

HOUSE BILL 823

IN THE HOUSE

February 15, 1979	Introduced and referred to Committee on Natural Resources.
February 20, 1979	Committee recommend bill, do pass.
February 22, 1979	Second reading, pass consider- ation.
February 23, 1979	Second reading, as amended, do not pass.

1 House BILL NO. 823
 2 INTRODUCED BY FAGG

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 UNDERGROUND CONVERSION OF UTILITIES LAW TO PROVIDE FOR
 6 ALLOCATION OF COSTS; AMENDING SECTIONS 69-4-311 THROUGH
 7 69-4-316, 69-4-323, 69-4-324, 69-4-351, 69-4-354, AND
 8 69-4-356, MCA."

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

11 Section 1. Section 69-4-311, MCA, is amended to read:

12 "69-4-311. Authorization to create special improvement
 13 districts. (1) The governing body of every county is hereby
 14 authorized and empowered to create special improvement
 15 districts under this part within the unincorporated portion
 16 of such county. The governing body of every city and town is
 17 hereby authorized and empowered to create special
 18 improvement districts under this part within its territorial
 19 limits. Said special improvement districts shall provide
 20 for the conversion of existing overhead electrical and
 21 communication facilities to underground locations and the
 22 construction, reconstruction, or relocation of any other
 23 electric or communication facilities which may be incidental
 24 thereto, pursuant to the provisions of this part.

25 (2) Any such special improvement district shall

1 include an area having a frontage of not less than ~~1,000~~ 100
 2 feet upon a public street, road, highway, or utilities
 3 easement along which overhead electric or communication
 4 facilities are located."

5 Section 2. Section 69-4-312, MCA, is amended to read:

6 "69-4-312. Procedure to initiate creation of district
 7 -- resolution for feasibility study. (1) Any governing body,
 8 on its own initiative or upon a petition signed by at least
 9 60% of the property owners owning at least 60% of the
 10 assessable land of any proposed district requesting the
 11 creation of a special improvement district, as provided for
 12 in this part, may pass a resolution at any regular or
 13 special meeting, declaring that it finds that the special
 14 improvement district is in the public interest. The
 15 governing body shall make a finding that the formation of
 16 the special improvement district, for the purposes set out
 17 in this part, will promote the public convenience,
 18 necessity, and welfare.

19 (2) The resolution shall state that the costs and
 20 expenses will be levied and assessed upon the utility and
 21 the property benefited and further request that each public
 22 utility serving such area by overhead electric or
 23 communication facilities shall, within 120 days after the
 24 receipt of the resolution and in consultation with the
 25 governing body, make a study of the cost of conversion of

1 its facilities in such area to underground service. The
 2 report of said study shall be provided to the governing body
 3 and made available for inspection in the office of the
 4 governing body and each public utility. The resolution of
 5 the governing body shall require that each public utility be
 6 provided with the name and address of the owner of each
 7 parcel or lot within the proposed improvement district, if
 8 known, and if not known, the description of the property and
 9 such other matters as may be required by the public
 10 utilities in order to perform the work involved in the cost
 11 study. The resolution shall further state the area in square
 12 feet of each lot or parcel within the proposed conversion
 13 service area."

14 Section 3. Section 69-4-313, MCA, is amended to read:
 15 "69-4-313. Cost and feasibility report. (1) The public
 16 utility ~~underground conversion~~ report shall set forth an
 17 estimate of the total underground conversion costs, in
 18 sufficient detail to show proposed construction
 19 administration, and overhead costs associated with this
 20 project and shall also indicate estimate the costs of
 21 underground conversion of facilities of the public utility
 22 located within the boundaries of the various parcels or
 23 lots then receiving service. The report shall also contain
 24 the public utility's and the governing body's
 25 recommendations concerning the feasibility of the project

1 for the district proposed, insofar as the physical
 2 characteristics of the district are concerned. The report
 3 shall make recommendations by the public utility concerning
 4 inclusion or exclusion of areas within the district or
 5 immediately adjacent to the district.

6 (2) The governing body shall give careful
 7 consideration to the public utility's recommendations
 8 concerning feasibility, recognizing their expertise in this
 9 area, and may amend the boundaries of the proposed
 10 improvement district; provided, that the cost--and
 11 feasibility report of the public utility contains a cost
 12 figure on the district as amended, or it may request a new
 13 cost and feasibility report from the public utility
 14 concerned on the basis of the amended district. Should a
 15 delay result in a significant increase of the estimated
 16 conversion costs, new hearings shall be held on the creation
 17 of the district. In the event an increase of 10% or more
 18 results from delay, only the hearing on the assessments need
 19 be held again."

20 Section 4. Section 69-4-314, MCA, is amended to read:
 21 "69-4-314. Determination of conversion costs. In
 22 determining the conversion costs included in the cost and
 23 feasibility report required by 69-4-313, the public utility
 24 is entitled to amounts sufficient to repay it for the
 25 following costs, as computed and reflected by the uniform

1 system of accounts approved by the Montana public service
2 commission, federal communications commission, or federal
3 power commission or if the public utility is not subject to
4 regulation by any of the above governmental agencies, by the
5 public utility's system of accounts then in use and in
6 accordance with standard accounting procedures of the public
7 utility, shall be included in the cost and feasibility
8 report:

9 (1) the original costs less depreciation taken of the
10 existing overhead electric and communication facilities to
11 be removed;

12 (2) the estimated costs of removing the overhead
13 electric and communication facilities less the salvage value
14 of the facilities removed;

15 (3) if the estimated cost of constructing new
16 underground facilities exceeds the estimated cost of
17 constructing new aerial facilities, then the cost difference
18 between the two;

19 (4) the cost of obtaining new easements when technical
20 considerations make it reasonably necessary to utilize
21 easements for the underground facilities different from
22 those used for above ground facilities or where the
23 preexisting easements are insufficient for the underground
24 facilities."

25 Section 5. Section 69-4-315, MCA, is amended to read:

1 "69-4-315. Resolution of intent to create district.
2 (1) On the filing with the clerk of any governing body of
3 the cost and feasibility report ~~by the public utility, as~~
4 ~~hereinbefore provided, and after considering the same,~~ the
5 governing body may, at any regular or special meeting, pass
6 a resolution declaring its intention to create a special
7 improvement district.

8 (2) The resolution shall state:

9 (a) that the costs and expenses of the district
10 created are, except as otherwise provided for, to be
11 partially charged to the public utility and to be levied and
12 assessed upon the abutting, adjoining, and adjacent lots and
13 land along or upon which improvements are to be made and
14 upon lots and lands benefited by such improvements and
15 included in the special improvement district created;

16 (b) that it is the intention of the governing body to
17 make such improvement which will promote public convenience,
18 necessity, and welfare; and

19 (c) the area and boundaries of the proposed
20 improvement district, the character of the proposed
21 improvement, the estimated total cost of the same, and the
22 intention of the governing body to hold a hearing on the
23 proposed improvement."

24 Section 6. Section 69-4-316, MCA, is amended to read:

25 "69-4-316. Notice of resolution of intention and

1 hearing. (1) Following the passage of the resolution in
2 69-4-315, the governing body shall cause notice of the
3 resolution and a hearing on any protests to the proposed
4 improvement to be given in the manner provided in 69-4-317.

5 (2) Such notice shall:

6 (a) declare that the governing body has passed a
7 resolution of intention to create a special improvement
8 district;

9 (b) describe the boundaries or area of the district
10 with sufficient particularity to permit each owner of real
11 property therein to ascertain that his property lies in the
12 district;

13 (c) describe in a general way the proposed
14 improvement, specifying the streets or property along which
15 it will be made and the nature of the benefits to the
16 property within the district;

17 (d) state the estimated cost as determined from the
18 cost and feasibility report and the estimated cost of
19 engineering, clerical service, easements, advertising,
20 inspection, collection of assessments, interest upon bonds,
21 and legal services for preparing proceedings and advising in
22 regard thereto, if applicable;

23 (e) state that it is proposed to assess the real
24 property in the district to pay ~~at~~ part of the cost of the
25 improvement according to the square footage of and the

1 benefits to be derived by each tract, block, lot, and parcel
2 of land within the district;

3 ~~(f) state that a portion of the cost of the~~
4 ~~improvement will be borne by the public utility. The cost to~~
5 ~~be borne by the utility shall not exceed an amount of seven~~
6 ~~times the annual billing of the utility against the property~~
7 ~~within the district or 50% of the project cost whichever is~~
8 ~~less.~~

9 ~~(f)(g)~~ state the time and place at which the governing
10 body will hear and pass upon all protests that may be made
11 against the making of such improvements or the creation of
12 such district or the benefits to be derived by the real
13 property in the district;

14 ~~(g)(h)~~ state that all property owners liable to be
15 assessed for such work and desiring to make a protest may
16 submit, in writing, such protest to the governing body by a
17 specified date, not less than 15 days from the first day of
18 publication of such notice."

19 Section 7. Section 69-4-323, MCA, is amended to read:

20 "69-4-323. Basis of assessments. (1) Whenever any
21 improvement authorized to be made by any governing body by
22 the terms of this part is ordered, the governing body shall
23 provide for the apportionment of the cost and expenses
24 thereof ~~to be borne by the utility and the properties within~~
25 ~~the district~~ as in their judgment may be fair and equitable

1 in consideration of the benefits accruing to the abutting,
 2 adjoining, contiguous, and adjacent lots and land and to the
 3 lots and land otherwise benefited and included within the
 4 special improvement district formed. Each lot and parcel of
 5 the land shall be separately assessed for the cost and
 6 expenses thereof in proportion to the number of square feet
 7 of such land and lots abutting, adjoining, contiguous, and
 8 adjacent thereto or included in the special improvement
 9 district and in proportion to the benefits derived to such
 10 property by said improvements.

11 (2) ~~The entire~~ A portion of the cost of the
 12 improvement may be assessed against the benefited property,
 13 as herein provided, or if money for paying part of such cost
 14 is available from any other source, the money so available
 15 may be so applied and the remaining cost so assessed against
 16 the benefited property. The cost and expenses to be
 17 assessed, as herein provided for, ~~shall~~ may include the cost
 18 of the improvement, engineering and clerical service,
 19 advertising, cost of inspection, cost of collecting
 20 assessments, cost of easements, and interest upon bonds, if
 21 issued, and for legal services for preparing proceedings and
 22 advising in regard thereto.

23 (3) Fee lands and property of the state or federal
 24 government shall not be considered as lands or property
 25 benefited by any improvement district and shall not be

1 subject to assessment for the payment of any of the cost or
 2 expense of such improvement."

3 Section 8. Section 69-4-324, MCA, is amended to read:
 4 "69-4-324. Proposed assessment ordinance. After the
 5 preparation of the proposed assessment list, the governing
 6 body shall cause to be prepared, for adoption at the hearing
 7 hereinafter provided for, an ordinance declaring the entire
 8 cost of the improvement, including the cost of construction
 9 as determined from 69-4-314, all legal and fiscal fees and
 10 costs, the cost of the publication of notices, and all other
 11 costs properly incident to the construction of the
 12 improvement and the financing thereof. Such ordinance shall
 13 specify what share, if any, of the total cost is payable
 14 from sources other than the imposition of assessments and
 15 the public utility's portion of the cost and shall
 16 incorporate the proposed assessment list provided for in
 17 69-4-322. Such ordinance shall specify the terms of
 18 installment payments, if said improvement is to be financed
 19 over a period of time."

20 Section 9. Section 69-4-351, MCA, is amended to read:
 21 "69-4-351. Maintenance and construction of converted
 22 facilities. The public utility shall have the duty to
 23 maintain, repair, and replace all underground facilities
 24 installed pursuant to this part. There ~~shall be no~~ may be
 25 competitive bidding ~~as to~~ for the construction of the

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1 converted facilities, ~~since existing facilities are owned,~~
 2 ~~maintained, and operated by the public utility and the~~
 3 ~~continuity of service of the utility is essential, both of~~
 4 ~~which make construction work by third persons impracticable.~~
 5 ~~Therefore, the public utility concerned shall be responsible~~
 6 ~~for the accomplishment of all construction work and may~~
 7 ~~contract out such of the construction work as it deems~~
 8 ~~desirable. If the governing body chooses to require~~
 9 ~~competitive bidding for the construction of converted~~
 10 ~~facilities, it shall require the person, firm, or~~
 11 ~~corporation who receives the bid to meet construction and~~
 12 ~~engineering standards set by the public utility according to~~
 13 ~~national standards."~~

14 Section 10. Section 69-4-354, MCA, is amended to read:

15 "69-4-354. Conversion of facilities on private
 16 property. (1) Any conversion of electric or communication
 17 service facilities, including service connections, located
 18 on a privately owned lot or parcel shall be made, at the
 19 expense of the utility and the landowner, by the public
 20 utility owning the facility. The conversion shall be made in
 21 accordance with applicable safety rules, codes, regulations,
 22 tariffs, or ordinances. The public utility shall not be
 23 required to convert service lines on property, other than
 24 public lands and right-of-way, until the landowner furnishes
 25 to the public utility a permit or easement authorizing the

1 public utility and its employees, agents, and contractors to
 2 enter upon real property of the landowner for the purpose of
 3 performing conversion work thereon.

4 (2) Upon completion of the conversion of overhead
 5 electric or communication service facilities on privately
 6 owned lots and parcels within a district, the public utility
 7 shall file with the governing body a verified statement of
 8 the portion of the costs of the conversion of such service
 9 facilities of each landowner in the district. Promptly
 10 thereafter, the governing body shall mail to each landowner
 11 a copy of such verified statement for the portion of the
 12 cost to be paid by the landowner, which shall be due and
 13 payable within 30 days or as otherwise provided by the
 14 public utility."

15 Section 11. Section 69-4-356, MCA, is amended to read:

16 "69-4-356. Payment of ~~public utility costs.~~ (1) Upon
 17 completion of the conversion contemplated by this part, the
 18 public utility shall present the governing body with a
 19 verified bill for conversion costs as computed pursuant to
 20 69-4-314, but based upon the actual cost of constructing the
 21 underground facility rather than the estimated cost of the
 22 facility. ~~in the event the conversion costs are less than~~
 23 ~~the estimated conversion costs, each assessed owner within~~
 24 ~~the improvement district shall receive the benefit, prorated~~
 25 ~~in such form and at such time or times as the governing body~~

1 ~~may determine the bill of the public utility shall be paid~~
2 ~~within 30 days by the governing body from the improvement~~
3 ~~district funds or such other source as is properly~~
4 ~~designated by the governing body.~~

5 (2) In determining the actual cost of constructing the
6 underground facility, the public utility shall use its
7 standard accounting procedures, such as the uniform system
8 of accounts as defined by the federal communications
9 commission, federal power commission, or Montana public
10 service commission and as is in use at the time of the
11 conversion by the public utility involved.

12 (3) The portion of the costs to be paid to the public
13 utility may be deducted from payments due the public utility
14 if the utility completes the construction of the project or
15 may be assessed against the public utility if this
16 construction is completed by a contract let by the governing
17 body."

-End-

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