

1 *House* BILL NO. *785*
 2 INTRODUCED BY *Harold NATHAN Hayden Jamison*
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4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO ENERGY
 5 RESOURCE EMERGENCIES; PROVIDING TO THE GOVERNOR THE POWER TO
 6 CURTAIL SALE OF ENERGY RESOURCES DURING EMERGENCIES OR
 7 DISASTERS IN ACCORDANCE WITH PLANS ADOPTED BY THE DEPARTMENT
 8 OF NATURAL RESOURCES AND CONSERVATION; PROVIDING PENALTIES;
 9 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Findings and purpose. (1) The legislature
 13 finds that the lack of energy resources and other energy
 14 resource emergencies may threaten the availability of
 15 essential services and transportation and the operation of
 16 the economy, jeopardizing the peace, health, safety, and
 17 welfare of the people of Montana.

18 (2) The legislature finds it necessary to provide an
 19 orderly procedure for anticipating and responding to energy
 20 resource shortages and to grant, under conditions prescribed
 21 in this act, emergency powers to order involuntary
 22 curtailments in the use of energy resources to the governor
 23 and other state officers.

24 (3) The legislature declares it is the policy of
 25 Montana to assist the president of the United States in

1 effective management and control of such factors and
 2 situations as contribute to an emergency affecting or likely
 3 to affect Montana, to cooperate with other states in matters
 4 related to an emergency affecting or likely to affect
 5 Montana, to meet extraordinary conditions in Montana arising
 6 out of the crisis by taking such steps as are necessary and
 7 appropriate, and generally to protect the peace, health,
 8 safety, and welfare of the people of Montana.

9 Section 2. Definitions. As used in this act, the
 10 following definitions apply:

11 (1) "Department" means the department of natural
 12 resources and conservation.

13 (2) "Disaster" means the occurrence or imminent threat
 14 of widespread or severe disruption of essential services and
 15 the operation of the economy or substantial damage, injury,
 16 or loss of life or property resulting from an acute shortage
 17 of energy resources.

18 (3) "Emergency" means the imminent threat of a
 19 disaster causing immediate peril to life, property,
 20 essential services, or the operation of the economy, which
 21 timely action can avert or minimize.

22 (4) "Energy resource" means electricity, natural gas,
 23 petroleum, coal, wood, fuel for heating, geothermal sources,
 24 radioactive materials, and any other resource yielding
 25 energy.

1 Section 3. Submission and approval of curtailment
 2 plans. (1) Any public utility as defined in 70-103 or other
 3 person, firm, or corporation engaged in the sale or resale
 4 of an energy resource in this state, except wood or coal for
 5 home heating, shall present for approval by the department a
 6 plan for curtailment of such sale or resale in the event of
 7 an energy resource emergency or disaster. Plans shall be
 8 submitted in such form and within such limits as the
 9 department shall specify.

10 (2) Approval of utility plans for the curtailment of
 11 load shall be based on the following factors:

12 (a) the consistency of the plan with the public
 13 health, safety, and welfare;

14 (b) the technical feasibility of implementation of the
 15 plan;

16 (c) the effectiveness with which the plan minimizes
 17 the impact of any curtailment; and

18 (d) the needs of commercial, retail, professional, and
 19 service establishments whose normal function is to supply
 20 goods or services, or both, of an essential nature,
 21 including but not limited to food, lodging, fuel, medical
 22 care facilities, during times of the day other than
 23 conventional daytime working hours.

24 (3) In the event of an emergency threatening the
 25 health, safety, and welfare of the general public, the

1 department may on its own action and without hearing
 2 establish a plan for the curtailment of load by any person
 3 referred to in this section. If an emergency is not present,
 4 the department shall prior to approval hold public hearings
 5 with respect to any proposed plan and give reasonable notice
 6 of such hearings.

7 Section 4. Liability. A person, firm, corporation, or
 8 utility is not liable for damages to persons or property
 9 resulting from a curtailment of service in accordance with a
 10 plan approved by the department.

11 Section 5. Information obtainable by governor. (1) On
 12 a continuing basis, the governor may obtain all necessary
 13 information from energy resource producers, suppliers, and
 14 consumers doing business within Montana and from political
 15 subdivisions in this state as necessary for him to determine
 16 whether shortages or an emergency or disaster will require
 17 energy resource conservation measures. Such information may
 18 include but is not limited to:

19 (a) sales volumes;

20 (b) forecasts of energy resource requirements;

21 (c) inventory of energy resources; and

22 (d) local distribution patterns of information under
 23 subsections (a), (b), and (c) of this subsection.

24 (2) In obtaining information under subsection (1) of
 25 this section during a state of emergency or disaster

1 proclaimed under [section 7 or 8], the governor may subpoena
 2 witnesses, material, and relevant books, papers, accounts,
 3 records, and memoranda; administer oaths; and cause the
 4 depositions of persons residing within or without Montana to
 5 be taken in the manner prescribed for depositions in civil
 6 actions in circuit courts, to obtain information relevant to
 7 energy resources that are the subject of the proclaimed
 8 emergency or disaster.

9 (3) In obtaining information under this section, the
 10 governor shall:

11 (a) seek to avoid eliciting information already
 12 furnished by a person or political subdivision in this state
 13 to a federal, state, or local regulatory authority that is
 14 available for his study; and

15 (b) cause reporting procedures, including forms, to
 16 conform to existing requirements of federal, state, and
 17 local regulatory authorities.

18 Section 6. Confidentiality of information. (1)
 19 Notwithstanding any other law, information furnished under
 20 [section 5] and designated by that person as confidential
 21 shall be maintained as confidential by the governor and any
 22 person who obtains information which he knows to be
 23 confidential under this act. The governor may not make known
 24 in any manner any particulars of such information to persons
 25 other than those specified in subsection (4) of this

1 section. No subpoena or judicial order may be issued
 2 compelling the governor or any other person to divulge or
 3 make known such confidential information, except when
 4 relevant to a prosecution for violation of subsection (5) of
 5 this section.

6 (2) Nothing in this section prohibits use of
 7 confidential information to prepare statistics or other
 8 general data for publication, if so presented as to prevent
 9 identification of particular persons.

10 (3) Any person who is served with a subpoena to give
 11 testimony orally or in writing or to produce books, papers,
 12 correspondence, memoranda, agreements, or other documents or
 13 records as provided in this act may apply to any district
 14 court for protection in the manner provided in M.R.Civ.P.,
 15 Rule 30, in the case of depositions.

16 (4) References to the governor in this section include
 17 only individuals designated for this purpose in writing by
 18 the governor.

19 (5) In addition to any penalties under [section 12], a
 20 person who discloses confidential information in violation
 21 of this section willfully or with criminal negligence may be
 22 subject, notwithstanding any other law, to removal from
 23 office or immediate dismissal from public employment.

24 Section 7. Declaration of emergency. (1) A state of
 25 emergency may be declared by the governor by executive order

1 when a lack of an energy resource or any energy resource
2 emergency is determined to exist. He shall state the nature
3 of the energy resource shortage emergency.

4 (2) Whenever the governor has declared a state of
5 emergency under this section, he may by executive order
6 direct actions:

7 (a) reducing energy resource usage by state agencies
8 and political subdivisions in this state;

9 (b) promoting conservation, prevention of waste, and
10 salvage of energy resources and the materials, services, and
11 facilities derived therefrom or dependent thereon by state
12 agencies and political subdivisions in this state;

13 (c) directing the establishment by state agencies and
14 political subdivisions in this state of programs necessary
15 to implement and comply with federal energy conservation
16 programs, including but not limited to allocation or
17 rationing of energy resources and the distribution of the
18 state's discretionary allotments.

19 Section 8. Disaster declaration by governor. A
20 disaster may be declared by executive order whenever the
21 governor determines that the conditions in [section 1(1)]
22 exist. In the order, he shall recite with specificity the
23 nature of the severe disruption in the supply of one or more
24 energy resources.

25 Section 9. Duration and termination. (1) A declaration

1 of emergency or disaster and all orders and rules issued as
2 a result of the declaration under this act shall continue in
3 effect for 30 days unless the governor rescinds it and
4 declares the emergency ended before the expiration of the
5 30-day period.

6 (2) A proclamation may be renewed or extended only by
7 joint resolution of the legislature unless 60 days have
8 elapsed from the date of the original proclamation.

9 Section 10. Involuntary curtailment orders. (1) During
10 any disaster proclaimed under [section 8], the governor by
11 executive order may order involuntary curtailments,
12 adjustments, or allocations in the supply and consumption of
13 energy resources applicable to all suppliers and consumers.
14 However, he may not order such curtailments, adjustments, or
15 allocations which discriminate within any class of
16 consumers. It is the intent of the legislature that any
17 such curtailments, adjustments, and allocations be ordered
18 and continue only so long as demonstrably necessary for the
19 maintenance of essential services or transportation or the
20 continued operation of the economy and that all such
21 curtailments, adjustments, and allocations be applied as
22 uniformly as practicable within each class of suppliers and
23 consumers.

24 (2) Any involuntary curtailments pursuant to
25 subsection (1) of this section shall be made by executive

1 order to the department requiring it to implement plans for
2 curtailment adopted pursuant to [section 3].

3 (3) In addition to orders issued pursuant to
4 subsection (1) of this section, the governor by executive
5 order may:

6 (a) modify transportation routes and schedules as
7 necessary to conserve energy resources to the extent
8 permissible under federal law and regulations;

9 (b) specify the times and manner in which energy
10 resources are supplied or consumed, consistent with the
11 restrictions imposed by subsection (1) of this section;

12 (c) prescribe and direct activities promoting the
13 conservation, prevention of waste, and salvage of energy
14 resources and the materials, services, and facilities
15 derived therefrom or dependent thereon.

16 Section 11. Review of executive orders. (1) Any
17 proclamation, executive order, or directive issued pursuant
18 to this act shall be deemed to be a rule subject to the
19 Montana Administrative Procedure Act, except that
20 jurisdiction for judicial determination of the validity
21 thereof pursuant to 82-4219 is conferred upon the supreme
22 court.

23 (2) Any such proceeding in the supreme court shall be
24 given precedence on the docket over all other cases except
25 prior cases arising under this act. The court may appoint a

1 hearing officer to take evidence and make proposed findings
2 of fact and conclusions of law in such case.

3 Section 12. Penalty. (1) Violation of [section 6(5)]
4 is punishable upon conviction by a fine of not more than
5 \$1,000 for each offense.

6 (2) Any person who willfully fails or neglects to
7 comply with an executive order issued under this act or a
8 directive of the governor implementing such an executive
9 order shall forfeit and pay into the state treasury a civil
10 penalty not to exceed \$1,000 for each such failure for each
11 day such failure persists.

12 (3) In addition to or in lieu of the civil penalty
13 available under subsection (2) of this section, the governor
14 may direct the reduction or termination of supply of any or
15 all energy resources being supplied to the noncomplying
16 party by any person or political subdivision in this state
17 whose activities in furnishing energy resources are subject
18 to allocation, rationing, regulation, or other control under
19 this act or any other law of Montana. A noncomplying party
20 is entitled to restoration of supply as soon as he has
21 achieved compliance.

22 (4) The governor may apply to any district court for
23 appropriate equitable relief against any person who violates
24 or fails to carry out an executive order or directive under
25 this act.

1 Section 13. Civil defense laws supplemented. The
2 powers vested in the governor under this act are in addition
3 to and not in lieu of emergency powers vested in him under
4 Title 77, chapter 23, or any other law of Montana.

5 Section 14. Severability. If a part of this act is
6 invalid, all valid parts that are severable from the invalid
7 part remain in effect. If a part of this act is invalid in
8 one or more of its applications, the part remains in effect
9 in all valid applications that are severable from the
10 invalid applications.

11 Section 15. Effective date. This act is effective on
12 its passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 585-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 21, 19 77, there is hereby submitted a Fiscal Note for House Bill 785 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:

House Bill 785 gives the Governor the power to curtail sale of energy resources during emergencies or disasters in accordance with plans adopted by the Department of Natural Resources and Conservation.

ASSUMPTIONS:

1. All public utilities or corporations engaged in the sale or resale of energy resources in this state will be required to file a plan for curtailment of such sale or resale in the event of an energy resource emergency or disaster.
2. One Resource Planner and Secretary will be necessary to implement the act.
3. General Fund monies will be required.
4. No emergencies or disasters as defined will occur.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Personal services	\$23,247	\$23,775
Operating costs	20,000	20,000
Equipment	<u>2,000</u>	<u>500</u>
Additional cost of proposed legislation	<u>\$45,247</u>	<u>\$44,275</u>

LONG-RANGE IMPACT:

Once the required plan has been prepared and approved, it is possible that less staff will be required.

Richard A. Treney for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-23-77