

HOUSE BILL NO. 753

INTRODUCED BY B. HANDS

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA GLOBAL WARMING SOLUTIONS ACT; PROVIDING LEGISLATIVE FINDINGS; DEFINING TERMS; PROVIDING THE BOARD OF ENVIRONMENTAL REVIEW WITH RULEMAKING AUTHORITY; REQUIRING GREENHOUSE GAS EMISSION REPORTING; PROVIDING A PROCESS TO ESTABLISH A STATEWIDE GREENHOUSE GAS EMISSION LIMIT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PREPARE A GREENHOUSE GAS EMISSION REDUCTION PLAN; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ESTABLISH SPECIFIC GREENHOUSE GAS EMISSION LIMITS AND REDUCTIONS; ALLOWING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT CERTAIN MARKET-BASED EMISSION LIMITS; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT A SCHEDULE OF FEES; CREATING A GREENHOUSE GAS EMISSION CONTROL ACCOUNT; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Montana Global Warming Solutions Act".

NEW SECTION. **Section 2. Legislative findings.** The legislature finds that:

(1) global warming threatens the economic well-being, public health, natural resources, and environment of Montana;

(2) the adverse impacts of global warming include a reduction in the quality and supply of water to the state, extended drought, diminished agricultural productivity, an increase in the number of forest fires, loss of high-altitude glaciers, heat-related deaths, an increase in the incidences of infectious diseases, and other human health-related problems;

(3) global warming will have detrimental effects on some of Montana's largest industries, including agriculture, forestry, tourism, electricity production from hydroelectric facilities, skiing, and recreational fishing;

(4) Montana has been a leader on energy conservation and environmental stewardship efforts, energy efficiency requirements, renewable energy standards, and natural resource conservation;

(5) action taken by Montana to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act; and

(6) by exercising a leadership role, Montana will position its economy, university system, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases.

NEW SECTION. Section 3. Definitions. Unless the context requires otherwise, as used in [sections 1 through 9], the following definitions apply:

(1) "Allowance" means an authorization to emit, during a specified year, up to 1 ton of carbon dioxide equivalent.

(2) "Alternative compliance mechanism" means an authorized action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction. The term includes but is not limited to:

(a) a flexible compliance schedule;

(b) alternative control technology;

(c) a process change; or

(d) a product substitution.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Carbon dioxide equivalent" means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science.

(5) "Cost-effective" means maximizing the reduction of greenhouse gas emissions at the lowest cost per unit.

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Direct emission reduction" means a greenhouse gas emission reduction action taken by a greenhouse gas emission source at that source.

(8) "Emission reduction measure" means a program, measure, standard, or alternative compliance mechanism authorized pursuant to [sections 1 through 9] that is applicable to sources or categories of sources and that is designed to reduce emissions of greenhouse gases.

(9) "Greenhouse gas" or "greenhouse gases" includes the following gases:

(a) carbon dioxide;

- (b) methane;
- (c) nitrous oxide;
- (d) hydrofluorocarbons;
- (e) black carbon;
- (f) perfluorocarbons; and
- (g) sulfur hexafluoride.

(10) "Greenhouse gas emission limit" means an authorization to a specific source or category of sources, during a specified year, to emit up to a certain level of greenhouse gases expressed in tons of carbon dioxide equivalents.

(11) "Greenhouse gas emission source" or "source" means a person who generates greenhouse gas emissions at a level significant enough to impact statewide greenhouse gas emissions or who generates greenhouse gas that when combined with other similar sources generates greenhouse gas emissions at a level significant enough to impact statewide greenhouse gas emissions.

(12) "Market-based compliance mechanism" means either one or both of the following:

(a) a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gases; or

(b) a greenhouse gas emission exchange, banking, credit, and other transaction that results in the same greenhouse gas emission reduction over the same time period as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted pursuant to [section 5].

(13) "Person" means an individual, partnership, corporation, limited liability company, sole proprietorship, firm, enterprise, franchise, association, state agency, political subdivision of the state, tribal government, or any other entity.

(14) "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases in the state expressed in tons of carbon dioxide equivalents, including all emissions of greenhouse gases associated with the generation or consumption of electricity.

(15) "Statewide greenhouse gas emission limit" means the maximum allowable level of statewide greenhouse gas emissions in 2020.

NEW SECTION. Section 4. Greenhouse gas emission reporting and statewide limit -- rulemaking.

(1) Before July 1, 2008, the board shall adopt rules that:

1 (a) identify greenhouse gas emission sources and categories of sources and require the reporting and
2 verification of statewide greenhouse gas emissions in order to monitor and enforce compliance with [sections 1
3 through 9];

4 (b) require the monitoring and annual reporting of greenhouse gas emissions from greenhouse emission
5 sources beginning with the sources or categories of sources that contribute the most to statewide greenhouse
6 gas emissions;

7 (c) ensure rigorous and consistent accounting of greenhouse gas emissions and provide reporting tools
8 and formats to ensure collection of necessary information; and

9 (d) ensure that greenhouse gas emission sources maintain comprehensive records of all reported
10 greenhouse gas emissions.

11 (2) Before July 1, 2008, the department shall determine, using the best available scientific, technological,
12 and economic information, what the statewide greenhouse gas emission level was in 1990, and the board shall,
13 through rulemaking, establish a statewide greenhouse gas emission limit that is equivalent to that level and that
14 is to be achieved by 2020.

15 (3) Before January 1, 2015, the department shall make recommendations to the governor and the
16 legislature on how to continue reductions of greenhouse gas emissions beyond 2020.

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18 **NEW SECTION. Section 5. Greenhouse gas emission reduction plan.** (1) Before January 1, 2010,
19 the department shall prepare a plan and the board shall approve a plan for achieving the maximum
20 technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories
21 of sources of greenhouse gases by 2020.

22 (2) The plan must identify and make recommendations on emission reduction measures, alternative
23 compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary
24 incentives for sources and categories of sources that the department finds are necessary or desirable to facilitate
25 the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by 2020.

26 (3) In developing the plan, the department shall:

27 (a) evaluate the total potential costs and total potential economic and noneconomic benefits of the plan
28 for reducing greenhouse gases to Montana's economy, environment, and public health using the best available
29 economic models, emission estimation techniques, and other scientific methods;

30 (b) take into account the relative contribution of each source or category of sources to statewide

1 greenhouse gas emissions and the potential for adverse effects on small businesses;

2 (c) recommend a minimum threshold of greenhouse gas emissions below which emission reduction
3 requirements will not apply;

4 (d) identify opportunities for emission reduction measures from all verifiable voluntary actions, including
5 but not limited to carbon sequestration projects and best management practices;

6 (e) ensure that the greenhouse gas emission reduction activities to be adopted by the board and
7 implemented by the department are complementary and nonduplicative and can be implemented in an efficient
8 and cost-effective manner; and

9 (f) consult with tribal governments and all state agencies with jurisdiction over sources of greenhouse
10 gases, including the department of public service regulation provided for in 2-15-2601, on all elements of the plan
11 that pertain to energy-related matters.

12 (4) The department shall update the plan at least once every 5 years.

13
14 **NEW SECTION. Section 6. Greenhouse gas limits and emission reductions -- rulemaking.** (1)

15 Before January 1, 2011, the board shall adopt greenhouse gas emission limits and emission reduction measures
16 by rule to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas
17 emissions in order to achieve the statewide greenhouse gas emission limit established pursuant to [section 4].

18 (2) In adopting rules pursuant to this section, the board shall, to the extent feasible and in order to
19 achieve the statewide greenhouse gas emission limit:

20 (a) ensure that the greenhouse gas emission reductions to be achieved are real, permanent, quantifiable,
21 verifiable, and enforceable;

22 (b) design the rules to include the equitable distribution of allowances when appropriate and in a manner
23 that minimizes costs and that promotes the goals and purposes of [sections 1 through 9];

24 (c) ensure that costs of the emission reduction measures are minimized and that the rules maximize the
25 total benefits to Montana and encourage early action to reduce greenhouse gas emissions;

26 (d) ensure that activities undertaken to comply with the rules do not disproportionately impact low-income
27 individuals or tribal communities;

28 (e) ensure that activities undertaken pursuant to the rules complement and do not interfere with efforts
29 to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant
30 emissions;

(f) consider the cost-effectiveness of proposed rules;

(g) consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health;

(h) minimize the administrative burden of implementing and complying with proposed rules;

(i) consider the significance of the contribution of each source or category of sources to statewide greenhouse gas emissions;

(j) ensure that the reduction is in addition to any emission reduction measure otherwise required by law or regulation and any other emission reduction measure that otherwise would occur;

(k) if using an alternative compliance mechanism, ensure that the greenhouse gas emission reduction occurs over the same time period and is equivalent in amount to any direct emission reduction required pursuant to [sections 1 through 9];

(l) rely upon the best available economic and scientific information and assessment of existing and projected technological capabilities;

(m) consult with the public service commission in the development of rules affecting electricity and natural gas providers in order to minimize any duplicative or inconsistent regulatory requirements; and

(n) ensure, when applicable and to the extent feasible, that public and private investment in greenhouse gas emission reduction be directed toward the most disadvantaged communities in Montana and provide an opportunity for tribal governments, small businesses, schools, affordable housing associations, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.

(3) The department shall develop methodologies to quantify and verify voluntary greenhouse gas emission reductions while ensuring that sources that have voluntarily reduced their greenhouse gas emissions prior to the implementation of subsection (1), receive appropriate credit for those voluntary reductions.

NEW SECTION. Section 7. Greenhouse gas emission reductions -- market-based emission limits and compliance -- rulemaking. (1) In addition to the provisions in [section 6], before January 1, 2011, the board may adopt rules that establish a system of market-based compliance mechanisms that the board determines will achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions, in the aggregate, from sources or categories of sources.

(2) In adopting the rules pursuant to subsection (1), the board shall:

(a) consider the potential for direct, indirect, and cumulative impacts from these mechanisms, including

1 localized impacts in communities that are already adversely impacted by air pollution;

2 (b) design any market-based compliance mechanism to prevent any increase in the emissions of toxic
3 air contaminants or other air pollutants;

4 (c) provide procedures for governing how market-based compliance mechanisms may be used by a
5 source that is subject to greenhouse gas emission limits and mandatory emission reporting requirements to
6 achieve compliance with the statewide greenhouse gas emission limit; and

7 (d) maximize additional environmental and economic benefits for Montana, as appropriate.
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9 **NEW SECTION. Section 8. Fees.** (1) The board may adopt rules that provide for a schedule of fees
10 to be paid by greenhouse gas emission sources regulated pursuant to [sections 1 through 9] based on the
11 contribution of greenhouse emissions from the source or category of sources. The fees must be commensurate
12 with the department's costs of regulating greenhouse gas emission sources pursuant to [sections 1 through 9].

13 (2) The funds collected under this section must be deposited in the greenhouse gas emission control
14 account created in [section 9].
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16 **NEW SECTION. Section 9. Greenhouse gas emission control account.** (1) There is a greenhouse
17 gas emission control account in the state special revenue fund. There is deposited in the account all money
18 received from fees collected under [section 8].

19 (2) The funds in the account are allocated to the department solely for the purposes of funding the costs
20 of implementing the provisions of [sections 1 through 9].
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22 **NEW SECTION. Section 10. Notification to tribal governments.** The secretary of state shall send
23 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
24 Chippewa tribe.
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26 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 9] are intended to be
27 codified as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to [sections 1
28 through 9].
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30 **NEW SECTION. Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
2 the part remains in effect in all valid applications that are severable from the invalid applications.

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4 NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 2007.

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