

SENATE BILL NO. 395

INTRODUCED BY A. WITTICH

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A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING CLASS FOURTEEN PROPERTY TAX CLASSIFICATION TO ALL FUTURE ELECTRICAL GENERATION FACILITIES AND FUEL AND GAS PRODUCTION FACILITIES; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, 15-24-3001, 75-20-104, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-301, 75-20-303, 75-20-304, AND 75-20-1202, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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Section 1. Section 15-6-137, MCA, is amended to read:

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"15-6-137. Class seven property -- description -- taxable percentage. (1) Except as provided in subsection (2), class seven property includes:

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(a) all property owned by cooperative rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

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(b) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

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(2) Class seven property does not include ~~wind~~ electrical generation facilities ~~and biomass generation facilities~~ classified under 15-6-157.

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(3) Class seven property is taxed at 8% of its market value."

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Section 2. Section 15-6-141, MCA, is amended to read:

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"15-6-141. Class nine property -- description -- taxable percentage. (1) Class nine property includes:

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(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created

1 by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not
 2 including rural electric cooperatives. However, rural electric cooperatives' property, except ~~wind~~ electrical
 3 generation facilities ~~and biomass-generation facilities~~ classified under 15-6-157, used for the sole purpose of
 4 serving customers representing less than 95% of the electric consumers located within the incorporated limits
 5 of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns
 6 property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly
 7 served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative
 8 is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a
 9 headquarters, office, shop, or other similar facility.

10 (b) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas
 11 transmission or oil transmission pipelines regulated by either the public service commission or the federal energy
 12 regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49
 13 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5); and

14 (c) centrally assessed companies' allocations except:

15 (i) electrical generation facilities classified under 15-6-156;

16 (ii) all property classified under 15-6-157;

17 (iii) all property classified under 15-6-158 and 15-6-159;

18 (iv) property owned by cooperative rural electric and cooperative rural telephone associations and
 19 classified under 15-6-135;

20 (v) property owned by organizations providing telephone communications to rural areas and classified
 21 under 15-6-135;

22 (vi) railroad transportation property included in 15-6-145;

23 (vii) airline transportation property included in 15-6-145; and

24 (viii) telecommunications property included in 15-6-156.

25 (2) Class nine property is taxed at 12% of market value."
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27 **Section 3.** Section 15-6-156, MCA, is amended to read:

28 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in
 29 subsections (2)(a) through (2)(g), class thirteen property includes:

30 (a) electrical generation facilities, except ~~wind~~ generation facilities ~~and biomass-generation facilities~~

1 classified under 15-6-157, of a centrally assessed electric power company;

2 (b) electrical generation facilities, except ~~wind generation facilities and biomass generation facilities~~
3 classified under 15-6-157, owned or operated by an exempt wholesale generator or an entity certified as an
4 exempt wholesale generator pursuant to 42 U.S.C. 16451;

5 (c) noncentrally assessed electrical generation facilities, except ~~wind generation facilities and biomass~~
6 ~~generation facilities~~ classified under 15-6-157, owned or operated by any electrical energy producer; and

7 (d) allocations of centrally assessed telecommunications services companies.

8 (2) Class thirteen property does not include:

9 (a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

10 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 ~~or~~
11 ~~15-6-157~~;

12 (c) allocations of electric power company property under 15-6-141;

13 (d) electrical generation facilities included in another class of property;

14 (e) property owned by cooperative rural telephone associations and classified under 15-6-135;

15 (f) property owned by organizations providing telecommunications services and classified under
16 15-6-135; and

17 (g) generation facilities that are exempt under 15-6-225.

18 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a
19 physically connected generator or generators, associated prime movers, and other associated property, including
20 appurtenant land and improvements and personal property, that are normally operated together to produce
21 electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired
22 steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

23 (b) The term does not include electrical generation facilities used for noncommercial purposes or
24 exclusively for agricultural purposes.

25 (c) The term also does not include a qualifying small power production facility, as that term is defined
26 in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of
27 electricity other than electric power from a small power production facility and classified under 15-6-134 and
28 15-6-138.

29 (4) Class thirteen property is taxed at 6% of its market value."
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1 **Section 4.** Section 15-6-157, MCA, is amended to read:

2 **"15-6-157. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen property
3 includes:

4 ~~(a) wind electrical generation facilities that have commenced construction after June 30, 2011 of a~~
5 ~~centrally assessed electric power company;~~

6 ~~(b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified~~
7 ~~as an exempt wholesale generator pursuant to 42 U.S.C. 16451;~~

8 ~~————(c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;~~

9 ~~————(d) wind generation facilities owned or operated by cooperative rural electric associations described~~
10 ~~under 15-6-137;~~

11 ~~————(e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed~~
12 ~~electric power company;~~

13 ~~————(f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an~~
14 ~~exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;~~

15 ~~————(g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned~~
16 ~~or operated by any electrical energy producer;~~

17 ~~————(h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by~~
18 ~~cooperative rural electric associations described under 15-6-137;~~

19 ~~(i)(b) all property of a biodiesel liquid fuel or gaseous fuel production facility, as defined in 15-24-3102,~~
20 ~~that has commenced construction after June 1, 2007 June 30, 2011;~~

21 ~~(j) all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction~~
22 ~~after June 1, 2007;~~

23 ~~————(k) all property of a biomass gasification facility, as defined in 15-24-3102;~~

24 ~~————(l) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection~~
25 ~~(1)(o) of this section, that sequesters carbon dioxide;~~

26 ~~————(m) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced~~
27 ~~construction after June 1, 2007;~~

28 ~~————(n) all property of a geothermal facility, as defined in 15-24-3102;~~

29 ~~————(o) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that~~
30 ~~sequesters carbon dioxide, as required by 15-24-3111(4)(c);~~

1 ~~(p)~~(c) all property or a portion of the property of a renewable energy manufacturing facility, as defined
 2 in 15-24-3102, that has commenced construction after June 1, 2007;

3 ~~(q)~~ all property of a natural gas combined cycle facility;

4 ~~(r)~~(d) equipment that is used to capture and to prepare for transport carbon dioxide that will be
 5 sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at
 6 coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that
 7 commence construction after December 31, 2007;

8 ~~(s)~~(e) high-voltage direct-current transmission lines and associated equipment and structures, including
 9 converter stations and interconnections, other than property classified under 15-6-159, that:

10 (i) originate in Montana with a converter station located in Montana east of the continental divide and
 11 that are constructed after July 1, 2007;

12 (ii) are certified under the Montana Major Facility Siting Act; and

13 (iii) provide access to energy markets for Montana electrical generation facilities listed in this section that
 14 commenced construction after June 1, 2007;

15 ~~(t)~~(f) all property of electric transmission lines, including substations, that originate at facilities specified
 16 in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this
 17 subsection (1) and terminating at an existing transmission line or substation that has commenced construction
 18 after June 1, 2007; and

19 ~~(u)~~(g) the qualified portion of an alternating current transmission line and its associated equipment and
 20 structures, including interconnections, that has commenced construction after June 1, 2007.

21 (2) (a) The qualified portion of an alternating current transmission line in subsection ~~(4)~~(u) (1)(g) is that
 22 percentage, as determined by the department of environmental quality, of rated transmission capacity of the line
 23 contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1)
 24 that are located in Montana.

25 (b) The department of revenue shall classify the total value of an alternating current transmission line
 26 in accordance with the determination made by the department of environmental quality pursuant to subsection
 27 (2)(a).

28 (c) The owner of property described under this subsection (2) shall disclose the location of the generation
 29 facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for
 30 transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not

1 required to disclose financial terms and conditions of contracts beyond that needed for classification.

2 (3) Class fourteen property does not include facilities:

3 (a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, was
4 not paid during the construction phase; or

5 (b) that are exempt under 15-6-225.

6 (4) For the purposes of this section, the following definitions apply:

7 ~~(a) "Biomass generation facilities" means any combination of boilers, generators, associated prime
8 movers, and other associated property, including appurtenant land and improvements and personal property, that
9 are normally operated together to produce electric power from the burning of organic material other than coal,
10 petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas
11 or other fuels allowed for ignition and to stabilize boiler operations.~~

12 ~~—— (b) "Wind generation facilities" means any combination of a physically connected wind turbine or
13 turbines, associated prime movers, and other associated property, including appurtenant land and improvements
14 and personal property, that are normally operated together to produce electric power from wind.~~

15 (a) "Electrical generation facilities" has the meaning provided in 15-6-156(3).

16 (b) "Liquid fuel or gaseous fuel production facility" means a property, including storage tanks and other
17 associated property, used to produce liquid or gaseous fuels that are intended to be consumed in the state
18 through a production process that involves a chemical or biological transformation of organic or inorganic
19 materials, including coal, petroleum, and natural gas, or renewable matter, including dedicated energy crops and
20 trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic
21 plants, animal wastes, municipal wastes, and other waste materials.

22 (5) (a) The department of environmental quality shall determine whether to certify that a transmission
23 line meets the criteria of subsection ~~(1)(s)~~ (1)(e), ~~(1)(t)~~ (1)(f), or ~~(1)(u)~~ (1)(g), as applicable, based on an
24 application provided for in 15-24-3112. The department of environmental quality shall review the certification 10
25 years after the line is operational, and if the property no longer meets the requirements of subsection ~~(1)(s)~~ (1)(e),
26 ~~(1)(t)~~ (1)(f), or ~~(1)(u)~~ (1)(g), the certification must be revoked.

27 (b) If the department of revenue finds that a certification previously granted was based on an application
28 that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the
29 application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time
30 that the certification was in effect.

1 (6) Class fourteen property is taxed at 3% of its market value."
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3 **Section 5.** Section 15-24-3001, MCA, is amended to read:

4 **"15-24-3001. Electrical generation and transmission facility exemption -- definitions.** (1) (a) Except
5 as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed
6 in the state of Montana after May 5, 2001, and before January 1, 2006, may be exempt from property taxation
7 for a 10-year period beginning on the date that an owner or operator of an electrical generation facility and related
8 delivery facilities commences to construct the facility as defined in 75-20-104~~(6)(a)~~(7)(a) and ~~(6)(b)~~ (7)(b). In order
9 to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery
10 facilities shall offer contracts to sell 50% of that facility's net generating output at a cost-based rate, which includes
11 a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility's completion.

12 (b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for
13 generation facilities powered by oil or gas turbines.

14 (2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to
15 consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined
16 by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract
17 period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not
18 contracted for in this fashion may be sold at market rates.

19 (3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation
20 under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to perform the
21 contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the
22 property is subject to a rollback tax as provided in 15-24-3002.

23 (b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation
24 under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the
25 contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the property
26 is subject to a rollback tax as provided in 15-24-3002.

27 (c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft,
28 sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection
29 (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.

30 (4) For the purposes of this section, the following definitions apply:

1 (a) (i) "Electrical generation facility" means any combination of a physically connected generator or
2 generators, associated prime movers, and other associated property, including appurtenant land and
3 improvements and personal property, that are normally operated together to produce 20 average megawatts or
4 more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam
5 turbines, oil or gas turbines, or turbine generators that are driven by falling water.

6 (ii) The term does not include:

7 (A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural
8 purposes; or

9 (B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned
10 and operated by a person not primarily engaged in the generation or sale of electricity other than electric power
11 from a small power production facility and that is classified under 15-6-134 and 15-6-138.

12 (b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the
13 electrical generation facility to the existing network transmission system.

14 (c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.

15 (5) The department shall appraise exempt electrical generation facilities for each year that the property
16 is exempt and determine the taxable value of the property as if it were subject to property taxation. The taxable
17 value determined by the department must be included as taxable valuation for the purposes of county
18 classification under 7-1-2111."

19

20 **Section 6.** Section 75-20-104, MCA, is amended to read:

21 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions
22 apply:

23 (1) "Addition thereto" means the installation of new machinery and equipment that would significantly
24 change the conditions under which the facility is operated.

25 (2) "Application" means an application for a certificate submitted in accordance with this chapter and the
26 rules adopted under this chapter.

27 (3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,
28 diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the
29 delivery of the energy form or product produced by a facility.

30 (b) The term does not include a transmission substation, a switchyard, voltage support, or other control

1 equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

2 (4) "Biomass generation facilities" means any combination of boilers, generators, associated prime
 3 movers, and other associated property, including appurtenant land and improvements and personal property, that
 4 are normally operated together to produce electric power from the burning of organic material other than coal,
 5 petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas
 6 or other fuels allowed for ignition and to stabilize boiler operations.

7 ~~(4)~~(5) "Board" means the board of environmental review provided for in 2-15-3502.

8 ~~(5)~~(6) "Certificate" means the certificate of compliance issued by the department under this chapter that
 9 is required for the construction or operation of a facility.

10 ~~(6)~~(7) "Commence to construct" means:

11 (a) any clearing of land, excavation, construction, or other action that would affect the environment of
 12 the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility
 13 purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

14 (b) the fracturing of underground formations by any means if the activity is related to the possible future
 15 development of a gasification facility or a facility employing geothermal resources but does not include the
 16 gathering of geological data by boring of test holes or other underground exploration, investigation, or
 17 experimentation;

18 (c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or
 19 rights-of-way upon or over which a facility may be constructed;

20 (d) the relocation or upgrading of an existing facility defined by subsection ~~(8)~~(9)~~(a)~~ (a) or ~~(8)~~(9)~~(b)~~ (b),
 21 including upgrading to a design capacity covered by subsection ~~(8)~~(9)~~(a)~~ (a), except that the term does not
 22 include normal maintenance or repair of an existing facility.

23 ~~(7)~~(8) "Department" means the department of environmental quality provided for in 2-15-3501.

24 ~~(8)~~(9) "Facility" means:

25 (a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts,
 26 except that the term:

27 (i) does not include an electric transmission line and associated facilities of a design capacity of 230
 28 kilovolts or less and 10 miles or less in length;

29 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less
 30 than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or

1 options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property
2 along the centerline;

3 (iii) does not include an electric transmission line that is less than 150 miles in length and extends from
4 an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation
5 facility, ~~as defined in 15-6-157~~, to the point at which the transmission line connects to a regional transmission grid
6 at an existing transmission substation or other facility for which the person planning to construct the line has
7 obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively
8 own more than 75% of the property along the centerline;

9 (iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less
10 than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a
11 newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly
12 acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection
13 ~~(b)(a)(iv)~~ (9)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission
14 right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited
15 areas.

16 (v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

17 (b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter
18 and 50 miles in length, and associated facilities, except that the term does not include:

19 (A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural
20 crops or for drinking water; or

21 (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person
22 planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more
23 than 75% of the owners who collectively own more than 75% of the property along the centerline;

24 (ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter
25 and 30 miles in length, and associated facilities used to transport coal suspended in water;

26 (c) any use of geothermal resources, including the use of underground space in existence or to be
27 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived
28 power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by
29 the department and added to an existing plant; or

30 (d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts

1 of hydroelectric power or more or any addition thereto.

2 ~~(9)~~(10) "Person" means any individual, group, firm, partnership, corporation, limited liability company,
3 cooperative, association, government subdivision, government agency, local government, or other organization
4 or entity.

5 ~~(10)~~(11) "Sensitive areas" means government-designated areas that have been recognized for their
6 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national
7 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and
8 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national
9 parks, monuments, or historic sites.

10 ~~(11)~~(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly
11 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or
12 operation of a proposed transmission line.

13 ~~(12)~~(13) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions
14 including but not limited to:

- 15 (a) installing larger conductors;
- 16 (b) replacing insulators;
- 17 (c) replacing pole or tower structures; or
- 18 (d) changing structure spacing, design, or guying.

19 ~~(13)~~(14) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or
20 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

21 (15) "Wind generation facilities" means any combination of a physically connected wind turbine or
22 turbines, associated prime movers, and other associated property, including appurtenant land and improvements
23 and personal property, that are normally operated together to produce electric power from wind."

24
25 **Section 7.** Section 75-20-201, MCA, is amended to read:

26 **"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --**
27 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in
28 operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying
29 for and obtaining a certificate of compliance issued with respect to the facility by the department.

30 (2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained

1 except in conformity with the certificate and any terms, conditions, and modifications contained within the
2 certification.

3 (3) A certificate may only be issued pursuant to this chapter.

4 (4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation
5 to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters
6 in a statewide election called by initiative or referendum according to the laws of this state.

7 (5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant
8 to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this
9 chapter.

10 (6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all
11 facilities over which an agency of the federal government has jurisdiction.

12 (7) All judicial challenges of certificates for projects with a project cost, as determined by the court, of
13 more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the
14 court determines that the challenge was without merit or was for an improper purpose, such as to harass, to
15 cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees
16 and costs incurred in defending the action."

17

18 **Section 8.** Section 75-20-207, MCA, is amended to read:

19 **"75-20-207. Notice requirement for certain electric transmission lines.** Whenever a person plans
20 to construct an electric transmission line or associated facilities under the provisions of
21 75-20-104(8)(a)(ii)(9)(a)(ii), it must provide public notice to persons residing in the area in which any portion of
22 the electric transmission facility may be located and to the department. This notice must be made no less than
23 60 days prior to the commencement of acquisition of right-of-way by publication of a summary describing the
24 transmission facility and the proposed location of the facility in those newspapers that will substantially inform
25 those persons of the construction and by mailing a summary to the department. The notice must inform the
26 property owners of their rights under this chapter concerning the location of the facility and that more information
27 concerning their rights may be obtained from the department."

28

29 **Section 9.** Section 75-20-208, MCA, is amended to read:

30 **"75-20-208. Certain electric transmission lines -- verification of requirements.** (1) Prior to

1 constructing a transmission line under 75-20-104~~(8)(a)(ii)~~(9)(a)(ii), the person planning to construct the line shall
 2 provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless
 3 extended by the department for good cause:

4 (a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information
 5 to establish landowner consent to construct the line; and

6 (b) sufficient information for the department to verify that the requirements of 75-20-104~~(8)(a)(ii)~~(9)(a)(ii)
 7 are satisfied.

8 (2) The provisions of 75-20-104~~(8)(a)(ii)~~(9)(a)(ii) do not apply to any facility for which public notice under
 9 75-20-207 has been given but for which the requirements of subsection (1) of this section have not been complied
 10 with."
 11

12 **Section 10.** Section 75-20-211, MCA, is amended to read:

13 **"75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant shall
 14 file with the department an application for a certificate under this chapter and for the permits required under the
 15 laws administered by the department in the form that is required under applicable rules, containing the following
 16 information:

17 (i) a description of the proposed location and of the facility to be built;

18 (ii) a summary of any preexisting studies that have been made of the impact of the facility;

19 (iii) for facilities defined in 75-20-104~~(8)(a)~~(9)(a) and ~~(8)(b)~~ (9)(b), a statement explaining the need for the
 20 facility, a description of reasonable alternate locations for the facility, a general description of the comparative
 21 merits and detriments of each location submitted, and a statement of the reasons why the proposed location is
 22 best suited for the facility;

23 (iv) (A) for facilities as defined in 75-20-104~~(8)(a)~~(9)(a) and ~~(8)(b)~~ (9)(b), baseline data for the primary and
 24 reasonable alternate locations; or

25 (B) for facilities as defined in 75-20-104~~(8)(e)~~(9)(c), baseline data for the proposed location and, at the
 26 applicant's option, any alternative locations acceptable to the applicant for siting the facility;

27 (v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

28 (vi) other information that the applicant considers relevant or that the department by order or rule may
 29 require.

30 (b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the

1 copy or copies must be available for public inspection.

2 (2) An application may consist of an application for two or more facilities in combination that are
3 physically and directly attached to each other and are operationally a single operating entity.

4 (3) The copy of the application must be accompanied by a notice specifying the date on or about which
5 the application is to be filed.

6 (4) An application must also be accompanied by proof that public notice of the application was given to
7 persons residing in the county in which any portion of the proposed facility is proposed or is alternatively proposed
8 to be located, by publication of a summary of the application in those newspapers that will substantially inform
9 those persons of the application."

10

11 **Section 11.** Section 75-20-301, MCA, is amended to read:

12 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days after
13 issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104~~(8)(a)~~(9)(a) and ~~(8)(b)~~ (9)(b), the
14 department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the
15 department finds and determines:

16 (a) the basis of the need for the facility;

17 (b) the nature of the probable environmental impact;

18 (c) that the facility minimizes adverse environmental impact, considering the state of available technology
19 and the nature and economics of the various alternatives;

20 (d) in the case of an electric, gas, or liquid transmission line or aqueduct:

21 (i) what part, if any, of the line or aqueduct will be located underground;

22 (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility
23 systems serving the state and interconnected utility systems; and

24 (iii) that the facility will serve the interests of utility system economy and reliability;

25 (e) that the location of the facility as proposed conforms to applicable state and local laws and
26 regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied
27 to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of
28 factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected
29 government subdivisions;

30 (f) that the facility will serve the public interest, convenience, and necessity;

1 (g) that the department or board has issued any necessary air or water quality decision, opinion, order,
2 certification, or permit as required by 75-20-216(3); and

3 (h) that the use of public lands for location of the facility was evaluated and public lands were selected
4 whenever their use is as economically practicable as the use of private lands.

5 (2) In determining that the facility will serve the public interest, convenience, and necessity under
6 subsection (1)(f), the department shall consider:

7 (a) the items listed in subsections (1)(a) and (1)(b);

8 (b) the benefits to the applicant and the state resulting from the proposed facility;

9 (c) the effects of the economic activity resulting from the proposed facility;

10 (d) the effects of the proposed facility on the public health, welfare, and safety;

11 (e) any other factors that it considers relevant.

12 (3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in
13 75-20-104~~(8)(c)~~(9)(c), the department shall approve a facility as proposed or as modified or an alternative to a
14 proposed facility if the department finds and determines:

15 (a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant
16 environmental impacts; and

17 (b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary
18 terms, will not result in:

19 (i) a violation of a law or standard that protects the environment; or

20 (ii) a violation of a law or standard that protects the public health and safety.

21 (4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section,
22 it shall deny the certificate."

23

24 **Section 12.** Section 75-20-303, MCA, is amended to read:

25 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application
26 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

27 (2) If the department has found that any regional or local law or regulation that would be otherwise
28 applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

29 (3) A certificate issued by the department must include the following:

30 (a) an environmental evaluation statement related to the facility being certified. The statement must

1 include but is not limited to analysis of the following information:

2 (i) the environmental impact of the proposed facility; and

3 (ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

4 (b) a plan for monitoring environmental effects of the proposed facility;

5 (c) a plan for monitoring the certified facility site between the time of certification and completion of
6 construction;

7 (d) a time limit as provided in subsection (4); and

8 (e) a statement signed by the applicant showing agreement to comply with the requirements of this
9 chapter and the conditions of the certificate.

10 (4) (a) The department shall issue as part of the certificate the following time limits:

11 (i) For a facility as defined in ~~75-20-104(8)(a)~~9(a) that is more than 30 miles in length and for a facility
12 defined in ~~75-20-104(8)(b)~~9(b), construction must be completed within 10 years.

13 (ii) For a facility as defined in ~~75-20-104(8)(a)~~9(a) that is 30 miles or less in length, construction must
14 be completed within 5 years.

15 (iii) For a facility as defined in ~~75-20-104(8)(c)~~9(c), construction must begin within 6 years and continue
16 with due diligence in accordance with preliminary construction plans established in the certificate.

17 (b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of
18 the facility is not commenced within the time limits provided in this section.

19 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the
20 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and
21 (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or
22 federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

23 (d) Construction may begin immediately upon issuance of a certificate unless the department finds that
24 there is substantial and convincing evidence that a delay in the commencement of construction is necessary and
25 should be established for a particular facility."

26

27 **Section 13.** Section 75-20-304, MCA, is amended to read:

28 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive
29 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing
30 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the

1 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with
2 the provisions of 75-20-216 and this part.

3 (2) The department may waive compliance with any of the provisions of this chapter upon receipt of
4 notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as
5 a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there
6 exists an immediate need for construction of a new facility or associated facility or the relocation of a previously
7 existing facility or associated facility in order to promote the public welfare.

8 (3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and (2)(c)
9 and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration of alternative
10 sites if the applicant makes a clear and convincing showing to the department at a public hearing that:

11 (a) a proposed facility will be constructed in a county where a single employer within the county has
12 permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the
13 employer's operations within the preceding 10-year period;

14 (b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located
15 support by resolution the waiver;

16 (c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased
17 or been curtailed; and

18 (d) the proposed facility will have a beneficial effect on the economy of the county in which the facility
19 is proposed to be located.

20 (4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer.
21 The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but
22 not limited to construction jobs or job losses during labor disputes.

23 (5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum
24 adverse environmental impact for a facility defined in 75-20-104~~(8)(a)~~(9)(a) or ~~(8)(b)~~ (9)(b) or for an associated
25 facility defined in 75-20-104(3).

26 (6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request
27 under subsection (3). However, any payments made under this subsection must be credited toward the fee paid
28 under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the
29 department under subsection (3) can be used in making a certification decision under this chapter.

30 (7) The department may grant only one waiver under subsections (3) and (4) for each permanent loss

1 of jobs as defined in subsection (3)(a)."

2

3 **Section 14.** Section 75-20-1202, MCA, is amended to read:

4 **"75-20-1202. Definitions.** As used in 75-20-201, 75-20-203, and this part, the following definitions apply:

5 (1) "Facility", as defined in 75-20-104(~~θ~~), is further defined to include any nuclear facility as defined in
6 subsection (2)(a).

7 (2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

8 (i) generating 50 megawatts of electricity or more by means of nuclear fission;

9 (ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

10 (iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

11 (b) Nuclear facility does not include any small-scale facility used solely for educational, research, or
12 medical purposes not connected with the commercial generation of energy."

13

14 NEW SECTION. **Section 15. Effective date.** [This act] is effective July 1, 2011.

15

16 NEW SECTION. **Section 16. Applicability.** [This act] applies to tax years beginning after December
17 31, 2011.

18

- END -