

HOUSE BILL 474

Introduced by Cohen, et al.

1/27	Introduced
1/28	Referred to State Administration
1/30	Fiscal Note Requested
2/06	Fiscal Note Received
2/08	Fiscal Note Printed
2/10	Hearing
2/14	Tabled in Committee

1 *House* BILL NO. *474* *Whalen*
 2 INTRODUCED BY *Robert Yellowtail* *Raney*
 3 *Marko Robert* *David* *Henry* *John* *Andy*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A MEANS FOR
 5 COMPENSATION OF PERSONS WHO INTERVENE IN PUBLIC SERVICE
 6 COMMISSION PROCEEDINGS; APPROPRIATING FUNDING FOR INTERVENOR
 7 COMPENSATION; AMENDING SECTION 69-1-403, MCA; AND PROVIDING
 8 AN EFFECTIVE DATE."

9
 10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because
 12 it grants to the public service commission the authority to
 13 adopt rules necessary for its implementation. It is the
 14 intent of the legislature that the commission adopt rules to
 15 require that each intervenor, in an effort to establish his
 16 eligibility for compensation, present verified records of
 17 the costs incurred by him in the proceedings and that each
 18 concerned utility be given ample opportunity to impeach
 19 those records. The commission shall also give full weight to
 20 all requirements of the federal Public Utilities Regulatory
 21 Policies Act of 1978 and other applicable federal statutes
 22 and regulations.

23
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 NEW SECTION. **Section 1.** Policy. It is the policy of

1 this state to encourage participation at all stages in all
 2 proceedings before the commission. Financial ability should
 3 not restrict the access of a consumer or a ratepayer
 4 organization to reasonable participation in hearings and
 5 proceedings before the commission. Public participation in
 6 the ratemaking process ensures that all pertinent issues are
 7 addressed by the commission in a fair and knowledgeable
 8 manner. Therefore, the state provides a means for
 9 compensation of persons interested in and directly affected
 10 by the subject matter of any hearing or proceeding pending
 11 before the commission.

12 NEW SECTION. **Section 2.** Rulemaking. The commission
 13 may adopt rules reasonably necessary for the implementation
 14 of [sections 1 through 8].

15 NEW SECTION. **Section 3.** Definitions. In [sections 1
 16 through 8], the following definitions apply:

17 (1) "Compensation" means reasonable attorney fees,
 18 expert witness fees, and other expenses, including but not
 19 limited to expenses incurred by an intervenor in
 20 coordinating testimony in preparation for and participation
 21 in a hearing before the commission.

22 (2) "Consumer" means any customer of a public utility.

23 (3) "Expert witness fee" means expenses incurred by an
 24 intervenor for the use of an expert witness in a hearing
 25 before the commission.

(4) "Hearing" means those activities referred to in 69-3-103 and 69-3-303 and contested case rulemaking and other proceedings initiated by the intervenor.

(5) "Other expenses" means reasonable expenses incurred by an intervenor in preparation for and participation in a hearing.

(6) "Substantial contribution" means presenting views, testimony, or arguments that are considered by the commission in making its decision following a hearing. To make a substantial contribution does not mean that the intervenor's position necessarily prevails. The issue of whether an intervenor made a substantial contribution is determined by the commission.

NEW SECTION. Section 4. Eligibility as intervenor -- application procedure. (1) To be eligible for an award of compensation for participation in a utility hearing before the commission, an intervenor who is not a public utility, common carrier, railroad, or other industry regulated by the public service commission shall apply to the commission pursuant to the scheduling order in the proceeding.

(2) The application must be brief and must:

(a) state the consumer interest represented by the intervenor;

(b) distinguish the intervenor's interest from any represented by other intervenors;

(c) certify that the intervenor requested representation by the consumer counsel and the request was denied;

(d) state the relevance of the interest to the issues of the proceeding; and

(e) outline the general nature of the intervenor's expected participation.

(3) The application must be served on any:

(a) affected utility;

(b) other known party; and

(c) other known intervenor to the proceeding.

(4) An affected utility, a party, or other intervenors have the right to file an objection to any application for eligibility, pursuant to commission rules.

(5) (a) The commission shall determine the intervenor's eligibility to receive an award under [sections 1 through 8].

(b) If the commission determines the intervenor is not eligible, the intervenor may not receive an award of compensation at the conclusion of the proceeding.

(c) If the commission determines the intervenor is eligible, the intervenor shall satisfy the other requirements of [sections 1 through 8] before he receives an award.

(6) The commission may condition its determination of

1 eligibility on a requirement that intervenors with the same
2 or similar interests share the same legal representative and
3 common expert witnesses.

4 (7) The commission may in determining eligibility
5 limit the amount of compensation that may be awarded to an
6 eligible intervenor.

7 (8) A utility is not entitled to compensation under
8 [sections 1 through 8] from an intervenor.

9 NEW SECTION. Section 5. Finding of substantial
10 contribution required. An intervenor may not receive an
11 award of compensation under [section 6] unless the
12 commission determines and finds that the intervenor made a
13 substantial contribution to the proceedings. The
14 determination must be based on a finding that the
15 intervenor's participation was meritorious and deserving of
16 compensation, as required under the federal Public Utilities
17 Regulatory Policies Act of 1978.

18 NEW SECTION. Section 6. Award to intervenor. (1) At
19 the time of issuance of a final order in any utility hearing
20 before it, the commission shall award to an intervenor who
21 has satisfied the requirements of [sections 1 through 8]
22 compensation for the reasonable costs incurred in
23 participating in the hearing.

24 (2) The utility or utilities initiating the proceeding
25 or whose rates, charges, or practices are reviewed in the

1 hearing shall pay the compensation.

2 (3) The commission makes the determination of whether
3 an intervenor is entitled to compensation. An intervenor is
4 entitled to receive compensation if the commission
5 determines that the intervention substantially contributed
6 to the formal decision rendered in the proceeding.

7 (4) In reviewing claims for compensation, the
8 commission shall compare the claims with the expenses
9 incurred by other parties to the proceeding for similar
10 services. The award of compensation may not exceed the
11 actual costs incurred by the intervenor.

12 NEW SECTION. Section 7. Procedure for payment of
13 compensation -- objection -- payment by utility. (1) (a)
14 Within 10 days of the date on which an appeal must be filed
15 or from the date the commission order awarding compensation
16 to an intervenor becomes final, the intervenor awarded
17 compensation by the commission shall file a memorandum of
18 costs with the commission. The memorandum must detail the
19 costs for attorney fees, expert witness fees, and other
20 expenses for which compensation is claimed.

21 (b) At the same time, the intervenor shall serve a
22 copy of the memorandum on any other party.

23 (c) Any party may file an objection to the memorandum
24 if the party disputes the reasonableness of any cost claimed
25 by the intervenor. The objection must be filed within 10

1 days of the date the memorandum is filed with the
2 commission.

3 (2) Within 30 days of the filing of a memorandum of
4 costs, the commission shall, after considering the
5 memorandum filed by the intervenor and any objections to it,
6 issue an order setting the amount of the compensation award.
7 If necessary, the commission shall allocate the award among
8 the affected utilities.

9 (3) (a) An intervenor who is not awarded compensation
10 in the commission order may petition the commission for an
11 award of compensation within 20 days of the commission's
12 order.

13 (b) The commission shall grant or deny the petition
14 within 20 days of receipt. If the commission grants the
15 petition, the intervenor shall follow the procedure set
16 forth in subsection (1).

17 (4) (a) A utility charged with paying compensation to
18 an intervenor under [sections 1 through 8] shall pay the
19 intervenor within 30 days from the date the order issued by
20 the commission becomes final. Appeal of the award stays
21 payment of the award pending judicial review.

22 (b) If the utility does not make payment within that
23 period, the intervenor may seek enforcement of the order in
24 district court. The utility shall pay to the intervenor
25 reasonable attorney fees and other expenses incurred by the

1 intervenor in seeking enforcement in district court.

2 (5) The time periods contained in this section may be
3 changed by commission rule.

4 NEW SECTION. Section 8. Compensation by utility as
5 regulatory expense. (1) The money paid to an intervenor by a
6 utility under [sections 1 through 8] is a regulatory
7 expense.

8 (2) If testimony is presented at a hearing at which
9 revenue requirements are not an issue, the commission may
10 order a rate increase, following proper notice, to cover the
11 compensation paid by a utility to an intervenor if the
12 commission determines that the size of the award warrants
13 immediate relief.

14 **Section 9.** Section 69-1-403, MCA, is amended to read:

15 "69-1-403. Determination and collection of fee. (1)
16 The fee provided for in 69-1-402 to be paid by regulated
17 companies must be determined in the manner set forth in
18 69-1-224 for determining the consumer counsel fee, except
19 that:

20 (a) gross revenues from sales to other regulated
21 companies for resale, as calculated by the public service
22 commission, must be excluded from the determination of the
23 total gross operating revenue pursuant to 69-1-224; and

24 (b) appropriations for intervenor compensation under
25 [sections 1 through 8] must be included.

1 (2) The department of revenue shall give notice by
 2 mail to each regulated company of the percentage determined
 3 pursuant to 69-1-224 and this section to be applied to gross
 4 operating revenues reported under 69-1-223, excluding gross
 5 revenues from sales to other regulated companies for resale,
 6 to determine the amount of the fee to be paid in the first
 7 year of the appropriation.

8 (3) The fee provided for in 69-1-402 may be computed
 9 and collected in the manner provided in 69-1-225 through
 10 69-1-227.

11 (4) All fees paid by a regulated company pursuant to
 12 this section are immediately recoverable by the regulated
 13 company in its rates and charges. Within 30 days after the
 14 issuance by the department of revenue of notices required by
 15 69-1-224(1) and (2), the public service commission shall by
 16 separate order authorize each regulated company to fully
 17 recover in its rates and charges, on an annual basis, the
 18 fees levied by this part."

19 NEW SECTION. Section 10. Appropriation. There is
 20 appropriated from the general fund to the public service
 21 commission \$50,000 for the biennium ending June 30, 1991,
 22 for intervenor compensation.

23 NEW SECTION. Section 11. Extension of authority. Any
 24 existing authority to make rules on the subject of the
 25 provisions of [this act] is extended to the provisions of

1 [this act].

2 NEW SECTION. Section 12. Codification instruction.
 3 [Sections 1 through 8] are intended to be codified as an
 4 integral part of Title 69, chapter 3, and the provisions of
 5 Title 69, chapter 3, apply to [sections 1 through 8].

6 NEW SECTION. Section 13. Effective date. [This act]
 7 is effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB474, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB474 would provide a means for compensation of persons who intervene in Public Service Commission proceedings and appropriate funds for intervenor compensation.

ASSUMPTIONS:

1. A utility shall pay an intervenor directly as specified on Page 7, lines 17-19 in Section 7(4)(a) of the proposed law.
2. Therefore, on Page 8, lines 19, 20, 23 and 24-25. Section 9, the amendments to current law 69-1-403, MCA, will be deleted because these changes conflict with utilities paying intervenors.
3. Likewise, the appropriation on Page 9, Section 10, will be deleted because no appropriation to the Public Service Commission (PSC) is needed when utilities pay the intervenors directly.
4. It is preferable to have utilities pay intervenors directly because of difficulty in reasonably predicting the appropriation which would be required by the PSC, e.g., the Montana Consumer Council FY89 budget for expert witnesses is \$507,000.
5. Based on these assumptions there will be no state fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Rates and charges will increase in an amount equal to the intervenor fees paid by a regulated company.

TECHNICAL OR MECHANICAL DEFECTS:

As described under the assumptions above, Section 9 and Section 10 of the proposed law are in conflict with the other sections of the proposed law.


RAY SHACKLEFORD, BUDGET DIRECTOR 2/4/89
OFFICE OF BUDGET AND PROGRAM PLANNING DATE


BEN COHEN, PRIMARY SPONSOR 2/7/89
DATE

Fiscal Note for HB474, as introduced

HB 474