

1 SENATE BILL NO. 253

2 INTRODUCED BY B. LAKE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING CERTAIN TAX CREDITS; REPEALING INDIVIDUAL
5 INCOME TAX AND CORPORATE LICENSE TAX CREDITS FOR UTILIZING LOCAL GOVERNMENT
6 EMPOWERMENT ZONES, THE CREDIT FOR USE OF AN ECONOMIC DEVELOPMENT LOAN, THE CREDIT
7 FOR ENERGY-CONSERVING INVESTMENTS AND EXPENDITURES, THE CREDIT FOR ALTERNATIVE FUEL
8 MOTOR VEHICLE CONVERSION, THE QUALIFIED ENDOWMENTS CREDIT, THE CREDIT FOR
9 PRESERVATION OF HISTORIC PROPERTY AND BUILDINGS, THE CREDIT FOR NEW OR EXPANDED
10 INDUSTRY, THE EMPOWERMENT ZONE NEW EMPLOYEES CREDIT, CREDITS FOR MOVIE, TELEVISION,
11 AND RELATED MEDIA PRODUCTION INCENTIVES, THE CREDIT FOR GEOTHERMAL SYSTEMS, THE
12 CREDIT FOR INSTALLING ALTERNATIVE ENERGY SYSTEMS, THE CREDITS FOR ALTERNATIVE ENERGY
13 GENERATION, THE CREDIT FOR MINERAL AND COAL EXPLORATION, THE CREDITS FOR THE
14 RECYCLING OF MATERIAL, THE CREDIT FOR OILSEED CRUSHING FACILITIES, THE CREDIT FOR
15 BIODIESEL OR BIOLUBRICANT PRODUCTION FACILITIES, THE CREDIT FOR BIODIESEL BLENDING AND
16 STORAGE FACILITIES, AND THE CREDIT FOR INVESTMENT IN CAPITAL COMPANIES; ~~REPEALING THE~~
17 ~~PUBLIC CONTRACTOR TAX CREDIT FOR PAYMENT OF INDIVIDUAL INCOME TAXES OR CORPORATE~~
18 ~~LICENSE TAXES~~; REPEALING LOCAL GOVERNMENT EMPOWERMENT ZONES; REPEALING THE
19 MONTANA CAPITAL COMPANY ACT; PROVIDING A TRANSITION FOR CREDITS THAT ARE SUBJECT TO
20 A CARRYFORWARD; AMENDING SECTIONS 15-31-125, 15-31-910, 15-32-104, 15-32-105, 15-32-106,
21 15-32-502, 17-6-302, 17-6-311, 17-6-312, 17-6-313, 17-7-502, 30-10-105, 32-1-422, 75-2-103, AND 75-5-103,
22 MCA; REPEALING SECTIONS 7-21-3701, 7-21-3702, 7-21-3703, 7-21-3704, 7-21-3710, 7-21-3715, 15-1-230,
23 15-30-2319, 15-30-2320, 15-30-2327, 15-30-2328, 15-30-2329, 15-30-2342, 15-30-2356, 15-31-124, 15-31-134,
24 15-31-137, 15-31-151, 15-31-161, 15-31-162, 15-31-901, 15-31-902, 15-31-903, 15-31-904, 15-31-905,
25 15-31-906, 15-31-907, 15-31-908, 15-31-911, 15-32-109, 15-32-115, 15-32-201, 15-32-202, 15-32-203,
26 15-32-401, 15-32-402, 15-32-404, 15-32-405, 15-32-406, 15-32-407, 15-32-501, 15-32-503, 15-32-504,
27 15-32-505, 15-32-506, 15-32-507, 15-32-508, 15-32-509, 15-32-601, 15-32-602, 15-32-603, 15-32-604,
28 15-32-609, 15-32-701, 15-32-702, 15-32-703, ~~15-50-207~~, 17-6-316, 33-2-724, 90-8-101, 90-8-102, 90-8-103,
29 90-8-104, 90-8-105, 90-8-106, 90-8-201, 90-8-202, 90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303,
30 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN APPLICABILITY

1 DATE."

2

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

4

5 **Section 1.** Section 15-31-125, MCA, is amended to read:

6 **"15-31-125. Determination of tax credit.** A new or expanding manufacturing corporation may receive
7 a license tax credit based on a percentage of wages paid its new employees hired within this state prior to [the
8 effective date of this act] for a period of 3 years as follows: the first 3 years of operation of a new corporation or
9 the first 3 years of expansion of an expanding corporation, a credit of 1% of the total new wages paid in this state,
10 as wages are defined in 39-51-201 ~~may be,~~ is allowed. In determining total wages for an expanding corporation,
11 only those wages paid in support of the expansion are considered in ascertaining the credit. The payroll and
12 number of jobs of the corporation in the 12-month period immediately preceding the expansion are averaged to
13 determine eligibility for the credit."

14

15 **Section 2.** Section 15-31-910, MCA, is amended to read:

16 **"15-31-910. (Temporary) Denial of claim for credit -- recapture.** ~~A taxpayer whose state-certified~~
17 ~~production has been revoked as provided in 15-31-904(5) may not claim the credits allowed under 15-31-907 and~~
18 ~~15-31-908.~~ If the department of commerce revokes the state certification of a production company after the
19 production company has taken a credit under 15-31-907 or 15-31-908 as those sections read prior to [the
20 effective date of this act], the production company shall refund the amount of any credits taken. The taxpayer is
21 subject to the penalty and interest provisions of this chapter. (Terminates January 1, 2015--sec. 17, Ch. 593, L.
22 2005; sec. 1, Ch. 186, L. 2009.)"

23

24 **Section 3.** Section 15-32-104, MCA, is amended to read:

25 **"15-32-104. Limitations on deduction ~~and credit.~~** Tax treatment under 15-32-103 ~~and 15-32-109~~ is
26 limited to persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel
27 extraction or conventional hydroelectric development."

28

29 **Section 4.** Section 15-32-105, MCA, is amended to read:

30 **"15-32-105. Application to new construction -- rules.** (1) It is the intent of the legislature that no

1 deduction ~~or credit~~ under this part be allowed for capital investment for an energy conservation practice in the
 2 new construction of a building if that capital investment would have been made under established standards of
 3 new construction. The department of revenue shall adopt rules to implement this legislative intent. ~~Such~~ The rules
 4 ~~shall~~ must be based on the best currently available methods of analysis, including those of the national bureau
 5 of standards, the department of housing and urban development, and other federal agencies and professional
 6 societies and materials developed by the department. Provisions ~~shall~~ must be made for an annual updating of
 7 rules and standards as required.

8 (2) The department may adopt rules to define standard components of conventional buildings and to
 9 establish other necessary elements of the definition of passive solar system consistent with the intent of
 10 15-32-102."

11
 12 **Section 5.** Section 15-32-106, MCA, is amended to read:
 13 **"15-32-106. Procedure for obtaining benefit of deduction or credit.** ~~The department of revenue shall~~
 14 ~~provide forms on which a taxpayer may apply for a tax credit under 15-32-109.~~ The department of revenue shall
 15 approve a deduction ~~or credit~~ under 15-32-103 ~~or 15-32-109~~ that demonstrably promotes energy conservation
 16 or uses a recognized nonfossil form of energy generation. The department of revenue may refer a deduction ~~or~~
 17 ~~credit~~ involving energy generation to the department of environmental quality for its advice, and the department
 18 of environmental quality shall respond within 60 days. The department of revenue may refer a deduction ~~or credit~~
 19 involving energy conservation to the department of labor and industry for its advice, and the department of labor
 20 and industry shall respond within 60 days. The department of revenue may deny a deduction ~~or credit~~ that it finds
 21 to be impractical or ineffective."

22
 23 **Section 6.** Section 15-32-502, MCA, is amended to read:
 24 **"15-32-502. Definitions.** For purposes of this part, the following definitions apply:
 25 (1) (a) "Certified expenditures" means those costs incurred for activities in direct support of exploration
 26 activity conducted at a specific exploration site for the purpose of determining the existence, location, extent, or
 27 quality of a mineral or coal deposit. The term includes:
 28 (i) the costs of obtaining the approvals, permits, licenses, and certificates for an exploration activity
 29 ~~referred to in 15-32-503;~~
 30 (ii) direct labor costs and the cost of benefits for employees directly associated with ~~work described in~~

1 ~~15-32-503~~ exploration activities;

2 (iii) the cost of renting or leasing equipment from parties not affiliated with the person requesting and
3 taking the credit;

4 (iv) the reasonable costs of owning, maintaining, and operating equipment;

5 (v) insurance and bond premiums associated with the activities set out in subsections (1)(a)(i) through
6 (1)(a)(vii);

7 (vi) payments to consultants and independent contractors; or

8 (vii) the general expense of operating the person's business, including the costs of materials and
9 supplies, if those expenses and costs are directly attributable to ~~the work described in 15-32-503~~ exploration
10 activities.

11 (b) The term does not include return on investment, insurance or bond premiums not covered under
12 subsection (1)(a)(v), or any other expense that the person has not incurred to complete ~~work described in~~
13 ~~15-32-503~~ exploration activities.

14 (2) "Exploration activities" means activities that are performed on land in the state for the purpose of
15 determining the existence, location, extent, or quality of a mineral or coal deposit, regardless of land ownership,
16 including:

17 (a) surveying by geophysical or geochemical methods;

18 (b) drilling exploration holes;

19 (c) conducting underground exploration;

20 (d) surface trenching and bulk sampling; and

21 (e) performing other exploratory work, including taking aerial photographs, geological and geophysical
22 logging, sample analysis, and metallurgical testing.

23 ~~(2) "Credit" means the exploration incentive credit for activities involving mineral and coal deposits~~
24 ~~authorized by this part.~~

25 ~~———(3) "Exploration activity data list" means, as applicable, a summary of work completed during the year~~
26 ~~that includes but is not limited to:~~

27 ~~———(a) the number of core or rotary drilling holes completed;~~

28 ~~———(b) chemical analytical data available; or~~

29 ~~———(c) aerial photographs or a topographic or geologic map showing the location of the drill holes, sample~~
30 ~~locations, or the other exploration activities undertaken.~~

1 ~~———— (4) "Geochemical methods" means geochemical data gathering methods, including the collection of soil,~~
 2 ~~rock, water, air, vegetation, and similar samples and their chemical analyses.~~

3 ~~———— (5) "Geophysical methods" means all geophysical data gathering methods used in mineral or coal~~
 4 ~~exploration, including seismic, gravity, magnetic, radiometric, radar, and electromagnetic and other remote~~
 5 ~~sensing measurements.~~

6 ~~(6)(3)~~ "Mineral" means those substances defined as minerals by 82-4-303 and coal as defined by
 7 82-1-111.

8 ~~(7) (a) "Mining operation" includes all operating and nonoperating activities related to a mineral deposit~~
 9 ~~interest and may be composed of one or more mining properties.~~

10 ~~———— (b) In determining whether mining properties are part of the same mining operation, the department may~~
 11 ~~consider whether the operation, in conducting mining activities on several mining properties, uses common~~
 12 ~~personnel, supply and maintenance facilities, mining-related treatment processes, storage facilities, roads,~~
 13 ~~pipelines, transportation equipment, and mining techniques and technology and may also consider the extent to~~
 14 ~~which the mineral deposit interest comprises a common mining property.~~

15 ~~———— (8) "Person" means a sole proprietorship, corporation, partnership, small business corporation as defined~~
 16 ~~in 15-30-3301, or limited liability company as defined in 35-8-102.~~

17 ~~———— (9) "Tax year" means the calendar year."~~

18

19 **Section 7.** Section 17-6-302, MCA, is amended to read:

20 **"17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following
 21 definitions apply:

22 (1) "Board" means the board of investments created in 2-15-1808.

23 ~~(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.~~

24 ~~(3)(2)~~ (2) "Clean and healthful environment" means an environment that is relatively free from pollution that
 25 threatens human health, including as a minimum, compliance with federal and state environmental and health
 26 standards.

27 ~~(4)(3)~~ (3) "Department" means the department of commerce provided for in 2-15-1801.

28 ~~(5)(4)~~ (4) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership
 29 interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal
 30 occupation is as an employee, officer, or partner of the enterprise.

1 ~~(6)~~(5) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings
2 and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

3 ~~(7)~~(6) "Intermediary loan" means a loan provided to a local economic development organization with a
4 revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development
5 loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but
6 not limited to programs from the economic development administration of the U.S. department of commerce and
7 the community development financial institution program from the U.S. department of the treasury.

8 ~~(8)~~(7) "Loan participation" means loans or portions of loans bought from a financial institution and does
9 not include the purchase of debentures issued by a capital company.

10 ~~(9)~~(8) "Local economic development organization" means:

11 (a) (i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation
12 under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

13 (ii) an entity certified by the department under 90-1-116; or

14 (iii) an entity established by a local government; and

15 (b) an entity actively engaged in economic development and business assistance work in the area.

16 ~~(10)~~(9) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or
17 other ownership interests is owned and controlled by residents of Montana.

18 ~~(11)~~(10) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana
19 economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana
20 tax revenue in the future to the people of Montana, either directly or indirectly.

21 ~~(12)~~(11) "Montana economy" means any business activities in the state of Montana, including those that
22 continue existing jobs or create new jobs in Montana.

23 ~~(13)~~(12) "Service fees" means the fees normally charged by a financial institution for servicing a loan,
24 including amounts charged for collecting payments and remitting amounts to the fund."

25

26 **Section 8.** Section 17-6-311, MCA, is amended to read:

27 "**17-6-311. Limitation on size of investments.** (1) Except as provided in subsection (2) and this
28 subsection, an investment may not be made that will result in any one business enterprise or person receiving
29 a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of
30 which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise

1 or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred
 2 for the project or enterprise for the coal tax investment that was made to the business enterprise or person must
 3 be held by a commercial lender. This subsection does not:

- 4 (a) apply to a loan made pursuant to 17-6-317;
- 5 (b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2);
- 6 ~~_____ (c) apply to the purchase of debentures issued by a capital company. However, the total amount of~~
 7 ~~debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time~~
 8 ~~of purchase.~~

9 (2) The total amount of loans made pursuant to 17-6-309(2) may not exceed \$80 million, the total amount
 10 of loans made pursuant to 17-6-317 may not exceed \$70 million, and a single loan may not be less than
 11 \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed \$16,666 for each job that is
 12 estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

- 13 (a) the estimated number of jobs to be created by the project within a 4-year period from the time that
 14 the loan is made and the impact of the jobs on the state and the community where the project will be located;
- 15 (b) the long-term effect of corporate and personal income taxes estimated to be paid by the business
 16 and its employees;
- 17 (c) the current and projected ability of the community to provide necessary infrastructure for economic
 18 and community development purposes;
- 19 (d) the amount of increased salaries, wages, and business incomes of existing jobholders and
 20 businesses; and
- 21 (e) other matters that the board considers necessary."

22
 23 **Section 9.** Section 17-6-312, MCA, is amended to read:

24 "**17-6-312. State participation in loans.** (1) Subject to 17-6-311, state participation in any loan to a
 25 business enterprise, except for a loan made pursuant to 17-6-317 or guaranteed by a federal agency, must be
 26 limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion
 27 as the loan participation amount.

28 ~~(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject~~
 29 ~~to subsection (1).~~

30 ~~(3)~~(2) State participation in loans to nonprofit corporations may qualify for the job credit interest rate

1 reductions under 17-6-318 if the interest rate reduction passes through to a for-profit business creating the jobs."

2

3 **Section 10.** Section 17-6-313, MCA, is amended to read:

4 **"17-6-313. Prior commitment of funds.** The board may authorize the commitment of funds to financial
5 institutions ~~and capital companies~~ pursuant to rules adopted by the board, but the determination as to credit with
6 respect to individual investments must be made by the financial institution and the board ~~or the capital company~~
7 ~~and the board.~~"

8

9 **Section 11.** Section 17-7-502, MCA, is amended to read:

10 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
11 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
12 need for a biennial legislative appropriation or budget amendment.

13 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
14 of the following provisions:

15 (a) The law containing the statutory authority must be listed in subsection (3).

16 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
17 appropriation is made as provided in this section.

18 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
19 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;
20 10-3-314; 10-4-301; 15-1-121; 15-1-218; ~~15-31-906~~; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
21 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;
22 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
23 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306;
24 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101;
25 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;
26 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103;
27 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

28 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
29 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
30 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana

1 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 2 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 3 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 4 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is
 5 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.
 6 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; ~~pursuant to sec. 17, Ch. 593, L. 2005, and~~
 7 ~~sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015;~~ pursuant to sec. 73, Ch. 44, L.
 8 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the
 9 supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113
 10 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30,
 11 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

12

13 **Section 12.** Section 30-10-105, MCA, is amended to read:

14 **"30-10-105. Exempt transactions -- rulemaking.** Except as expressly provided in this section,
 15 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

16 (1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is
 17 presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

18 (2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to
 19 30-10-201 if:

20 (i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any
 21 warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system
 22 operated by the national association of securities dealers, inc., or by any other quotation system approved by the
 23 commissioner by rule; or

24 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there has not been a
 25 default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors
 26 have been in existence for less than 3 years and there has not been a default in the payment of principal, interest,
 27 or dividends on the security.

28 (b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with
 29 respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered
 30 broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15

1 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not
2 ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If
3 a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested
4 persons, may modify or vacate the order or extend it until final determination. An order under this subsection may
5 not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by
6 reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the
7 burden of proof that the person did not know and in the exercise of reasonable care could not have known of the
8 order.

9 (3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited
10 order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form
11 that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a
12 specified period;

13 (4) a transaction between the issuer or other person on whose behalf the offering is made and an
14 underwriter or between underwriters;

15 (5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian,
16 or conservator in the performance of official duties;

17 (6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of
18 this chapter;

19 (7) an offer or sale to a bank, savings institution, trust company, insurance company, investment
20 company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial
21 institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary
22 capacity;

23 (8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10
24 persons, ~~other than those designated in subsection (7)}~~ during any period of 12 consecutive months, if:

25 (i) the seller reasonably believes that all the buyers are purchasing for investment; and

26 (ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective
27 buyer. However, a commission may be paid to a registered broker-dealer if the securities involved are registered
28 with the United States securities and exchange commission under the federal Securities Act of 1933, as
29 amended.

30 (b) a transaction pursuant to an offer made in this state directed by the offeror to not more than 25

1 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

2 (i) the seller reasonably believes that all the buyers are purchasing for investment;

3 (ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective
4 buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered
5 with the United States securities and exchange commission under the federal Securities Act of 1933, as
6 amended; and

7 (iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers
8 in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny
9 an application.

10 (c) a transaction pursuant to an offer made in this state by an offeror that is used in conjunction with the
11 exemption found in subsection (8)(a) and the offeror has applied to the commissioner to use the exemption found
12 in subsection (8)(b) in conjunction with or in addition to the exemption in subsection (8)(a), which the
13 commissioner may allow if:

14 (i) the offeror has its corporate headquarters or principal place of business in this state;

15 (ii) the seller reasonably believes that all the buyers are purchasing for investment;

16 (iii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a
17 prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved
18 are registered with the United States securities and exchange commission under the federal Securities Act of
19 1933, as amended; and

20 (iv) the offeror applies for and obtains the written approval of the commissioner prior to making any offers
21 in addition to the offers made pursuant to subsection (8)(a) and pays a filing fee that must accompany the
22 application for approval. The commissioner may deny the application.

23 (d) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this
24 state, whether or not the offeror or any of the offerees are then present in this state, if the offer either originates
25 from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any
26 post office in this state in the case of a mailed offer).

27 (9) an offer or sale of a preorganization certificate or subscription if:

28 (a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a
29 prospective subscriber;

30 (b) the number of subscribers does not exceed 25; and

- 1 (c) a payment is not made by a subscriber;
- 2 (10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who
3 at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable
4 warrants exercisable within not more than 90 days of their issuance, if:
- 5 (a) a commission or other remuneration, ~~{other than a standby commission}~~, is not paid or given directly
6 or indirectly for soliciting any security holder in this state; or
- 7 (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order
8 disallow either subsection (10)(a) or the notice specifying the terms of the offer;
- 9 (11) an offer, but not a sale, of a security for which registration statements have been filed under both
10 parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation
11 order is not in effect and a public proceeding or examination looking toward an order is not pending under either
12 law;
- 13 (12) an offer, but not a sale, of a security for which a registration statement has been filed under parts
14 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;
- 15 (13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer
16 of the security or not, if nothing of value is given by security holders for the distribution other than the surrender
17 of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;
- 18 (14) a transaction incident to a right of conversion, a statutory or judicially approved reclassification, or
19 a recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or
20 sale of assets;
- 21 (15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of
22 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any
23 transactional exemptions adopted by rule.
- 24 ~~(16) a transaction in the securities of a certified Montana capital company or a certified Montana small
25 business investment capital company, as defined in 90-8-104, if the company first files all disclosure documents,
26 along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for
27 the filing.~~
- 28 ~~(17)~~(16) the sale of a commodity investment contract traded on a commodities exchange recognized by
29 the commissioner at the time of sale;
- 30 ~~(18)~~(17) a transaction within the exclusive jurisdiction of the commodity futures trading commission as

1 granted under the Commodity Exchange Act;

2 ~~(19)~~(18) a transaction that:

3 (a) involves the purchase of one or more precious metals;

4 (b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds
5 of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the
6 purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the
7 quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is
8 delivered into the possession of a depository, other than the seller, that:

9 (i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under
10 or supervised pursuant to the laws of the United States or of this state;

11 (B) is a depository the warehouse receipts of which are recognized for delivery purposes for any
12 commodity on a contract market designated by the commodity futures trading commission; or

13 (C) is a storage facility licensed by the United States or any agency of the United States; and

14 (ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument
15 evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue
16 to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

17 (A) liens of the purchaser;

18 (B) tax liens;

19 (C) liens agreed to by the purchaser; or

20 (D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

21 (c) requires the quantity of precious metals purchased and delivered into the possession of a depository,
22 as provided in subsection ~~(19)(b)~~ (18)(b), to be physically located within Montana at all times after the 7-day
23 delivery period provided in subsection ~~(19)(b)~~ (18)(b), and the precious metals are in fact physically located within
24 Montana at all times after that delivery period;

25 ~~(20)~~(19) a transaction involving a commodity investment contract solely between persons engaged in
26 producing, processing, using commercially, or handling as merchants each commodity subject to the contract
27 or any byproduct of the commodity;

28 ~~(24)~~(20) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock
29 ownership plan qualified under section 401 of the Internal Revenue Code; or

30 ~~(22)~~(21) (a) an offer or sale of securities by a cooperative association organized under the provisions of

1 Title 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of
 2 Title 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase
 3 of the securities is necessary or incidental to establishing membership in the cooperative association;

4 (b) a cooperative organized under the laws of another state may not take advantage of the exemption
 5 created by this subsection ~~(22)~~ (21) unless, not less than 10 days before the issuance or delivery of the securities,
 6 the cooperative has furnished the commissioner with a general written description of the transaction and any
 7 other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules
 8 establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for
 9 the purposes of this subsection ~~(22)~~ (21)."

10

11 **Section 13.** Section 32-1-422, MCA, is amended to read:

12 **"32-1-422. Restriction on investment in corporate stock -- rulemaking authority.** (1) Except as
 13 provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or
 14 surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital
 15 stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the
 16 bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss
 17 must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim
 18 of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the
 19 bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an
 20 investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this
 21 section shall forfeit to the state twice the nominal amount of the stock.

22 (2) A bank may acquire and hold for its own account:

23 (a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely
 24 for the purpose of providing services to banks;

25 (b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount;

26 and

27 ~~(c) shares of stock in a Montana capital company or a Montana small business investment capital~~
 28 ~~company within limits prescribed by the Montana Capital Company Act; and~~

29 ~~(d)~~(c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which
 30 are limited to those allowed by law for a bank.

1 (3) A bank may invest any amount up to the limit established by the department of its unimpaired capital
2 and surplus in shares of stock of:

3 (a) the federal national mortgage association;

4 (b) the federal home loan mortgage corporation;

5 (c) the federal agricultural mortgage corporation; and

6 (d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health,
7 transit, educational, environmental, or similar needs of the nation when the department determines that the
8 investment is in the public interest.

9 (4) A bank may, upon written application and approval of the department, make an investment in an
10 amount permitted by the department by rule so long as the investment serves primarily to promote the public
11 welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing,
12 and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined
13 in 35-1-113, that makes investments for similar public welfare purposes.

14 (5) The department shall adopt rules to implement this section. The rules pertaining to the investments
15 allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided
16 for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller
17 of the currency."

18

19 **Section 14.** Section 75-2-103, MCA, is amended to read:

20 **"75-2-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
21 apply:

22 (1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

23 (2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous
24 substances, or any combination thereof.

25 (3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere,
26 including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42
27 U.S.C. 7401, et seq.

28 (4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend
29 to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere
30 with the enjoyment of life, property, or the conduct of business.

- 1 (5) "Associated supporting infrastructure" means:
2 (a) electric transmission and distribution facilities;
3 (b) pipeline facilities;
4 (c) aboveground ponds and reservoirs and underground storage reservoirs;
5 (d) rail transportation;
6 (e) aqueducts and diversion dams;
7 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy
8 development project; or
9 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development
10 project.
- 11 (6) "Board" means the board of environmental review provided for in 2-15-3502.
- 12 (7) (a) "Commercial hazardous waste incinerator" means:
13 (i) an incinerator that burns hazardous waste; or
14 (ii) a boiler or industrial furnace subject to the provisions of 75-10-406.
15 (b) Commercial hazardous waste incinerator does not include a research and development facility that
16 receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste
17 treatment remediation technologies.
- 18 (8) "Department" means the department of environmental quality provided for in 2-15-3501.
- 19 (9) "Emission" means a release into the outdoor atmosphere of air contaminants.
- 20 (10) (a) "Energy development project" means each plant, unit, or other development and associated
21 developments, including any associated supporting infrastructure, designed for or capable of:
22 (i) generating electricity;
23 (ii) producing gas derived from coal;
24 (iii) producing liquid hydrocarbon products;
25 (iv) refining crude oil or natural gas;
26 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive
27 pursuant to Title 15, chapter 70, part 5; or
28 ~~(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant~~
29 ~~to 15-32-701; or~~
30 ~~(vii)~~(vi) transmitting electricity through an electric transmission line with a design capacity of equal to or

1 greater than 50 kilovolts.

2 (b) The term does not include a nuclear facility as defined in 75-20-1202.

3 (11) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant
4 to Title 75, chapter 2, 5, 10, or 11.

5 (12) "Hazardous waste" means:

6 (a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department
7 administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

8 (b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

9 (13) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible
10 material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of
11 removal, destruction, disposal, or volume reduction of any portion of the input material.

12 (b) Incinerator does not include:

13 (i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as
14 refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

15 (ii) space heaters that burn used oil;

16 (iii) wood-fired boilers; or

17 (iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

18 (14) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of
19 human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals.

20 The term includes:

21 (a) cultures and stocks of infectious agents;

22 (b) human pathological wastes;

23 (c) waste human blood or products of human blood;

24 (d) sharps;

25 (e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed
26 to infectious agents during research;

27 (f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

28 (g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions
29 from humans or animals.

30 (15) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

1 (i) equipment associated with the well and used for the purpose of producing, treating, separating, or
2 storing oil, natural gas, or other liquids produced by the well; and

3 (ii) a group of wells under common ownership or control that produce oil or natural gas and that share
4 common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other
5 liquids produced by the wells.

6 (b) The equipment referred to in subsection (15)(a) includes but is not limited to wellhead assemblies,
7 amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting
8 tubing.

9 (c) The term does not include equipment such as compressor engines used for transmission of oil or
10 natural gas.

11 (16) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private
12 corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal
13 government or an agency of the federal government, or any other legal entity and includes persons resident in
14 Canada.

15 (17) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer,
16 parent corporation, or subsidiary corporation.

17 (18) "Small business stationary source" means a stationary source that:

18 (a) is owned or operated by a person who employs 100 or fewer individuals;

19 (b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

20 (c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C.
21 7661, et seq.;

22 (d) emits less than 50 tons per year of an air pollutant;

23 (e) emits less than a total of 75 tons per year of all air pollutants combined; and

24 (f) is not excluded from this definition under 75-2-108(3).

25 (19) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous
26 wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial
27 wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution
28 control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal
29 droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof;
30 wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt

1 shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or
2 petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

3 (b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes
4 regulated under the mining and reclamation laws administered by the department of environmental quality, or
5 slash and forest debris regulated under laws administered by the department of natural resources and
6 conservation."

7

8 **Section 15.** Section 75-5-103, MCA, is amended to read:

9 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following
10 definitions apply:

11 (1) "Associated supporting infrastructure" means:

12 (a) electric transmission and distribution facilities;

13 (b) pipeline facilities;

14 (c) aboveground ponds and reservoirs and underground storage reservoirs;

15 (d) rail transportation;

16 (e) aqueducts and diversion dams;

17 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy
18 development project; or

19 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development
20 project.

21 (2) (a) "Base numeric nutrient standards" means numeric water quality standards for nutrients in surface
22 water that are adopted to protect the designated uses of a surface water body.

23 (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that
24 are adopted to protect human health.

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

26 (4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or
27 other wastes, creating a hazard to human health.

28 (5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

29 (6) (a) "Currently available data" means data that is readily available to the department at the time a
30 decision is made, including information supporting its previous lists of water bodies that are threatened or

1 impaired.

2 (b) The term does not mean new data to be obtained as a result of department efforts.

3 (7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a
4 parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant
5 to 75-5-301(5)(c).

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

7 (9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes
8 sewage systems and treatment works.

9 (10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
10 chemical, physical, biological, and other constituents that are discharged into state waters.

11 (11) (a) "Energy development project" means each plant, unit, or other development and associated
12 developments, including any associated supporting infrastructure, designed for or capable of:

13 (i) generating electricity;

14 (ii) producing gas derived from coal;

15 (iii) producing liquid hydrocarbon products;

16 (iv) refining crude oil or natural gas;

17 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive
18 pursuant to Title 15, chapter 70, part 5; or

19 ~~(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant~~
20 ~~to 15-32-701; or~~

21 ~~(vii)~~(vi) transmitting electricity through an electric transmission line with a design capacity of equal to or
22 greater than 50 kilovolts.

23 (b) The term does not include a nuclear facility as defined in 75-20-1202.

24 (12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether
25 or not those uses are included in the water quality standards.

26 (13) "High-quality waters" means all state waters, except:

27 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
28 the board's classification rules; and

29 (b) surface waters that:

30 (i) are not capable of supporting any one of the designated uses for their classification; or

1 (ii) have zero flow or surface expression for more than 270 days during most years.

2 (14) "Impaired water body" means a water body or stream segment for which sufficient credible data
3 shows that the water body or stream segment is failing to achieve compliance with applicable water quality
4 standards.

5 (15) "Industrial waste" means a waste substance from the process of business or industry or from the
6 development of any natural resource, together with any sewage that may be present.

7 (16) "Interested person" means a person who has a real property interest, a water right, or an economic
8 interest that is or may be directly and adversely affected by the department's preliminary decision regarding
9 degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization
10 to degrade high-quality waters.

11 (17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one
12 of its existing or future nonpoint sources or to natural background sources.

13 (18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation
14 of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum
15 change that can occur from the best practicable condition in a surface water without causing a violation of the
16 surface water quality standards.

17 (19) "Local department of health" means the staff, including health officers, employed by a county, city,
18 city-county, or district board of health.

19 (20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium,
20 cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

21 (21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by
22 the department where water quality standards may be exceeded, subject to conditions that are imposed by the
23 department and that are consistent with the rules adopted by the board.

24 (22) "Nutrient work group" means an advisory work group, convened by the department, representing
25 publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested
26 parties that will advise the department on the base numeric nutrient standards, the development of temporary
27 nutrient criteria, and the implementation of those standards and criteria together with associated economic
28 impacts.

29 (23) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,
30 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded

1 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

2 (24) "Outstanding resource waters" means:

3 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
4 national wilderness areas as of October 1, 1995; or

5 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and
6 approved by the legislature.

7 (25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point
8 source.

9 (26) "Parameter" means a physical, biological, or chemical property of state water when a value of that
10 property affects the quality of the state water.

11 (27) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
12 partnership, individual, or other entity and includes persons resident in Canada.

13 (28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to
14 any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating
15 craft, from which pollutants are or may be discharged.

16 (29) (a) "Pollution" means:

17 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters that
18 exceeds that permitted by Montana water quality standards, including but not limited to standards relating to
19 change in temperature, taste, color, turbidity, or odor; or

20 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
21 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
22 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

23 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
24 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed
25 by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this
26 chapter.

27 (30) "Sewage" means water-carried waste products from residences, public buildings, institutions, or
28 other buildings, including discharge from human beings or animals, together with ground water infiltration and
29 surface water present.

30 (31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other

1 wastes to an ultimate disposal point.

2 (32) "Standard of performance" means a standard adopted by the board for the control of the discharge
3 of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best
4 available demonstrated control technology, processes, operating methods, or other alternatives, including, when
5 practicable, a standard permitting no discharge of pollutants.

6 (33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or
7 underground.

8 (b) The term does not apply to:

9 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

10 (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation
11 or land application disposal system and the waters are not returned to state waters.

12 (34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
13 combination with narrative information, that supports a finding as to whether a water body is achieving compliance
14 with applicable water quality standards.

15 (35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a
16 determination that the base numeric nutrient standards cannot be achieved by a particular point source
17 discharger due to economic impacts or the limits of technology.

18 (36) "Threatened water body" means a water body or stream segment for which sufficient credible data
19 and calculated increases in loads show that the water body or stream segment is fully supporting its designated
20 uses but threatened for a particular designated use because of:

21 (a) proposed sources that are not subject to pollution prevention or control actions required by a
22 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

23 (b) documented adverse pollution trends.

24 (37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for
25 point sources and load allocations for both nonpoint sources and natural background sources established at a
26 level necessary to achieve compliance with applicable surface water quality standards.

27 (38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage,
28 industrial wastes, or other wastes.

29 (39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated
30 to one of its existing or future point sources.

1 (40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures,
2 or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve
3 the quality of state waters. Water quality protection practices include but are not limited to treatment requirements,
4 standards of performance, effluent standards, and operating procedures and practices to control site runoff,
5 spillage or leaks, sludge or water disposal, or drainage from material storage.

6 (41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
7 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

8 (42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory
9 capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development
10 of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in
11 an advisory capacity as provided in 75-5-704.

12 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires
13 otherwise, in this chapter, the following definitions apply:

14 (1) "Associated supporting infrastructure" means:

15 (a) electric transmission and distribution facilities;

16 (b) pipeline facilities;

17 (c) aboveground ponds and reservoirs and underground storage reservoirs;

18 (d) rail transportation;

19 (e) aqueducts and diversion dams;

20 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy
21 development project; or

22 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development
23 project.

24 (2) (a) "Base numeric nutrient standards" means numeric water quality standards for nutrients in surface
25 water that are adopted to protect the designated uses of a surface water body.

26 (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that
27 are adopted to protect human health.

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

29 (4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or
30 other wastes, creating a hazard to human health.

- 1 (5) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- 2 (6) (a) "Currently available data" means data that is readily available to the department at the time a
3 decision is made, including information supporting its previous lists of water bodies that are threatened or
4 impaired.
- 5 (b) The term does not mean new data to be obtained as a result of department efforts.
- 6 (7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a
7 parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant
8 to 75-5-301(5)(c).
- 9 (8) "Department" means the department of environmental quality provided for in 2-15-3501.
- 10 (9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes
11 sewage systems and treatment works.
- 12 (10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
13 chemical, physical, biological, and other constituents that are discharged into state waters.
- 14 (11) (a) "Energy development project" means each plant, unit, or other development and associated
15 developments, including any associated supporting infrastructure, designed for or capable of:
- 16 (i) generating electricity;
- 17 (ii) producing gas derived from coal;
- 18 (iii) producing liquid hydrocarbon products;
- 19 (iv) refining crude oil or natural gas;
- 20 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive
21 pursuant to Title 15, chapter 70, part 5; or
- 22 ~~(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant~~
23 ~~to 15-32-701; or~~
- 24 ~~(vii)~~(vi) transmitting electricity through an electric transmission line with a design capacity of equal to or
25 greater than 50 kilovolts.
- 26 (b) The term does not include a nuclear facility as defined in 75-20-1202.
- 27 (12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether
28 or not those uses are included in the water quality standards.
- 29 (13) "High-quality waters" means all state waters, except:
- 30 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by

1 the board's classification rules; and

2 (b) surface waters that:

3 (i) are not capable of supporting any one of the designated uses for their classification; or

4 (ii) have zero flow or surface expression for more than 270 days during most years.

5 (14) "Impaired water body" means a water body or stream segment for which sufficient credible data
6 shows that the water body or stream segment is failing to achieve compliance with applicable water quality
7 standards.

8 (15) "Industrial waste" means a waste substance from the process of business or industry or from the
9 development of any natural resource, together with any sewage that may be present.

10 (16) "Interested person" means a person who has a real property interest, a water right, or an economic
11 interest that is or may be directly and adversely affected by the department's preliminary decision regarding
12 degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization
13 to degrade high-quality waters.

14 (17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one
15 of its existing or future nonpoint sources or to natural background sources.

16 (18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation
17 of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum
18 change that can occur from the best practicable condition in a surface water without causing a violation of the
19 surface water quality standards.

20 (19) "Local department of health" means the staff, including health officers, employed by a county, city,
21 city-county, or district board of health.

22 (20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium,
23 cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

24 (21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by
25 the department where water quality standards may be exceeded, subject to conditions that are imposed by the
26 department and that are consistent with the rules adopted by the board.

27 (22) "Nutrient work group" means an advisory work group, convened by the department, representing
28 publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested
29 parties that will advise the department on the base numeric nutrient standards, the development of temporary
30 nutrient criteria, and the implementation of those standards and criteria together with associated economic

1 impacts.

2 (23) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,
3 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded
4 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

5 (24) "Outstanding resource waters" means:

6 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
7 national wilderness areas as of October 1, 1995; or

8 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and
9 approved by the legislature.

10 (25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point
11 source.

12 (26) "Parameter" means a physical, biological, or chemical property of state water when a value of that
13 property affects the quality of the state water.

14 (27) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
15 partnership, individual, or other entity and includes persons resident in Canada.

16 (28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to
17 any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating
18 craft, from which pollutants are or may be discharged.

19 (29) (a) "Pollution" means:

20 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters that
21 exceeds that permitted by Montana water quality standards, including but not limited to standards relating to
22 change in temperature, taste, color, turbidity, or odor; or

23 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
24 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
25 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

26 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
27 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed
28 by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this
29 chapter.

30 (c) Contamination of ground water within the boundaries of a geologic storage reservoir, as defined in

1 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11,
2 part 1, is not pollution and does not require a mixing zone.

3 (30) "Sewage" means water-carried waste products from residences, public buildings, institutions, or
4 other buildings, including discharge from human beings or animals, together with ground water infiltration and
5 surface water present.

6 (31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other
7 wastes to an ultimate disposal point.

8 (32) "Standard of performance" means a standard adopted by the board for the control of the discharge
9 of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best
10 available demonstrated control technology, processes, operating methods, or other alternatives, including, when
11 practicable, a standard permitting no discharge of pollutants.

12 (33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or
13 underground.

14 (b) The term does not apply to:

15 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

16 (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation
17 or land application disposal system and the waters are not returned to state waters.

18 (34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
19 combination with narrative information, that supports a finding as to whether a water body is achieving compliance
20 with applicable water quality standards.

21 (35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a
22 determination that the base numeric nutrient standards cannot be achieved by a particular point source
23 discharger due to economic impacts or the limits of technology.

24 (36) "Threatened water body" means a water body or stream segment for which sufficient credible data
25 and calculated increases in loads show that the water body or stream segment is fully supporting its designated
26 uses but threatened for a particular designated use because of:

27 (a) proposed sources that are not subject to pollution prevention or control actions required by a
28 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

29 (b) documented adverse pollution trends.

30 (37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for

1 point sources and load allocations for both nonpoint sources and natural background sources established at a
2 level necessary to achieve compliance with applicable surface water quality standards.

3 (38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage,
4 industrial wastes, or other wastes.

5 (39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated
6 to one of its existing or future point sources.

7 (40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures,
8 or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve
9 the quality of state waters. Water quality protection practices include but are not limited to treatment requirements,
10 standards of performance, effluent standards, and operating procedures and practices to control site runoff,
11 spillage or leaks, sludge or water disposal, or drainage from material storage.

12 (41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
13 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

14 (42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory
15 capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development
16 of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in
17 an advisory capacity as provided in 75-5-704."

18
19 **NEW SECTION. Section 16. Transition -- carryover of credits.** A credit allowed a taxpayer prior to
20 [the effective date of this act] under the provisions of 15-31-151, 15-31-907, 15-32-202, 15-32-404, 15-32-506,
21 15-32-507, 15-32-508, 15-32-509, 15-32-701, 15-32-702, 15-32-703, 17-6-316, or 33-2-724 that may be carried
22 forward for a specified number of years is not impaired by [this act], and the taxpayer may claim the credit for the
23 taxes specified for the period established in the section at the time the credit was first allowed.

24
25 **NEW SECTION. Section 17. Repealer.** The following sections of the Montana Code Annotated are
26 repealed:

27 7-21-3701. Purpose of empowerment zone.
28 7-21-3702. Definitions.
29 7-21-3703. Empowerment zones -- creation.
30 7-21-3704. Criteria for empowerment zone.

- 1 7-21-3710. Tax credits for employers in empowerment zone.
- 2 7-21-3715. Rulemaking authority.
- 3 15-1-230. REPORT ON INCOME TAX CREDIT TO COMMITTEE.
- 4 15-30-2319. Credit for energy-conserving investments.
- 5 15-30-2320. Credit for alternative fuel motor vehicle conversion.
- 6 15-30-2327. QUALIFIED ENDOWMENTS CREDIT -- DEFINITIONS -- RULES.
- 7 15-30-2328. CREDIT FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENT -- RECAPTURE OF CREDIT -- DEDUCTION
- 8 INCLUDED AS INCOME.
- 9 15-30-2329. BENEFICIARIES OF ESTATES -- CREDIT FOR CONTRIBUTION TO QUALIFIED ENDOWMENT.
- 10 15-30-2342. Credit for preservation of historic property.
- 11 15-30-2356. Empowerment zone new employees -- tax credit.
- 12 15-31-124. New or expanded industry credit -- definitions.
- 13 15-31-134. Empowerment zone new employees -- tax credit.
- 14 15-31-137. Small business corporation and partnership credit for alternative fuel conversion.
- 15 15-31-151. Credit for preservation of historic buildings.
- 16 15-31-161. CREDIT FOR CONTRIBUTION BY CORPORATIONS TO QUALIFIED ENDOWMENT -- RECAPTURE OF CREDIT
- 17 -- DEDUCTION INCLUDED AS INCOME.
- 18 15-31-162. SMALL BUSINESS CORPORATION, PARTNERSHIP, AND LIMITED LIABILITY COMPANY CREDIT FOR
- 19 CONTRIBUTION TO QUALIFIED ENDOWMENT -- RECAPTURE OF CREDIT -- DEDUCTION INCLUDED AS
- 20 INCOME.
- 21 15-31-901. Short title.
- 22 15-31-902. Purpose.
- 23 15-31-903. Definitions.
- 24 15-31-904. Application for state certification -- approval -- revocation -- eligibility for tax credits -- rules.
- 25 15-31-905. Submission of costs.
- 26 15-31-906. Application for tax credit -- fee.
- 27 15-31-907. Employment production tax credit.
- 28 15-31-908. Tax credit for qualified expenditures.
- 29 15-31-911. Rules.
- 30 15-32-109. Credit for energy-conserving expenditures.

- 1 15-32-115. Credit for geothermal system -- to whom available -- eligible costs -- limitations.
- 2 15-32-201. Amount of credit -- to whom available.
- 3 15-32-202. Taxable years in which credit may be claimed -- carryover.
- 4 15-32-203. Department to make rules.
- 5 15-32-401. Purpose and statement of policy.
- 6 15-32-402. Commercial or net metering system investment credit -- alternative energy systems.
- 7 15-32-404. Carryover of credit.
- 8 15-32-405. Exclusion from other tax incentives.
- 9 15-32-406. Separation of credit portion.
- 10 15-32-407. Rules authorized.
- 11 15-32-501. Purpose and statement of policy.
- 12 15-32-503. Exploration incentive credit.
- 13 15-32-504. Procedure for requesting and certifying credit.
- 14 15-32-505. Application of credit.
- 15 15-32-506. Credit carryover.
- 16 15-32-507. Credit limitation.
- 17 15-32-508. Credit assignment.
- 18 15-32-509. Record of credit use.
- 19 15-32-601. Definitions.
- 20 15-32-602. Amount and duration of credit -- how claimed.
- 21 15-32-603. Credit for investment in property used to collect or process reclaimable material or to
- 22 manufacture a product from reclaimed material.
- 23 15-32-604. Limitation of credit.
- 24 15-32-609. Recycled material qualifying for deduction -- purpose -- rulemaking.
- 25 15-32-701. Oilseed crush facility -- tax credit.
- 26 15-32-702. Biodiesel or biolubricant production facility tax credit.
- 27 15-32-703. Biodiesel blending and storage tax credit -- recapture -- report to interim committee.
- 28 ~~15-50-207. Credit against other taxes -- credit for personal property taxes and certain fees.~~
- 29 17-6-316. Economic development loan -- infrastructure tax credit.
- 30 33-2-724. Empowerment zone new employees -- tax credit.

- 1 90-8-101. Short title.
- 2 90-8-102. Declaration of policy.
- 3 90-8-103. Purpose.
- 4 90-8-104. Definitions.
- 5 90-8-105. Rulemaking.
- 6 90-8-106. Fees.
- 7 90-8-201. Certification of Montana capital companies and small business investment capital companies.
- 8 90-8-202. Designation of qualified Montana capital companies -- designation of qualified Montana small
9 business investment capital company -- tax credit.
- 10 90-8-203. No recapture -- unqualified investments -- penalty.
- 11 90-8-204. Application requirements.
- 12 90-8-205. State liability disclaimed.
- 13 90-8-301. Qualified investments -- penalty -- extension permissible.
- 14 90-8-302. Restriction on investment.
- 15 90-8-303. Conflict of interest.
- 16 90-8-304. Application of securities law.
- 17 90-8-305. Sale of debentures.
- 18 90-8-311. Legislative review and oversight.
- 19 90-8-312. Investment reporting and recordkeeping.
- 20 90-8-313. Examination.
- 21 90-8-321. Decertification.

22

23 NEW SECTION. **Section 18. Applicability.** [This act] applies to tax years beginning after December
24 31, 2011.

25 - END -