

HOUSE BILL NO. 405
INTRODUCED BY M. LANGE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ENERGY; CREATING THE MONTANA CLEAN ENERGY DEVELOPMENT AND ECONOMIC SECURITY ACT; PROVIDING LEGISLATIVE FINDINGS; DEFINING CERTAIN TERMS; PROVIDING CERTAIN EXEMPTIONS AND EXCEPTIONS; CLARIFYING JUDICIAL REVIEW; AUTHORIZING THE GOVERNOR TO IMPLEMENT CERTAIN MEASURES TO FACILITATE AND EXPEDITE THE COMPLETION OF CLEAN ENERGY DEVELOPMENT PROJECTS; AMENDING SECTIONS 75-20-103 AND 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana Clean Energy Development and Economic Security Act".

NEW SECTION. **Section 2. Policy and legislative findings.** (1) It is constitutionally declared in the state of Montana that the inalienable rights of the citizens of this state include the right to a clean and healthful environment, to pursue life's basic necessities, to enjoy and defend life and liberty, to acquire, possess, and protect property, and to seek safety, health, and happiness in all lawful ways. The balancing of these constitutional rights is necessary in order to maintain a sustainable quality of life for all Montanans.

(2) The legislature finds that:

(a) energy supply and price fundamentally impact all aspects of Montana's economy and social fabric, including the livelihood of all Montanans;

(b) significant uncertainty in energy supply and prices has created an unprecedented need for the state to develop sustainable, reliable, low-cost, and clean energy resources;

(c) the state:

(i) with a demonstrated reserve base of almost 120 billion tons of coal, has the largest coal reserves in the United States and ranks sixth nationally in terms of coal production;

(ii) is endowed with significant wind energy resources, ranking fifth in the nation for overall wind energy potential;

(iii) has demonstrated reserves of 966 billion cubic feet of natural gas and 427 million barrels of crude oil; and

(iv) has the capacity, given the tremendous productivity of Montana agriculture, to produce significant quantities of ethanol and biodiesel;

(d) Montana is in a very unique position to produce value-added clean energy products, including:

(i) low-cost and clean coal and wind electricity generation;

(ii) ultraclean conversion of coal to synthetic petroleum products and natural gas; and

(iii) production and refining of ethanol, biodiesel, crude oil, and gas products;

(e) sustainable and reasonable development of Montana's clean energy resources provides a tremendous opportunity to diversify the state's economy, create high-quality, high-paying jobs, revitalize Montana communities, and stabilize and increase revenue to the state;

(f) Montana's existing stringent energy project permitting requirements protect public health, safety, and welfare AND THOSE PERMITTING REQUIREMENTS ENSURE THAT ENERGY PROJECTS THAT ARE DEVELOPED IN MONTANA ARE CLEAN ENERGY PROJECTS;

(g) certain impediments, including transmission and pipeline constraints and overly burdensome and duplicative regulatory constraints, forestall the necessary and timely development of the state's clean energy resources; and

(h) it is in the public interest that the legislature, on behalf of all Montanans, remove impediments and facilitate the timely and sustainable development of Montana's clean energy resources for energy and economic security purposes.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

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

(d) rail transportation;

(e) aqueduct and diversion dams;

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

(g) other associated supporting infrastructure that is necessary for a clean energy development project.

(2) "Clean energy development project" means each plant, unit, or other development and associated developments designed for or capable of:

(a) generating electricity and any associated supporting infrastructure, except that the term does not include a nuclear facility defined in 75-20-1202;

(b) producing gas derived from coal and any associated supporting infrastructure;

(c) producing liquid hydrocarbon products and any associated supporting infrastructure;

(d) refining crude oil or natural gas and any associated supporting infrastructure;

(E) PRODUCING SILANE GAS AND POLYSILICON AND ANY ASSOCIATED SUPPORTING INFRASTRUCTURE;

~~(e)~~(F) producing alcohol to be blended for gasohol and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5, and any associated supporting infrastructure;

~~(f)~~(G) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701 and any associated supporting infrastructure; or

~~(g)~~(H) transmitting electricity through an electric transmission line with a design capacity ~~of more than~~ 69 EQUAL TO OR GREATER THAN 50 kilovolts and any associated supporting infrastructure.

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

NEW SECTION. Section 4. Clean energy development project exemptions -- exceptions. (1) A clean energy development project is:

(a) exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when a state agency issues any permit, lease, license, easement, and other approvals in conjunction with the proposed clean energy development project;

(b) except for the provisions of 75-20-1201 through 75-20-1205, exempt from the provisions of Title 75, chapter 20;

(c) CONSISTENT WITH SUBSECTION (4), exempt from any local law or regulation that is unreasonably restrictive in view of existing technology, of factors of cost or economics, or of the needs of energy consumers, whether the clean energy development project is located inside or outside the directly affected government; and

(d) considered to serve the public interest, convenience, and necessity.

(2) [Sections 1 through 5] do not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a clean energy development project.

(3) The provisions of [sections 1 through 5] do not apply to a proposed mine that is subject to The

Montana Strip and Underground Mine Reclamation Act.

(4) PRIOR TO ANY JUDICIAL DETERMINATION UNDER SUBSECTION (1)(C), A CLEAN ENERGY DEVELOPMENT PROJECT SPONSOR SHALL:

(A) CONSULT WITH THE LOCAL GOVERNMENTAL ENTITY THAT HAS ADOPTED A LOCAL LAW OR REGULATION THAT THE PROJECT SPONSOR BELIEVES IS UNREASONABLY RESTRICTIVE; AND

(B) MAKE A GOOD FAITH ATTEMPT TO RESOLVE ANY ISSUES REGARDING WHETHER THE LOCAL LAW OR REGULATION IS UNREASONABLY RESTRICTIVE.

NEW SECTION. Section 5. Judicial review of department decisions -- surety bond. (1) A person aggrieved by an action taken pursuant to [sections 1 through 5] may obtain judicial review of that action by filing a petition in a state district court of competent jurisdiction. A challenge to an action taken pursuant to [sections 1 through 5] must be brought in the county in which the activity is proposed to occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) A judicial challenge to an action taken pursuant to [sections 1 through 5] by a party other than a permit applicant in conjunction with a clean energy development project must include the permit applicant unless otherwise agreed to by the permit applicant. All judicial challenges with respect to a clean energy development project with a project cost, as determined by the court, that is more than \$1 million have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees, DAMAGES, and costs incurred in defending the action.

(3) When an appeal is filed under this section, the court shall require a surety bond by the party requesting the appeal, unless that party is the permit applicant, for the payment of costs and damages incurred by the permit applicant and its employees if the court determines that the action taken pursuant to [sections 1 through 5] was correct. When requiring a surety bond, the court shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(4) Any action or proceeding challenging an action taken pursuant to [sections 1 through 5], must be brought within 60 days of the action that is the subject of the challenge.

~~— (5) Except as expressly provided for in [sections 1 through 5], a court of this state does not have jurisdiction to hear or determine any issue or case or controversy concerning a clean energy development project or to stop or delay the construction, operation, or maintenance of a clean energy development project except to~~

enforce compliance with ~~[sections 1 through 5]~~.

Section 6. Section 75-20-103, MCA, is amended to read:

"75-20-103. Chapter supersedes other laws or rules. This chapter supersedes other laws or regulations except as provided in 75-20-401 and [sections 1 through 5]. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated ~~thereunder~~ under those laws, this chapter ~~shall govern~~ governs and ~~control~~ controls and the other law or rule ~~shall be deemed~~ is considered superseded for the purpose of this chapter. Amendments to this chapter ~~shall~~ have the same effect."

Section 7. Section 75-20-104, MCA, is amended to read:

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

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

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

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

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

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

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

(6) "Commence to construct" means:

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

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

experimentation;

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

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

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

(8) "Facility" means, except for a clean energy development project defined in [section 3]:

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

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

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity within an existing easement or right-of-way; and

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

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

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

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

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

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

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

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

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

(11) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

- (a) installing larger conductors;
- (b) replacing insulators;
- (c) replacing pole or tower structures; or
- (d) changing structure spacing, design, or guying.

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

NEW SECTION. Section 8. Governor's powers. (1) In addition to existing powers and duties, the governor has certain powers and duties to facilitate the timely and sustainable development of Montana's energy resources for energy and economic development and security purposes.

(2) The governor may, through executive order, implement the following measures in order to facilitate and expedite the completion of clean energy development projects as defined in [section 3]:

(a) in conjunction with the provisions of [sections 1 through 5], create an executive branch permitting facilitation process for clean energy development projects that, to the extent allowed by law, coordinates and synchronizes all requisite agency applications, permits, licenses, orders, and decisions;

(b) establish a statewide pool of qualified private contractors with the requisite expertise to assist state agencies in expediting agency applications, permits, licenses, orders, and decisions; and

(c) require relevant state agencies to conduct base-line information assessments that include but are not limited to:

- (i) an inventory of coal and coal bed natural gas resources;
- (ii) an inventory of wind resources;
- (iii) an inventory of available water resources;
- (iv) an inventory of cultural resources;
- (v) an inventory of biological resources;
- (vi) an inventory and analysis of potential transmission and pipeline corridors;
- (vii) an inventory and analysis of local government infrastructure needs; and
- (viii) any other study, analysis, or inventory that would expedite the state permitting process.

NEW SECTION. Section 9. Codification instruction. (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 5].

(2) [Section 8] is intended to be codified as an integral part of Title 90, chapter 4, and the provisions of Title 90, chapter 4, apply to [section 8].

NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.

NEW SECTION. SECTION 12. RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO ANY APPLICATION FOR A PERMIT, LICENSE, CERTIFICATE, OR MODIFICATION OF A PERMIT, LICENSE, OR CERTIFICATE THAT WAS SUBMITTED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND HAD NOT BEEN GRANTED OR DENIED BEFORE [THE EFFECTIVE DATE OF THIS ACT]. FOR PURPOSES OF THIS SECTION, A DETERMINATION THAT AN APPLICATION IS NOT COMPLETE IS NOT A DENIAL.

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