING THAT ALL FEES,
~~TAXES~~, FINES, AND PENALTIES PAID UNDER THE MONTANA UTILITY
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FUND."

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read as follows:

"70-806. Application for certification -- filing and
contents -- ~~fees ---use-of-filing-fees~~ -- USE OF FILING FEES
-- proof of service on municipalities -- waiver of time
requirement. (1) At least two (2) years prior to
anticipated commencement of construction of a utility
facility as defined in sections 70-803 (3) (a), 70-803 (3)
(b) (iv), 70-803 (3) (c), and 70-803 (3) (d) and at least
nine (9) months prior to the anticipated commencement date
of the construction of a utility facility as defined in
section 70-803 (3) (b) (iii), an applicant for a certificate
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facility to be built thereon;

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the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location
or locations for the proposed facility, a description of the
comparative merits and detriments of each location
submitted, and a statement of the reasons why the primary
proposed location is best suited for the facility; and

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consider relevant or as the department may by regulation or
order require. A copy or copies of the studies referred to
in clause (b) above shall be filed with the department, if
ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the ~~state~~
general earmarked revenue fund for the use of the department
in administering this chapter. Said fee shall be based upon
the estimated cost of the facility according to the
declining scale which follows. The applicant shall pay the
accumulated sums calculated as follows: three percent (3%)
of any estimated cost up to one million dollars
(\$1,000,000); plus one percent (1%) of any estimated cost
over a million dollars and up to twenty million dollars
(\$20,000,000); plus one-half of one percent (0.5%) of any

1 estimated cost over twenty million dollars (\$20,000,000) and
 2 up to one hundred million dollars (\$100,000,000); plus
 3 one-quarter of one percent (0.25%) of any amount of
 4 estimated cost over one hundred million (\$100,000,000) and
 5 up to three hundred million dollars (\$300,000,000); plus
 6 one-tenth of one percent (0.1%) of any amount of estimated
 7 cost over three hundred million dollars (\$300,000,000). ~~It~~
 8 ~~is the intent of the legislature that the revenues derived~~
 9 ~~from the filing fee be used by the department in compiling~~
 10 ~~the information required for rendering a decision on a~~
 11 ~~certificate and for carrying out its other responsibilities~~
 12 under this act. IT IS THE INTENT OF THE LEGISLATURE THAT THE
 13 REVENUES DERIVED FROM THE FILING FEE BE USED BY THE
 14 DEPARTMENT IN COMPILING THE INFORMATION REQUIRED FOR
 15 RENDERING A DECISION ON A CERTIFICATE AND FOR CARRYING OUT
 16 ITS OTHER RESPONSIBILITIES UNDER THIS CHAPTER.

17 (3) Each application shall be accompanied by proof of
 18 service of a copy of such application on the chief executive
 19 officer of each municipality and the head of each government
 20 agency, charged with the duty of protecting the environment
 21 or of planning land use, in the area in which any portion of
 22 such facility is to be located, both as primarily and as
 23 alternatively proposed. The copy of such application shall
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1 that the applicant did not have knowledge that the need
2 existed sufficiently in advance of the need to file an
3 application within the time provided in subsection (1) of
4 this section.

5 (8) The board may, in its discretion, waive the
6 necessity of filing an application where utility facilities
7 are being relocated pursuant to sections 32-2414 through
8 32-2416, R.C.M. 1947, and where it is satisfied after an
9 examination of the environmental impact statement filed
10 pursuant to chapter 65 of Title 69, R.C.M. 1947, that such
11 relocation will not significantly affect the environment."

12 Section 2. Section 70-821, R.C.M. 1947, is amended to
13 read as follows:

14 "70-821. Penalties for violation of act -- civil
15 action by attorney general. (1) Whoever

16 (a) without first obtaining a certificate of site and
17 facility required under section 4 [70-804], commences to
18 construct or operate a utility facility after the effective
19 date of this act; or

20 (b) having first obtained a certificate of site and
21 facility, constructs, operates or maintains a utility
22 facility other than in compliance with the certificate; or

23 (c) causes any of the aforementioned acts to occur;
24 shall be liable to a civil penalty of not more than ten
25 thousand dollars (\$10,000) for each violation. Each day of a

1 continuing violation shall constitute a separate offense.
2 The penalty shall be recoverable in a civil suit brought by
3 the attorney general on behalf of the state in the first
4 district court of Montana.

5 (2) Whoever knowingly and willfully violates
6 subsection (1) shall be fined not more than ten thousand
7 dollars (\$10,000) for each violation or imprisoned for not
8 more than one (1) year, or both. Each day of a continuing
9 violation shall constitute a separate offense.

10 (3) In addition to any penalty provided in subsections
11 (1) or (2), whenever the department determines that a person
12 is violating or is about to violate any of the provisions of
13 this section, it shall refer the matter to the attorney
14 general who may bring a civil action on behalf of the state
15 in the first district court of Montana for injunctive or
16 other appropriate relief against the violation and to
17 enforce the act or a certificate issued hereunder, and upon
18 a proper showing a permanent or preliminary injunction or
19 temporary restraining order shall be granted without bond.

20 (4) All fines AND PENALTIES collected shall be
21 deposited in the state-general earmarked revenue fund for
22 the use of the department in administering this chapter."

-End-

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Section 1. Section 70-806, R.C.M. 1947, is amended to read as follows:

"70-806. Application for certification -- filing and contents -- ~~fees ---use-of-filing-fees~~ USE OF FILING FEES -- proof of service on municipalities -- waiver of time requirement. (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 70-803 (3) (a), 70-803 (3) (b) (iv), 70-803 (3) (c), and 70-803 (3) (d) and at least nine (9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 70-803 (3) (b) (iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

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(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

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 21 or of planning land use, in the area in which any portion of
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 9 any of the municipalities, government agencies or persons
 10 identified in subsections (3) and (4) of this section may be
 11 cured pursuant to orders of the department designed to
 12 afford them adequate notice to enable their effective
 13 participation in the proceeding. In addition, the department
 14 may, after filing, require the applicant to serve notice of
 15 the application or copies thereof or both upon such other
 16 persons, and file proof thereof, as the department may deem
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 19 shall be in such form and contain such information as the
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 21 shall be given as set forth in subsections (3) and (4) of
 22 this section.

23 (7) The board may waive compliance with the time limit
 24 of this section if an applicant makes a clear and convincing
 25 showing that an immediate need for a facility exists and

1 that the applicant did not have knowledge that the need
 2 existed sufficiently in advance of the need to file an
 3 application within the time provided in subsection (1) of
 4 this section.

5 (8) The board may, in its discretion, waive the
 6 necessity of filing an application where utility facilities
 7 are being relocated pursuant to sections 32-2414 through
 8 32-2416, R.C.M. 1947, and where it is satisfied after an
 9 examination of the environmental impact statement filed
 10 pursuant to chapter 65 of Title 69, R.C.M. 1947, that such
 11 relocation will not significantly affect the environment."

12 Section 2. Section 70-821, R.C.M. 1947, is amended to
 13 read as follows:

14 *70-821. Penalties for violation of act -- civil
 15 action by attorney general. (1) Whoever

16 (a) without first obtaining a certificate of site and
 17 facility required under section 4 [70-804], commences to
 18 construct or operate a utility facility after the effective
 19 date of this act; or

20 (b) having first obtained a certificate of site and
 21 facility, constructs, operates or maintains a utility
 22 facility other than in compliance with the certificate; or

23 (c) causes any of the aforementioned acts to occur;
 24 shall be liable to a civil penalty of not more than ten
 25 thousand dollars (\$10,000) for each violation. Each day of a

1 continuing violation shall constitute a separate offense.
 2 The penalty shall be recoverable in a civil suit brought by
 3 the attorney general on behalf of the state in the first
 4 district court of Montana.

5 (2) Whoever knowingly and willfully violates
 6 subsection (1) shall be fined not more than ten thousand
 7 dollars (\$10,000) for each violation or imprisoned for not
 8 more than one (1) year, or both. Each day of a continuing
 9 violation shall constitute a separate offense.

10 (3) In addition to any penalty provided in subsections
 11 (1) or (2), whenever the department determines that a person
 12 is violating or is about to violate any of the provisions of
 13 this section, it shall refer the matter to the attorney
 14 general who may bring a civil action on behalf of the state
 15 in the first district court of Montana for injunctive or
 16 other appropriate relief against the violation and to
 17 enforce the act or a certificate issued hereunder, and upon
 18 a proper showing a permanent or preliminary injunction or
 19 temporary restraining order shall be granted without bond.

20 (4) All fines AND PENALTIES collected shall be
 21 deposited in the state-general earmarked revenue fund for
 22 the use of the department in administering this chapter."

-End-

March 18, 1975

SENATE COMMITTEE OF THE WHOLE
AMENDMENTS TO HOUSE BILL NO. 447

That House Bill No. 447, third reading, be amended as follows:

1. Amend page 6, section 2, line 22.

Following: line 22

Insert: "Section 3. There is a new R.C.M. Section numbered
70-824 which reads as follows:

"70-824. Earmarked revenue fund. All fees, taxes, fines, and penalties collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in carrying out its functions and responsibilities under this chapter."

Corrected copy
3/20/75

March 18, 1975

SENATE COMMITTEE OF THE WHOLE

AMENDMENTS TO HOUSE BILL NO. 447

That House Bill No. 447, third reading, be amended as follows:

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Following: line 22

Insert: "Section 3. There is a new R.C.M. Section numbered 70-824 that reads as follows:

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REFERENCE BILL
SECOND PRINTING 3/19/15

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12 is violating or is about to violate any of the provisions of
13 this section, it shall refer the matter to the attorney
14 general who may bring a civil action on behalf of the state
15 in the first district court of Montana for injunctive or
16 other appropriate relief against the violation and to
17 enforce the act or a certificate issued hereunder, and upon
18 a proper showing a permanent or preliminary injunction or
19 temporary restraining order shall be granted without bond.

20 (4) All fines AND PENALTIES collected shall be
21 deposited in the state-general earmarked revenue fund for
22 the use of the department in administering this chapter."

23 SECTION 3. THERE IS A NEW R.C.M. SECTION NUMBERED
24 70-824 THAT READS AS FOLLOWS:

25 70-824. Earmarked revenue fund. All fees, taxes,

1 fines, and penalties collected under this chapter shall be
2 deposited in the earmarked revenue fund for use by the
3 department in carrying out its functions and
4 responsibilities under this chapter.

-End-