

SENATE BILL NO. 338

INTRODUCED BY D. ANKNEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PROVIDING FOR  
5 THE MITIGATED RETIREMENT OF COAL-FIRED GENERATING UNITS; REQUIRING THE OWNER OF A  
6 COAL-FIRED GENERATING UNIT TO FILE A RETIREMENT PLAN; ESTABLISHING THE CONTENTS OF A  
7 RETIREMENT PLAN; PROVIDING AN EXCEPTION TO THE FILING OF A PLAN; ALLOWING FOR THE  
8 DEVELOPMENT OF A TRANSITION AGREEMENT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL  
9 QUALITY TO REVIEW AND APPROVE OR MODIFY A PLAN; ALLOWING THE DEPARTMENT TO COLLECT  
10 A FEE; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; PROVIDING FOR A DISCOUNT RATE  
11 FOR RETIREMENT PLANS FILED AND APPROVED PRIOR TO THE RETIREMENT OF A COAL-FIRED  
12 GENERATING UNIT; REQUIRING PAYMENT OF CERTAIN RETIREMENT PLAN COSTS; PROVIDING FOR  
13 ENFORCEMENT OF A PLAN; ESTABLISHING A RETIREMENT PLANNING AND GRANT PROGRAM AND  
14 ACCOUNT; PROVIDING FOR USE OF THE ACCOUNT; PROVIDING FOR THE DISTRIBUTION OF FUNDS  
15 IN THE ACCOUNT; ESTABLISHING REQUIREMENTS FOR THE DISBURSEMENT OF GRANTS USING THE  
16 ACCOUNT; PROVIDING FOR THE AWARD OF GRANTS; REQUIRING REPORTING TO THE GOVERNOR  
17 AND LEGISLATURE; AMENDING SECTION 75-1-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
18 DATE AND A RETROACTIVE APPLICABILITY DATE."

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

21  
22 NEW SECTION. **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Coal-Fired  
23 Generating Unit Mitigated Retirement Act".

24  
25 NEW SECTION. **Section 2. Intent -- purpose.** (1) It is the legislature's intent that the requirements of  
26 [sections 1 through 12] mitigate the effects of the retirement of a coal-fired generating unit across the state of  
27 Montana.

28 (2) It is the purpose of [sections 1 through 12] to allow the department of environmental quality to:  
29 (a) ensure that adequate information is available to the public concerning the retirement of coal-fired  
30 generating units;



1 (b) protect and maintain Montana's quality of life for current and future generations in accordance with  
2 the requirements of [sections 1 through 12]; and

3 (c) promote a transition to retirement that protects Montana communities and people while still allowing  
4 the owners of a coal-fired generating unit to meet changing demands.

5 (3) A retirement plan approved in accordance with [sections 1 through 12] is intended to dovetail with,  
6 not to duplicate, remediation and environmental cleanup requirements established in accordance with existing  
7 law at a coal-fired generating unit that is retired in Montana.

8  
9 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 12], the following definitions  
10 apply:

11 (1) "Coal-fired generating unit" means an individual unit of a coal-fired electrical generating facility  
12 located in Montana, where the unit has a generating capacity that is greater than or equal to 200 megawatts.

13 (2) (a) "Decommissioning requirements" means the dismantlement, removal, and disposal of a coal-fired  
14 generating unit including the unit itself and any related components and materials associated with the unit.

15 (b) Except as provided in subsection (2)(c), the term also means:

16 (i) the loss of value of residential and commercial real estate in a community directly affected by the  
17 retirement of a coal-fired generating unit when an outstanding liability associated with the residential or  
18 commercial real estate exceeds its fair market value because of the retirement;

19 (ii) the outstanding liability associated with bonds held by a local government issued for public  
20 infrastructure that was constructed to support a community attendant to a coal-fired generating unit, to the degree  
21 that the local government projected available revenue from the coal-fired generating unit would have been  
22 available to repay the bonds;

23 (iii) costs necessary for a workforce transition, including but not limited to workforce redevelopment and  
24 training programs needed to provide education or skills-based training for employees seeking a new job; and

25 (iv) cost shifts within a community directly affected by the retirement of a coal-fired generating unit, within  
26 the state of Montana, or both, attributable to the retirement of a coal-fired generating unit. Cost shifts must be  
27 determined based on a reasonable length of time and not longer than a 5-year period. These shifts may include:

28 (A) anticipated changes in a local government's revenue and in the state's revenue due to the retirement  
29 of a coal-fired generating unit offset by the diminution of local government or state needs resulting from the  
30 retirement of a coal-fired generating unit;

1 (B) cost shifts to customers who take service from a public utility as provided for in Title 69, chapter 8.  
 2 These costs include only costs that are defrayed through the retiring coal-fired generating unit's continued  
 3 operation, which will no longer be defrayed due to its retirement; and

4 (C) anticipated costs specific to tribal governments affected by the retirement of a coal-fired generating  
 5 unit.

6 (c) The term does not mean costs or liabilities otherwise defined by a contract between owners,  
 7 operators, or both.

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

9 (4) "Eligible entity" means an incorporated city or town, a county, a consolidated local government, a  
 10 tribal government, a school district, a special district as defined in 18-8-202, a local economic development  
 11 organization as defined in 17-6-302, OR a public utility as defined in Title 69, ~~chapter 3 or chapter 8, an electric~~  
 12 ~~cooperative as defined in Title 35, chapter 18, or an owner of a coal-fired generating unit.~~

13 (5) "Operator" means the person engaged in operating or decommissioning a coal-fired generating unit.  
 14 An operator may or may not be an owner.

15 (6) "Owner" means a person who has a legal or equitable interest in property subject to [sections 1  
 16 through 12] or the person's legal representative. An owner may or may not be an operator.

17 (7) "Person" means an individual, partnership, corporation, association, or other legal entity or any  
 18 political subdivision or agency of the state or of the federal government.

19 (8) "Retirement" or "retired" means the complete and permanent closure of a coal-fired generating unit.  
 20 Retirement occurs on the date that the coal-fired generating unit ceases combustion of fuel and permanently  
 21 ceases to generate electricity.

22

23 **NEW SECTION. Section 4. Retirement plan required.** (1) (a) Except as provided in subsection (1)(b)  
 24 and subject to subsection (2), an owner of a coal-fired generating unit that is planned for retirement or is retired  
 25 shall submit a retirement plan that includes decommissioning requirements to the department in accordance with  
 26 [section 6(1)] and implement an approved plan in accordance with [sections 1 through 12].

27 (b) Except as provided in subsection (1)(c), if a coal-fired generating unit has more than one owner, the  
 28 owners may jointly submit a plan in accordance with [section 6(1)] and provide the department with a copy of a  
 29 written agreement between the owners on joint implementation of an approved plan.

30 (c) If the owners are unable to submit a joint plan or agree to joint implementation of a plan or if one

1 owner enters into a transition agreement in accordance with [section 5] and another owner does not enter into  
2 an agreement, then each owner is responsible for meeting the requirements of subsection (1)(a).

3 (2) If on or before July 1, 2018, unless mutually extended by the parties, an owner of a coal-fired  
4 generating unit that is planned for retirement enters into an agreement with the governor and attorney general  
5 to provide for a fair and equitable retirement transition in accordance with [section 5] that includes a payment in  
6 accordance with [section 5(4)] and that considers the needs of affected communities, owners, and other  
7 interested stakeholders, an owner is not required to include decommissioning requirements as defined in [section  
8 3(2)(b)] in a retirement plan filed with the department in accordance with [section 6(1)] and is not required to  
9 implement decommissioning requirements as defined in [section 3(2)(b)].

10  
11 **NEW SECTION. Section 5. Transition agreement with governor and attorney general --**  
12 **requirements.** (1) A transition agreement with the governor and attorney general entered into in accordance with  
13 [section 4(2)] must include:

14 (a) a commitment by an owner of the coal-fired generating unit planned for retirement to continue to  
15 operate the coal-fired generating unit to a date certain. The date may be extended by future agreements.

16 (b) a date certain for filing a plan that includes decommissioning requirements as defined in [section  
17 3(2)(a)] with the department in accordance with [sections 1 through 12]; and

18 (c) any other provisions that, in the judgment of the governor and attorney general, are necessary to  
19 achieve the purposes and intent of the agreement and [section 2].

20 (2) An agreement may include other parties if, in the judgment of the governor and attorney general and  
21 with the agreement of an owner, those parties are necessary to achieve the purposes of the agreement.

22 (3) If an owner does not enter into the agreement pursuant to this section or if the governor and attorney  
23 general determine it is necessary to achieve the purposes of the agreement, the governor and attorney general  
24 may enter into an agreement with one owner or separate agreements with each owner.

25 (4) (a) The agreement may include a payment to the state made in settlement of the obligations arising  
26 from decommissioning requirements as defined in [section 3(2)(b)]. The payment may be established through  
27 a memorandum of understanding or legal settlement, including but not limited to an order by a utility or regulatory  
28 commission.

29 (b) Except as provided in subsection (4)(c), payment for decommissioning requirements as defined in  
30 [section 3(2)(b)] must be deposited in the retirement planning and grant program account established in [section

1 10(1)].

2 (c) Payments for decommissioning requirements representative of statewide cost shifts established in  
3 [section 3(2)(b)(iv)] must be deposited in the state general fund.

4 (5) Prior to entering into an agreement as provided in this section, the governor and attorney general  
5 shall provide the public with a notice of the proposed agreement and shall provide opportunity to comment on  
6 the terms of an agreement.

7 (6) An agreement may be adjusted to address an individual owner's commitment in the event that  
8 another owner files a retirement plan in accordance with [section 6] instead of entering into an agreement in  
9 accordance with this section.

10

11 NEW SECTION. **Section 6. Retirement plan requirements.** (1) No later than 3 months after a  
12 coal-fired generating unit is retired and no earlier than 5 years prior to the coal-fired generating unit's planned  
13 retirement, an owner shall submit a proposed retirement plan in the form that the department requires under  
14 applicable rules.

15 (2) A retirement plan required in subsection (1) must include:

16 (a) an overview of decommissioning requirements as defined in [section 3(2)(a)] planned for the  
17 coal-fired generating unit;

18 (b) the date of the coal-fired generating unit's actual retirement or the date of the planned retirement if  
19 the plan is filed prior to being retired; and

20 (c) except as provided in [section 4(2)] decommissioning requirements as defined in [section 3(2)(b)].

21 (3) The plan required in subsection (1) must outline financial information for the decommissioning  
22 requirements of the coal-fired generating unit, which must include:

23 (a) an estimate of the costs associated with the elements of each decommissioning requirement and the  
24 data and assumptions supporting the cost estimate;

25 (b) a plan for funding a retirement plan;

26 (c) the accumulated financial reserve of the owner for the retirement plan as of the date of submission  
27 of the plan;

28 (d) timeframes in which the retirement plan is intended to be implemented and paid in accordance with  
29 [section 8(5) and (6)];

30 (e) if the plan is filed prior to the retirement of the coal-fired generating unit, a proposed discount rate for

1 the purposes of [section 8(3)]; and

2 (f) any other information related to the financing of the retirement plan requested by the department.

3 (4) A retirement plan required pursuant to subsection (1) may consist of a plan for more than one unit  
4 that is retired at the same time.

5 (5) The department shall adjust decommissioning requirements accordingly if:

6 (a) one owner enters into a transition agreement that includes a payment in accordance with [section  
7 5(4)]; or

8 (b) an owner identifies actions it has taken or will take to reduce or offset decommissioning requirements.

9

10

11 **NEW SECTION. Section 7. Department's powers, duties, and functions -- rulemaking.** (1) The  
12 department shall:

13 (a) review a proposed retirement plan;

14 (b) approve or modify and approve a retirement plan;

15 (c) make investigations or inspections that the department considers necessary to ensure compliance  
16 with any provision of [sections 1 through 12]; and

17 (d) implement a grant program and award grants in accordance with [section 11].

18 (2) Before July 1, 2018, the department shall adopt rules in accordance with the Montana Administrative  
19 Procedure Act provided for in Title 2, chapter 4, providing:

20 (a) substantive requirements that the department considers necessary to accomplish the purposes of  
21 [sections 1 through 12]; and

22 (b) administrative requirements that the department considers necessary to implement [sections 1  
23 through 12].

24 (3) The department may recover its costs, including administrative costs, for its review, approval, or  
25 modification, and enforcement, including inspection, of a retirement plan. Recovered costs must be deposited  
26 in the retirement planning and grant program account established in [section 10(1)].

27 (4) The department may consult with other state and federal agencies, including but not limited to the  
28 coal board provided for in 2-15-1821, the office of consumer counsel established in 5-15-201, and the public  
29 service commission established in Title 69, chapter 1, part 1, during its review of a plan.

30

1            NEW SECTION. **Section 8. Approval of plan -- discount rate.** (1) (a) The department shall review  
2 for completeness a retirement plan and shall provide a written completeness notice to the owner within 90 days  
3 of receipt and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice  
4 must note all deficiencies identified in the information submitted.

5            (b) The department shall consider incremental revenue to eligible entities from the owner that offset  
6 decommissioning requirements before approving or modifying a plan.

7            (2) (a) Once the department determines that a proposed plan is complete, the department shall publish  
8 a notice and brief summary of the proposed plan in a daily newspaper of general circulation in the area affected  
9 and make the plan available to the public. The notice must provide 14 days for submission of written comments  
10 to the department regarding the plan. Upon written request during the comment period by 10 or more persons,  
11 by a group composed of 10 or more members, or by a local governing body of a city, town, or county, the  
12 department shall conduct a public meeting at or near the coal-fired generating unit site regarding the proposed  
13 plan. The meeting must be held within 30 days of the date that written notice of the department's completeness  
14 determination is provided to the owner. Review of the plan is not subject to Title 75, chapter 1, parts 1 through  
15 3.

16            (b) During the review period, the owner may respond in writing to the comments received by the  
17 department during the public comment period.

18            (c) Subject to subsection (3), the department shall approve a plan if the department concludes that the  
19 plan meets the requirements of [sections 1 through 12]. If the department determines that a plan does not meet  
20 the requirements, the department may modify the plan as necessary to bring it into compliance. The department  
21 shall provide formal written notification of approval or modification within 180 days of determining a proposed plan  
22 is complete unless the owner and the department agree to an extension of the review to a date certain.

23            (d) If a plan is modified, the department shall include in the notification the substance of and reasons for  
24 the modification.

25            (3) (a) If a plan is filed prior to the date that a coal-fired generating unit is retired, the department shall  
26 determine an appropriate discount rate, based on the cost of capital of a proxy group of owners of coal-fired  
27 generating units and provided in accordance with [section 6(3)(e)], and apply that rate to the sum of  
28 decommissioning requirements as defined in [section 3(2)(b)] and included in a plan approved by the department  
29 pursuant to [section 7(1)(b)] for the purpose of discounting those costs from the date of the planned retirement  
30 of the coal-fired generating unit identified pursuant to [section 6(2)(b)] to the date that the plan is filed with the

1 department.

2 (b) The result of the calculation made pursuant to subsection (3)(a) is the amount of the  
3 decommissioning requirement as defined in [section 3(2)(b)].

4 (4) The department's decision to modify a plan or the department's determination of a discount rate  
5 becomes final unless, within 30 days after notice of the department's decision or determination, the owner submits  
6 to the department a written request for a hearing specifying the grounds for the appeal. The hearing must be  
7 conducted in accordance with the contested case provisions of the Montana Administrative Procedure Act, Title  
8 2, chapter 4, part 6.

9 (5) (a) Except as provided in subsection (5)(e), payments for decommissioning requirements as defined  
10 in [section 3(2)(b)] must be deposited in the retirement planning and grant program account established in  
11 [section 10(1)].

12 (b) Subject to subsection (5)(d), payments must be made in two equal installments.

13 (c) The first payment required by subsection (5)(b) is due 60 days after the approval of the plan or 180  
14 days before the coal-fired generating unit is to be retired, whichever is later. The second payment is due 1 year  
15 after the coal-fired generating unit is retired.

16 (d) An owner may elect to pay within a shorter timeframe. If implementation of a plan has been jointly  
17 agreed to by the owners in accordance with [section 4(1)(b)], the owners shall determine each individual owner's  
18 payment responsibility.

19 (e) Payments for decommissioning requirements representative of statewide cost shifts established in  
20 [section 3(2)(b)(iv)] must be deposited in the state general fund.

21 (6) Except as provided in subsection (7), after a plan is approved, an owner of a coal-fired generating  
22 unit shall pay for and implement decommissioning requirements as defined in [section 3(2)(a)] at the coal-fired  
23 generating unit based on a schedule agreed to by the department and owner. When implementation is complete,  
24 the owner shall provide proof to the department that the requirements have been met.

25 (7) (a) Appropriate to the circumstances, prior to final approval of a plan, the department may request  
26 necessary information from an owner in order for the department to determine bond requirements to be paid by  
27 an owner in accordance with subsections (7)(b) and (7)(c) to provide for decommissioning requirements as  
28 defined in [section 3(2)(a)].

29 (b) If required by the department, the owner shall submit to the department a bond payable to the state  
30 of Montana in a form acceptable by the department and in the sum determined by the department, conditioned



1 upon the owner meeting decommissioning requirements as defined in [section 3(2)(a)].

2 (c) If a bond is provided in accordance with this subsection (7), the department may allow an owner to  
3 begin implementation of decommissioning requirements as defined in [section 3(2)(a)] based on a schedule  
4 agreed to by an owner and the department.

5  
6 **NEW SECTION. Section 9. Enforcement of plan.** (1) (a) If the department finds that an owner has  
7 failed to file a plan or implement an approved plan, it may serve written notice of the violation, by certified mail,  
8 on the owner.

9 (b) Subject to subsection (5), the notice may include an order to pay administrative penalties and must:

10 (i) specify the provisions of [sections 1 through 12] and the facts alleged to constitute a violation;

11 (ii) if the order requires the payment of an administrative civil penalty, state findings and conclusions  
12 describing the basis for its penalty assessment; and

13 (iii) include an order to take necessary corrective action within a reasonable period of time. The time  
14 period must be stated in the order.

15 (c) Service by mail is complete on the date of mailing.

16 (2) The department's order becomes final unless, within 30 days after notice of the department's decision  
17 or determination, the owner submits to the department a written request for a hearing specifying the grounds for  
18 the appeal.

19 (3) Action under subsection (1) is not a bar to enforcement of a rule, order, or action made or issued  
20 under [sections 1 through 12] by injunction or other appropriate civil remedies.

21 (4) This section does not prevent the department from making efforts to obtain voluntary compliance  
22 through warning, conference, or any other appropriate means.

23 (5) (a) An action initiated under this section may include an administrative civil penalty determined by  
24 the department for each day of a violation.

25 (b) Administrative penalties collected under this section must be deposited in the retirement planning  
26 and grant program account established in [section 10].

27 (c) In determining the amount of penalty to be assessed for an alleged violation under this section, the  
28 department shall consider the penalty factors in 75-1-1001.

29 (d) The department may bring a judicial action to enforce a final administrative order issued pursuant  
30 to this section. The action must be filed in the district court of the county in which the violation occurred or, if

1 mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark  
2 County.

3 (6) An appeal of a compliance order or an administrative penalty pursuant to this section must be  
4 conducted in accordance with the contested case provisions of the Montana Administrative Procedure Act, Title  
5 2, chapter 4, part 6.

6  
7 **NEW SECTION. Section 10. Retirement planning and grant program account.** (1) There is an  
8 account in the state special revenue fund established in 17-2-102 to be known as the retirement planning and  
9 grant program account.

10 (2) There must be deposited in the account:

11 (a) money received from legislative allocations;

12 (b) payments or penalties received in accordance with [section 5], [section 7(3)], [section 8(5)], or  
13 [section 9(5)]; and

14 (c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of [section 11].

15 (3) There is an account in the federal special revenue fund established in 17-2-102 to be known as the  
16 retirement planning and grant program account. There must be deposited in the account money received from  
17 the federal government for the purpose of [section 11].

18 (4) Subject to ~~subsection (5)~~ SECTION 11(5), funds in either account created in this section may be used  
19 by the department only to establish, administer, and implement ~~the retirement planning program provided for in~~  
20 ~~[section 11].~~ SECTIONS 1 THROUGH 12.

21  
22 **NEW SECTION. Section 11. Distribution of funds -- grant program.** (1) (a) In accordance with  
23 ~~[section 10(5)]~~ SUBSECTION (5), funds from the accounts provided for in [section 10] must be disbursed to eligible  
24 entities by the department to fund decommissioning requirements as defined in [section 3(2)(a)] and [section  
25 3(2)(b)(ii) and (2)(b)(iv)].

26 (b) For decommissioning requirements defined in [section 3(2)(b)(i) and (2)(b)(iii)], the department shall  
27 make grants available using the accounts established in [section 10] to eligible entities affected by the retirement  
28 or pending retirement of a coal-fired generating unit.

29 (2) (a) Funding for each element of the decommissioning requirements must be made available for the  
30 purposes of subsections (1)(a) and (1)(b) in substantially the same amount as identified in a plan approved by

1 the department pursuant to [section 8]. Funding for decommissioning requirements as defined in [section  
2 3(2)(b)(i)] must be provided to an eligible entity for potential distribution to residential and commercial real estate  
3 owners.

4 (b) If the funding available is less than the sum total of the decommissioning requirements identified in  
5 a plan and approved by the department pursuant to [section 8], the funding available for each element of the  
6 decommissioning requirements must be determined by the department based on the ratio of available funds  
7 divided by the sum total of decommissioning requirements, multiplied by each element of the decommissioning  
8 requirements.

9 (c) If an agreement reached pursuant to [section 5] includes a payment but does not specify funding for  
10 each element of the decommissioning requirements, the governor and attorney general shall submit a statement  
11 allocating the funds. That statement is binding guidance to the department.

12 (3) For the purposes of subsection (1)(b), the department must receive proposals for grants from eligible  
13 entities. Eligible entities may work cooperatively on a proposal. The department shall work with applicants in  
14 preparing cost estimates for a proposal. In reviewing proposals, the department may consult with other state  
15 agencies with expertise pertinent to the proposal and use information included in an approved retirement plan.

16 (4) (a) The department shall adopt rules necessary to implement the planning and grant program in  
17 accordance with [section 7] and this section. In adopting rules, the department shall look to the rules adopted for  
18 programs administered by the coal board in accordance with Title 90, chapter 6, part 2, and other similar state  
19 programs. To the extent feasible, the department shall make the rules compatible with those other programs.

20 (b) The rules must provide for distribution methods for financial assistance.

21 (5) Administrative expenses for the grant program during a fiscal year may not exceed actual  
22 administrative costs, or 4% of the combined highest balances in the retirement planning and grant program  
23 accounts established in [section 10] in that fiscal year, whichever is less.

24 (6) The department shall report to the governor and the legislature as provided in 5-11-210 regarding  
25 the disbursement of funds and grants that are awarded during each biennium. The report must be provided in  
26 an electronic format and include a listing of all funds disbursed, grant requests and awards, and a summary of  
27 the intended use of funds received.

28

29 **NEW SECTION. Section 12. Effect on other obligations.** Nothing in [sections 1 through 12] absolves  
30 an owner or operator from or otherwise affects any duty, liability, or obligation of the owner or operator under any

1 other law or rule or any order or settlement agreement under any other law or rule, including Title 75, chapters  
2 5 and 20.

3

4 **Section 13.** Section 75-1-1001, MCA, is amended to read:

5 **"75-1-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to which  
6 subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into  
7 account the following factors:

8 (a) the nature, extent, and gravity of the violation;

9 (b) the circumstances of the violation;

10 (c) the violator's prior history of any violation, which:

11 (i) must be a violation of a requirement under the authority of the same chapter and part as the violation  
12 for which the penalty is being assessed;

13 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years  
14 prior to the date of the occurrence of the violation for which the penalty is being assessed; and

15 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative  
16 appeal or judicial review;

17 (d) the economic benefit or savings resulting from the violator's action;

18 (e) the violator's good faith and cooperation;

19 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address  
20 or mitigate the violation or impacts of the violation; and

21 (g) other matters that justice may require.

22 (2) After the amount of a penalty is determined under subsection (1), the department of environmental  
23 quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may  
24 institute a payment schedule or suspend all or a portion of the penalty.

25 (3) The department of environmental quality may accept a supplemental environmental project as  
26 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an  
27 environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but  
28 which the violator is not otherwise legally required to perform.

29 (4) This section applies to penalties assessed by the department of environmental quality or the district  
30 court under Title 75, chapters 2, 5, 6, 11, ~~and 20~~, and [sections 1 through 12]; Title 75, chapter 10, parts 2, 4, 5,

1 and 12; and Title 76, chapter 4.

2 (5) The board of environmental review and the department of environmental quality may, for the statutes  
3 listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."

4  
5 **NEW SECTION. Section 14. Notification to tribal governments.** The secretary of state shall send  
6 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
7 Chippewa tribe.

8  
9 **NEW SECTION. SECTION 15. IMPLEMENTATION. THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL**  
10 **IMPLEMENT [THIS ACT] WITHIN EXISTING RESOURCES.**

11  
12 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through 12] are intended to be  
13 codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 12].

14  
15 **COORDINATION SECTION. Section 17. Coordination instruction.** If either Senate Bill No. 38 or  
16 House Bill No. 60, or both, and [this act] are passed and approved, then Senate Bill No. 38 and House Bill No.  
17 60 are void.

18  
19 **NEW SECTION. Section 18. Saving clause.** [This act] does not affect rights and duties that matured,  
20 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

21  
22 **NEW SECTION. Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are  
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
24 the part remains in effect in all valid applications that are severable from the invalid applications.

25  
26 **NEW SECTION. Section 20. Effective date.** [This act] is effective on passage and approval.

27  
28 **NEW SECTION. SECTION 21. RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE**  
29 **MEANING OF 1-2-109, TO COAL-FIRED GENERATING UNITS RETIRED ON OR AFTER JANUARY 1, 2017.**

30 - END -