

House Bill 397

In The House

January 21, 1981	Introduced and referred to Committee on Natural Resources.
February 3, 1981	Committee recommend bill do pass as amended
February 4, 1981	Bill printed and placed on members' desks.
February 6, 1981	Second reading do pass.
February 9, 1981	Correctly engrossed.
February 11, 1981	Third reading passed.

In The Senate

February 12, 1981	Introduced and referred to Committee on Natural Resources.
March 26, 1981	Committee recommend bill concurred.
March 30, 1981	Motion pass consideration.
March 31, 1981	Second reading pass consideration.
April 1, 1981	Second reading pass consideration.
April 2, 1981	Second reading pass consideration.
April 3, 1981	Second reading pass consideration until April 8, 1981
April 8, 1981	On motion, consideration be passed until April 14, 1981. Motion adopted.
April 14, 1981	On motion, consideration be passed until April 16, 1981. Motion passed.
April 16, 1981	Passed consideration.
April 17, 1981	Passed consideration.

April 20, 1981

On motion taken from
second reading and referred
to Natural Resources.
Motion adopted.

Rereferred to Committee
on Natural Resources.

April 23, 1981

Died in Committee.

HOUSE BILL NO. 397

INTRODUCED BY McBride Korman

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LEASE OF WATER PROJECTS UNDER THE CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR HYDROELECTRIC DEVELOPMENT; AMENDING SECTION 85-1-102, MCA."

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

Section 1. Section 85-1-102, MCA, is amended to read:

"85-1-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

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

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

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 established for the use, distribution, or conservation of water 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, but not limited to reservoirs,

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

12 NEW SECTION. Section 2. Lease of works by the board.
 13 The board may lease any works or projects managed by the
 14 department to any person, association, partnership, or
 15 corporation for the development of hydroelectric generation
 16 capability and the use and disposition of the electricity
 17 generated, as provided in [sections 2 through 11].

18 NEW SECTION. Section 3. Conditions on lease. In
 19 issuing any lease under the provisions of [section 2], the
 20 board may incorporate in the lease any reasonable condition
 21 it may find necessary in order to protect the interests of
 22 the state.

23 NEW SECTION. Section 4. Examination of works and
 24 projects. Whenever an application in writing has been
 25 presented to the board for lease of works or projects

1 managed by the department, the board shall require the
 2 department to make an examination of the value of the power
 3 site, the plans of development submitted by the applicant,
 4 and all other matters relating to the proposed development
 5 that it determines to be necessary. Examination of the value
 6 of the site shall include an estimate of the annual power
 7 production output of the facility.

8 NEW SECTION. Section 5. Notice of proposed lease. (1)
 9 If the preliminary investigations and the initial
 10 application made for a lease are such that the board
 11 determines further proceedings on the application are
 12 justified, it shall publish notice of the proposed lease not
 13 less than once each week for 6 weeks in two newspapers of
 14 general circulation throughout the state, one of which is
 15 published in the neighborhood of the location of the power
 16 site. This notice shall include the department's estimate of
 17 annual power production capacity of the facility.

18 (2) The board shall solicit additional applicants in
 19 its notice of the proposed lease of a facility.

20 NEW SECTION. Section 6. Receipt of applications. The
 21 board shall consider applications from any party, if they
 22 are received within 120 days after the final publication of
 23 the notice. Applications shall include a statement of the
 24 capability of the applicant to achieve the annual production
 25 output estimated by the department, the estimated time to

1 make the works or project operational, the bid amount of the
2 annual royalty, and any other information that the board
3 requests. The original applicant shall have the opportunity
4 to match the highest bid received.

5 NEW_SECTION. Section 7. Determinations by the board.

6 (1) Within 60 days following the conclusion of the bid
7 acceptance period, the board shall hold a hearing to examine
8 all bids which have been received for the lease of the works
9 or projects.

10 (2) The board may reject any or all bids or may award
11 a lease to the person, association, partnership, or
12 corporation whose offer, considered in its totality, is the
13 most advantageous to the state. The decision shall include
14 a determination that the potential developer will provide an
15 adequate annual payment, is capable of carrying out the
16 proposed development, can provide efficient and reliable
17 service, and intends in good faith without unnecessary delay
18 to proceed with the development.

19 NEW_SECTION. Section 8. Payment by the lessee. (1)

20 The lessee must pay an annual royalty to the state as
21 required in the lease.

22 (2) The board may authorize provisions in the lease
23 that offer economic incentives for rapid development of the
24 works or projects or impose economic penalties for delays in
25 development. This discretion includes the ability to waive,

1 reduce, or suspend the annual royalty when payment would
2 render the project economically infeasible due to
3 insufficient revenues.

4 NEW_SECTION. Section 9. Compliance with federal law.

5 If the project must hold any federal license, permit, or
6 exemption, as required by federal law, the license, permit,
7 or exemption shall be held by the department.

8 NEW_SECTION. Section 10. Duration of the lease. The

9 term of the lease may not exceed the term of a license held
10 by the state under [section 9], and in no event may the term
11 of the lease exceed 55 years.

12 NEW_SECTION. Section 11. Duties of the department.

13 The department has primary responsibility for supervision of
14 the lease. Any disputes that arise between the department
15 and the lessee may be appealed to the board, upon written
16 petition of either party.

17 Section 12. Codification instruction. Sections 2
18 through 11 are intended to be codified as an integral part
19 of Title 85, chapter 1, part 2, and the provisions of Title
20 85, chapter 1, apply to sections 2 through 11.

-End-

Approved by Committee
on Natural Resources

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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.

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(6) "Works" means all property, rights, easements, and franchises ~~relating thereto and deemed necessary or convenient for their operation~~ established for the use, distribution, or conservation of water 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, but not limited to~~ reservoirs.

1 dams, diversion canals, distributing canals, waste canals,
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 16 site. This notice shall include the department's estimate of
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18 (2) The board shall solicit additional applicants in
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6 (1) within 60 days following the conclusion of the bid
7 acceptance period, the board shall hold a hearing to examine
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9 or projects.

10 (2) The board may SHALL WITHIN 180 DAYS FOLLOWING THE
11 CONCLUSION OF THE BID ACCEPTANCE PERIOD reject any or all
12 bids or may SHALL award a lease to the person, association,
13 partnership, or corporation whose offer, considered in its
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