

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING TAX INCENTIVES AND REVISING TAXATION OF
5 CERTAIN ENERGY CONVERSION OR PRODUCTION, ENERGY TRANSMISSION, AND ENERGY STORAGE;
6 ELIMINATING PROPERTY TAX INCENTIVES AND PREFERENTIAL TAX RATES FOR CERTAIN
7 GENERATION, PRODUCTION, TRANSMISSION, AND STORAGE; PROVIDING FOR PROPERTY TAX
8 RECLASSIFICATION OF SMALL POWER PRODUCTION FACILITIES; PROVIDING A PHASE-OUT OF THE
9 SMALL ELECTRICAL GENERATION EQUIPMENT PROPERTY TAX EXEMPTION; PROVIDING A PHASE-OUT
10 OF THE ENERGY PRODUCTION OR DEVELOPMENT PROPERTY TAX ABATEMENT; IMPOSING THE
11 ELECTRICAL ENERGY PRODUCERS LICENSE TAX ON CERTAIN PRODUCERS THAT USE PRODUCED
12 ELECTRICITY FOR A COMMERCIAL USE; ELIMINATING THE WHOLESALE ENERGY TRANSACTION TAX
13 EXEMPTION FOR CERTAIN ELECTRICITY PRODUCED BY WIND TURBINES ERECTED ON STATE LAND;
14 REQUIRING CERTAIN CUSTOMER-GENERATORS WITH NET METERING TO USE METERING EQUIPMENT
15 THAT IS CAPABLE OF MEASURING PRODUCTION OF ELECTRICITY; AMENDING SECTIONS 15-6-137,
16 15-6-141, 15-6-156, 15-6-157, 15-6-158, 15-6-225, 15-24-3001, 15-24-3111, 15-51-101, 15-72-104, 69-3-2003,
17 69-8-602, 75-20-104, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-301, 75-20-303, 75-20-304, AND
18 75-20-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 **Section 1.** Section 15-6-137, MCA, is amended to read:

23 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) ~~Except as provided in~~
24 ~~subsection (2), class~~ Class seven property includes:

25 (a) all property owned by cooperative rural electrical associations that serve less than 95% of the
26 electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties
27 described in 15-6-141(1)(c);

28 (b) electric transformers and meters; electric light and power substation machinery; natural gas
29 measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally
30 assessed public utilities; and tools used in the repair and maintenance of this property.



1 (2) ~~Class seven property does not include wind generation facilities, biomass generation facilities, and~~
2 ~~energy storage facilities classified under 15-6-157.~~

3 ~~——(3) Class seven property is taxed at 8% of its market value."~~

4

5 **Section 2.** Section 15-6-141, MCA, is amended to read:

6 **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property includes:

7 (a) centrally assessed allocations of an electric power company or centrally assessed allocations of an
8 electric power company that owns or operates transmission or distribution facilities or both;

9 (b) if congress passes legislation that allows the state to tax property owned by an agency created by
10 congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by
11 a public agency created by congress to transmit or distribute electrical energy produced at privately owned
12 generating facilities, not including rural electric cooperatives;

13 (c) rural electric cooperatives' property, except ~~wind generation facilities, biomass generation facilities,~~
14 ~~and energy storage facilities classified under 15-6-157~~ and property used for headquarters, office, shop, or other
15 similar facilities, used for the sole purpose of serving customers representing less than 95% of the electric
16 consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally
17 assessed electric power company also owns property or serving an incorporated municipality with a population
18 that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service
19 from the facilities of an electric cooperative;

20 (d) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas
21 transmission or oil transmission pipelines regulated by either the public service commission or the federal energy
22 regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49
23 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5); and

24 (e) centrally assessed companies' allocations except:

25 (i) electrical generation facilities classified under 15-6-156;

26 (ii) all property classified under 15-6-157;

27 (iii) all property classified under 15-6-158 and 15-6-159;

28 (iv) property owned by cooperative rural electric and cooperative rural telephone associations and
29 classified under 15-6-135;

30 (v) property owned by organizations providing telephone communications to rural areas and classified

1 under 15-6-135;

2 (vi) railroad transportation property included in 15-6-145;

3 (vii) airline transportation property included in 15-6-145; and

4 (viii) telecommunications property included in 15-6-156.

5 (2) Class nine property is taxed at 12% of market value."

6

7 **Section 3.** Section 15-6-156, MCA, is amended to read:

8 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in
9 subsections (2)(a) through (2)(g), class thirteen property includes:

10 (a) electrical generation facilities; ~~except wind generation facilities, biomass generation facilities, and~~
11 ~~energy storage facilities classified under 15-6-157~~; of a centrally assessed electric power company;

12 (b) electrical generation facilities; ~~except wind generation facilities, biomass generation facilities, and~~
13 ~~energy storage facilities classified under 15-6-157~~, owned or operated by an exempt wholesale generator or an
14 entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

15 (c) noncentrally assessed electrical generation facilities; ~~except wind generation facilities, biomass~~
16 ~~generation facilities, and energy storage facilities classified under 15-6-157~~; owned or operated by any electrical
17 energy producer; and

18 (d) allocations of centrally assessed telecommunications services companies.

19 (2) Class thirteen property does not include:

20 (a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

21 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 ~~or~~
22 ~~15-6-157~~;

23 (c) allocations of electric power company property under 15-6-141;

24 (d) electrical generation facilities included in another class of property;

25 (e) property owned by cooperative rural telephone associations and classified under 15-6-135;

26 (f) property owned by organizations providing telecommunications services and classified under
27 15-6-135; and

28 (g) generation facilities that are exempt under 15-6-225.

29 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a
30 physically connected generator or generators, associated prime movers, and other associated property, including

1 appurtenant land and improvements and personal property, that are normally operated together to produce
 2 electric power. The term includes but is not limited to generating facilities that produce electricity from
 3 biomass-fired or coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling
 4 water, and generators driven by wind. The term also includes a qualifying small power production facility, as that
 5 term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the
 6 generation or sale of electricity other than electric power from a small power production facility.

7 (b) The term does not include electrical generation facilities used for noncommercial purposes or
 8 exclusively for agricultural purposes.

9 ~~_____ (c) The term also does not include a qualifying small power production facility, as that term is defined~~
 10 ~~in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of~~
 11 ~~electricity other than electric power from a small power production facility and classified under 15-6-134 and~~
 12 ~~15-6-138.~~

13 (4) Class thirteen property is taxed at 6% of its market value."
 14

15 **Section 4.** Section 15-6-157, MCA, is amended to read:

16 **"15-6-157. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen property
 17 includes:

18 ~~_____ (a) wind generation facilities of a centrally assessed electric power company;~~

19 ~~_____ (b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified~~
 20 ~~as an exempt wholesale generator pursuant to 42 U.S.C. 16451;~~

21 ~~_____ (c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;~~

22 ~~_____ (d) wind generation facilities owned or operated by cooperative rural electric associations described~~
 23 ~~under 15-6-137;~~

24 ~~_____ (e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed~~
 25 ~~electric power company;~~

26 ~~_____ (f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an~~
 27 ~~exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;~~

28 ~~_____ (g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned~~
 29 ~~or operated by any electrical energy producer;~~

30 ~~_____ (h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by~~

- 1 cooperative rural electric associations described under 15-6-137;
- 2 ~~—— (i) energy storage facilities of a centrally assessed electric power company;~~
- 3 ~~—— (j) energy storage facilities owned or operated by an exempt wholesale generator or an entity certified~~
4 ~~as an exempt wholesale generator pursuant to 42 U.S.C. 16451;~~
- 5 ~~—— (k) noncentrally assessed energy storage facilities owned or operated by any electrical energy producer;~~
- 6 ~~—— (l) energy storage facilities owned or operated by cooperative rural electrical associations described~~
7 ~~under 15-6-137;~~
- 8 ~~—— (m) battery energy storage systems that comply with federal standards on the manufacture and~~
9 ~~installation of the systems that are owned and operated by an electrical energy storage producer, electrical~~
10 ~~energy producer, or energy trading entity or by the owner or operator of an electrical vehicle charging site;~~
- 11 ~~—— (n) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced~~
12 ~~construction after June 1, 2007;~~
- 13 ~~—— (o) all property of a biogas production facility, as defined in 15-24-3102, that has commenced~~
14 ~~construction after June 1, 2007;~~
- 15 ~~—— (p) all property of a biomass gasification facility, as defined in 15-24-3102;~~
- 16 ~~—— (q) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection~~
17 ~~(1)(t) of this section, that sequesters carbon dioxide;~~
- 18 ~~—— (r) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced~~
19 ~~construction after June 1, 2007;~~
- 20 ~~—— (s) all property of a geothermal facility, as defined in 15-24-3102;~~
- 21 ~~—— (t) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that~~
22 ~~sequesters carbon dioxide, as required by 15-24-3111(4)(c);~~
- 23 ~~—— (u) all property or a portion of the property of a renewable energy manufacturing facility, as defined in~~
24 ~~15-24-3102, that has commenced construction after June 1, 2007;~~
- 25 ~~—— (v) all property of a natural gas combined cycle facility;~~
- 26 ~~—— (w)(a) equipment that is used to capture and to prepare for transport carbon dioxide that will be~~
27 ~~sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at~~
28 ~~coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that~~
29 ~~commence construction after December 31, 2007;~~
- 30 ~~(x)(b) high-voltage direct-current transmission lines and associated equipment and structures, including~~

1 converter stations and interconnections, other than property classified under 15-6-159, that:

2 (i) originate in Montana with a converter station located in Montana east of the continental divide and
3 that are constructed after July 1, 2007;

4 (ii) are certified under the Montana Major Facility Siting Act; and

5 (iii) provide access to energy markets for Montana electrical generation facilities listed in this section that
6 commenced construction after June 1, 2007;

7 ~~_____ (y) all property of electric transmission lines, including substations, that originate at facilities specified
8 in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this
9 subsection (1) and terminating at an existing transmission line or substation that has commenced construction
10 after June 1, 2007;~~

11 ~~_____ (z) the qualified portion of an alternating current transmission line and its associated equipment and
12 structures, including interconnections, that has commenced construction after June 1, 2007.~~

13 ~~_____ (2) (a) The qualified portion of an alternating current transmission line in subsection (1)(z) is that
14 percentage, as determined by the department of environmental quality, of rated transmission capacity of the line
15 contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1)
16 that are located in Montana.~~

17 ~~_____ (b) The department of revenue shall classify the total value of an alternating current transmission line
18 in accordance with the determination made by the department of environmental quality pursuant to subsection
19 (2)(a).~~

20 ~~_____ (c) The owner of property described under this subsection (2) shall disclose the location of the generation
21 facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for
22 transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not
23 required to disclose financial terms and conditions of contracts beyond that needed for classification.~~

24 ~~(3)(2)~~ Class fourteen property does not include facilities:

25 (a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, was
26 not paid during the construction phase; or

27 (b) that are exempt under 15-6-225.

28 ~~_____ (4) For the purposes of this section, the following definitions apply:~~

29 ~~_____ (a) "Biomass generation facilities" means any combination of boilers, generators, associated prime
30 movers, and other associated property, including appurtenant land and improvements and personal property, that~~

1 are normally operated together to produce electric power from the burning of organic material other than coal,
2 petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas
3 or other fuels allowed for ignition and to stabilize boiler operations:

4 ~~———— (b) (i) "Compressed air energy storage" means the conversion of electrical energy to compressed air
5 by using an electrically powered turbocompressor for storage in vessels designed for that purpose and in the
6 earth, including but not limited to deep saline formations, basalt formations, aquifers, depleted oil or gas
7 reservoirs, abandoned mines, and mined rock cavities:~~

8 ~~———— (ii) The term includes the conversion of compressed air into electrical energy by using turboexpander
9 equipment and electrical generation equipment.~~

10 ~~———— (c) (i) "Energy storage facilities" means hydroelectric pumped storage property, compressed air energy
11 storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of energy
12 storage facilities directly connected to the electrical power grid and associated property, appurtenant land and
13 improvements, and personal property that are designed to:~~

14 ~~———— (A) receive and store electrical energy as potential energy; and~~

15 ~~———— (B) convert the stored energy into electrical energy for sale as an energy commodity or as electricity
16 services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid,
17 including but not limited to frequency regulation ancillary services and frequency control.~~

18 ~~———— (ii) The term includes only property that in the aggregate can store at least 0.25 megawatt hour and has
19 a power rating of at least 1 megawatt for a period of at least 0.25 hour.~~

20 ~~———— (iii) The term does not include property, including associated property and appurtenant land and
21 improvements, that is used to hold water in ponds, reservoirs, or impoundments related to hydroelectric pumped
22 storage as defined in subsection (4)(e).~~

23 ~~———— (d) "Flywheel storage" means a process that stores energy kinetically in the form of a rotating flywheel.
24 Energy stored by the rotating flywheel can be converted to electrical energy through the flywheel's integrated
25 electric generator.~~

26 ~~———— (e) "Hydroelectric pumped storage" means a process that converts electrical energy to potential energy
27 by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through
28 hydraulic turbines and generate electrical energy.~~

29 ~~———— (f) "Regenerative fuel cell" means a device that produces hydrogen and oxygen from electricity and water
30 and alternately produces electrical energy and water from stored hydrogen and oxygen.~~

1 ~~_____ (g) "Wind generation facilities" means any combination of a physically connected wind turbine or~~
 2 ~~turbines, associated prime movers, and other associated property, including appurtenant land and improvements~~
 3 ~~and personal property, that are normally operated together to produce electric power from wind.~~

4 ~~(5)(3)~~ (a) The department of environmental quality shall determine whether to certify that a transmission
 5 line meets the criteria of subsection ~~(1)(x), (1)(y), or (1)(z)~~ (1)(b), as applicable, based on an application provided
 6 for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line
 7 is operational, and if the property no longer meets the requirements of subsection ~~(1)(x), (1)(y), or (1)(z)~~ (1)(b),
 8 the certification must be revoked.

9 (b) If the department of revenue finds that a certification previously granted was based on an application
 10 that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the
 11 application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time
 12 that the certification was in effect.

13 ~~(6)(4)~~ Class fourteen property is taxed at 3% of its market value."
 14

15 **Section 5.** Section 15-6-158, MCA, is amended to read:

16 **"15-6-158. Class fifteen property -- description -- taxable percentage.** (1) Class fifteen property
 17 includes:

18 (a) carbon dioxide pipelines certified by the department of environmental quality under 15-24-3112 for
 19 the transportation of carbon dioxide for the purposes of sequestration or for use in closed-loop enhanced oil
 20 recovery operations;

21 ~~_____ (b) qualified liquid pipelines certified by the department of environmental quality under 15-24-3112;~~

22 ~~(e)(b)~~ carbon sequestration equipment; and

23 ~~(d)(c)~~ equipment used in closed-loop enhanced oil recovery operations; and

24 ~~_____ (e) all property of pipelines, including pumping and compression equipment, carrying products other than~~
 25 ~~carbon dioxide, that originate at facilities specified in 15-6-157(1), with at least 90% of the product carried by the~~
 26 ~~pipeline originating at facilities specified in 15-6-157(1) and terminating at an existing pipeline or facility.~~

27 (2) For the purposes of this section, the following definitions apply:

28 (a) "Carbon dioxide pipeline" means a pipeline that transports carbon dioxide from a plant or facility that
 29 produces or captures carbon dioxide to a carbon sequestration point, including a closed-loop enhanced oil
 30 recovery operation.

1 (b) "Carbon sequestration" means the long-term storage of carbon dioxide from a carbon dioxide pipeline
 2 in geologic formations, including but not limited to deep saline formations, basalt or oil shale formations, depleted
 3 oil and gas reservoirs, unminable coal beds, and closed-loop enhanced oil recovery operations.

4 (c) "Carbon sequestration equipment" means the equipment used for carbon sequestration, including
 5 equipment used to inject carbon dioxide at the carbon sequestration point and equipment used to retain carbon
 6 dioxide in the sequestration location.

7 (d) "Carbon sequestration point" means the location where the carbon dioxide is to be confined for
 8 sequestration.

9 (e) "Closed-loop enhanced oil recovery operation" means all oil production equipment, as described in
 10 15-6-138(1)(c), owned by an entity that owns or operates an operation that, after construction, installation, and
 11 testing has been completed and the full enhanced oil recovery process has been commenced, injects carbon
 12 dioxide to increase the amount of crude oil that can be recovered from a well and retains as much of the injected
 13 carbon dioxide as practicable, but not less than 85% of the carbon dioxide injected each year absent catastrophic
 14 or unforeseen occurrences.

15 ~~_____ (f) "Liquid pipeline" means a pipeline that is dedicated to using 90% of its pipeline capacity for
 16 transporting fuel or methane gas from a coal gasification facility, biodiesel production facility, biogas production
 17 facility, or ethanol production facility.~~

18 ~~(g)~~(f) "Plant or facility that produces or captures carbon dioxide" means a facility that produces a flow
 19 of carbon dioxide that can be sequestered or used in a closed-loop enhanced oil recovery operation. This does
 20 not include wells from which the primary product is carbon dioxide.

21 (3) Class fifteen property does not include a carbon dioxide pipeline, ~~liquid pipeline~~, or closed-loop
 22 enhanced oil recovery operation for which, during construction, the standard prevailing wages for heavy
 23 construction, as provided in 18-2-414, were not paid during the construction phase.

24 (4) [(a) Except as provided in subsection (4)(b),] class fifteen property is taxed at 3% of its market value.

25 [(b) Carbon sequestration equipment placed in service after January 1, 2014, that is certified as provided
 26 in subsection (5) and that has a current granted tax abatement under 15-24-3111 is taxed at 1.5% of its reduced
 27 market value during the qualifying period provided for in 15-24-3111(7).

28 (5) (a) Requests for certification must be made on forms available from the department of revenue.
 29 Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws,
 30 orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

1 (b) The board of oil and gas conservation shall promulgate rules specifying procedures, including
 2 timeframes for certification application, and definitions necessary to identify carbon sequestration equipment for
 3 certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of
 4 carbon sequestration equipment. The board of oil and gas conservation shall identify and track compliance in the
 5 use of carbon sequestration equipment and report continuous acts or patterns of noncompliance at a facility to
 6 the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

7 (c) A person may appeal the certification, classification, and valuation of the property to the state tax
 8 appeal board. Appeals on the property certification must name the board of oil and gas conservation as the
 9 respondent, and appeals on the classification or valuation of the equipment must name the department of
 10 revenue as the respondent.] (Bracketed language terminates December 31, 2025--sec. 7, Ch. 407, L. 2015.)"

11

12 **Section 6.** Section 15-6-225, MCA, is amended to read:

13 **"15-6-225. Small electrical generation equipment exemption.** (1) (a) Machinery and equipment used
 14 in a qualifying generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy are
 15 exempt from taxation for 5 years after the generation of electricity begins.

16 (b) To qualify for the exemption under this section, the generation facility must be powered by an
 17 alternative renewable energy source and placed in service before July 1, 2017.

18 (2) For the purposes of this section:

19 (a) "alternative renewable energy source" means a form of energy or matter that is capable of being
 20 converted into forms of energy useful to humanity, including electricity, and the technology necessary to make
 21 this conversion when the source is not exhaustible in terms of this planet and when the source or technology is
 22 not in general commercial use. The term includes but is not limited to:

23 (i) solar energy;

24 (ii) wind energy;

25 (iii) geothermal energy;

26 (iv) conversion of biomass;

27 (v) fuel cells that do not require hydrocarbon fuel;

28 (vi) small hydroelectric generators producing less than 1 megawatt; or

29 (vii) methane from solid waste.

30 (b) "generation facility" includes any combination of a generator or generators, associated prime movers,

1 and other associated machinery and equipment that are normally operated together to produce electric power,
2 but does not include the owner's business improvements and personal property."

3

4 **Section 7.** Section 15-24-3001, MCA, is amended to read:

5 **"15-24-3001. Electrical generation and transmission facility exemption -- definitions.** (1) (a) Except
6 as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed
7 in the state of Montana after May 5, 2001, and before January 1, 2006, may be exempt from property taxation
8 for a 10-year period beginning on the date that an owner or operator of an electrical generation facility and related
9 delivery facilities commences to construct the facility as defined in 75-20-104~~(6)(a)~~(7)(a) and ~~(6)(b)~~ (7)(b). In order
10 to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery
11 facilities shall offer contracts to sell 50% of that facility's net generating output at a cost-based rate, which includes
12 a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility's completion.

13 (b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for
14 generation facilities powered by oil or gas turbines.

15 (2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to
16 consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined
17 by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract
18 period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not
19 contracted for in this fashion may be sold at market rates.

20 (3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation
21 under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to perform the
22 contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the
23 property is subject to a rollback tax as provided in 15-24-3002.

24 (b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation
25 under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the
26 contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the property
27 is subject to a rollback tax as provided in 15-24-3002.

28 (c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft,
29 sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection
30 (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.

1 (4) For the purposes of this section, the following definitions apply:

2 (a) (i) "Electrical generation facility" means any combination of a physically connected generator or
3 generators, associated prime movers, and other associated property, including appurtenant land and
4 improvements and personal property, that are normally operated together to produce 20 average megawatts or
5 more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam
6 turbines, oil or gas turbines, or turbine generators that are driven by falling water.

7 (ii) The term does not include:

8 (A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural
9 purposes; or

10 (B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned
11 and operated by a person not primarily engaged in the generation or sale of electricity other than electric power
12 from a small power production facility and that is classified under 15-6-134 and 15-6-138.

13 (b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the
14 electrical generation facility to the existing network transmission system.

15 (c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.

16 (5) The department shall appraise exempt electrical generation facilities for each year that the property
17 is exempt and determine the taxable value of the property as if it were subject to property taxation."
18

19 **Section 8.** Section 15-24-3111, MCA, is amended to read:

20 **"15-24-3111. Energy production or development -- tax abatement -- eligibility.** (1) A facility listed
21 in subsection (3), clean advanced coal research and development equipment, and renewable energy research
22 and development equipment may qualify for an abatement of property tax liability pursuant to this part.

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

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

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

30 (3) Subject to subsections (4) and (5), the following facilities or property may qualify for the abatement

- 1 allowed under this part:
- 2 (a) biodiesel production facilities;
- 3 (b) biogas production facilities;
- 4 (c) biomass gasification facilities;
- 5 (d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;
- 6 (e) ethanol production facilities;
- 7 (f) geothermal facilities;
- 8 (g) renewable energy manufacturing facilities;
- 9 (h) clean advanced coal research and development equipment and renewable energy research and
- 10 development equipment;
- 11 (i) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced through
- 12 carbon credit offsets;
- 13 (j) transmission lines and associated equipment and structures classified in 15-6-157;
- 14 (k) converter stations classified under 15-6-159;
- 15 (l) carbon sequestration equipment as defined in 15-6-158; and
- 16 (m) pipelines classified under 15-6-158.
- 17 (4) (a) In order to qualify for the abatement under this part, a facility listed in subsection (3) must meet
- 18 the following requirements:
- 19 (i) commencement of construction of the facility must occur after June 1, 2007 and before July 1, 2017;
- 20 and
- 21 (ii) the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, must be paid
- 22 during the construction phase of the facility.
- 23 (b) In order to qualify for the abatement under this part, clean advanced coal research and development
- 24 equipment and renewable energy research and development equipment must be placed into service after June
- 25 30, 2007 and before July 1, 2017.
- 26 (c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the gasification
- 27 process must be sequestered at a rate that is practically obtainable but may not be less than 65%.
- 28 (d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is applied
- 29 for after December 31, 2014, do not qualify under subsection (3)(d).
- 30 (e) To qualify under subsection (3)(i), the facility shall offset carbon dioxide emissions by the percentage

1 determined in 15-24-3116.

2 (5) To qualify for an abatement, the facility or clean advanced coal research and development equipment
3 and renewable energy research and development equipment must be certified as provided in 15-24-3112.

4 (6) Upon termination of the qualifying period, the abatement ceases and the property for which the
5 abatement had been granted must be assessed at 100% of its taxable value.

6 (7) For the purposes of this section, "qualifying period" means the construction period and the first 15
7 years after the facility commences operation or the clean advanced coal research and development equipment
8 or renewable energy research and development equipment is purchased. The total time of the qualifying period
9 may not exceed 19 years."

10

11 **Section 9.** Section 15-51-101, MCA, is amended to read:

12 **"15-51-101. Rate of tax -- electrical energy producers.** (1) In addition to the license tax, now provided
13 by law, each person or other organization now engaged in the generation, manufacture, or production of
14 electricity and electrical energy in the state of Montana, either through water power or by any other means, for
15 barter, sale, or exchange (and hereinafter referred to as the "producer") a producer shall on or before the 30th
16 day after each calendar quarter, quarterly periods ending March 31, June 30, September 30, and December 31,
17 render provide a statement to the department of revenue showing the gross amount, except for actual and
18 necessary plant use, required to produce the energy of electricity and electrical energy produced, manufactured,
19 or generated during the preceding calendar quarter without any deduction. The statement must be provided
20 quarterly no later than March 31, June 30, September 30, and December 31. and

21 (2) A producer shall pay a license tax thereon in the sum of \$.0002 per kilowatt hour on all such
22 electricity and electrical energy generated, manufactured, or produced, measured at the place of production and
23 as shown on the statement required in the manner and within the time hereinafter provided by this section.

24 (3) For the purposes of this part:

25 (a) (i) "Commercial use" means commercial or industrial use of electricity and electrical energy by a
26 person or organization that generated, manufactured, or produced the electricity and electrical energy. The term
27 includes a commercial or industrial user of a net metering system.

28 (ii) The term does not include generation, manufacture, or production of electricity and electrical energy
29 for noncommercial purposes or exclusively for agricultural purposes.

30 (b) "Net metering system" has the meaning provided by 69-8-103.

1 (c) "Producer" means a person or organization engaged in the generation, manufacture, or production
2 of electricity and electrical energy in the state, either through water power or by any other means, for barter, sale,
3 exchange, or commercial use."

4

5 **Section 10.** Section 15-72-104, MCA, is amended to read:

6 **"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.** (1) (a)
7 Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted
8 within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per kilowatt hour of
9 electricity transmitted by a transmission services provider in the state.

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

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

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

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

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

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

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

5 (c) If an electrical generation facility located within the state produces electricity for sale inside and
6 outside the state, sales within the state are considered to have come from electricity produced within the state
7 for purposes of the tax imposed by this section.

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

10 (b) Electricity produced in the state by an agency of the United States government or electricity produced
11 from an electric energy generation facility, as defined in 90-5-101(3), constructed after May 1, 2001, that is within
12 the exterior boundaries of a Montana Indian reservation for delivery outside the state is exempt from the tax
13 imposed by this section.

14 ~~(c) Electricity produced by wind turbines erected on state land for which annual lease payments are
15 made to the permanent school trust fund is exempt from the tax imposed by this section.~~

16 ~~——(d) Electricity delivered to a distribution services provider that is a municipal utility described in
17 69-8-103(4)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt
18 from the tax imposed by this section.~~

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

23 (4) A distribution services provider is allowed to recover the tax imposed by this section and the
24 administrative costs to comply with this part in its rates."
25

26 **Section 11.** Section 69-3-2003, MCA, is amended to read:

27 **"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following
28 definitions apply:

29 (1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric
30 power other than simple generation, transmission, or distribution. Ancillary services related to transmission

1 services include energy losses, energy imbalances, scheduling and dispatching, load following, system
2 protection, spinning reserves and nonspinning reserves, and reactive power.

3 (2) "Balancing authority" means a transmission system control operator who balances electricity supply
4 and load at all times to meet transmission system operating criteria and to provide reliable electric service to
5 customers.

6 (3) "Common ownership" means the same or substantially similar persons or entities that maintain a
7 controlling interest in more than one community renewable energy project even if the ownership shares differ
8 between two community renewable energy projects. Two community renewable energy projects may not be
9 considered to be under common ownership simply because the same entity provided debt or equity or both debt
10 and equity to both projects.

11 (4) "Community renewable energy project" means an eligible renewable resource that:

12 (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and
13 that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

14 (b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

15 (5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is
16 selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or
17 cooperative.

18 (b) The term does not include governmental entities selling electricity produced only by facilities
19 generating less than 250 kilowatts that were in operation prior to 1990.

20 (6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting
21 in 2008, for which compliance with this part must be demonstrated.

22 (7) "Cooperative utility" means:

23 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

24 (b) an existing municipal electric utility as of May 2, 1997.

25 (8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric
26 generating resource to rapidly start, stop, increase, or decrease electricity production from that generating
27 resource in order to respond to the balancing authority's need to match supply resources to loads on the
28 transmission system.

29 (9) "Electric generating resource" means any plant or equipment used to generate electricity by any
30 means.

1 (10) "Eligible renewable resource" means a facility either located within Montana or delivering electricity
2 from another state into Montana that commences commercial operation after January 1, 2005, or a hydroelectric
3 project expansion referred to in subsection (10)(d)(iii), any of which produces electricity from one or more of the
4 following sources:

5 (a) wind;

6 (b) solar;

7 (c) geothermal;

8 (d) water power, in the case of a hydroelectric project that:

9 (i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate
10 rating of 10 megawatts or less;

11 (ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric
12 generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less; or

13 (iii) is an expansion of an existing hydroelectric project that commences construction and increases
14 existing generation capacity on or after October 1, 2013. Engineering estimates of the average incremental
15 generation from the increase in existing generation capacity must be submitted to the commission for review. The
16 commission shall determine an average annual incremental generation that will constitute the eligible renewable
17 resource from the capacity expansion, subject to further revision by the commission in the event of significant
18 changes in stream flow or dam operation.

19 (e) landfill or farm-based methane gas;

20 (f) gas produced during the treatment of wastewater;

21 (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
22 fuels from wood, forest, or field residues, including wood pieces that have been treated with chemical
23 preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, and that are used at a facility that
24 has a nameplate capacity of 5 megawatts or less;

25 (h) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells; and

26 (i) the renewable energy fraction from:

27 (i) the sources identified in this subsection (10) of electricity production from a multiple-fuel process with
28 fossil fuels;

29 (ii) flywheel storage ~~as defined in 15-6-157(4)(d);~~

30 (iii) hydroelectric pumped storage ~~as defined in 15-6-157(4)(e);~~

1 (iv) batteries; and

2 (v) compressed air derived from any of the sources in this subsection (10) that is forced into an
3 underground storage reservoir and later released, heated, and passed through a turbine generator.

4 (11) "Flywheel storage" means a process that stores energy kinetically in the form of a rotating flywheel.
5 Energy stored by the rotating flywheel can be converted to electrical energy through the flywheel's integrated
6 electric generator.

7 (12) "Hydroelectric pumped storage" means a process that converts electrical energy to potential energy
8 by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through
9 hydraulic turbines and generate electrical energy.

10 ~~(11)~~(13) "Local owners" means:

11 (a) Montana residents;

12 (b) general partnerships of which all partners are Montana residents;

13 (c) business entities organized under the laws of Montana that:

14 (i) have less than \$50 million of gross revenue;

15 (ii) have less than \$100 million of assets; and

16 (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana
17 residents;

18 (d) Montana nonprofit organizations;

19 (e) Montana-based tribal councils;

20 (f) Montana political subdivisions or local governments;

21 (g) Montana-based cooperatives other than cooperative utilities; or

22 (h) any combination of the individuals or entities listed in subsections ~~(11)(a)~~ (13)(a) through ~~(11)(g)~~
23 (13)(g).

24 ~~(12)~~(14) "Nonspinning reserve" means offline generation that can be ramped up to capacity and
25 synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during
26 emergency conditions, unforeseen load swings, and generation disruptions.

27 ~~(13)~~(15) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter
28 3, on January 1, 2005, including the public utility's successors or assignees.

29 ~~(14)~~(16) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity
30 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of

1 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

2 ~~(15)~~(17) "Renewable energy fraction" means the proportion of electricity output directly attributable to
3 electricity and associated renewable energy credits produced by one of the sources identified in subsection (10).

4 ~~(16)~~(18) "Seasonality" means the degree to which an electric generating resource is capable of producing
5 electricity in each of the seasons of the year.

6 ~~(17)~~(19) "Small customer" means a retail customer that has an individual load with an average monthly
7 demand of less than 5,000 kilowatts.

8 ~~(18)~~(20) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system
9 and immediately responsive to frequency control and that is needed to maintain system frequency stability during
10 emergency conditions, unforeseen load swings, and generation disruptions.

11 ~~(19)~~(21) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the
12 community renewable energy project and other eligible renewable resources that are:

- 13 (a) located within 5 miles of the project;
- 14 (b) constructed within the same 12-month period; and
- 15 (c) under common ownership."

16

17 **Section 12.** Section 69-8-602, MCA, is amended to read:

18 **"69-8-602. Utility net metering requirements.** (1) A Subject to subsection (2), a utility shall:

19 ~~(1)~~(a) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable
20 of registering the flow of electricity in two directions, unless the commission determines, after appropriate notice
21 and opportunity for comment:

22 ~~(a)~~(i) that the use of additional metering equipment to monitor the flow of electricity in each direction is
23 necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits
24 and costs of purchasing and installing additional metering equipment; and

25 ~~(b)~~(ii) how the costs of net metering are to be allocated between the customer-generator and the utility;
26 and

27 ~~(2)~~(b) charge the customer-generator a minimum monthly fee that is the same as other customers of the
28 electric utility in the same rate class. The commission shall determine, after appropriate notice and opportunity
29 for comment if:

30 ~~(a)~~(i) the utility will incur direct costs associated with interconnecting or administering net metering

1 systems that exceed any offsetting benefits associated with these net metering systems; and
 2 ~~(b)(ii)~~ public policy is best served by imposing these costs on the customer-generator, rather than
 3 allocating these costs among the utility's entire customer base.

4 (2) For the purpose of complying with the reporting requirements of the electrical energy tax, a
 5 customer-generator that is subject to taxation under 15-51-101 shall utilize metering equipment that is capable
 6 of measuring the production of electricity without taking into account the amount of electricity consumed."
 7

8 **Section 13.** Section 75-20-104, MCA, is amended to read:

9 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions
 10 apply:

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

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

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

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

20 (4) "Biomass generation facilities" means any combination of boilers, generators, associated prime
 21 movers, and other associated property, including appurtenant land and improvements and personal property, that
 22 are normally operated together to produce electric power from the burning of organic material other than coal,
 23 petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas
 24 or other fuels allowed for ignition and to stabilize boiler operations.

25 ~~(4)(5)~~ "Board" means the board of environmental review provided for in 2-15-3502.

26 ~~(5)(6)~~ "Certificate" means the certificate of compliance issued by the department under this chapter that
 27 is required for the construction or operation of a facility.

28 ~~(6)(7)~~ "Commence to construct" means:

29 (a) any clearing of land, excavation, construction, or other action that would affect the environment of
 30 the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility

1 purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

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

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

8 (d) the relocation or upgrading of an existing facility defined by subsection ~~(8)(a)~~ (11)(a) or ~~(8)(b)~~ (11)(b),
9 including upgrading to a design capacity covered by subsection ~~(8)(a)~~ (11)(a), except that the term does not
10 include normal maintenance or repair of an existing facility.

11 (8) (a) "Compressed air energy storage" means the conversion of electrical energy to compressed air
12 by using an electrically powered turbocompressor for storage in vessels designed for that purpose and in the
13 earth, including but not limited to deep saline formations, basalt formations, aquifers, depleted oil or gas
14 reservoirs, abandoned mines, and mined rock cavities.

15 (b) The term includes the conversion of compressed air into electrical energy by using turboexpander
16 equipment and electrical generation equipment.

17 ~~(7)(9)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

18 (10) (a) "Energy storage facilities" means hydroelectric pumped storage property, compressed air energy
19 storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of energy
20 storage facilities directly connected to the electrical power grid and associated property, appurtenant land and
21 improvements, and personal property that are designed to:

22 (i) receive and store electrical energy as potential energy; and

23 (ii) convert the stored energy into electrical energy for sale as an energy commodity or as electricity
24 services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid,
25 including but not limited to frequency regulation ancillary services and frequency control.

26 (b) The term includes only property that in the aggregate can store at least 0.25 megawatt hour and has
27 a power rating of at least 1 megawatt for a period of at least 0.25 hour.

28 (c) The term does not include property, including associated property and appurtenant land and
29 improvements, that is used to hold water in ponds, reservoirs, or impoundments related to hydroelectric pumped
30 storage.

1 ~~(b)~~(11) "Facility" means, subject to 75-20-1202:

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

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

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

9 (iii) does not include electric transmission lines that are collectively less than 150 miles in length and are
10 required under state or federal regulations and laws, with respect to reliability of service, for an electrical
11 generation facility, as defined in 15-24-3001(4), or a wind generation facility, biomass generation facility, or
12 energy storage facility, ~~as defined in 15-6-157~~, to interconnect to a regional transmission grid or secure firm
13 transmission service to use the grid for which the person planning to construct the line or lines has obtained
14 right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own
15 more than 75% of the property along the centerline or centerlines;

16 (iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or
17 more to increase that line's capacity, including construction outside the existing easement or right-of-way. Except
18 for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly
19 acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection
20 ~~(b)(a)(iv)~~ (11)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission
21 right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited
22 areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the
23 transmission network and protect electrical workers and the public.

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

25 (vi) does not include an energy storage facility, ~~as defined in 15-6-157~~;

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

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

30 (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person

1 planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more
2 than 75% of the owners who collectively own more than 75% of the property along the centerline;

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

5 (c) any use of geothermal resources, including the use of underground space in existence or to be
6 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived
7 power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by
8 the department and added to an existing plant, except that the term does not include a compressed air energy
9 storage facility, ~~as defined in 15-6-157~~; or

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

12 (12) "Flywheel storage" means a process that stores energy kinetically in the form of a rotating flywheel.
13 Energy stored by the rotating flywheel can be converted to electrical energy through the flywheel's integrated
14 electric generator.

15 (13) "Hydroelectric pumped storage" means a process that converts electrical energy to potential energy
16 by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through
17 hydraulic turbines and generate electrical energy.

18 ~~(9)~~(14) "Person" means any individual, group, firm, partnership, corporation, limited liability company,
19 cooperative, association, government subdivision, government agency, local government, or other organization
20 or entity.

21 (15) "Regenerative fuel cell" means a device that produces hydrogen and oxygen from electricity and
22 water and alternately produces electrical energy and water from stored hydrogen and oxygen.

23 ~~(10)~~(16) "Sensitive areas" means government-designated areas that have been recognized for their
24 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national
25 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and
26 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national
27 parks, monuments, or historic sites.

28 ~~(11)~~(17) "Transmission substation" means any structure, device, or equipment assemblage, commonly
29 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or
30 operation of a proposed transmission line.

1 ~~(12)~~(18) "Transmission reliability agencies" means the federal energy regulatory commission, the western
2 electricity coordinating council, the national electric reliability council, and the midwest reliability organization.

3 ~~(13)~~(19) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions
4 including but not limited to:

- 5 (a) installing larger conductors;
- 6 (b) replacing insulators;
- 7 (c) replacing pole or tower structures;
- 8 (d) changing structure spacing, design, or guying; or
- 9 (e) installing additional circuits.

10 ~~(14)~~(20) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or
11 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

12 (21) "Wind generation facilities" means any combination of a physically connected wind turbine or
13 turbines, associated prime movers, and other associated property, including appurtenant land and improvements
14 and personal property, that are normally operated together to produce electric power from wind."

15

16 **Section 14.** Section 75-20-201, MCA, is amended to read:

17 **"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --**
18 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in
19 operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying
20 for and obtaining a certificate of compliance issued with respect to the facility by the department.

21 (2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained
22 except in conformity with the certificate and any terms, conditions, and modifications contained within the
23 certification.

24 (3) A certificate may only be issued pursuant to this chapter.

25 (4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation
26 to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters
27 in a statewide election called by initiative or referendum according to the laws of this state.

28 (5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant
29 to 75-20-104~~(8)~~(11) may petition the department to review the energy-related project under the provisions of this
30 chapter. The construction or installation of an energy storage facility, ~~as defined in 15-6-157,~~ is not considered

1 an energy-related project under the provisions of this chapter. A certificate for the construction or installation of
 2 an energy storage facility is not required under this chapter.

3 (6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all
 4 facilities over which an agency of the federal government has jurisdiction.

5 (7) All judicial challenges of certificates for projects with a project cost, as determined by the court, of
 6 more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the
 7 court determines that the challenge was without merit or was for an improper purpose, such as to harass, to
 8 cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees
 9 and costs incurred in defending the action."
 10

10

11 **Section 15.** Section 75-20-207, MCA, is amended to read:

12 **"75-20-207. Notice requirement for certain electric transmission lines.** Whenever a person plans
 13 to construct an electric transmission line or associated facilities under the provisions of
 14 75-20-104~~(8)(a)(ii)~~(11)(a)(ii), it must provide public notice to persons residing in the area in which any portion of
 15 the electric transmission facility may be located and to the department. This notice must be made no less than
 16 60 days prior to the commencement of acquisition of right-of-way by publication of a summary describing the
 17 transmission facility and the proposed location of the facility in those newspapers that will substantially inform
 18 those persons of the construction and by mailing a summary to the department. The notice must inform the
 19 property owners of their rights under this chapter concerning the location of the facility and that more information
 20 concerning their rights may be obtained from the department."
 21

21

22 **Section 16.** Section 75-20-208, MCA, is amended to read:

23 **"75-20-208. Certain electric transmission lines -- verification of requirements.** (1) Prior to
 24 constructing a transmission line under 75-20-104~~(8)(a)(ii)~~(11)(a)(ii), the person planning to construct the line shall
 25 provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless
 26 extended by the department for good cause:

27 (a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information
 28 to establish landowner consent to construct the line; and

29 (b) sufficient information for the department to verify that the requirements of 75-20-104~~(8)(a)(ii)~~(11)(a)(ii)
 30 are satisfied.

1 (2) The provisions of 75-20-104~~(8)(a)(ii)~~(11)(a)(ii) do not apply to any facility for which public notice under
 2 75-20-207 has been given but for which the requirements of subsection (1) of this section have not been complied
 3 with."

4

5 **Section 17.** Section 75-20-211, MCA, is amended to read:

6 **"75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant shall
 7 file with the department an application for a certificate under this chapter and for the permits required under the
 8 laws administered by the department in the form that is required under applicable rules, containing the following
 9 information:

10 (i) a description of the proposed location and of the facility to be built;

11 (ii) a summary of any preexisting studies that have been made of the impact of the facility;

12 (iii) for facilities defined in 75-20-104~~(8)(a)~~(11)(a) and ~~(8)(b)~~ (11)(b), a statement explaining the need for
 13 the facility, a description of reasonable alternate locations for the facility, a general description of the comparative
 14 merits and detriments of each location submitted, and a statement of the reasons why the proposed location is
 15 best suited for the facility;

16 (iv) (A) for facilities as defined in 75-20-104~~(8)(a)~~(11)(a) and ~~(8)(b)~~ (11)(b), baseline data for the primary
 17 and reasonable alternate locations; or

18 (B) for facilities as defined in 75-20-104~~(8)(c)~~(11)(c), baseline data for the proposed location and, at the
 19 applicant's option, any alternative locations acceptable to the applicant for siting the facility;

20 (v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

21 (vi) other information that the applicant considers relevant or that the department by order or rule may
 22 require.

23 (b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the
 24 copy or copies must be available for public inspection.

25 (2) An application may consist of an application for two or more facilities in combination that are
 26 physically and directly attached to each other and are operationally a single operating entity.

27 (3) The copy of the application must be accompanied by a notice specifying the date on or about which
 28 the application is to be filed.

29 (4) An application must also be accompanied by proof that public notice of the application was given to
 30 persons residing in the county in which any portion of the proposed facility is proposed or is alternatively proposed

1 to be located, by publication of a summary of the application in those newspapers that will substantially inform
 2 those persons of the application."

3

4 **Section 18.** Section 75-20-301, MCA, is amended to read:

5 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days after
 6 issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104~~(8)(a)~~(11)(a) and ~~(8)(b)~~ (11)(b), the
 7 department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the
 8 department finds and determines:

9 (a) the basis of the need for the facility;

10 (b) the nature of the probable environmental impact;

11 (c) that the facility minimizes adverse environmental impact, considering the state of available technology
 12 and the nature and economics of the various alternatives;

13 (d) in the case of an electric, gas, or liquid transmission line or aqueduct:

14 (i) what part, if any, of the line or aqueduct will be located underground;

15 (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility
 16 systems serving the state and interconnected utility systems; and

17 (iii) that the facility will serve the interests of utility system economy and reliability;

18 (e) that the location of the facility as proposed conforms to applicable state and local laws and
 19 regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied
 20 to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of
 21 factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected
 22 government subdivisions;

23 (f) that the facility will serve the public interest, convenience, and necessity;

24 (g) that the department or board has issued any necessary air or water quality decision, opinion, order,
 25 certification, or permit as required by 75-20-216(3); and

26 (h) that the use of public lands or federally designated energy corridors for location of a facility defined
 27 in 75-20-104~~(8)(a)~~(11)(a) or ~~(8)(b)~~ (11)(b) was evaluated and public lands or federally designated energy corridors
 28 for that facility were selected whenever their use was compatible with:

29 (i) the requirements of subsections (1)(a) through (1)(g); and

30 (ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined

1 in 75-20-104~~(8)(a)~~(11)(a).

2 (2) In determining that the facility will serve the public interest, convenience, and necessity under
3 subsection (1)(f), the department shall consider:

- 4 (a) the items listed in subsections (1)(a) and (1)(b);
5 (b) the benefits to the applicant and the state resulting from the proposed facility;
6 (c) the effects of the economic activity resulting from the proposed facility;
7 (d) the effects of the proposed facility on the public health, welfare, and safety;
8 (e) any other factors that it considers relevant.

9 (3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in
10 75-20-104~~(8)(e)~~(11)(c), the department shall approve a facility as proposed or as modified or an alternative to a
11 proposed facility if the department finds and determines:

- 12 (a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant
13 environmental impacts; and
14 (b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary
15 terms, will not result in:
16 (i) a violation of a law or standard that protects the environment; or
17 (ii) a violation of a law or standard that protects the public health and safety.

18 (4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section,
19 it shall deny the certificate."
20

21 **Section 19.** Section 75-20-303, MCA, is amended to read:

22 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application
23 for a certificate, the department shall issue an opinion stating its reasons for the action taken.

24 (2) If the department has found that any regional or local law or regulation that would be otherwise
25 applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

26 (3) A certificate issued by the department must include the following:

- 27 (a) an environmental evaluation statement related to the facility being certified. The statement must
28 include but is not limited to analysis of the following information:
29 (i) the environmental impact of the proposed facility; and
30 (ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

- 1 (b) a plan for monitoring environmental effects of the proposed facility;
- 2 (c) a plan for monitoring the certified facility site between the time of certification and completion of
3 construction;
- 4 (d) a time limit as provided in subsection (4);
- 5 (e) a statement confirming that notice was provided pursuant to subsection (5); and
- 6 (f) a statement signed by the applicant showing agreement to comply with the requirements of this
7 chapter and the conditions of the certificate.

8 (4) (a) The department shall issue as part of the certificate the following time limits:

9 (i) For a facility as defined in ~~75-20-104(8)(a)~~75-20-104(11)(a) that is more than 30 miles in length and for a facility
10 defined in ~~75-20-104(8)(b)~~75-20-104(11)(b), construction must be completed within 10 years.

11 (ii) For a facility as defined in ~~75-20-104(8)(a)~~75-20-104(11)(a) that is 30 miles or less in length, construction must
12 be completed within 5 years.

13 (iii) For a facility as defined in ~~75-20-104(8)(c)~~75-20-104(11)(c), construction must begin within 6 years and continue
14 with due diligence in accordance with preliminary construction plans established in the certificate.

15 (b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of
16 the facility is not commenced within the time limits provided in this section.

17 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the
18 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and
19 (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or
20 federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

21 (d) Construction may begin immediately upon issuance of a certificate unless the department finds that
22 there is substantial and convincing evidence that a delay in the commencement of construction is necessary and
23 should be established for a particular facility.

24 (5) (a) For a facility defined in ~~75-20-104(8)(a)~~75-20-104(11)(a) and ~~(8)(b)~~ (11)(b), the environmental review
25 conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a
26 1-mile-wide facility siting corridor along the facility route.

27 (b) The department shall provide written notice of the availability of the draft environmental review to
28 each owner of property within the 1-mile-wide facility siting corridor identified in the environmental review as the
29 department's preferred alternative facility siting corridor. No more than 60 days prior to the availability of the draft
30 environmental review, the names and addresses of the property owners must be obtained from the property tax

1 rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice must:

2 (i) be delivered personally or by first-class mail. If delivered personally, the property owner shall sign a
3 receipt verifying that the property owner received the statement.

4 (ii) inform the property owner that the property owner's property is located within the department's
5 preferred alternative 1-mile-wide facility siting corridor;

6 (iii) inform the property owner about how a copy of the environmental review may be obtained; and

7 (iv) inform the property owner of the property owner's rights under this chapter concerning the location
8 of the facility and that more information concerning those rights may be obtained from the department.

9 (c) If there is more than one name listed on the property tax rolls for a single property, the notice must
10 be mailed to the first listed property owner at the address on the property tax rolls.

11 (d) By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b)
12 are satisfied.

13 (e) The department shall site a corridor of at least 500 feet in width for the facility within the 1-mile-wide
14 corridor in accordance with 75-20-301. If the department determines that it will select a facility siting corridor that
15 is completely or partially different from the preferred alternative facility siting corridor described in the draft
16 environmental review, it shall, before issuing the certificate, provide notice of its intended facility siting corridor
17 and an opportunity to comment to property owners within the 1-mile-wide facility siting corridor that deviates from
18 the preferred alternative. Property owners must be determined and notice must be given in the same manner as
19 provided in subsection (5)(b).

20 (f) If the certificate holder complies with subsection (6), a certificate holder may modify the siting of the
21 facility within the 1-mile-wide corridor without complying with the provisions of 75-20-219 if the alternate siting
22 is done in a manner that minimizes the impact on residential areas, crop land, and sensitive sites.

23 (6) (a) A certificate holder may submit an adjustment of the location of a facility outside the corridor
24 designated pursuant to subsection (5) to the department. The adjustment must be accompanied by the written
25 agreement of the affected property owner and all contiguous property owners that would be affected. The
26 submission must include a map showing the approved facility location and the proposed adjustment.

27 (b) The certificate holder may construct the facility as described in the submission unless the department
28 notifies the certificate holder within 15 days of the submission that the department has determined that:

29 (i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the
30 department would have selected a different location for the facility; or

- 1 (ii) the adjustment would materially increase unmitigated adverse impacts.
- 2 (c) Siting of a facility within the corridor designated pursuant to subsection (5) or an adjustment pursuant
- 3 to subsection (6)(a) is not subject to:
- 4 (i) Title 75, chapter 1, part 2;
- 5 (ii) a certificate amendment under 75-20-219; or
- 6 (iii) a board review under 75-20-223."

7

8 **Section 20.** Section 75-20-304, MCA, is amended to read:

9 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive

10 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing

11 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the

12 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with

13 the provisions of 75-20-216 and this part.

14 (2) The department may waive compliance with any of the provisions of this chapter upon receipt of

15 notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as

16 a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there

17 exists an immediate need for construction of a new facility or associated facility or the relocation of a previously

18 existing facility or associated facility in order to promote the public welfare.

19 (3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and (2)(c)

20 and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration of alternative

21 sites if the applicant makes a clear and convincing showing to the department at a public hearing that:

22 (a) a proposed facility will be constructed in a county where a single employer within the county has

23 permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the

24 employer's operations within the preceding 10-year period;

25 (b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located

26 support by resolution the waiver;

27 (c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased

28 or been curtailed; and

29 (d) the proposed facility will have a beneficial effect on the economy of the county in which the facility

30 is proposed to be located.

1 (4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer.
 2 The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but
 3 not limited to construction jobs or job losses during labor disputes.

4 (5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum
 5 adverse environmental impact for a facility defined in 75-20-104~~(8)(a)~~(11)(a) or ~~(8)(b)~~ (11)(b) or for an associated
 6 facility defined in 75-20-104(3).

7 (6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request
 8 under subsection (3). However, any payments made under this subsection must be credited toward the fee paid
 9 under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the
 10 department under subsection (3) can be used in making a certification decision under this chapter.

11 (7) The department may grant only one waiver under subsections (3) and (4) for each permanent loss
 12 of jobs as defined in subsection (3)(a)."

13

14 **Section 21.** Section 75-20-1202, MCA, is amended to read:

15 **"75-20-1202. Definitions.** As used in 75-20-201, 75-20-203, and this part, the following definitions apply:

16 (1) "Facility", as defined in 75-20-104~~(8)~~(11), is further defined to include any nuclear facility as defined
 17 in subsection (2)(a).

18 (2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

19 (i) generating 50 megawatts of electricity or more by means of nuclear fission;

20 (ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

21 (iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

22 (b) Nuclear facility does not include any small-scale facility used solely for educational, research, or
 23 medical purposes not connected with the commercial generation of energy."

24

25 **NEW SECTION. Section 22. Notification to tribal governments.** The secretary of state shall send
 26 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
 27 Chippewa tribe.

28

29 **NEW SECTION. Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are
 30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

1 the part remains in effect in all valid applications that are severable from the invalid applications.

2

3 NEW SECTION. **Section 24. Effective date.** [This act] is effective on passage and approval.

4

5 NEW SECTION. **Section 25. Applicability.** [This act] applies to tax years beginning after December
6 31, 2017.

7

- END -