

1 SENATE BILL NO. 293

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 FOR A
 11 ROLLBACK TAX; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING
 12 SECTIONS 75-20-104, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-301, 75-20-303, 75-20-304, AND
 13 75-20-1202, MCA; REPEALING SECTIONS 15-24-3001, 15-24-3002, 15-24-3004, 15-24-3005, 15-24-3006,
 14 AND 15-24-3007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT
 15 TERMINATION DATE."

16

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

18

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

21

22 NEW SECTION. **Section 2. Policy.** (1) It is the policy of the state that the tax abatement in [sections
 23 1 through 10] is to be strictly limited to new investments that qualify under the standards established in
 24 [sections 1 through 10]. The provisions of [sections 1 through 10] do not apply to any previously existing
 25 properties or to any new investments or property that does not qualify under [sections 1 through 10].

26 (2) It is also the policy of the state that the abatement in [sections 1 through 10] is to encourage
 27 investment in an established energy corridor in the state that may not otherwise occur without [sections 1
 28 through 10].

1 (3) [Sections 1 through 10] are not to be interpreted as a precedent for reducing the taxation of any
2 other property in the state or for affecting the use of any property valuation method for tax purposes established
3 under law to meet the standards of the Montana constitution and law. The department of environmental quality
4 and the department of revenue are directed to administer and interpret [sections 1 through 10] strictly in
5 accordance with this policy. Any ambiguities in [sections 1 through 10] are to be resolved in favor of the strict
6 reading of this policy.

7

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

10 (1) "Commencement of construction" means initiation of onsite fabrication, erection, or installation of
11 infrastructure, including but not limited to the following:

- 12 (a) building supports or foundations;
- 13 (b) laying of underground pipework; or
- 14 (c) construction of storage structures.

15 (2) "Electrical generation facility" means:

- 16 (a) any combination of a physically connected generator or generators, associated prime movers, and
17 other associated property, including appurtenant land and improvements and personal property, that are
18 normally operated together to produce electric power with a nameplate capacity of 100 megawatts or greater;
- 19 (b) energy storage facilities;
- 20 (c) a transmission line necessary to interconnect directly with a qualifying transmission line; or
- 21 (d) any combination of subsections (2)(a) through (2)(c).

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

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

- 28 (a) receive and store electrical energy as potential energy; and

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

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

6 (6) "Local governmental unit" means a county, city, consolidated city-county, or town. If an exempt
 7 eligible electrical generation facility is located within a tax increment financing district, the tax increment
 8 financing district is considered a local governmental unit and is entitled to the distribution of impact fees under
 9 [section 7]. A tax increment financing district may not receive a distribution of impact fees if an exempt eligible
 10 electrical generation facility is not located within the district.

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

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

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

18
 19 **NEW SECTION. Section 4. Energy production or development -- tax abatement -- eligibility.** (1)

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

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

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

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

28 (3) In order to qualify for the abatement under [sections 1 through 10], an eligible electrical generation

1 facility must meet the following requirements:

2 (a) commencement of construction of the facility must occur after July 1, 2021;

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

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

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

7 (ii) large customers located in the state or located out of state.

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

10 (5) The department of revenue shall appraise eligible electrical generation facilities for each year that
11 the property is exempt and determine the taxable value of the property as if it were subject to property taxation.

12

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

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

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

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

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

28 (4) A taxpayer that has forfeited any portion of its abatement because of revocation may not reapply

1 for an abatement under [sections 1 through 10].

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

5

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

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

12

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

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

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

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

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

5
6 NEW SECTION. Section 8. Eligible electrical generation impact fee reserve account. (1) The
7 governing body of a county receiving impact fees under [section 7(4)] shall establish an eligible electrical
8 generation impact fee reserve account to be used to hold the collections. Money held in the account may not be
9 considered as cash balance for the purpose of reducing mill levies.

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

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

15
16 NEW SECTION. Section 9. Eligible electrical generation impact fund. (1) A local governmental
17 unit and a school district that receives impact fees pursuant to [section 7(1)] or [section 8] shall establish an
18 eligible electrical generation impact fund for the deposit of the fees. A local governmental unit or school district
19 may retain the money in the fund for any time period considered appropriate by the governing body of the local
20 governmental unit or school district. Money retained in the fund may not be considered as fund balance for the
21 purpose of reducing mill levies.

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

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

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

28

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

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

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

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

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

12

13 **Section 11.** Section 75-20-104, MCA, is amended to read:

14 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following
15 definitions apply:

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

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

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

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

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

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

28 (6) "Commence to construct" means:

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

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

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

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

14 (7) (a) "Commencement of acquisition of right-of-way" means the actual, defined legal transfer of
15 property.

16 (b) The term does not mean preliminary discussions, option agreements that are not within 60 days of
17 commencement of acquisition, letters of intent, or other documents that do not conclusively result in the legal
18 transfer of property.

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

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

25 (b) The term does not include:

26 (i) electrical generation facilities used for noncommercial purposes or exclusively for agricultural
27 purposes; or

28 (ii) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is

1 owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric
 2 power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

3 ~~(9)(10)~~ "Facility" means, subject to 75-20-1202:

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

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

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

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

19 (iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or
 20 more to increase that line's capacity, including construction outside the existing easement or right-of-way.

21 Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field
 22 standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as
 23 described in this subsection ~~(9)(a)(iv)~~ (10)(a)(iv) may not exceed a total of 10 miles in length or be more than
 24 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be
 25 to avoid sensitive areas or inhabited areas or to conform to state or federal safety, reliability, and operational
 26 standards designed to safeguard the transmission network and protect electrical workers and the public.

27 (v) does not include a transmission substation, a switchyard, voltage support, or other control
 28 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
3 diameter 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
13 derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities
14 approved by the department and added to an existing plant, except that the term does not include a
15 compressed air energy 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
17 megawatts of hydroelectric power or more or any addition thereto.

18 ~~(10)~~(11) "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 ~~(11)~~(12) "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
24 and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or
25 national parks, monuments, or historic sites.

26 ~~(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.~~ (13) "Transmission reliability agencies" means the federal energy

1 regulatory commission, the western electricity coordinating council, the national electric reliability council, and
 2 the midwest reliability organization.

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

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

8 ~~(14)~~(15) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions
 9 including but not limited to:

- 10 (a) installing larger conductors;
- 11 (b) replacing insulators;
- 12 (c) replacing pole or tower structures;
- 13 (d) changing structure spacing, design, or guying; or
- 14 (e) installing additional circuits.

15 ~~(15)~~(16) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or
 16 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

17

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

19 **"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --**

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

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

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

27 (4) If the department decides to issue a certificate for a nuclear facility, it shall report the
 28 recommendation to the applicant and may not issue the certificate until the recommendation is approved by a

1 majority of the voters in a statewide election called by initiative or referendum according to the laws of this
2 state.

3 (5) A person that proposes to construct an energy-related project that is not defined as a facility
4 pursuant to ~~75-20-104(9)~~ 75-20-104(10) may petition the department to review the energy-related project under
5 the provisions of this chapter. The construction or installation of an energy storage facility, as defined in 15-6-
6 157, is not considered an energy-related project under the provisions of this chapter. A certificate for the
7 construction or installation of an energy storage facility is not required under this chapter.

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

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

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

17 **"75-20-207. Notice requirement for certain electric transmission lines.** Whenever a person plans
18 to construct an electric transmission line or associated facilities under the provisions of ~~75-20-104(9)(a)(ii)~~ 75-
19 20-104(10)(a)(ii), it ~~must~~ shall provide public notice to persons residing in the area in which any portion of the
20 electric transmission facility may be located and to the department. This notice must be made no less than 60
21 days prior to the commencement of acquisition of right-of-way as defined in 75-20-104 by publication of a
22 summary describing the transmission facility and the proposed location of the facility in those newspapers that
23 will substantially inform those persons of the construction and by mailing a summary to the department. The
24 notice must inform the property owners of their rights under this chapter concerning the location of the facility
25 and that more information concerning their rights may be obtained from the department."
26

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

28 **"75-20-208. Certain electric transmission lines -- verification of requirements.** (1) Prior to

1 constructing a transmission line under ~~75-20-104(9)(a)(ii)~~75-20-104(10)(a)(ii), the person planning to construct
 2 the line shall provide to the department within 36 months of the date of the public notice provided under 75-20-
 3 207, unless extended by the department for good cause:

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

6 (b) sufficient information for the department to verify that the requirements of ~~75-20-104(9)(a)(ii)~~ 75-
 7 20-104(10)(a)(ii), are satisfied.

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

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

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

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

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

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

23 (iv) (A) for facilities as defined in ~~75-20-104(9)(a)~~ 75-20-104(10)(a) and ~~(9)(b)~~ (10)(b), baseline data
 24 for the primary and reasonable alternate locations; or

25 (B) for facilities as defined in ~~75-20-104(9)(c)~~, 75-20-104(10)(c), baseline data for the proposed
 26 location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

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

28 and

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

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

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

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

9 (4) An application must also be accompanied by proof that public notice of the application was given
10 to persons residing in the county in which any portion of the proposed facility is proposed or is alternatively
11 proposed to be located, by publication of a summary of the application in those newspapers that will
12 substantially inform those persons of the application."
13

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

15 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days
16 after issuance of the report pursuant to 75-20-216 for facilities defined in ~~75-20-104(9)(a)~~ 75-20-104(10)(a) and
17 ~~(9)(b)~~ (10)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed
18 facility if the department finds and determines:

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

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

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

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

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

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

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

28 (e) that the location of the facility as proposed conforms to applicable state and local laws and

1 regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied
 2 to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of
 3 factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly
 4 affected government subdivisions;

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

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

8 (h) that the use of public lands or federally designated energy corridors for location of a facility defined
 9 in ~~75-20-104(9)(a)~~ 75-20-104(10)(a) or ~~(9)(b)~~ (10)(b) was evaluated and public lands or federally designated
 10 energy corridors for that facility were selected whenever their use was compatible with:

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

12 (ii) transmission line reliability criteria established by transmission reliability agencies for a facility
 13 defined in ~~75-20-104(9)(a)~~ 75-20-104(10)(a).

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

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

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

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

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

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

21 (3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in ~~75-20-~~
 22 ~~104(9)(c)~~ 75-20-104(10)(c), the department shall approve a facility as proposed or as modified or an alternative
 23 to a proposed facility if the department finds and determines:

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

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

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

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

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

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

6 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application
7 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) For a facility as defined in ~~75-20-104(9)(a)~~ 75-20-104(10)(a) that is 30 miles or less in length,
26 construction must be completed within 5 years.

27 (iii) For a facility as defined in ~~75-20-104(9)(c)~~ 75-20-104(10)(c), construction must begin within 6 years
28 and continue with due diligence in accordance with preliminary construction plans established in the certificate.

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

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

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

10 (5) (a) (i) Except as provided in subsection (5)(a)(ii), for a facility defined in ~~75-20-104(9)(a) and~~
11 ~~(9)(b)~~ 75-20-104(10)(a) and (10)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1
12 through 3, prepared by the department must designate a 500-foot-wide facility siting corridor along the facility
13 route.

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

20 (b) The department shall provide written notice of the availability of each environmental review
21 document to each owner of property within a corridor. No more than 60 days prior to the availability of each
22 environmental review document, the names and addresses of the property owners must be obtained from the
23 property tax rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice
24 must:

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

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

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

1 obtained; and

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

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

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

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

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

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

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

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

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

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

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

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

28 (ii) Upon receipt of a submitted adjustment, the department shall:

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

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

6 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive
7 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing
8 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the
9 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with
10 the provisions of 75-20-216 and this part.

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

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

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

4 (5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or
 5 minimum adverse environmental impact for a facility defined in ~~75-20-104(9)(a) or (9)(b)~~ 75-20-104(10)(a) or
 6 (10)(b) or for an associated facility defined in 75-20-104(3).

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

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

13

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

15 **"75-20-1202. Definitions.** As used in 75-20-201, 75-20-203, and this part, the following definitions
 16 apply:

17 (1) "Facility", as defined in ~~75-20-104(9)~~ 75-20-104(10), is further defined to include any nuclear
 18 facility as defined in subsection (2)(a).

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

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

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

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

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

25

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

28 15-24-3001. Electrical generation and transmission facility exemption -- definitions.

- 1 15-24-3002. Rollback tax -- computation.
- 2 15-24-3004. Wind generation facility impact fee for local governmental units and school districts.
- 3 15-24-3005. Electrical generation facility impact fee for local governmental units and school districts -- wind
- 4 generation facility impact fee.
- 5 15-24-3006. Electrical energy generation impact fee reserve account.
- 6 15-24-3007. Electrical generation impact fund.

7

8 **NEW SECTION. Section 21. Notification to tribal governments.** The secretary of state shall send a

9 copy of [this act] to each federally recognized tribal government in Montana.

10

11 **NEW SECTION. Section 22. Codification instruction.** [Sections 1 through 10] are intended to be

12 codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections

13 1 through 10].

14

15 **NEW SECTION. Section 23. Saving clause.** [This act] does not affect rights and duties that

16 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

17

18 **NEW SECTION. Section 24. Severability.** If a part of [this act] is invalid, all valid parts that are

19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

20 the part remains in effect in all valid applications that are severable from the invalid applications.

21

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

23

24 **NEW SECTION. Section 26. Contingent termination.** [This act] terminates when the department of

25 environmental quality certifies to the code commissioner and the department of revenue that eligible electrical

26 generation facilities totaling 2,000 megawatts of nameplate capacity have been constructed and interconnected

27 to a qualifying transmission line.

28 - END -