

SENATE BILL NO. 229

INTRODUCED BY TURNAGE, McBRIDE, HAZELBAKER,
B. BROWN, DOVER, TOWE

IN THE SENATE

January 21, 1981	Introduced and referred to Committee on Natural Resources.
February 16, 1981	Committee recommend bill do pass as amended. Report adopted.
February 17, 1981	Bill printed and placed on members' desks.
February 19, 1981	Second reading, do pass as amended.
February 21, 1981	Correctly engrossed.
February 23, 1981	Third reading, passed. Ayes, 46; Noes, 4. Transmitted to House.

IN THE HOUSE

February 23, 1981	Introduced and referred to Committee on Natural Resources.
April 14, 1981	Committee recommend bill be concurrent in. Report adopted.
April 17, 1981	Second reading, concurrent in. On motion rules suspended and bill placed on third reading this day. Third reading, concurrent in. Ayes, 66; Noes, 29.

IN THE SENATE

April 17, 1981

Returned from House. Con-
curred in. Sent to enrolling.

Reported correctly enrolled.

1 *Spack* BILL NO. *229*
 2 INTRODUCED BY *Turnage, McBride, Hultgren, Bob Brown*
 3 *Dave Davis*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
 5 HYDROELECTRIC POWER GENERATION AT APPROPRIATE DEPARTMENT OF
 6 NATURAL RESOURCES AND CONSERVATION WATER PROJECTS; PROVIDING
 7 FOR THE LEASE OF SUCH PROJECTS FOR THE PURPOSE OF POWER
 8 GENERATION; SPECIFICALLY AUTHORIZING THE CONSTRUCTION AND
 9 OPERATION OF SUCH FACILITIES BY THE DEPARTMENT IF NO LEASE
 10 IS CONSUMMATED; AND ESTABLISHING THE METHOD OF SALE OF POWER
 11 GENERATED AT SUCH FACILITIES."

12
 13 WHEREAS, the availability of energy from traditional
 14 sources is diminishing; and

15 WHEREAS, the demand for energy from the state's
 16 citizens is increasing, due to population growth and
 17 economic expansion; and

18 WHEREAS, because of newly developing technology and
 19 increasing energy costs, small-scale hydroelectric power
 20 generation is becoming an economically feasible additional
 21 source of energy; and

22 WHEREAS, the state of Montana currently owns and
 23 controls many water projects which may have potential
 24 capacity for the small-scale generation of hydroelectric
 25 energy; and

1 WHEREAS, it is in the best interest of the people of
 2 Montana to utilize Montana's water resources to the fullest
 3 extent possible.

4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 Section 1. Survey of power generation capacity. The
 7 department shall study the economic and environmental
 8 feasibility of constructing and operating a small-scale
 9 hydroelectric power generating facility on each of the water
 10 projects under its control as of [the effective date of this
 11 act], and shall periodically update such studies as the cost
 12 of the electrical energy increases. In determining whether
 13 small-scale hydroelectric generation may be economically
 14 faasible on a particular project, the department shall
 15 consider:

- 16 (1) the estimated cost of construction of a facility;
- 17 (2) the estimated cost of maintaining, repairing, and
 18 operating the facility;
- 19 (3) the estimated cost of tying into an existing power
 20 distribution channel;
- 21 (4) the ability of public utilities or rural electric
 22 cooperatives to lease and operate such a facility;
- 23 (5) the debt burden to be serviced;
- 24 (6) the revenue expected to be derived; and
- 25 (7) the likelihood of a reasonable rate of return on

1 the investment.

2 Section 2. Lease of sites to public utilities or
3 electric cooperatives -- first option. (1) If after
4 completion of the feasibility study of a particular project
5 the board determines that hydroelectric power generation at
6 the project would be feasible and in the best interest of
7 the people of the state of Montana, it shall publish notice
8 and make the site available for lease for the purpose of
9 small-scale hydroelectric power generation pursuant to
10 [sections 2 through 8].

11 (2) In issuing a notice of availability of a site for
12 lease under this section, the board shall include in the
13 notice any reasonable conditions it may find necessary in
14 order to protect the interests of the state.

15 Section 3. Receipt of applications. (1) Applications
16 for lease may be submitted by any public utility, as defined
17 in 69-3-101, or electric cooperative, organized under Title
18 35, chapter 13, that sells power to Montana customers or by
19 any Montana corporation proposing to use a substantial
20 portion of the electricity to be generated in its own
21 operation.

22 (2) The board shall consider only applications
23 received within 180 days after the final publication of the
24 notice.

25 (3) Applications must include a statement of the

1 capability of the applicant to achieve the annual production
2 output estimated by the department, the estimated time to
3 make the project operational, the bid amount of the royalty,
4 and any other information that the board requests.

5 Section 4. Determinations by the board. (1) Within a
6 reasonable time following the conclusion of the lease
7 application period, the board shall hold a hearing to
8 examine all applications that have been received for the
9 lease of the project.

10 (2) Within 180 days following the conclusion of the
11 lease application period, the board must reject any or all
12 applications or must award a lease to the party whose offer,
13 considered in its totality, is the most advantageous to the
14 state.

15 (3) The decision must include a determination that the
16 potential developer will provide an adequate royalty
17 payment, is capable of carrying out the proposed
18 development, can provide efficient and reliable service, and
19 intends in good faith without unnecessary delay to proceed
20 with the development.

21 Section 5. Lease conditions. (1) The lessee must pay a
22 royalty to the state as required in the lease.

23 (2) The board may authorize provisions in the lease
24 that offer economic incentives for rapid development of the
25 project or impose economic penalties for delays in

1 development, which may include cancellation of the lease.

2 Section 6. Compliance with federal law. If the project
3 must hold a license, permit, or exemption under federal law,
4 the license, permit, or exemption shall be held by the
5 department.

6 Section 7. Duration of lease. The term of the lease
7 may not exceed the term of the license, permit, or exemption
8 held by the department under [section 6] and may in no event
9 exceed 55 years.

10 Section 8. Duties of the department. The department
11 has primary responsibility for supervision of any such
12 lease. Any disputes that arise between the department and
13 the lessee may be appealed to the board, upon written
14 petition of either party.

15 Section 9. Power generation by department authorized.
16 (1) If no lease applications are received under [section 3]
17 or if the board rejects all lease applications under
18 [section 4], the department shall proceed to obtain any
19 necessary license, permit, or exemption under federal law
20 and shall commence construction and operation of a
21 small-scale hydroelectric generation facility pursuant to
22 the provisions of this chapter.

23 (2) Financing of construction and operation of the
24 facility shall be accomplished in a manner determined by the
25 board to be most feasible.

1 (3) The department may not sell power generated at a
2 facility except to a public utility or a rural electrical
3 cooperative, organized in Montana and selling power to
4 Montana customers.

5 Section 10. Sale of power. If the operator of a
6 small-scale hydroelectric generation facility under this
7 chapter and a public utility or an electric cooperative are
8 unable to mutually agree to a contract for the sale of
9 electricity or a price for the electricity purchased by the
10 utility or electric cooperative, the public service
11 commission shall require the utility or electric cooperative
12 to purchase the power under rates and terms established as
13 provided in [sections 11 through 13].

14 Section 11. Determination by the public service
15 commission. A determination of the rates and terms under
16 which the power must be purchased shall be made by the
17 public service commission upon petition of the facility
18 operator or a public utility or electric cooperative or
19 during a rate proceeding involving the review of rates paid
20 for electricity purchased from the facility. The commission
21 shall render a decision within 120 days from receipt of the
22 petition or before the completion of the rate review
23 proceeding. The rate and terms of the determination must be
24 according to the standards specified in [section 12].

25 Section 12. Standards for the determination. (1) The

1 standards for the determination provided for in [section 11]
 2 by the public service commission shall include the
 3 following:

4 (a) Long-term contracts for the purchase of
 5 electricity by the utility or electric cooperative from a
 6 small-scale hydroelectric facility under this chapter shall
 7 be encouraged in order to enhance the economic feasibility
 8 of such facilities.

9 (b) The rates paid by a utility or electric
 10 cooperative to a small-scale hydroelectric facility may not
 11 exceed, over the term of the purchase contract, the
 12 incremental cost to the utility or electric cooperative of
 13 the electricity that, but for the purchase from the
 14 small-scale hydroelectric facility, the utility or electric
 15 cooperative would generate or purchase from another source.

16 (c) The rates to be paid by a utility or an electric
 17 cooperative for power purchased from a small-scale
 18 hydroelectric facility shall be established with
 19 consideration of the availability and reliability of the
 20 power produced.

21 (2) The commission may set these rates by use of any
 22 of the following methods:

23 (a) the levelized avoided cost over the term of the
 24 contract;

25 (b) the cost of production for the small-scale

1 hydroelectric facility plus a just and reasonable return; or

2 (c) any other method that will promote the development
 3 of small-scale hydroelectric facilities.

4 Section 13. Purchase of power by electric cooperative
 5 not agreeing to be bound by public service commission
 6 determination. If any electric cooperative wishing to
 7 purchase power from a small-scale hydroelectric facility
 8 under this chapter refuses to submit to the ratemaking
 9 authority of the public service commission established in
 10 [section 11], then the rate for such cooperative may be
 11 determined by the rural electrification administration upon
 12 petition by a rural electric cooperative or a generation and
 13 transmission cooperative. The facility shall sell power in
 14 accordance with such determination, so long as the rates and
 15 terms so established will allow the facility a reasonable
 16 return.

17 Section 14. Codification instruction. Sections 1
 18 through 13 are intended to be codified as an integral part
 19 of Title 85, chapter 1, and the provisions of Title 85,
 20 chapter 1, apply to sections 1 through 13.

-End-

Approved by Committee
on Natural Resources

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10 OPERATION OF SUCH FACILITIES BY THE DEPARTMENT IF NO LEASE
11 ~~IS--CONSUMMATED~~ APPLICATIONS ARE RECEIVED AND PROHIBITING
12 CONSTRUCTION BY THE DEPARTMENT IF ALL LEASE APPLICATIONS ARE
13 REJECTED BY THE BOARD; AND ESTABLISHING THE METHOD OF SALE
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16 WHEREAS, the availability of energy from traditional
17 sources is diminishing; and

18 WHEREAS, the demand for energy from the state's
19 citizens is increasing, due to population growth and
20 economic expansion; and

21 WHEREAS, because of newly developing technology and
22 increasing energy costs, small-scale hydroelectric power
23 generation is becoming an economically feasible additional
24 source of energy; and

25 WHEREAS, the state of Montana currently owns and

1 controls many water projects which may have potential
2 capacity for the small-scale generation of hydroelectric
3 energy; and

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5 Montana to utilize Montana's water resources to the fullest
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11 feasibility of constructing and operating a small-scale
12 hydroelectric power generating facility on each of the water
13 projects under its control ~~as-of-[the-effective-date-of-this~~
14 ~~act]~~ and shall periodically update such studies as the cost
15 of the electrical energy increases. In determining whether
16 small-scale hydroelectric generation may be economically
17 feasible on a particular project, the department shall
18 consider:

- 19 (1) the estimated cost of construction of a facility;
- 20 (2) the estimated cost of maintaining, repairing, and
21 operating the facility;
- 22 (3) the estimated cost of tying into an existing power
23 distribution channel;
- 24 (4) the ability of public utilities or rural electric
25 cooperatives to lease and operate such a facility;

1 (5) the debt burden to be serviced;
 2 (6) the revenue expected to be derived; and
 3 (7) the likelihood of a reasonable rate of return on
 4 the investment.

5 Section 2. Lease of sites to public utilities or
 6 electric cooperatives -- first option. (1) If after
 7 completion of the feasibility study of a particular project
 8 the board determines that hydroelectric power generation at
 9 the project would be feasible and in the best interest of
 10 the people of the state of Montana, it shall publish notice
 11 and make the site available for lease for the purpose of
 12 small-scale hydroelectric power generation pursuant to
 13 [sections 2 through 8].

14 (2) In issuing a notice of availability of a site for
 15 lease under this section, the board shall include in the
 16 notice any reasonable conditions it may find necessary in
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 20 in 69-3-101, or electric cooperative, organized under Title
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 22 any Montana corporation proposing to use a substantial
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25 (2) The board shall consider only applications

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 7 and any other information that the board requests.

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 14 lease application period, the board must reject any or all
 15 applications or must award a lease to the party whose offer,
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 17 state.

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 19 potential developer will provide an adequate royalty
 20 payment, is capable of carrying out the proposed
 21 development, can provide efficient and reliable service, and
 22 intends in good faith without unnecessary delay to proceed
 23 with the development.

24 (4) IF ALL LEASE APPLICATIONS ARE REJECTED, THE
 25 DEPARTMENT MAY NOT CONSTRUCT A FACILITY ON ITS OWN.

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2 royalty to the state as required in the lease.

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6 development, which may include cancellation of the lease.

7 Section 6. Compliance with federal law. If the project
8 must hold a license, permit, or exemption under federal law,
9 the license, permit, or exemption shall be held by the
10 department.

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12 may not exceed the term of the license, permit, or exemption
13 held by the department under [section 5] and may in no event
14 exceed 55 years.

15 Section 8. Duties of the department. The department
16 has primary responsibility for supervision of any such
17 lease. Any disputes that arise between the department and
18 the lessee may be appealed to the board, upon written
19 petition of either party.

20 Section 9. Power generation by department authorized.
21 (1) If no lease applications are received under [section 3]
22 ~~or--if--the--board--rejects--all--lease--applications--under~~
23 ~~[section--4]~~ the department shall MAY UPON APPROVAL OF THE
24 LEGISLATURE proceed to obtain any necessary license, permit,
25 or exemption under federal law and shall commence

1 construction and operation of a small-scale hydroelectric
2 generation facility pursuant to the provisions of this
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4 THE DEPARTMENT HAS PRESENTED CLEAR AND CONVINCING EVIDENCE
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6 FEASIBLE AND IS THE MOST PRACTICAL MEANS BY WHICH THE
7 FACILITY COULD BE DEVELOPED.

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22 to purchase the power under rates and terms established as
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 20 cooperative to a small-scale hydroelectric facility may not
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 22 incremental cost to the utility or electric cooperative of
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 24 small-scale hydroelectric facility, the utility or electric
 25 cooperative would generate or purchase from another source.

1 (c) The rates to be paid by a utility or an electric
 2 cooperative for power purchased from a small-scale
 3 hydroelectric facility shall be established with
 4 consideration of the availability and reliability of the
 5 power produced.

6 (2) The commission may set these rates by use of any
 7 of the following methods:

8 (a) the levelized avoided cost over the term of the
 9 contract;

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 17 purchase power from a small-scale hydroelectric facility
 18 under this chapter refuses to submit to the ratemaking
 19 authority of the public service commission established in
 20 [section 11], then the rate for such cooperative may be
 21 determined by the ~~rural-electrification-administration-upon~~
 22 ~~petition-by-a-rural-electric-cooperative-or-a-generation-and~~
 23 ~~transmission-cooperative~~ FEDERAL ENERGY REGULATORY
 24 COMMISSION UPON PROPER PETITION. The facility shall sell
 25 power in accordance with such determination, so long as the

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1 rates and terms so established will allow the facility a
2 reasonable return.

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5 of Title 85, chapter 1, and the provisions of Title 85,
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WHEREAS, the availability of energy from traditional sources is diminishing; and

WHEREAS, the demand for energy from the state's citizens is increasing, due to population growth and economic expansion; and

WHEREAS, because of newly developing technology and increasing energy costs, small-scale hydroelectric power generation is becoming an economically feasible additional source of energy; and

WHEREAS, the state of Montana currently owns and

controls many water projects which may have potential capacity for the small-scale generation of hydroelectric energy; and

WHEREAS, it is in the best interest of the people of Montana to utilize Montana's water resources to the fullest extent possible.

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

Section 1. Survey of power generation capacity. The department shall study the economic and environmental feasibility of constructing and operating a small-scale hydroelectric power generating facility on each of the water projects under its control as of [the effective date of this act] and shall periodically update such studies as the cost of the electrical energy increases. In determining whether small-scale hydroelectric generation may be economically feasible on a particular project, the department shall consider:

- (1) the estimated cost of construction of a facility;
(2) the estimated cost of maintaining, repairing, and operating the facility;
(3) the estimated cost of tying into an existing power distribution channel;
(4) the ability of public utilities or rural electric cooperatives to lease and operate such a facility;

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5 Section 2. Lease of sites to public utilities or
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 10 the people of the state of Montana, it shall publish notice
 11 and make the site available for lease for the purpose of
 12 small-scale hydroelectric power generation pursuant to
 13 [sections 2 through B].

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 15 lease under this section, the board shall include in the
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 23 with the development.

24 (4) IF ALL LEASE APPLICATIONS ARE REJECTED, THE
 25 DEPARTMENT MAY NOT CONSTRUCT A FACILITY ON ITS OWN NEGOTIATE

1 WITH ALL APPLICANTS ON AN EQUAL BASIS IN AN EFFORT TO ARRIVE
2 AT AN ACCEPTABLE APPLICATION.

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4 royalty to the state as required in the lease.

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6 that offer economic incentives for rapid development of the
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18 has primary responsibility for supervision of any such
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20 the lessee may be appealed to the board, upon written
21 petition of either party.

22 Section 9. Power generation by department authorized.
23 (1) If no lease applications are received under [section 3]
24 ~~or if the board rejects all lease applications under~~
25 [section 4], OR IF THE BOARD REJECTS ALL LEASE APPLICATIONS

1 UNDER [SECTION 4], the department shall MAY UPON APPROVAL OF
2 THE LEGISLATURE proceed to obtain any necessary license,
3 permit, or exemption under federal law and shall commence
4 construction and operation of a small-scale hydroelectric
5 generation facility pursuant to the provisions of this
6 chapter. CONSTRUCTION MAY NOT COMMENCE UNTIL SUCH TIME AS
7 THE DEPARTMENT HAS PRESENTED CLEAR AND CONVINCING EVIDENCE
8 TO THE LEGISLATURE THAT CONSTRUCTION IS ECONOMICALLY
9 FEASIBLE AND IS THE MOST PRACTICAL MEANS BY WHICH THE
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19 small-scale hydroelectric generation facility under this
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23 utility or electric cooperative, the public service
24 commission shall require the utility or electric cooperative
25 to purchase the power under rates and terms established as

1 provided in [sections 11 through 13].

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8 of Title 85, chapter 1, and the provisions of Title 85,
9 chapter 1, apply to sections 1 through 13.

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1 SENATE BILL NO. 229
 2 INTRODUCED BY TURNAGE, McBRIDE, HAZELBAKER,
 3 B. BROWN, DOVER, TOWE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
 6 HYDROELECTRIC POWER GENERATION AT APPROPRIATE DEPARTMENT OF
 7 NATURAL RESOURCES AND CONSERVATION WATER PROJECTS; PROVIDING
 8 FOR THE LEASE OF SUCH PROJECTS FOR THE PURPOSE OF POWER
 9 GENERATION; SPECIFICALLY AUTHORIZING THE CONSTRUCTION AND
 10 OPERATION OF SUCH FACILITIES BY THE DEPARTMENT IF NO LEASE
 11 ~~IS CONSUMMATED APPLICATIONS ARE RECEIVED AND PROHIBITING~~
 12 ~~CONSTRUCTION BY THE DEPARTMENT IF ALL LEASE APPLICATIONS ARE~~
 13 ~~REJECTED BY THE BOARD IS CONSUMMATED~~; AND ESTABLISHING THE
 14 METHOD OF SALE OF POWER GENERATED AT SUCH FACILITIES."

15
 16 WHEREAS, the availability of energy from traditional
 17 sources is diminishing; and

18 WHEREAS, the demand for energy from the state's
 19 citizens is increasing, due to population growth and
 20 economic expansion; and

21 WHEREAS, because of newly developing technology and
 22 increasing energy costs, small-scale hydroelectric power
 23 generation is becoming an economically feasible additional
 24 source of energy; and

25 WHEREAS, the state of Montana currently owns and

1 controls many water projects which may have potential
 2 capacity for the small-scale generation of hydroelectric
 3 energy; and

4 WHEREAS, it is in the best interest of the people of
 5 Montana to utilize Montana's water resources to the fullest
 6 extent possible.

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Survey of power generation capacity. The
 10 department shall study the economic and environmental
 11 feasibility of constructing and operating a small-scale
 12 hydroelectric power generating facility on each of the water
 13 projects under its control ~~as of the effective date of this~~
 14 ~~act~~ and shall periodically update such studies as the cost
 15 of the electrical energy increases. In determining whether
 16 small-scale hydroelectric generation may be economically
 17 feasible on a particular project, the department shall
 18 consider:

- 19 (1) the estimated cost of construction of a facility;
- 20 (2) the estimated cost of maintaining, repairing, and
 21 operating the facility;
- 22 (3) the estimated cost of tying into an existing power
 23 distribution channel;
- 24 (4) the ability of public utilities or rural electric
 25 cooperatives to lease and operate such a facility;

- 1 (5) the debt burden to be serviced;
- 2 (6) the revenue expected to be derived; and
- 3 (7) the likelihood of a reasonable rate of return on
- 4 the investment.

5 Section 2. Lease of sites to public utilities or
 6 electric cooperatives -- first option. (1) If after
 7 completion of the feasibility study of a particular project
 8 the board determines that hydroelectric power generation at
 9 the project would be feasible and in the best interest of
 10 the people of the state of Montana, it shall publish notice
 11 and make the site available for lease for the purpose of
 12 small-scale hydroelectric power generation pursuant to
 13 [sections 2 through 8].

14 (2) In issuing a notice of availability of a site for
 15 lease under this section, the board shall include in the
 16 notice any reasonable conditions it may find necessary in
 17 order to protect the interests of the state.

18 Section 3. Receipt of applications. (1) Applications
 19 for lease may be submitted by any public utility, as defined
 20 in 69-3-101, or electric cooperative, organized under Title
 21 35, chapter 18, that sells power to Montana customers or by
 22 any Montana corporation proposing to use a substantial
 23 portion of the electricity to be generated in its own
 24 operation.

25 (2) The board shall consider only applications

1 received within 180 days after the final publication of the
 2 notice.

3 (3) Applications must include a statement of the
 4 capability of the applicant to achieve the annual production
 5 output estimated by the department, the estimated time to
 6 make the project operational, the bid amount of the royalty,
 7 and any other information that the board requests.

8 Section 4. Determinations by the board. (1) Within a
 9 reasonable time following the conclusion of the lease
 10 application period, the board shall hold a hearing to
 11 examine all applications that have been received for the
 12 lease of the project.

13 (2) Within 180 days following the conclusion of the
 14 lease application period, the board must reject any or all
 15 applications or must award a lease to the party whose offer,
 16 considered in its totality, is the most advantageous to the
 17 state.

18 (3) The decision must include a determination that the
 19 potential developer will provide an adequate royalty
 20 payment, is capable of carrying out the proposed
 21 development, can provide efficient and reliable service, and
 22 intends in good faith without unnecessary delay to proceed
 23 with the development.

24 (4) IF ALL LEASE APPLICATIONS ARE REJECTED, THE
 25 DEPARTMENT MAY NOT CONSTRUCT A FACILITY ON ITS OWN NEGOTIATE

1 WITH ALL APPLICANTS ON AN EQUAL BASIS IN AN EFFORT TO ARRIVE
 2 AT AN ACCEPTABLE APPLICATION.

3 Section 5. Lease conditions. (1) The lessee must pay a
 4 royalty to the state as required in the lease.

5 (2) The board may authorize provisions in the lease
 6 that offer economic incentives for rapid development of the
 7 project or impose economic penalties for delays in
 8 development, which may include cancellation of the lease.

9 Section 6. Compliance with federal law. If the project
 10 must hold a license, permit, or exemption under federal law,
 11 the license, permit, or exemption shall be held by the
 12 department.

13 Section 7. Duration of lease. The term of the lease
 14 may not exceed the term of the license, permit, or exemption
 15 held by the department under [section 6] and may in no event
 16 exceed 55 years.

17 Section 8. Duties of the department. The department
 18 has primary responsibility for supervision of any such
 19 lease. Any disputes that arise between the department and
 20 the lessee may be appealed to the board, upon written
 21 petition of either party.

22 Section 9. Power generation by department authorized.

23 (1) If no lease applications are received under [section 3]
 24 ~~or if the board rejects all lease applications under~~
 25 ~~[section 4],~~ OR IF THE BOARD REJECTS ALL LEASE APPLICATIONS

1 UNDER [SECTION 4], the department shall MAY UPON APPROVAL OF
 2 THE LEGISLATURE proceed to obtain any necessary license,
 3 permit, or exemption under federal law and shall commence
 4 construction and operation of a small-scale hydroelectric
 5 generation facility pursuant to the provisions of this
 6 chapter. CONSTRUCTION MAY NOT COMMENCE UNTIL SUCH TIME AS
 7 THE DEPARTMENT HAS PRESENTED CLEAR AND CONVINCING EVIDENCE
 8 TO THE LEGISLATURE THAT CONSTRUCTION IS ECONOMICALLY
 9 FEASIBLE AND IS THE MOST PRACTICAL MEANS BY WHICH THE
 10 FACILITY COULD BE DEVELOPED.

11 (2) Financing of construction and operation of the
 12 facility shall be accomplished in a manner determined by the
 13 board to be most feasible.

14 (3) The department may not sell power generated at a
 15 facility except to a public utility or a rural electrical
 16 cooperative, OR A FEDERAL POWER-MARKETING AGENCY organized
 17 in Montana and selling power to Montana customers.

18 Section 10. Sale of power. If the operator of a
 19 small-scale hydroelectric generation facility under this
 20 chapter and a public utility or an electric cooperative are
 21 unable to mutually agree to a contract for the sale of
 22 electricity or a price for the electricity purchased by the
 23 utility or electric cooperative, the public service
 24 commission shall require the utility or electric cooperative
 25 to purchase the power under rates and terms established as

1 provided in [sections 11 through 13].

2 Section 11. Determination by the public service
3 commission. A determination of the rates and terms under
4 which the power must be purchased shall be made by the
5 public service commission upon petition of the facility
6 operator or a public utility or electric cooperative or
7 during a rate proceeding involving the review of rates paid
8 for electricity purchased from the facility. The commission
9 shall render a decision within 120 days from receipt of the
10 petition or before the completion of the rate review
11 proceeding. The rate and terms of the determination must be
12 according to the standards specified in [section 12].

13 Section 12. Standards for the determination. (1) The
14 standards for the determination provided for in [section 11]
15 by the public service commission shall include the
16 following:

17 (a) Long-term contracts for the purchase of
18 electricity by the utility or electric cooperative from a
19 small-scale hydroelectric facility under this chapter shall
20 be encouraged in order to enhance the economic feasibility
21 of such facilities.

22 (b) The rates paid by a utility or electric
23 cooperative to a small-scale hydroelectric facility may not
24 exceed, over the term of the purchase contract, the
25 incremental cost to the utility or electric cooperative of

1 the electricity that, but for the purchase from the
2 small-scale hydroelectric facility, the utility or electric
3 cooperative would generate or purchase from another source.

4 (c) The rates to be paid by a utility or an electric
5 cooperative for power purchased from a small-scale
6 hydroelectric facility shall be established with
7 consideration of the availability and reliability of the
8 power produced.

9 (2) The commission may set these rates by use of any
10 of the following methods:

11 (a) the levelized avoided cost over the term of the
12 contract;

13 (b) the cost of production for the small-scale
14 hydroelectric facility plus a just and reasonable return; or

15 (c) any other method that will promote the development
16 of small-scale hydroelectric facilities.

17 Section 13. Purchase of power by electric cooperative
18 not agreeing to be bound by public service commission
19 determination. If any electric cooperative wishing to
20 purchase power from a small-scale hydroelectric facility
21 under this chapter refuses to submit to the ratemaking
22 authority of the public service commission established in
23 [section 11], then the rate for such cooperative may be
24 determined by the ~~rural-electrification-administration-upon~~
25 ~~petition-by-a-rural-electric-cooperative-or-a-generation-and~~

1 ~~transmission--cooperative~~ FEDERAL ENERGY REGULATORY
2 COMMISSION UPON PROPER PETITION. The facility shall sell
3 power in accordance with such determination, so long as the
4 rates and terms so established will allow the facility a
5 reasonable return.

6 Section 14. Codification instruction. Sections 1
7 through 13 are intended to be codified as an integral part
8 of Title 85, chapter 1, and the provisions of Title 85,
9 chapter 1, apply to sections 1 through 13.

-End-