

HOUSE BILL 555

IN THE HOUSE

February 3, 1979	Introduced and referred to Committee on Natural Resources.
February 17, 1979	Committee recommend bill, as amended.
February 19, 1979	Printed and placed on members' desks.
February 20, 1979	Second reading, do pass.
February 21, 1979	Considered correctly engrossed.
February 22, 1979	Third reading, passed.

IN THE SENATE

February 22, 1979	Introduced and referred to Committee on Natural Resources.
March 15, 1979	Committee recomend bill, as amended.
March 17, 1979	Second reading, concurred.
March 20, 1979	Third reading, as amended.

IN THE HOUSE

March 21, 1979	Returned from House, as amended.
March 22, 1979	On motion consideration passed until the 71st Legislative day.
March 29, 1979	Second reading, amendments adopted.
March 30, 1979	Third reading amendments adopted.

GOVENOR

April 5, 1979	Delivered to Governor.
April 10, 1979	Veto.

1 *House* BILL NO. *555*
 2 INTRODUCED BY *Howl Daily Couray Linn*
 3 *Olson*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE
 5 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM
 6 CONSTRUCTING, OPERATING, AND MAINTAINING WATER PROJECTS FOR
 7 THE DEVELOPMENT OF POWER; AMENDING SECTION 85-1-102, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 85-1-102, MCA, is amended to read:
 11 "85-1-102. Definitions. Unless the context requires
 12 otherwise, in this chapter the following definitions apply:

13 (1) "Board" means the board of natural resources and
 14 conservation provided for in 2-15-3302.

15 (2) "Cost of works" means the cost of construction;
 16 the cost of all lands, property, rights, easements, and
 17 franchises acquired which are deemed necessary for the
 18 construction; the cost of all water rights acquired or
 19 exercised by the department in connection with those works;
 20 the cost of all machinery and equipment, financing charges,
 21 interest prior to and during construction and for a period
 22 not exceeding 3 years after the completion of construction;
 23 cost of engineering and legal expenses, plans,
 24 specifications, surveys, estimates of cost, and other
 25 expenses necessary or incident to determining the

1 feasibility or practicability of any project; administrative
 2 expense; and such other expenses as may be necessary or
 3 incident to the financing herein authorized and the
 4 construction of the works and the placing of the same in
 5 operation.

6 (3) "Department" means the department of natural
 7 resources and conservation provided for in Title 2, chapter
 8 15, part 33.

9 (4) "Owner" means all individuals, irrigation
 10 districts, drainage districts, flood control districts,
 11 incorporated companies, societies, or associations having
 12 any title or interest in any properties, rights, easements,
 13 or franchises to be acquired.

14 (5) "Project" means any one of the works herein
 15 defined or any combination of such works which are
 16 physically connected or jointly managed and operated as a
 17 single unit.

18 (6) "Works" means all property, rights, easements, and
 19 franchises relating thereto and deemed necessary or
 20 convenient for their operation and all water rights acquired
 21 or exercised by the department in connection with those
 22 works and includes all means of conserving and distributing
 23 water, including, without limiting the generality of the
 24 foregoing, reservoirs, dams, diversion canals, distributing
 25 canals, waste canals, drainage canals, dikes, lateral

1 ditches and pumping units, mains, pipelines, and waterworks
2 systems and includes all such works for the conservation,
3 development, storage, distribution, and utilization of
4 water, including without limiting the generality of the
5 foregoing, works for the purpose of irrigation, flood
6 prevention, drainage, fish and wildlife, recreation,
7 ~~development--of--power,~~ watering of stock, supplying of water
8 for public, domestic, industrial, or other uses other than
9 the generation of power, and for fire protection."

-End-

Approved by Committee
on Natural Resources

HOUSE BILL NO. 555

INTRODUCED BY HAND, DAILY, CONROY, LIEN, O'CONNELL

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM CONSTRUCTING, OPERATING, AND MAINTAINING WATER PROJECTS FOR THE DEVELOPMENT OF POWER; AMENDING SECTION 85-1-102, MCA."

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feasibility or practicability of any project; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(5) "Project" means any one of the works herein defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(6) "Works" means all property, rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral

1 ditches and pumping units, mains, pipelines, and waterworks
2 systems and includes all such works for the conservation,
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5 foregoing, works for the purpose of irrigation, flood
6 prevention, drainage, fish and wildlife, recreation,
7 ~~development--of-power,~~ watering of stock, supplying of water
8 for public, domestic, industrial, or other uses other than
9 the generation of power, and for fire protection."

10 SECTION 2. THERE IS A NEW MCA SECTION THAT READS:

11 Leasing of state-owned projects and works for power
12 generation. Nothing in [section 1] is intended to prohibit
13 the department or the board from leasing to a person
14 state-owned projects or works for construction and operation
15 of electrical generation facilities.

16 SECTION 3. CODIFICATION. SECTION 2 IS INTENDED TO BE
17 CODIFIED AS AN INTEGRAL PART OF TITLE 85, CHAPTER 1, PART 1,
18 AND THE PROVISIONS CONTAINED IN TITLE 85, CHAPTER 1, PART 1,
19 APPLY TO SECTION 2.

-End-

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5 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM
6 CONSTRUCTING, OPERATING, AND MAINTAINING WATER PROJECTS FOR
7 THE DEVELOPMENT OF POWER ~~AND TO PROVIDE FOR POWER GENERATION~~
8 ~~AT IDUSTON DAM~~; AMENDING SECTION 85-1-102, MCA; ~~PROVIDING AN~~
9 ~~EFFECTIVE DATE."~~

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12 SECTION 2. THERE IS A NEW MCA SECTION THAT READS:

13 Leasing of state-owned projects and works for power
 14 generation. Nothing in [section 1] is intended to prohibit
 15 the department or the board from leasing to a person
 16 state-owned projects or works for construction and operation
 17 of electrical generation facilities.

18 SECTION 3. THERE IS A NEW MCA SECTION THAT READS:

19 Power generation at Toston Dam. (1) The department
 20 shall conduct a study of the economic feasibility of power
 21 generation at the Broadwater-Missouri Dam facilities (Toston
 22 Dam). This study is to be completed no later than June 30,
 23 1979. If the study shows that power generation is
 24 economically feasible, the department shall offer for lease
 25 the use of the facilities at Toston Dam for power

1 generation, subject to the requirements of subsection (2).
 2 (2) The facilities, if subject to lease under
 3 subsection (1), shall be offered for lease no later than
 4 November 1, 1979, and a decision on the lease shall be made
 5 no later than February 1, 1980. Preference in granting the
 6 lease shall be given to nonprofit corporations. The minimum
 7 acceptable lease offer must provide for an annual payment of
 8 an amount equal or equivalent to 1 mill per kilowatt hour of
 9 power generated and sold. Notwithstanding the provisions of
 10 85-1-332, the department shall use 50% of the lease revenues
 11 for maintenance and repair of Toston Dam and its associated
 12 irrigation facilities.

13 SECTION 4. CODIFICATION. SECTION 2-15 SECTIONS 2 AND 3
 14 ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 85,
 15 CHAPTER 1, PART 1, AND THE PROVISIONS CONTAINED IN TITLE 85,
 16 CHAPTER 1, PART 1, APPLY TO SECTION 2 SECTIONS 2 AND 3.

17 SECTION 5. EFFECTIVE DATE. SECTION 3 IS EFFECTIVE ON
 18 PASSAGE AND APPROVAL OF THIS ACT.

-End-

March 15, 1979

SENATE STANDING COMMITTEE REPORT
(Natural Resources)

That House Bill No. 555 be amended as follows:

1. Title, line 7.

Following: "POWER"

Insert: "AND TO PROVIDE FOR POWER GENERATION AT TOSTON DAM"

Following: "MCA"

Insert: "; PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 3, line 16.

Following: line 15

Insert: "Section 3. There is a new MCA section that reads:

Power generation at Toston Dam. (1) The department shall conduct a study of the economic feasibility of power generation at the Broadwater-Missouri Dam facilities (Toston Dam). This study is to be completed no later than June 30, 1979. If the study shows that power generation is economically feasible, the department shall offer for lease the use of the facilities at Toston Dam for power generation, subject to the requirements of subsection (2).

(2) The facilities, if subject to lease under subsection (1), shall be offered for lease no later than November 1, 1979, and a decision on the lease shall be made no later than February 1, 1980. Preference in granting the lease shall be given to nonprofit corporations. The minimum acceptable lease offer must provide for an annual payment of an amount equal or equivalent to 1 mill per kilowatt hour of power generated and sold. Notwithstanding the provisions of 85-1-332, the department shall use 50% of the lease revenues for maintenance and repair of Toston Dam and its associated irrigation facilities."

Renumber: subsequent section

3. Page 3, line 16.

Following: "CODIFICATION."

Strike: "SECTION 2 IS"

Insert: "Sections 2 and 3 are"

4. Page 3, line 19.

Following: "TO"

Strike: "SECTION 2"

Insert: "sections 2 and 3"

5. Page 3, line 20.

Following: line 19

Insert: "Section 5. Effective date. Section 3 is effective on passage and approval of this act."

State of Montana
Office of The Governor
Helena 59601

THOMAS L. JUDGE
GOVERNOR

April 10, 1979

The Honorable William Mathers
President of the Senate
State Capitol
Helena, Montana 59601

The Honorable Harold Gerke
Speaker of the House
State Capitol
Helena, Montana 59601

Dear President Mathers and Speaker Gerke:

Pursuant to the authority vested in me as Governor according to the Laws and Constitution of Montana, I hereby veto House Bill 555, "AN ACT TO PROHIBIT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM CONSTRUCTING, OPERATING, AND MAINTAINING WATER PROJECTS FOR THE DEVELOPMENT OF POWER AND TO PROVIDE FOR POWER GENERATION AT TOSTON DAM: AMENDING SECTION 85-1-102, MCA; PROVIDING AN EFFECTIVE DATE."

The bill, as amended by the Legislature, contains two features to which I strongly object. The first is the removal of the existing authority of the Department of Natural Resources and Conservation to construct, operate, and maintain water projects for hydroelectric generation; the second is the requirement that 50% of all revenues received by the Department from the lease of the state-owned Toston Dam to a private utility company or rural electric cooperative for power generation purposes be reserved solely for the maintenance and repair of the Toston Dam and its associated irrigation facilities.

As to the first feature to which I object, the state government has had the authority to install hydroelectric generation facilities on its water projects since 1935, although it has never been exercised. However, with the development of improved technology for the generation of power from low-head water projects, and the increasing costs of producing electrical power by other methods, it now appears feasible to generate power from several of the state's existing water projects. The Department is currently studying in more detail this possibility on the Toston Dam under a grant from the U.S. Department of Energy.



The Honorable William Mathers
The Honorable Harold Gerke
Page Two
April 10, 1979

Since it now appears feasible to install hydroelectric generation facilities on several state-owned water projects, it is essential that the state retain the legal authority to construct, operate, and maintain such facilities itself, for the following reasons:

- (1) The state will be in a much more favorable bargaining position to maximize the revenue it could obtain from leasing a water project to an electric utility or cooperative. There is a high potential that the state may receive substantial revenues from the lease of its water projects for hydroelectric generation purposes, which could be earmarked for the repair and maintenance of many of those projects which are seriously deteriorated or unsafe. Without having the authority to install hydroelectric generation facilities itself, the state's bargaining position is considerably weakened;
- (2) Because of the state's ability to sell revenue bonds to finance the construction of hydroelectric generation facilities, it may be cheaper for the state to construct such facilities than it would for an electric utility or cooperative, thereby reducing electrical rates to the consumers of electricity;
- (3) There may be instances on projects other than the Toston Dam where an electric utility or cooperative will be unable or unwilling to construct the generation facilities.

Finally, as to the second objectionable feature of this legislation, I believe it would be a serious mistake to earmark a specific percentage of the lease revenues from any project for repair and maintenance of that project. A fixed percentage earmarks an arbitrary amount of revenue to that project when there is no way of knowing how much total revenue will be taken in from the lease of the project; the amount earmarked may bear no relationship to the actual amount needed.

In summary, House Bill 555 is ill-conceived legislation. - It attempts to address a special situation on the Toston Dam with legislation that will apply statewide. But most importantly, it severely restricts the state's ability to exercise needed options to address our energy supply situation while at the same time implementing a promising plan to repair state-owned water projects.

Sincerely,



THOMAS L. JUDGE
Governor

cc: The Honorable Frank Murray