

SENATE BILL NO. 445

INTRODUCED BY M. TROPILA, COBB, OLSON, ANKNEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ALTERNATIVE ENERGY REVOLVING LOAN PROGRAM TO INCLUDE ENERGY CONSERVATION PROJECTS; AMENDING SECTIONS 75-2-401, 75-2-413, 75-25-101, 75-25-102, AND 75-25-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-2-401, MCA, is amended to read:

"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty. (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the alternative energy and

energy conservation revolving loan account established in 75-25-101.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.

(e) The department may bring a judicial action to enforce a final administrative order issued pursuant to this section. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

Section 2. Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties -- venue -- effect of action -- presumption of continuing violation under certain circumstances. (1) (a) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed \$10,000 for each violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under this chapter by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of any county where a violation occurs or is threatened or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

(4) Money collected under this section must be deposited in the alternative energy and energy conservation revolving loan account established in 75-25-101. This subsection does not apply to money collected by an approved local air pollution control program."

Section 3. Section 75-25-101, MCA, is amended to read:

"75-25-101. Alternative energy and energy conservation revolving loan account. (1) There is a special revenue account called the alternative energy and energy conservation revolving loan account to the credit of the department of environmental quality.

(2) The alternative energy and energy conservation revolving loan account consists of money deposited into the account from air quality penalties from 75-2-401 and 75-2-413 and money from any other source. Any interest earned by the account and any interest that is generated from a loan repayment must be deposited into the account and used to sustain the program.

(3) Funds from the alternative energy and energy conservation revolving loan account may be used to provide loans to individuals, small businesses, units of local government, units of the university system, and nonprofit organizations for ~~the purpose of~~ capital investments for energy conservation purposes, as those terms

are defined in 15-32-102, and building alternative energy systems, as defined in 15-32-102:

- (a) to generate energy for their own use; and
- (b) for net metering as defined in 69-8-103; ~~and~~
- ~~—— (c) for capital investments by those entities for energy conservation purposes, as defined in 15-32-102, when done in conjunction with an alternative energy system.~~

(4) The amount of a loan may not exceed \$40,000, and the loan must be repaid within 10 years."

Section 4. Section 75-25-102, MCA, is amended to read:

"75-25-102. Administration of revolving loan account -- rulemaking authority. (1) The department of environmental quality shall adopt rules establishing:

- (a) eligibility criteria, including:
 - (i) criteria for defining residences, small businesses, and nonprofit organizations;
 - (ii) criteria for defining capital investments for energy conservation purposes;
 - (iii) ownership of the alternative energy facility;
 - (iv) financial capacity to repay the loans;
 - (v) estimated return on investment in the alternative energy and energy conservation; and
 - (vii) other matters that the department considers necessary to ensure repayment of loans and to encourage maximum use of the fund for alternative energy, energy conservation, and net metering uses;
- (b) processes and procedures for disbursing loans, including the agencies or organizations that are allowed to process the loan application for the department; and
- (c) terms and conditions for the loans, including repayment schedules and interest.

(2) The department shall solicit assistance in the development and operation of the program from individuals familiar with financial services and persons knowledgeable in alternative energy systems and energy conservation.

(3) Administrative costs charged to the account may not exceed 10% of the total loans or \$23,000 a year, whichever is greater. Legal fees and costs associated with collection of debt on principal are not considered administrative costs.

(4) The loan repayment period may not exceed 10 years. The loans must be made at a low interest rate. The department may set the interest rate at an amount that will cover its administrative costs, but the rate may not be less than 1% a year. The department may seek recovery of the amount of principal loaned in the event of default."

Section 5. Section 75-25-103, MCA, is amended to read:

"75-25-103. Outcome measures. The department of environmental quality shall develop reasonable outcome measures by which the success of the alternative energy ~~system~~ and energy conservation loan program provided for in this part must be measured on an annual basis. Minimal outcome that must be measured includes:

- (1) a loan loss ratio of under 5%;
- (2) the types of alternative energy systems and energy conservation projects that provided the best overall results for residences and those for small businesses; and
- (3) a determination of the amount of energy that was produced and saved because of participation in the program."

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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