SENATE BILL NO. 518

INTRODUCED BY J. COBB

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING A PROCESS TO HELP OFFSET THE IMPACTS OF A MAJOR ENERGY GENERATION FACILITY DEVELOPMENT ON LOCAL GOVERNMENT INFRASTRUCTURE AND SCHOOLS; CREATING A MAJOR ENERGY GENERATION FACILITY IMPACT BOARD; PROVIDING FOR THE ADMINISTRATION OF THE BOARD; ESTABLISHING THE GENERAL POWERS OF THE BOARD; ESTABLISHING ACCOUNTS; PROVIDING CRITERIA FOR AWARDING GRANTS; REQUIRING THAT AN IMPACT PLAN BE SUBMITTED; AUTHORIZING THE COORDINATION OF THE PERMITTING PROCESS AND THE IMPACT PLAN PROCESS; AUTHORIZING PROPERTY TAX PREPAYMENT; AUTHORIZING LOCAL GOVERNMENT FACILITY IMPACT BONDS; PROVIDING A PROCESS FOR IMPACT PLAN AMENDMENTS; ESTABLISHING LOCAL GOVERNMENT BUDGET AUTHORITY TO BUDGET AND EXPEND PAYMENTS; ALLOWING FOR FUND TRANSFERS; ALLOWING FOR EQUITABLE DISTRIBUTION OF PROPERTY TAX REVENUE AMONG AFFECTED LOCAL GOVERNMENTAL UNITS; REQUIRING THE DEVELOPMENT OF EMPLOYEE SURVEYS; CLARIFYING THAT THE COAL BOARD MAY AWARD IMPACT GRANTS BASED ON COAL BED METHANE DEVELOPMENT; INCREASING THE WHOLESALE ENERGY TRANSACTION TAX; AMENDING SECTIONS 15-72-104, 15-72-106, AND 90-6-206, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 20] may be cited as the "Major Energy Generation Facility Development Impact Act".

NEW SECTION. **Section 2. Declaration of necessity and purpose.** The large-scale development and operation of major energy generation facilities in the state may cause an influx of people to the area of the development. This influx of people and the corresponding increase in demand for local government facilities and services may create a burden on the local taxpayer. There is a significant time-lag between the time when additional facilities and services must be provided and the time when additional tax revenue is available as a result of the increased tax base. In addition, local government units in whatever jurisdiction the development is not located may receive substantial adverse economic impacts without benefit of a major increased tax base in

the future. Therefore, there is a need to provide a system to assist local government units in meeting the initial financial impact of major energy generation facility development.

NEW SECTION. **Section 3. Definitions.** In [sections 1 through 20], the following definitions apply:

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

(2) "Board" means the major energy generation facility impact board established in [section 4].

(3) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenue, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

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

(5) "Facility" means a facility that is owned, operated, or maintained by a local government unit and that, under the impact plan submitted under the provisions of [section 9], can be expected to have increased capital and operating costs as a result of the major energy generation facility development.

(6) "Local government unit" means a county, city, town, school district, or any of the following independent special districts:

(a) rural fire district;

(b) public hospital district;

(c) refuse disposal district;

(d) county water and sewer district;

(e) county water district;

(f) county sewer district; or

(g) park district.

(7) "Major energy generation facility development" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other development and associated developments designed for or capable of:

(i) generating 250 megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(ii) producing 25 million cubic feet or more of gas derived from coal each day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iii) producing 25,000 barrels of liquid hydrocarbon products each day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(iv) enriching uranium minerals or any addition thereto; and

(b) the construction or operation of a development described in subsection (7)(a) for which a permit is applied for under Title 75, chapters 2 and 5, and for which the average number of persons on the payroll of the major energy generation facility developer and of contractors at the major energy generation facility development exceeds or is projected to exceed 75 for any consecutive 6-month period.

(8) (a) "Property tax prepayment" means a potentially reimbursable impact payment made by the developer of a major energy generation facility to the impact fund of an affected local government unit pursuant to an approved impact plan, to be expended for the purpose or purposes identified in the impact plan.

(b) The term does not mean a payment or prepayment of property taxes for general distribution among funds or accounts.

NEW SECTION. **Section 4. Major energy generation facility impact board.** (1) There is a major energy generation facility impact board.

(2) The board is a five-member board.

(3) The board shall include among its members:

(a) a representative of the energy generation industry;

(b) a representative of a major financial institution in Montana;

(c) a person who, when appointed to the board, is an elected school district trustee;

(d) a person who, when appointed to the board, is an elected county commissioner; and

(e) a member of the public at large.

(4) (a) At least three persons, when appointed to the board, shall reside in an area impacted or expected to be impacted by major energy generation facility development.

(b) At least one person must be from each district provided for in 5-1-102.

(5) The board is a quasi-judicial board subject to the provisions of 2-15-124, except that one of the members need not be an attorney licensed to practice law in this state.

NEW SECTION. **Section 5. Major generation facility impact board -- general powers.** (1) The board

may:

(a) retain professional staff, including its administrative staff, and retain consultants and advisers;

(b) adopt rules governing its proceedings, determinations, and administration of [sections 1 through 20];

(c) award grants to local government units subject to [section 8];

(d) make payments to local government units from money paid to the major energy generation facility impact account as provided in [section 9];

(e) make determinations as provided in [sections 9, 13, and 18]; and

(f) accept grants and other funds to be used in carrying out [sections 1 through 20].

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board.

NEW SECTION. **Section 6. Election of presiding officer -- meetings -- facilities -- funding.** (1) The board shall elect a presiding officer from among its members.

(2) The board shall meet as necessary or as called by the presiding officer or a majority of the members.

(3) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(4) The administrative and operating expenses of the board must be paid from revenue deposited to the credit of the major energy generation facility impact trust account, provided for in [section 7], from the tax on wholesale energy transactions pursuant to Title 15, chapter 72.

NEW SECTION. **Section 7. Accounts established.** (1) There is within the state agency fund type a major energy generation facility impact account. Money is payable into this account from property tax prepayments made by a major energy generation facility developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in [section 9]. The state treasurer shall draw warrants from this account upon order of the board.

(2) (a) There is within the state special revenue fund a major energy generation facility impact trust account. Within this trust account, there is established a reserve account not to exceed $100,000.

(b) Money within the major energy generation facility impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided in [section 6];

(ii) to establish and maintain the reserve account; and

(iii) for distribution to the counties of origin, as provided by [section 15] and this section.

(c) Money within the major energy generation facility impact trust reserve account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-72-106(4) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve account revenue is necessary to allow the board to meet its quasi-judicial responsibilities under [section 9, 13, or 18].

(3) Money is payable into the major energy generation facility impact trust account under the provisions of 15-72-106(4). After first deducting the administrative and operating expenses of the board, as provided in [section 6], and then establishing and maintaining the reserve account in the amount of $100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the board.

NEW SECTION. **Section 8. Basis for awarding grants.** Grants must be awarded to a local government unit on the basis of:

(1) need;

(2) the severity of impact from major energy generation facility development;

(3) the availability of funds; and

(4) the extent of local effort in meeting its needs.

NEW SECTION. **Section 9. Impact plan to be submitted.** (1) After an application for a permit for a major energy generation facility development is made under Title 75, chapter 2 or 5, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact that the major energy generation facility development will have on local government units and shall file proof of the submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The major energy generation facility developer and the affected local government units shall ensure that the impact plan includes:

(a) a timetable for development, including the opening date of the major energy generation facility development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the major energy generation facility development;

(c) the increased capital and operating cost to local government units for providing services that can be expected as a result of the major energy generation facility development; and

(d) the financial or other assistance that the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the major energy generation facility development, as identified in the impact plan, whether from property tax prepayments, as provided in [section 11], bonds, as provided in [section 12], or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The impact plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of the governing body of an affected local government unit, the major energy generation facility developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county shall contract with the developer to obtain the requested financial assistance for each local government unit within the county. Any disbursements to a local government unit under this subsection must be credited against future tax liabilities, if any.

(4) The governing body of the county in which the fiscal impacts on local government units are forecasted in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.

(5) An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services that can be expected as a result of the major energy generation facility development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the major energy generation facility development.

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons for the objection. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board, stating the need and justification for the extension. The board shall grant the extension unless it finds that there is no reasonable basis for the request. If an objection

is not received within the 90-day period or any extension of the period, the impact plan is approved without any review by the board. An approved impact plan is binding and may be altered only under the amendment provisions of [section 13].

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county that, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing. The impact plan filed by the developer does not carry a presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan that were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, must be served by the board upon all parties. A local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guarantee that the developer will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make property tax prepayments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving property tax prepayments shall deposit the property tax prepayments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each property tax prepayment and its intended use in compliance with the impact plan. The board shall deposit property tax prepayments received from a developer into the major energy generation facility impact account established by [section 7].

(11) The board shall notify the department of its receipt of the written guaranty of property tax prepayment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the major energy generation facility impact account is used to deliver property tax

prepayments to the local government unit, pay to that local government unit, in one sum or in parts, the money from the major energy generation facility impact account identified in the impact plan as the amount of the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined that an objection filed by an affected local government unit under [section 13(3)] or subsections (5) and (6) of this section is valid and it results in some remedial order by the board or a court of competent jurisdiction, the local government unit must be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any costs and attorney fees awarded are in addition to any amounts paid by the developer under [sections 1 through 20].

(14) Upon a determination by the department that a permittee under Title 75, chapter 2 or 5 has become or will become a major energy generation facility developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the major energy generation facility development increase their payrolls from the date of the waiver by 75 or more persons. However, any revocation must be requested by an affected local government unit, and notice and opportunity for hearing must be given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person who holds an permit under Title 75, chapter 2 or 5, and who has filed an impact plan fails to comply with the review and implementation requirements in [sections 1 through 20], the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance.

NEW SECTION. **Section 10. Permit procedure and review of impact plan to run concurrently.** It is intended that the procedure for fulfilling the permit requirements of Title 75, chapter 2 or 5, and the review of the impact plan by the board under [section 9], if review occurs, are to run concurrently.

NEW SECTION. **Section 11. Property tax prepayment -- major energy generation facility development.** (1) After permission to commence operation is granted by the appropriate governmental agency and upon request of the governing body of a county in which a major energy generation facility development is to be located, a person intending to construct or locate a major energy generation facility development in this

state shall prepay property taxes as specified in the impact plan. This property tax prepayment must exclude the 6-mill university levy established under 20-25-423 and may exclude the mandatory county levies for the school BASE funding program established in 20-9-331 and 20-9-333.

(2) The person who is to prepay under this section is not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the major energy generation facility development.

(4) When the major energy generation facility developments are completed and assessed by the department of revenue, they are subject to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not exceed the tax obligation of the major energy generation facility development for that year, and the time period for tax crediting is limited to the productive life of the major energy generation facility's operation.

NEW SECTION. **Section 12. Industrial local government facility impact bonds.** (1) When the need for the construction, renovation, improvement, or acquisition of facilities as a result of the major energy generation facility development is determined under [section 9], the owners of a major energy generation facility development may enter into a written agreement with the local government unit having the burden for the increased capital and operating costs expected to be incurred by the facilities. The local government unit may execute a written agreement with the owner of a major energy generation facility development for the issuance of any bonds provided for in this section.

(2) The agreement with the owners of a major energy generation facility development must provide for a property tax prepayment guaranty through a third-party financial institution, in addition to the taxes imposed by the local government unit on property owners generally, of the principal and interest on the bonds provided for in this section. Payment will then be made by an annual special tax levy on the property of the major energy generation facility development sufficient to retire the principal and interest on these bonds. The bonds may not be an obligation of the local government unit, but must be special obligations limited to the revenue derived from

the special tax levy. A local government unit shall establish a levy and, to the extent that bonds are issued as provided in this section, shall pledge the special fund and all revenue of the special tax levy to the repayment of the bonds.

(3) The debt limits set forth in 7-7-2203, 7-7-4201, and 20-9-406 do not apply to bonds issued in accordance with this section. The interest on the bonds is not subject to state taxes.

(4) The bonds must be authorized by the governing body of the local government unit by a resolution that states:

(a) the facility for which the bonds are issued;

(b) the amount of the bonds;

(c) the rate of interest that the bonds bear;

(d) the date of the bonds and the maturity date or dates of the bonds;

(e) the dates interest is payable on the bonds;

(f) the redemption options, if any, with respect to the bonds; and

(g) the manner of execution of the bonds.

(5) The bonds must be:

(a) in registered form as to principal and interest;

(b) payable in installments and at times not exceeding 30 years from their date of issuance; and

(c) payable at a place or places and be evidenced in a manner that the governing body determines is in the best interest of the local government unit.

(6) Any bonds issued under the authority of this section may be sold at public or private sale in a manner, at a time or times, and at a price above or below par as may be determined by the governing body of the local government unit. All expenses, premiums, and commissions that the local government unit considers necessary or advantageous in connection with the authorization, sale, and issuance of the bonds may be paid by the governing body of the local government unit from the proceeds of the sale of the bonds.

(7) If more than one local government unit adopts a resolution to issue bonds, the local government units may enter into an interlocal agreement under Title 7, chapter 11, part 1, providing for the issue of bonds of the local government units to be combined in a single offering, if the governing body of each local government unit authorizing the bonds determines that the pooling of bonds:

(a) is in the best interest of the local government units;

(b) will facilitate the sale of the bonds under more advantageous terms;

(c) will lower the interest rates; or

(d) will lower the cost of issuance.

(8) In addition to the specific requirements of 7-11-105, the interlocal agreement must provide:

(a) that the bond titles must denote that bonds of different local government units have been pooled and must refer to each local government unit executing the interlocal agreement;

(b) for a single debt service fund, to be held by a qualified trust company, to which each local government unit shall pledge and pay the annual special tax levies levied against the major energy generation facility development; and

(c) that the bonds are payable solely from and against the debt service funds under the interlocal agreement.

NEW SECTION. **Section 13. Impact plan amendments.** (1) The impact plan may provide for amendment under definite conditions specified in the impact plan. Also, the governing body of an affected county or the major energy generation facility developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the major energy generation facility is forecast to increase or decrease by at least 75 persons, as determined under [section 3(7)], over or under the employment levels contemplated by the approved impact plan;

(b) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date that the major energy generation facility begins commercial production; or

(c) the governing body of an affected county and the major energy generation facility developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt of the impact plan, the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and

(c) a description of the corrective measures proposed by the petitioner.

(3) Within 60 days after notice that the petition has been received, an affected local government unit or the major energy generation facility developer shall notify the board in writing if the local government unit or the developer objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If an objection is not received within the 60-day period, the impact plan

must be amended by the board as proposed by the petitioner.

(4) If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall conduct a hearing on the validity of the objections within 30 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county that in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

(5) Following the hearing, the board shall make findings as to those portions of the amendments that were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held.

NEW SECTION. **Section 14. Local government budget authority.** A local government unit may budget and expend property tax prepayments received from a major energy generation facility developer under [sections 1 through 20] or pursuant to an impact plan approved under [sections 1 through 20]. If a property tax prepayment is requested or received after the adoption of the budget for the fiscal year in which the property tax prepayment is to be expended, the governing body of the local government unit may by a majority vote amend its budget to provide for the receipt and expenditure of the property tax prepayment.

NEW SECTION. **Section 15. Fund transfer.** Prior to each October 31, all money segregated by county in the major energy generation facility impact trust account following allocation to the major energy generation facility impact trust reserve account, established in [section 7], as of September 30 immediately preceding must be transferred to the county for which the funds have been held. The funds transferred must be deposited in the county major energy generation facility trust reserve account established in [section 21].

NEW SECTION. **Section 16. Declaration of necessity and purpose.** The commencement of new major energy generation facility developments often results in revenue disparities among adjacent local government units. This occurs primarily when a major energy generation facility development that locates in one taxing jurisdiction causes population influxes in neighboring jurisdictions. The result can be that some jurisdictions

will experience a need to increase expenditures and receive no corresponding increase in revenue, while other jurisdictions will experience an increase in revenue and receive no comparable increase in expenditures. Therefore, there is a need to allocate the increase in the property tax base resulting from the major energy generation facility development and operation of new major energy generation facilities so that property tax revenue will be equitably distributed among affected local government units.

NEW SECTION. **Section 17. Definitions.** As used in [sections 16 through 20], the following definitions apply:

(1) "Affected local government unit" means a local government unit that will experience a need to increase services or facilities as a result of the commencement of a major energy generation facility development or within which a major energy generation facility development is located in accordance with an impact plan adopted pursuant to [section 9].

(2) "Jurisdictional revenue disparity" means property tax revenue resulting from a major energy generation facility development that is inequitably distributed among affected local government units as finally determined by the board in an approved impact plan.

(3) "Local government unit", for the purposes of [sections 16 through 20], means a county, municipality, or school district.

(4) "Major energy generation facility development employee" means a person who resides within the jurisdiction of an affected local government unit as a result of employment with a major energy generation facility development or its contractors or subcontractors.

(5) "Major energy generation facility development elementary school student" or "major energy generation facility development high school student" means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a major energy generation facility development or its contractors or subcontractors.

(6) "Taxable valuation" of a major energy generation facility development means the value of applicable property classified under Title 15, chapter 6, part 1.

NEW SECTION. **Section 18. Jurisdictional revenue disparity -- conditioned exemption and reallocation of certain taxable valuation.** (1) When an impact plan for a major energy generation facility development approved pursuant to [section 9] identifies a jurisdictional revenue disparity, the board shall promptly notify the developer, all affected local government units, and the department of revenue of the disparity. Except

as provided in [section 19] and this section, the increase in taxable valuation of the major energy generation facility development that occurs after the issuance and validation of a permit under Title 75, chapter 2 or 5, is not subject to the usual application of county and school district property tax mill levies. This increase in taxable valuation must be allocated to local government units as provided in [section 19]. The increase in taxable valuation allocated, as provided in [section 19], is subject to 15-10-420 and the application of property tax mill levies in the local government unit to which it is allocated. The increase in taxable valuation allocated to the local government unit is considered newly taxable property in the recipient local government unit as provided in 15-10-420.

(2) Subject to 15-10-420, the total taxable valuation of a major energy generation facility development remains subject to the statewide mill levies and basic county levies for elementary and high school BASE funding programs as provided in 20-9-331 and 20-9-333.

(3) The provisions of subsection (1) remain in effect until the major energy generation facility development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the board.

NEW SECTION. **Section 19. Allocation of taxable valuation for local taxation purposes.** When property of a major energy generation facility development is subject to the provisions of [section 18], the increase in taxable valuation must be allocated by the department of revenue as follows:

(1) The local government unit in which the major energy generation facility is located must be allocated 20% of the total increase in taxable valuation of the gross proceeds.

(2) The remaining increase in taxable valuation of the major energy generation facility development must be allocated between affected counties and affected municipalities according to the following formula, based on the place of residence of major energy generation facility development employees:

(a) A portion, not to exceed 20%, must be distributed to affected municipalities, based on that percentage of the total number of major energy generation facility development employees that reside within municipal boundaries. The taxable valuation allocated to affected municipalities must be distributed to each municipality according to its percentage of the total number of major energy generation facility development employees who reside within municipal boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is subject to the same county mill levy as other taxable properties located in the municipality.

(b) The remaining portion of the taxable valuation must be distributed to each affected county according to its percentage of the total number of major energy generation facility development employees who reside within

the county.

(3) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected high school district according to the percentage of the total number of major energy generation facility development high school students who reside within each district.

(4) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected elementary school district according to the percentage of the total number of major energy generation facility development elementary school students who reside within each district.

(5) The distribution formula specified in subsections (2) through (4) may be modified by an impact plan approved as provided in [section 9] or amended as provided in [section 13] if the modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the major energy generation facility development and the allocation of taxable valuation resulting from the major energy generation facility development.

NEW SECTION. **Section 20. Employee surveys.** (1) Each major energy generation facility development subject to the provisions of [sections 18 and 19] shall, on or before May 1 of each year, conduct a survey of its employees and promptly submit a report of its findings to the department of revenue. The report must include:

(a) the number of major energy generation facility development employees residing within each affected county;

(b) the number of major energy generation facility development employees residing within each affected municipality;

(c) the number of major energy generation facility development students residing in each affected high school district; and

(d) the number of major energy generation facility development students residing in each affected elementary school district.

(2) The initial allocation of the increase in taxable valuation made as provided in [sections 18 and 19] must be made on the basis of the place of residence of major energy generation facility development employees and the district of enrollment of major energy generation facility development students as projected in the approved impact plan for that period of time between the issuance and validation of the permit and the submission of an employee survey as provided for in this section.

NEW SECTION. **Section 21. County major energy generation facility impact trust account -- expenditure restrictions.** (1) The governing body of a county receiving an allocation under 15-72-106(4) shall establish a county major energy generation facility impact trust reserve account.

(2) Money received by a county pursuant to 15-72-106(4) or [section 15] must remain in the account and may not be appropriated by the governing body until:

(a) a major energy generation facility development has permanently ceased all major energy generation facility-related activity; or

(b) the number of persons employed full-time in major energy generation facility activities by the major energy generation facility development is less than one-half of the average number of persons employed full-time in major energy generation facility activities by the facility during the immediately preceding 5-year period.

(3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county shall allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county and may use the remaining funds in the account to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of major energy generation facility activity or the reduction in the major energy generation facility workforce described in subsection (2)(b);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of major energy generation facility activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit;

(d) attract new industry to the impact area;

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in major energy generation facility activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in major energy generation facility activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(5) Money in the reserve account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account.

Section 22. Section 15-72-104, MCA, is amended to read:

"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery. (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of ~~0.015~~ 0.0153 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.

(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.

(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.

(b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.

(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state

for purposes of the tax imposed by this section.

(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.

(b) Electricity produced in the state by an agency of the ~~of the~~ United States government for delivery outside of the state is exempt from the tax imposed by this section.

(c) Electricity delivered to a distribution services provider that is a municipal utility described in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

(d) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

[(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract or contracts that establish the purchase price or prices of electricity. The exemption allowed by this subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing contract or existing contracts.]

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates. (Bracketed language terminates January 1, 2003--sec. 40, Ch. 556, L. 1999.)"

Section 23. Section 15-72-106, MCA, is amended to read:

"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue. (1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.

(2) A self-assessing distribution services provider is subject to the provisions of this part.

(3) ~~The~~ Except as provided in subsection (4), the wholesale energy transaction tax collected under this part must be deposited in the general fund.

(4) Of the total amount of the wholesale energy transaction tax collected under this part for each biennium, $100,000 must be deposited in the state special revenue account provided for in [section 7]."

Section 24. Section 90-6-206, MCA, is amended to read:

"90-6-206. Basis for awarding grants. (1) Grants must be awarded on the basis of:

(a) need;

(b) degree of severity of impact from an increase or decrease in coal or coal bed methane development or in the consumption of coal or coal bed methane by a coal-using or coal bed methane energy complex;

(c) availability of funds; and

(d) degree of local effort in meeting these needs.

(2) In determining the degree of local effort, the board shall review the millage rates levied for the present fiscal year in relation to the average millage rates levied during the 3 years immediately preceding the year of application for assistance.

(3) Millage rates for the present fiscal year that are lower than the average millage rate levied during the 3 years immediately preceding the year of application for assistance must be considered by the board to indicate the lack of local effort. The application under these circumstances may be rejected.

(4) Further, in determining the degree of local effort, the board shall consider the possibility of requiring that local governmental unit to increase its bonded indebtedness to provide all or part of the governmental service or facility that is needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex.

(5) To the extent that funds are needed to evaluate and plan for the impact needs caused by the increase or decrease in coal development or in the consumption of coal by a coal-using energy complex, consideration of bond issues and millage levies may be waived.

(6) To the extent that the applicant has no history of mill levies, subsections (2) and (3) do not apply."

NEW SECTION. **Section 25. Codification instruction.** (1) [Sections 1 through 20] are intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 1 through 20].

(2) [Section 21] is intended to be codified as an integral part of Title 7, chapter 6, part 22, and the provisions of Title 7, chapter 6, part 22, apply to [section 21].

NEW SECTION. **Section 26. Effective date.** [This act] is effective July 1, 2001.

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