

HOUSE BILL NO. 431

INTRODUCED BY E. STAFMAN, C. KEOGH, J. HAMILTON, T. RUNNING WOLF, K. KORTUM, M.

CAFERRO, M. THANE, M. ROMANO

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO CARBON EMISSIONS; PROVIDING FOR LIMITATIONS ON CERTAIN CARBON EMISSIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-2-111 AND 75-2-211, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, customers of Montana's regulated electric utilities have an interest in ensuring that generating facilities provide efficient electrical generation, taking advantage of the best available technology; and

WHEREAS, generating assets of this nature produce power that costs approximately \$111 per megawatt-hour compared to other generation types that have recently cited costs as low as \$45 per megawatt-hour in recent requests for proposal; and

WHEREAS, a small number of electrical generation facilities utilize old technologies in Montana that are not efficient or cost-effective and account for a grossly disproportionate output of gases that result in distorted iterations in rainfall patterns, drought, flooding, changes in seasonal and diurnal temperature, altered patterns of pest pressure, and reduced agricultural productivity.

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

NEW SECTION. Section 1. Emissions limits -- carbon intensity -- rulemaking authority. (1)

Except as provided in subsection (2), after January 1, 2024, a major stationary source located in the state that generates electricity and is a qualifying small power production facility with a capacity greater than 25 megawatts may not emit more than 1.2 metric tons of carbon dioxide for each megawatt-hour measured on an annual basis.

(2) (a) A major stationary source is exempt from the requirements of subsection (1) if it must

1 generate electricity in order to fulfill the requirements of a contract executed prior to [the effective date of this
2 act]. A copy of the contract, verifying required generation, must be provided to the department.

3 (b) A contract that expires after [the effective date of this act] may not be extended unless the
4 source complies with the requirements of subsection (1).

5 (3) A major stationary source that fails to comply with the requirements of subsection (1) shall be
6 issued a temporary operating permit for not more than 2 years.

7 (a) The temporary operating permit may be issued only after the source submits a plan to comply
8 with the requirements of this part.

9 (b) The department shall suspend the temporary operating permit of a major stationary source that
10 fails to comply with the requirements of subsection (1) within 2 years of the issuance of a temporary operating
11 permit.

12 (4) A major stationary source subject to subsection (3) may purchase carbon offset credits to offset
13 emissions and comply with this part.

14 (5) The department shall adopt rules to implement this section.

15

16 **Section 2.** Section 75-2-111, MCA, is amended to read:

17 **"75-2-111. Powers of board.** Except as provided in [section 1],~~The the~~ board shall, subject to the
18 provisions of 75-2-207:

19 (1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place
20 designated by the board. The board may compel the attendance of witnesses and the production of evidence at
21 hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter
22 who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will
23 be available to the public at cost.

24 (2) issue orders necessary to effectuate the purposes of this chapter;

25 (3) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

26

27 **Section 3.** Section 75-2-211, MCA, is amended to read:

28 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) Except as provided in

1 ~~[section 1].~~The department shall by rule provide for the issuance, modification, suspension, revocation, and
2 renewal of a permit issued under this part.

3 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this
4 section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of
5 any machine, equipment, device, or facility that the department finds may directly or indirectly cause or
6 contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the
7 owner or operator shall file with the department the appropriate permit application on forms available from the
8 department.

9 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall
10 file the permit application with the department no later than January 3, 2006, or 60 days after the initial well
11 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas
12 well facility is:

13 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through
14 wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

15 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable
16 of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

17 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use
18 equipment necessary to complete or operate an oil or gas well facility without a permit until the department's
19 decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or
20 operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of
21 construction, installation, or operation of the facility.

22 (d) The department shall adopt rules establishing air emission control requirements applicable to
23 an oil or gas well facility during the time from the initial well completion date until the department's decision on
24 the application is final.

25 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject
26 to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

27 (3) The permit program administered by the department pursuant to this section must include the
28 following:

- 1 (a) requirements and procedures for permit applications, including standard application forms;
- 2 (b) requirements and procedures for submittal of information necessary to determine the location,
3 quantity, and type of emissions;
- 4 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- 5 (d) procedures for providing notice and an opportunity for comment to contiguous states and
6 federal agencies, as appropriate;
- 7 (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- 8 (f) procedures for the transfer of permits;
- 9 (g) requirements and procedures for suspension, modification, and revocation of permits by the
10 department;
- 11 (h) requirements and procedures for appropriate emission limitations and other requirements,
12 including enforceable measures necessary to ensure compliance with those limitations and requirements;
- 13 (i) requirements and procedures for permit modification and amendment; and
- 14 (j) requirements and procedures for issuing a single permit authorizing emissions from similar
15 operations at multiple temporary locations, which permit may include conditions necessary to ensure
16 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
17 operator notify the department in advance of each change in location.
- 18 (4) This section does not restrict the department's authority to adopt regulations providing for a
19 single air quality permit system.
- 20 (5) Department approval of an application to transfer a portable emission source from one location
21 to another is exempt from the provisions of 75-1-201(1).
- 22 (6) The department may, for good cause shown, waive or shorten the time required for filing the
23 appropriate applications.
- 24 (7) The department shall require that applications for permits be accompanied by any plans,
25 specifications, and other information that it considers necessary.
- 26 (8) An application is not considered filed until the applicant has submitted all fees required under
27 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)
28 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of

1 an application that the application is incomplete and fails to list the reasons why the application is considered
2 incomplete, the application is considered filed as of the date of the purported filing.

3 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires
4 the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75,
5 chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the
6 application:

7 (i) within 180 days after the department's receipt of a filed application, as provided in subsection
8 (8), if the department prepares the environmental impact statement;

9 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if
10 a state agency other than the department has been designated by the governor as lead agency for preparation
11 of the environmental impact statement; or

12 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that
13 requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental
14 impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

15 (b) If an application does not require the preparation of an environmental impact statement, is not
16 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42
17 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt
18 of a filed application, as provided in subsection (8), of its approval or denial of the application, except as
19 provided in subsection (14).

20 (c) If an application does not require the preparation of an environmental impact statement and is
21 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify
22 the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
23 approval or denial of the application.

24 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an
25 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the
26 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
27 application, as provided in subsection (8).

28 (e) If an application for a permit is for the construction, installation, alteration, or use of a source

1 that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the
2 department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit
3 required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the
4 applications within the time period provided for in 75-2-215(3)(e).

5 (f) The time for notification may be extended for 30 days by written agreement of the department
6 and the applicant. Additional 30-day extensions may be granted by the department upon the request of the
7 applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the
8 applicant's agent.

9 (g) Failure by the department to act in a timely manner does not constitute approval or denial of
10 the application. This does not limit or abridge the right of any person to seek available judicial remedies to
11 require the department to act in a timely manner.

12 (10) Except as provided in 75-2-213, when the department approves or denies the application for a
13 permit under this section, a person who is directly and adversely affected by the department's decision may
14 request a hearing before the board. The request for hearing must be filed within 15 days after the department
15 renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the
16 department renders its decision. The contested case provisions of the Montana Administrative Procedure Act,
17 Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

18 (11) Except as provided in 75-2-213:

19 (a) the department's decision on the application is not final until 15 days have elapsed from the
20 date of the decision;

21 (b) the filing of a request for hearing does not stay the department's decision. However, the board
22 may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

23 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

24 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the
25 person requesting the stay.

26 (c) upon granting a stay, the board may require a written undertaking to be given by the party
27 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if
28 the board determines that the permit was properly issued. When requiring an undertaking, the board shall use

1 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on
2 injunctions.

3 (12) The department shall provide, by rule, a period of 30 days in which the public may submit
4 comments on draft air quality permits for applications that:

- 5 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;
- 6 (b) are subject to the requirements of 75-2-215; or
- 7 (c) require the preparation of an environmental impact statement.

8 (13) The department shall provide, by rule, a period of 15 days in which the public may submit
9 comments on draft air quality permits not subject to subsection (12).

10 (14) The department shall provide, by rule, the basis upon which the department may extend by 15
11 days:

12 (a) the period as provided in subsection (13) in which the public may submit comments on draft air
13 quality permits not subject to subsection (12); and

14 (b) the period for notifying an applicant of its final decision on approval or denial of an application,
15 as provided in subsection (9)(b).

16 (15) (a) The department may adopt rules for issuance, modification, suspension, revocation,
17 renewal, or creation of:

- 18 (i) general permits covering multiple similar sources; or
- 19 (ii) other permits covering multiple similar sources.

20 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under
21 the permit upon authorization by the department or upon notice to the department."

22

23 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
24 integral part of Title 75, chapter 2, part 1, and the provisions of Title 75, chapter 2, part 1, apply to [section 1].

25

26 **NEW SECTION. Section 5. Saving clause.** [This act] does not affect rights and duties that matured,
27 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

28

1 **NEW SECTION. Section 6. Contingent voidness.** (1) If any provision of [this act] is disapproved by
2 the United States secretary of the interior pursuant to 30 CFR 732.17, then that portion of [this act] is void.

3 (2) Within 15 days of the effective date of the disapproval under subsection (1), the department of
4 environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1)
5 has occurred.

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7 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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