

_____ BILL NO. _____

1
2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO
5 ESTABLISH REQUIREMENTS FOR THE CAPTURE, TRANSPORTATION, AND STORAGE OF CARBON
6 DIOXIDE OR THE OFFSETTING OF CARBON DIOXIDE AT COAL-FIRED ELECTRICAL GENERATION AND
7 SYNTHETIC FUEL FACILITIES; LIMITING THE AMOUNT OF CARBON DIOXIDE THAT CAN BE OFFSET;
8 AMENDING SECTIONS 15-24-3111, 15-24-3116, 69-8-421, AND 75-2-211, MCA; AND PROVIDING AN
9 APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 15-24-3111, MCA, is amended to read:

14 **"15-24-3111. Energy production or development -- tax abatement -- eligibility.** (1) A facility listed
15 in subsection (3), clean advanced coal research and development equipment, and renewable energy research
16 and development equipment may qualify for an abatement of property tax liability pursuant to this part.

17 (2) (a) If the abatement is granted for a facility listed in subsection (3), the qualifying facility must be
18 assessed at 50% of its taxable value for the qualifying period.

19 (b) If the abatement is granted for clean advanced coal research and development equipment or
20 renewable energy research and development equipment, the qualifying equipment, up to the first \$1 million of
21 the value of equipment at a facility, must be assessed at 50% of its taxable value for the qualifying period. There
22 is no abatement for any portion of the value of equipment at a facility in excess of \$1 million.

23 (c) The abatement applies to all mills levied against the qualifying facility or equipment.

24 (3) Subject to subsections (4) and (5), the following facilities or property may qualify for the abatement
25 allowed under this part:

26 (a) biodiesel production facilities;

27 (b) biogas production facilities;

28 (c) biomass gasification facilities;

29 (d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;

30 (e) ethanol production facilities;

- 1 (f) geothermal facilities;
- 2 (g) renewable energy manufacturing facilities;
- 3 (h) clean advanced coal research and development equipment and renewable energy research and
4 development equipment;
- 5 (i) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced through
6 carbon credit offsets;
- 7 (j) transmission lines and associated equipment and structures classified in 15-6-157;
- 8 (k) converter stations classified under 15-6-159;
- 9 (l) carbon sequestration equipment as defined in 15-6-158; and
- 10 (m) pipelines classified under 15-6-158.
- 11 (4) (a) In order to qualify for the abatement under this part, a facility listed in subsection (3) must meet
12 the following requirements:
- 13 (i) commencement of construction of the facility must occur after June 1, 2007; and
- 14 (ii) the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), must
15 be paid during the construction phase of the facility.
- 16 (b) In order to qualify for the abatement under this part, clean advanced coal research and development
17 equipment and renewable energy research and development equipment must be placed into service after June
18 30, 2007.
- 19 (c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the gasification
20 process must be sequestered ~~at a rate that is practically obtainable but may not be less than 65%~~ in compliance
21 with the requirements of 75-2-211(3)(k) and (16).
- 22 (d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is applied
23 for after December 31, 2014, do not qualify under subsection (3)(d).
- 24 (e) To qualify under subsection (3)(i), the facility shall offset carbon dioxide emissions by the percentage
25 determined in 15-24-3116.
- 26 (5) To qualify for an abatement, the facility or clean advanced coal research and development equipment
27 and renewable energy research and development equipment must be certified as provided in 15-24-3112.
- 28 (6) Upon termination of the qualifying period, the abatement ceases and the property for which the
29 abatement had been granted must be assessed at 100% of its taxable value.
- 30 (7) For the purposes of this section, "qualifying period" means the construction period and the first 15

1 years after the facility commences operation or the clean advanced coal research and development equipment
2 or renewable energy research and development equipment is purchased. The total time of the qualifying period
3 may not exceed 19 years."

4

5 **Section 2.** Section 15-24-3116, MCA, is amended to read:

6 **"15-24-3116. Rules.** (1) The department of revenue shall adopt rules for the implementation of this part,
7 including the valuation of qualifying property and administration of property certified under 15-24-3112 or
8 classified under 15-6-157 or 15-6-158.

9 (2) The department of environmental quality shall adopt rules necessary for certification, compliance,
10 and revocation of certificates, as provided in 15-24-3112, and for classification as class fourteen property, as
11 provided in 15-6-157, or class fifteen property, as provided in 15-6-158. The rules may include specifying
12 procedures, including timeframes for certification application, and definitions necessary to identify property for
13 certification and compliance. The Except as provided in 75-2-211(3)(k) and (16), the percentage of the carbon
14 dioxide produced by a facility that is to be sequestered or offset must be based on technology that is practically
15 obtainable as determined by the department."

16

17 **Section 3.** Section 69-8-421, MCA, is amended to read:

18 **"69-8-421. Approval of electricity supply resources.** (1) A public utility that removed its generation
19 assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission for
20 approval of an electricity supply resource that is not yet procured.

21 (2) Within 45 days of the public utility's submission of an application for approval, the commission shall
22 determine whether or not the application is adequate and in compliance with the commission's minimum filing
23 requirements. If the commission determines that the application is inadequate, it shall explain the deficiencies.

24 (3) The commission shall issue an order within 180 days of receipt of an adequate application for
25 approval of a power purchase agreement from an existing generating resource unless it determines that
26 extraordinary circumstances require additional time.

27 (4) (a) Except as provided in subsections (4)(b) through (4)(d), the commission shall issue an order
28 within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity interest
29 in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for which
30 approval would result in construction of a new electric generating resource. The commission may extend the time

1 limit up to an additional 90 days if it determines that extraordinary circumstances require it.

2 (b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation
3 resource or a modification to an existing resource, the commission shall hold the public hearing on the application
4 for approval at least 30 days after the issuance of the final air quality permit.

5 (c) If a final air quality permit is not issued within the time limit pursuant to subsection (4)(a), the
6 commission shall extend the time limit in order to comply with subsection (4)(b).

7 (d) The commission may extend the time limit for issuing an order for an additional 60 days following the
8 hearing pursuant to subsection (4)(b).

9 (5) To facilitate timely consideration of an application, the commission may initiate proceedings to
10 evaluate planning and procurement activities related to a potential resource procurement prior to the public utility's
11 submission of an application for approval.

12 (6) (a) The commission may approve or deny, in whole or in part, an application for approval of an
13 electricity supply resource.

14 (b) The commission may consider all relevant information known up to the time that the administrative
15 record in the proceeding is closed in the evaluation of an application for approval.

16 (c) A commission order granting approval of an application must include the following findings:

17 (i) approval, in whole or in part, is in the public interest; and

18 (ii) procurement of the electricity supply resource is consistent with the requirements in 69-3-201, the
19 objectives in 69-8-419, and commission rules.

20 (d) The commission order may include a provision for allowable generation assets cost of service when
21 the utility has filed an application for the lease or acquisition of an equity interest in a plant or equipment used to
22 generate electricity.

23 (e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that
24 is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or
25 synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures
26 required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in rates. ~~By March~~
27 ~~31, 2008, the~~ The commission shall adopt rules for the implementation of this subsection (6)(e).

28 (f) The commission order may include other findings that the commission determines are necessary.

29 (g) A commission order that denies approval must describe why the findings required in subsection (6)(c)
30 could not be reached.

1 (7) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order
2 containing the findings required under subsection (6)(c), the commission may not subsequently disallow the
3 recovery of costs related to the approved electricity supply resource based on contrary findings.

4 (8) Until the state or federal government has adopted uniformly applicable statewide standards for the
5 capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition
6 of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal
7 and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a
8 ~~minimum of 50% of~~ the carbon dioxide produced by the facility in compliance with the requirements of
9 75-2-211(3)(k) and (16). Carbon dioxide captured by a facility or equipment may be sequestered offsite from the
10 facility or equipment.

11 (9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the
12 manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed
13 any power supply purchase agreement as part of its overall resource portfolio. The commission may subsequently
14 disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch,
15 operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201, 69-8-419, and
16 commission rules.

17 (10) The commission may engage independent engineering, financial, and management consultants or
18 advisory services to evaluate a public utility's electricity supply resource procurement plans and proposed
19 electricity supply resources. The consultants must have demonstrated knowledge and experience with electricity
20 supply procurement and resource portfolio management, modeling, risk management, and engineering practices.
21 The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services.
22 These costs are recoverable in rates.

23 (11) ~~By March 31, 2008, the~~ The commission shall adopt rules prescribing minimum filing requirements
24 for applications filed pursuant to this part."

25

26 **Section 4.** Section 75-2-211, MCA, is amended to read:

27 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule
28 provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

29 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section,
30 not later than 180 days before construction, installation, or alteration begins or as a condition of use of any

1 machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air
2 pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator
3 shall file with the department the appropriate permit application on forms available from the department.

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

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

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

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

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

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

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

24 (a) requirements and procedures for permit applications, including standard application forms;

25 (b) requirements and procedures for submittal of information necessary to determine the location,
26 quantity, and type of emissions;

27 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

28 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
29 agencies, as appropriate;

30 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

- 1 (f) procedures for the transfer of permits;
- 2 (g) requirements and procedures for suspension, modification, and revocation of permits by the
3 department;
- 4 (h) requirements and procedures for appropriate emission limitations and other requirements, including
5 enforceable measures necessary to ensure compliance with those limitations and requirements;
- 6 (i) requirements and procedures for permit modification and amendment; ~~and~~
- 7 (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations
8 at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the
9 requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the
10 department in advance of each change in location; and
- 11 (k) for construction permit applications filed after [the effective date of this act] for coal-fired electrical
12 generation facilities, coal gasification facilities, or coal-to-liquid facilities, requirements that 100% of the carbon
13 dioxide emissions from the facility be captured, transported if necessary, and permanently stored in a geological
14 formation or, subject to subsection (16), offset through agreements with carbon offset providers, as defined in
15 69-8-103.
- 16 (4) This section does not restrict the board's authority to adopt regulations providing for a single air
17 quality permit system.
- 18 (5) Department approval of an application to transfer a portable emission source from one location to
19 another is exempt from the provisions of 75-1-201(1).
- 20 (6) The department may, for good cause shown, waive or shorten the time required for filing the
21 appropriate applications.
- 22 (7) The department shall require that applications for permits be accompanied by any plans,
23 specifications, and other information that it considers necessary.
- 24 (8) An application is not considered filed until the applicant has submitted all fees required under
25 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)
26 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of
27 an application that the application is incomplete and fails to list the reasons why the application is considered
28 incomplete, the application is considered filed as of the date of the purported filing.
- 29 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the
30 preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter

1 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

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

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

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

10 (b) If an application does not require the preparation of an environmental impact statement, is not subject
11 to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475,
12 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed
13 application, as provided in subsection (8), of its approval or denial of the application, except as provided in
14 subsection (14).

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

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

23 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that is
24 also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall
25 prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under
26 this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within
27 the time period provided for in 75-2-215(3)(e).

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

1 agent.

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

5 (10) When the department approves or denies the application for a permit under this section, a person
6 who is jointly or severally adversely affected by the department's decision may request a hearing before the
7 board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit
8 setting forth the grounds for the request must be filed within 30 days after the department renders its decision.
9 The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to
10 a hearing before the board under this subsection.

11 (11) (a) The department's decision on the application is not final until 15 days have elapsed from the date
12 of the decision.

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

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

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

18 (c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting
19 the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board
20 determines that the permit was properly issued. When requiring an undertaking, the board shall use the same
21 procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

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

24 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

25 (b) are subject to the requirements of 75-2-215; or

26 (c) require the preparation of an environmental impact statement.

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

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

30 (a) the period as provided in subsection (13) in which the public may submit comments on draft air quality

1 permits not subject to subsection (12); and

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

4 (15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or
5 creation of:

6 (i) general permits covering multiple similar sources; or

7 (ii) other permits covering multiple similar sources.

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

10 (16) In meeting the requirements of subsection (3)(k), a facility may only offset 25% of its carbon dioxide
11 emissions through agreements with carbon offset providers as defined in 69-8-103."

12

13 NEW SECTION. Section 5. Applicability. [This act] applies to an application for a permit submitted to
14 the department of environmental quality after [the effective date of this act].

15

- END -