

## 1 HOUSE BILL NO. 703

2 INTRODUCED BY C. POPE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROPERTY TAX LAWS RELATED TO  
5 ELECTRICAL GENERATION FACILITIES; PROVIDING PROPERTY TAX INCENTIVES FOR CERTAIN NEW  
6 ELECTRICAL GENERATION FACILITIES; ALLOWING A PROPERTY TAX EXEMPTION UNDER CERTAIN  
7 CONDITIONS; AUTHORIZING A LOCAL GOVERNMENTAL UNIT TO ASSESS AN IMPACT FEE FOR LOCAL  
8 GOVERNMENTAL UNITS AND SCHOOL DISTRICTS THAT ARE IMPACTED BY A FACILITY EXEMPTED  
9 FROM PROPERTY TAXATION; PROVIDING FOR INTERLOCAL IMPACT AGREEMENTS; REQUIRING THE  
10 DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE CERTIFICATION; PROVIDING RULEMAKING  
11 AUTHORITY; PROVIDING FOR A ROLLBACK TAX; AMENDING SECTIONS 75-20-104, 75-20-201, 75-20-207,  
12 75-20-208, 75-20-211, 75-20-301, 75-20-303, 75-20-304, AND 75-20-1202, MCA; REPEALING SECTIONS  
13 15-24-3001, 15-24-3002, 15-24-3004, 15-24-3005, 15-24-3006, AND 15-24-3007, MCA; AND PROVIDING AN  
14 IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE."

15

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

17

18 NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Energy Enterprise  
19 Corridor Opportunity Act".

20

21 NEW SECTION. **Section 2. Policy.** It is the policy of the state of Montana that the tax abatement in  
22 [sections 1 through 10] is to be strictly limited to new investments that qualify under the standards established  
23 in [sections 1 through 10]. The provisions of [sections 1 through 10] do not apply to any previously existing  
24 properties or to any new investments or property that does not qualify under [sections 1 through 10]. It is also the  
25 policy of the state of Montana that the abatement in [sections 1 through 10] is to encourage investment in an  
26 established energy corridor in Montana that may not otherwise occur without [sections 1 through 10]. [Sections  
27 1 through 10] are not to be interpreted as a precedent for reducing the taxation of any other property in the state  
28 or for affecting the use of any property valuation method for tax purposes established under law to meet the  
29 standards of the Montana constitution and law. The department of environmental quality and the department of  
30 revenue are directed to administer and interpret [sections 1 through 10] strictly in accordance with this policy.

1 Any ambiguities in [sections 1 through 10] are to be resolved in favor of the strict reading of this policy.

2

3 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], unless the context requires  
4 otherwise, the following definitions apply:

5 (1) "Commencement of construction" means initiation of onsite fabrication, erection, or installation of,  
6 but not limited to the following:

7 (a) building supports or foundations;

8 (b) laying of underground pipework; or

9 (c) construction of storage structures.

10 (2) "Electrical generation facility" means:

11 (a) any combination of a physically connected generator or generators, associated prime movers, and  
12 other associated property, including appurtenant land and improvements and personal property, that are normally  
13 operated together to produce electric power with a nameplate capacity of 100 megawatts or greater;

14 (b) energy storage facilities;

15 (c) a transmission line necessary to interconnect directly with a qualifying transmission line; or

16 (d) any combination of subsections (2)(a) through (2)(c).

17 (3) "Eligible electrical generation facility" means an electrical generation facility interconnected to a  
18 qualifying transmission line.

19 (4) "Energy storage facilities" means hydroelectric pumped storage property, compressed air energy  
20 storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of energy  
21 storage facilities directly connected to the electrical power grid and associated property, appurtenant land and  
22 improvements, and personal property that are designed to:

23 (a) receive and store electrical energy as potential energy; and

24 (b) convert the stored energy into electrical energy for sale as an energy commodity or as electricity  
25 services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid,  
26 including but not limited to frequency regulation ancillary services and frequency control.

27 (5) "Large customer" means any premises, except subdivisions, with the estimated connected load for  
28 full operation at an individual service for the premises of 500 kilowatts or larger.

29 (6) "Local governmental unit" means a county, city, consolidated city-county, or town. If an exempt  
30 eligible electrical generation facility is located within a tax increment financing district, the tax increment financing

1 district is considered a local governmental unit and is entitled to the distribution of impact fees under [section 7].  
2 A tax increment financing district may not receive a distribution of impact fees if an exempt eligible electrical  
3 generation facility is not located within the district.

4 (7) "Qualifying period" means the construction period and the first 5 years after the facility commences  
5 operation. The total time of the qualifying period may not exceed 7 years.

6 (8) "Qualifying transmission line" means an electric transmission line with a design capacity of 500  
7 kilovolts or more constructed before [the effective date of this act] that is owned by a public utility or multiple public  
8 utilities.

9 (9) "Rollback" means the period of time that an owner or operator of an eligible electrical generation  
10 facility was exempt from property taxes pursuant to [section 4].

11  
12 **NEW SECTION. Section 4. Energy production or development -- tax abatement -- eligibility.** (1)

13 (a) Eligible electrical generation facilities may qualify for an abatement of property tax liability pursuant to [sections  
14 1 through 10].

15 (b) An eligible electrical generation facility may not qualify for an abatement of property tax liability  
16 pursuant to [sections 1 through 10] if the facility seeks or receives an abatement in accordance with 15-24-3111.

17 (2) (a) If the abatement is granted for an eligible electrical generation facility, the facility is exempt from  
18 property taxation for the qualifying period.

19 (b) The abatement applies to all mills levied against the eligible electrical generation facility.

20 (3) In order to qualify for the abatement under [sections 1 through 10], an eligible electrical generation  
21 facility must meet the following requirements:

22 (a) commencement of construction of the facility must occur after July 1, 2019;

23 (b) the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), must  
24 be paid during the construction phase of the facility; and

25 (c) the project must be constructed to serve directly or through power purchase agreements:

26 (i) electric customers of any size located out-of-state; or

27 (ii) large customers located in Montana or located out-of-state.

28 (4) Upon termination of the qualifying period, the abatement ceases and the property for which the  
29 abatement had been granted must be assessed at 100% of its taxable value.

30 (5) The department of revenue shall appraise eligible electrical generation facilities for each year that

1 the property is exempt and determine the taxable value of the property as if it were subject to property taxation.

2

3 **NEW SECTION. Section 5. Certification.** (1) (a) Upon application by a taxpayer, the department of  
4 environmental quality shall determine whether a facility qualifies for a tax abatement under [section 4] or rules  
5 adopted under [section 6]. If the department determines that a facility qualifies for abatement, it shall issue a  
6 certification of eligibility.

7 (b) An application for certification must be made on forms available from the department.

8 (c) Certification remains in effect only as long as substantial compliance with [sections 1 through 10]  
9 continues.

10 (2) The department of environmental quality shall identify and track compliance with [sections 1 through  
11 10] in the use of certified property. The department may revoke a certification for failure to maintain substantial  
12 compliance with eligibility requirements in [section 4] or with rules adopted pursuant to [section 6]. Revocation  
13 of a certificate must be reported to the department of revenue within 30 days of revocation.

14 (3) If a taxpayer's certification is revoked, the taxpayer forfeits the abatement. Upon revocation, the  
15 property must be assessed at 100% of its taxable value beginning on January 1 of the year or years for which  
16 the certification is revoked. Any remaining abatement must be forfeited. The taxpayer is immediately liable for  
17 any additional taxes, penalty, and interest resulting from the revocation.

18 (4) A taxpayer that has forfeited any portion of its abatement because of revocation may not reapply for  
19 an abatement under [sections 1 through 10].

20 (5) A taxpayer aggrieved by a determination made by the department of environmental quality or the  
21 department of revenue has the right to the review procedures in 15-1-211 or to a hearing under Title 2, chapter  
22 4, part 6.

23

24 **NEW SECTION. Section 6. Rules.** (1) The department of revenue shall adopt rules for the  
25 implementation of [sections 1 through 10], including the valuation of qualifying property and administration.

26 (2) The department of environmental quality shall adopt rules necessary for certification, compliance,  
27 and revocation of certificates, as provided in [section 5]. The rules may include specifying procedures, including  
28 timeframes for certification application, and definitions necessary to identify property for certification and  
29 compliance.

30

1            **NEW SECTION. Section 7. Eligible electrical generation facility impact fee -- local governments**  
2 **and schools.** (1) If an owner or operator of an eligible electrical generation facility is exempt from property  
3 taxation pursuant to [section 4], the owner or operator of the facility is subject to an initial local government and  
4 local school impact fee. In the first 3 years of construction, the impact fee may not exceed 0.5% of the total cost  
5 of constructing the eligible electrical generation facility.

6            (2) Except as provided in subsection (4), the jurisdictional area of a local governmental unit in which an  
7 eligible electrical generation facility is located is the local governmental unit that is authorized to assess the  
8 impact fee pursuant to subsection (1) of this section.

9            (3) The impact fee must be distributed to the local governmental unit for local impacts and to the  
10 impacted school districts.

11            (4) Subject to the conditions of [section 8], if the eligible electrical generation facility is located within the  
12 jurisdictional areas of multiple local governmental units of the county or contiguous counties, the local  
13 governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine how the  
14 fee should be distributed among the various local governmental units and impacted school districts pursuant to  
15 subsection (3). The county in which the eligible electrical generation facility is located is authorized to assess the  
16 fee under the interlocal agreement.

17            (5) Impact fees imposed under subsection (4) of this section must be deposited in a county electrical  
18 energy generation impact fee reserve account established in [section 8] for the county in which the eligible  
19 electrical generation facility is located. Money in the account may not be expended until the multiple local  
20 governmental units have entered into an interlocal agreement.

21

22            **NEW SECTION. Section 8. Eligible electrical generation impact fee reserve account.** (1) The  
23 governing body of a county receiving impact fees under [section 7(4)] shall establish an eligible electrical  
24 generation impact fee reserve account to be used to hold the collections. Money held in the account may not be  
25 considered as cash balance for the purpose of reducing mill levies.

26            (2) Money may be expended from the account for any purpose of an interlocal agreement provided for  
27 in [section 7(4)]. The county treasurer shall distribute money in the account to each local governmental unit  
28 according to the terms of the interlocal agreement.

29            (3) Money in the account must be invested as provided by law. Interest and income from the investment  
30 of the eligible electrical generation impact fee reserve account must be credited to the account.

1  
 2           **NEW SECTION. Section 9. Eligible electrical generation impact fund.** (1) A local governmental unit  
 3 and a school district that receives impact fees pursuant to [section 7(1)] or [section 8] shall establish an eligible  
 4 electrical generation impact fund for the deposit of the fees. A local governmental unit or school district may retain  
 5 the money in the fund for any time period considered appropriate by the governing body of the local governmental  
 6 unit or school district. Money retained in the fund may not be considered as fund balance for the purpose of  
 7 reducing mill levies.

8           (2) Money may be expended from the fund for any purpose allowed by law.

9           (3) Money in the fund must be invested as provided by law. Interest and income earned on the  
 10 investment of money in the fund must be credited to the fund.

11           (4) The fund must be financially administered as a nonbudgeted fund by a city, town, or county under  
 12 the provisions of Title 7, chapter 6, part 40, or by a school district under the provisions of Title 20, chapter 9, part  
 13 5.

14  
 15           **NEW SECTION. Section 10. Rollback tax -- computation.** (1) If the taxpayer fails to meet the  
 16 requirements of [section 4], the property is subject to a rollback tax in addition to the property tax levied on the  
 17 property. The rollback tax is a lien on the property and is due and payable by the owner of the property within 180  
 18 days after failure to perform the contract.

19           (2) The department of revenue shall determine the amount of rollback tax due on the property by:

20           (a) determining the taxable value of the property;

21           (b) multiplying this value by the sum of the annual mill levies that would have been levied had the  
 22 property exemption pursuant to [section 4] not been applied in the taxing jurisdiction in which the eligible electrical  
 23 generation property is located during the rollback period; and

24           (c) subtracting from this figure any actual property tax paid on the property during this period less any  
 25 impact fee paid pursuant to [section 7], if any.

26  
 27           **Section 11.** Section 75-20-104, MCA, is amended to read:  
 28           **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions  
 29 apply:

30           (1) "Addition thereto" means the installation of new machinery and equipment that would significantly

1 change the conditions under which the facility is operated.

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

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

7 (b) The term does not include a transmission substation, a switchyard, voltage support, or other control  
8 equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

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

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

12 (6) "Commence to construct" means:

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

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

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

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

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

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

1           **(b) The term does not include:**

2           **(i) electrical generation facilities used for noncommercial purposes or exclusively for agricultural**  
 3 **purposes; or**

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

7           ~~(8)(9)~~ "Facility" means, subject to 75-20-1202:

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

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

12           (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts for which  
 13 the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from  
 14 more than 75% of the owners who collectively own more than 75% of the property along the centerline;

15           (iii) does not include electric transmission lines that are collectively less than 150 miles in length and are  
 16 required under state or federal regulations and laws, with respect to reliability of service, for an electrical  
 17 generation facility, ~~as defined in 15-24-3001(4)~~; or a wind generation facility, biomass generation facility, or  
 18 energy storage facility, as defined in 15-6-157, to interconnect to a regional transmission grid or secure firm  
 19 transmission service to use the grid for which the person planning to construct the line or lines has obtained  
 20 right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own  
 21 more than 75% of the property along the centerline or centerlines;

22           (iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or  
 23 more to increase that line's capacity, including construction outside the existing easement or right-of-way. Except  
 24 for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly  
 25 acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection  
 26 (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission  
 27 right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited  
 28 areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the  
 29 transmission network and protect electrical workers and the public.

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



1 (vi) does not include an energy storage facility, as defined in 15-6-157;

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

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

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

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

11 (c) any use of geothermal resources, including the use of underground space in existence or to be  
12 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived  
13 power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by  
14 the department and added to an existing plant, except that the term does not include a compressed air energy  
15 storage facility, as defined in 15-6-157; or

16 (d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts  
17 of hydroelectric power or more or any addition thereto.

18 ~~(9)~~(10) "Person" means any individual, group, firm, partnership, corporation, limited liability company,  
19 cooperative, association, government subdivision, government agency, local government, or other organization  
20 or entity.

21 ~~(10)~~(11) "Sensitive areas" means government-designated areas that have been recognized for their  
22 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national  
23 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and  
24 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national  
25 parks, monuments, or historic sites.

26 ~~(11)~~(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly  
27 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or  
28 operation of a proposed transmission line.

29 ~~(12)~~(13) "Transmission reliability agencies" means the federal energy regulatory commission, the western  
30 electricity coordinating council, the national electric reliability council, and the midwest reliability organization.

1           ~~(13)~~(14) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions  
2 including but not limited to:

- 3           (a) installing larger conductors;  
4           (b) replacing insulators;  
5           (c) replacing pole or tower structures;  
6           (d) changing structure spacing, design, or guying; or  
7           (e) installing additional circuits.

8           ~~(14)~~(15) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or  
9 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

10

11           **Section 12.** Section 75-20-201, MCA, is amended to read:

12           **"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --**

13 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in  
14 operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying  
15 for and obtaining a certificate of compliance issued with respect to the facility by the department.

16           (2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained  
17 except in conformity with the certificate and any terms, conditions, and modifications contained within the  
18 certification.

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

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

23           (5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant  
24 to ~~75-20-104(8)~~ 75-20-104(9) may petition the department to review the energy-related project under the  
25 provisions of this chapter. The construction or installation of an energy storage facility, as defined in 15-6-157,  
26 is not considered an energy-related project under the provisions of this chapter. A certificate for the construction  
27 or installation of an energy storage facility is not required under this chapter.

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

30           (7) All judicial challenges of certificates for projects with a project cost, as determined by the court, of

1 more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the  
2 court determines that the challenge was without merit or was for an improper purpose, such as to harass, to  
3 cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees  
4 and costs incurred in defending the action."  
5

6 **Section 13.** Section 75-20-207, MCA, is amended to read:

7 **"75-20-207. Notice requirement for certain electric transmission lines.** Whenever a person plans  
8 to construct an electric transmission line or associated facilities under the provisions of ~~75-20-104(8)(a)(ii)~~  
9 75-20-104(9)(a)(ii), it must provide public notice to persons residing in the area in which any portion of the electric  
10 transmission facility may be located and to the department. This notice must be made no less than 60 days prior  
11 to the commencement of acquisition of right-of-way by publication of a summary describing the transmission  
12 facility and the proposed location of the facility in those newspapers that will substantially inform those persons  
13 of the construction and by mailing a summary to the department. The notice must inform the property owners of  
14 their rights under this chapter concerning the location of the facility and that more information concerning their  
15 rights may be obtained from the department."  
16

17 **Section 14.** Section 75-20-208, MCA, is amended to read:

18 **"75-20-208. Certain electric transmission lines -- verification of requirements.** (1) Prior to  
19 constructing a transmission line under ~~75-20-104(8)(a)(ii)~~ 75-20-104(9)(a)(ii), the person planning to construct  
20 the line shall provide to the department within 36 months of the date of the public notice provided under  
21 75-20-207, unless extended by the department for good cause:

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

24 (b) sufficient information for the department to verify that the requirements of ~~75-20-104(8)(a)(ii)~~  
25 75-20-104(9)(a)(ii) are satisfied.

26 (2) The provisions of ~~75-20-104(8)(a)(ii)~~ 75-20-104(9)(a)(ii) do not apply to any facility for which public  
27 notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not  
28 been complied with."  
29

30 **Section 15.** Section 75-20-211, MCA, is amended to read:

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

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

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

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

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

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

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

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

18           (b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the  
 19 copy or copies must be available for public inspection.

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

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

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

28

29           **Section 16.** Section 75-20-301, MCA, is amended to read:

30           **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days after

1 issuance of the report pursuant to 75-20-216 for facilities defined in ~~75-20-104(8)(a) and (8)(b)~~ 75-20-104(9)(a)  
 2 and (9)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed  
 3 facility if the department finds and determines:

4 (a) the basis of the need for the facility;  
 5 (b) the nature of the probable environmental impact;  
 6 (c) that the facility minimizes adverse environmental impact, considering the state of available technology  
 7 and the nature and economics of the various alternatives;

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

9 (i) what part, if any, of the line or aqueduct will be located underground;  
 10 (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility  
 11 systems serving the state and interconnected utility systems; and

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

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

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

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

21 (h) that the use of public lands or federally designated energy corridors for location of a facility defined  
 22 in ~~75-20-104(8)(a) or (8)(b)~~ 75-20-104(9)(a) or (9)(b) was evaluated and public lands or federally designated  
 23 energy corridors for that facility were selected whenever their use was compatible with:

24 (i) the requirements of subsections (1)(a) through (1)(g); and

25 (ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined  
 26 in ~~75-20-104(8)(a)~~ 75-20-104(9)(a).

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

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

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

- 1 (c) the effects of the economic activity resulting from the proposed facility;  
 2 (d) the effects of the proposed facility on the public health, welfare, and safety;  
 3 (e) any other factors that it considers relevant.

4 (3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in  
 5 ~~75-20-104(8)(c)~~ 75-20-104(9)(c), the department shall approve a facility as proposed or as modified or an  
 6 alternative to a proposed facility if the department finds and determines:

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

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

- 11 (i) a violation of a law or standard that protects the environment; or  
 12 (ii) a violation of a law or standard that protects the public health and safety.

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

15

16 **Section 17.** Section 75-20-303, MCA, is amended to read:

17 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application  
 18 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

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

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

22 (a) an environmental evaluation statement related to the facility being certified. The statement must  
 23 include but is not limited to analysis of the following information:

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

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

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

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

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

30 (e) a statement confirming that notice was provided pursuant to subsection (5); and

1 (f) a statement signed by the applicant showing agreement to comply with the requirements of this  
2 chapter and the conditions of the certificate.

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

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

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

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

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

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

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

19 (5) (a) (i) Except as provided in subsection (5)(a)(ii), for a facility defined in ~~75-20-104(8)(a) and (8)(b)~~  
20 75-20-104(9)(a) and (9)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through  
21 3, prepared by the department must designate a 500-foot-wide facility siting corridor along the facility route.

22 (ii) Prior to preparation of the environmental review or the draft environmental impact statement, the  
23 department shall consult the applicant and, in a manner determined by rule, landowners and identify areas in  
24 which a corridor considered in the environmental review document should be more or less than 500 feet wide.  
25 The corridor width may not be narrower than the applicant's right-of-way. For each area in which the corridor is  
26 more or less than 500 feet in width, the department shall provide a written justification. The department may not  
27 modify a corridor after issuance of the final environmental review document.

28 (b) The department shall provide written notice of the availability of each environmental review document  
29 to each owner of property within a corridor. No more than 60 days prior to the availability of each environmental  
30 review document, the names and addresses of the property owners must be obtained from the property tax rolls

1 of the county where the property is located. Except as provided in subsection (5)(c), the notice must:

2 (i) be delivered personally or by first-class mail. If delivered personally, the property owner shall sign a  
3 receipt verifying that the property owner received the statement.

4 (ii) inform the property owner that the property owner's property is located within a corridor;

5 (iii) inform the property owner about how a copy of the environmental review document may be obtained;

6 and

7 (iv) inform the property owner of the property owner's rights under this chapter concerning the location  
8 of the facility and that more information concerning those rights may be obtained from the department.

9 (c) If there is more than one name listed on the property tax rolls for a single property, the notice must  
10 be mailed to the first listed property owner at the address on the property tax rolls.

11 (d) By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b)  
12 are satisfied.

13 (6) (a) A certificate holder may submit an adjustment of the location of a facility outside the approved  
14 facility siting corridor to the department. The adjustment must be accompanied by the written agreement of the  
15 affected property owner and all contiguous property owners that would be affected. The submission must include  
16 a map showing the approved facility siting corridor and the proposed adjustment. At the time of submission to  
17 the department, the adjustment must be accompanied by a copy of a legal notice published in a newspaper of  
18 general circulation in the area of the adjustment. The legal notice must specify that public comments on the  
19 adjustment may be submitted to the department within 10 days of the publication date of the notice.

20 (b) The certificate holder may construct the facility as described in the submission unless the department  
21 notifies the certificate holder within 15 days of the submission that the department has determined that:

22 (i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the  
23 department would have selected a different siting corridor for the facility; or

24 (ii) the adjustment would materially increase unmitigated adverse impacts.

25 (c) An adjustment pursuant to subsection (6)(a) is not subject to:

26 (i) Title 75, chapter 1, part 2;

27 (ii) a certificate amendment under 75-20-219; or

28 (iii) a board review under 75-20-223.

29 (d) (i) For each facility, the department shall maintain a list of persons who requested to receive  
30 electronic notice of any adjustment submitted pursuant to this subsection (6).



- 1 (ii) Upon receipt of a submitted adjustment, the department shall:  
2 (A) post information about the adjustment on the department's website; and  
3 (B) electronically notify each person identified in subsection (6)(d)(i) of the adjustment and where  
4 information about the adjustment may be viewed."  
5

6 **Section 18.** Section 75-20-304, MCA, is amended to read:

7 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive  
8 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing  
9 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the  
10 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with  
11 the provisions of 75-20-216 and this part.

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

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

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

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

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

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

29 (4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer.  
30 The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but

1 not limited to construction jobs or job losses during labor disputes.

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

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

9 (7) The department may grant only one waiver under subsections (3) and (4) for each permanent loss  
10 of jobs as defined in subsection (3)(a)."

11

12 **Section 19.** Section 75-20-1202, MCA, is amended to read:

13 **"75-20-1202. Definitions.** As used in 75-20-201, 75-20-203, and this part, the following definitions apply:

14 (1) "Facility", as defined in ~~75-20-104(8)~~ 75-20-104(9), is further defined to include any nuclear facility  
15 as defined in subsection (2)(a).

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

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

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

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

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

22

23 **NEW SECTION. Section 20. Repealer.** The following sections of the Montana Code Annotated are  
24 repealed:

25 15-24-3001. Electrical generation and transmission facility exemption -- definitions.

26 15-24-3002. Rollback tax -- computation.

27 15-24-3004. Wind generation facility impact fee for local governmental units and school districts.

28 15-24-3005. Electrical generation facility impact fee for local governmental units and school districts -- wind  
29 generation facility impact fee.

30 15-24-3006. Electrical energy generation impact fee reserve account.

1 15-24-3007. Electrical generation impact fund.

2

3 NEW SECTION. **Section 21. Notification to tribal governments.** The secretary of state shall send  
4 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
5 Chippewa tribe.

6

7 NEW SECTION. **Section 22. Codification instruction.** [Sections 1 through 10] are intended to be  
8 codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections  
9 1 through 10].

10

11 NEW SECTION. **Section 23. Saving clause.** [This act] does not affect rights and duties that matured,  
12 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

13

14 NEW SECTION. **Section 24. Severability.** If a part of [this act] is invalid, all valid parts that are  
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
16 the part remains in effect in all valid applications that are severable from the invalid applications.

17

18 NEW SECTION. **Section 25. Effective date.** [This act] is effective on passage and approval.

19

20 NEW SECTION. **Section 26. Contingent termination.** [This act] terminates when the department of  
21 environmental quality provides written certification to the code commissioner and the department of revenue that  
22 eligible electrical energy generation facilities totaling 2,000 megawatts of nameplate capacity have been  
23 constructed and interconnected to a qualifying transmission line.

24

- END -