

1 SENATE BILL NO. 88

2 INTRODUCED BY D. ANKNEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN OWNER OF A COAL-FIRED GENERATING UNIT
 5 TO FILE A BOND OR OTHER FINANCIAL ASSURANCE; REQUIRING THE DEPARTMENT OF
 6 ENVIRONMENTAL QUALITY TO ESTABLISH THE AMOUNT OF THE BOND OR OTHER FINANCIAL
 7 ASSURANCE; PROVIDING FOR THE RELEASE OF THE BOND OR OTHER FINANCIAL ASSURANCE;
 8 PROVIDING FOR A PENALTY IF A BOND OR OTHER FINANCIAL ASSURANCE IS NOT FILED; ALLOWING
 9 A PENALTY, BOND, OR OTHER FINANCIAL ASSURANCE TO BE APPEALED TO THE BOARD OF
 10 ENVIRONMENTAL REVIEW; ALLOWING FOR THE USE OF A FORFEITED BOND; AMENDING SECTIONS
 11 75-2-217 AND 75-25-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

14

15 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 3], the following definitions
 16 apply:

17 (1) "Coal-fired generating unit" means an individual unit of a coal-fired generating facility located in
 18 this state that has a generating capacity greater than or equal to 350 megawatts.

19 (2) "Owner" means a person who has a legal or equitable interest in a coal-fired generating unit or the
 20 person's legal representative.

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

23

24 NEW SECTION. Section 2. Coal-fired generating unit bond or other financial assurance. (1) (a)
 25 The department of environmental quality shall require that each owner of a coal-fired generating unit submit a
 26 bond or other financial assurance in a sum determined by the department in accordance with subsection (2),
 27 conditioned on the faithful continued operation of a coal-fired generating unit in order to comply with the
 28 requirements of an air quality permit. Bonding or financial assurance may not include self-bonding.

1 (b) Within 60 days after a request by the department in accordance with subsection (1)(a), an owner
2 of a coal-fired generating unit shall submit a bond or other financial assurance payable to the state in a form
3 acceptable by the department and for a sum determined by the department.

4 (c) If the coal-fired generating unit has more than one owner, the bond required in accordance with
5 this subsection (1) must cover only the individual owner's share of operational costs at the coal-fired generating
6 unit.

7 (2) In determining the amount of the bond or other financial assurance required in accordance with
8 subsection (1), the department shall take into consideration:

9 (a) the current and reasonably anticipated operation of the coal-fired generating unit;

10 (b) the current and reasonably anticipated need for electricity generated by the coal-fired generating
11 unit by customers in this state and in the western United States; and

12 (c) other information determined relevant by the department.

13 (3) (a) If an owner fails to submit a bond or other financial assurance acceptable to the department
14 within the timeframe required by this section, the department may assess an initial administrative penalty of
15 \$10,000 and an additional administrative penalty of \$10,000 for each day the failure to submit the bond or other
16 financial assurance continues.

17 (b) Penalties collected under this section must be deposited in the alternative energy revolving loan
18 account established in 75-25-101.

19 (4) An owner may appeal the department's penalty assessment or the amount of the bond or other
20 financial assurance determined by the department to the board of environmental review within 20 days after
21 receipt of written notice of the penalty or bond amount. The contested case provisions of the Montana
22 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this
23 subsection.

24
25 **NEW SECTION. Section 3. Release of bond or other financial assurance -- liability.** (1) The
26 department of environmental quality shall release an owner's share of the bond or other financial assurance
27 held in accordance with [section 2] if requested by the owner to address a mechanical or operational failure at
28 the coal-fired generating unit in order to complete repairs or modifications needed to ensure the coal-fired

1 generating unit operates in accordance with the requirements of an air quality permit.

2 (2) If an owner fails to complete repairs or modifications in order to continue to operate the unit in
3 accordance with the requirements of an air quality permit within 120 days after notification by the department,
4 the department shall cause the bond or other financial assurance to be forfeited.

5 (3) The department shall use a forfeited bond or financial assurance to:

6 (a) contract with a third party to complete the necessary repairs or modifications; or

7 (b) work in cooperation with another owner of the coal-fired generating unit who has requested a
8 release of the bond or other financial assurance to ensure the necessary repairs and modifications are
9 completed.

10 (4) If an owner's bond or other financial assurance is forfeited prior to the expiration of an air quality
11 permit under which a unit or units are operating, the owner shall provide a new bond or other financial
12 assurance in accordance with [section 1] to cover the owner's remaining obligation as it exists under the permit.

13 (5) Nothing in [sections 1 through 3] relieves an owner of its obligation to comply with the
14 requirements of an air quality permit issued by the department or the requirements of this chapter.

15

16 **Section 4.** Section 75-2-217, MCA, is amended to read:

17 **"75-2-217. Operating permit program -- exemptions -- general requirements -- duration.** (1) The
18 board shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and
19 renewal of operating permits as part of an operating permit program to be administered by the department
20 under this chapter. The board shall promulgate rules that are consistent with the operating permit framework
21 and guidelines outlined in Subchapter V of the federal Clean Air Act and implementing regulations.

22 (2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter
23 V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

24 (3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this
25 section or operate any source required to have a permit under this section without having complied with the
26 requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219,
27 and this section.

28 (4) The board may by rule provide for the exemption of one or more source categories, in whole or in

1 part, from all or part of the requirements of this section if the board determines that compliance with the
2 requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The
3 board may premise this determination upon a similar determination by the appropriate federal agency acting
4 pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

5 (5) The board may by rule provide for general operating permits covering numerous similar sources.

6 (6) An operating permit issued by the department under 75-2-218 and this section is effective for a
7 period not to exceed 5 years and may be renewed.

8 (7) The operating permit program administered by the department pursuant to this section must
9 include the following:

10 (a) adequate procedures that are streamlined and reasonable for:

11 (i) expeditiously determining when applications are complete;

12 (ii) processing applications; and

13 (iii) expeditiously reviewing permit actions, including application renewals or revisions;

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

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

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

19 (e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;

20 (f) deadlines for submitting permit applications and compliance plans that are not later than 12
21 months after the source becomes subject to the operating permit requirement;

22 (g) deadlines for submitting permit renewal applications that are not later than 6 months before
23 expiration of the existing operating permit;

24 (h) requirements for compliance plans that must be submitted with permit and renewal applications,
25 including schedules of compliance and progress reports;

26 (i) requirements and procedures for periodic certification of source compliance with permit
27 requirements, including the prompt reporting of any deviations from permit requirements;

28 (j) requirements for submission of any plans, specifications, or other information that the department

1 considers necessary under this section;

2 (k) conditions and procedures for the transfer of operating permits;

3 (l) requirements and procedures for suspension, modification, amendment, and revocation of permits
4 by the department for cause, including the modification or amendment of permits before renewal or termination
5 to incorporate applicable limitations or requirements effective after permit issuance;

6 (m) requirements and procedures for incorporating into permits and permit renewals all applicable
7 emission limitations and other requirements, including enforceable measures necessary to ensure compliance
8 with those limitations and requirements;

9 (n) requirements and procedures for permit modification and amendment;

10 (o) procedures for tracking activities conducted under general permits;

11 (p) requirements and procedures for issuing a single operating permit authorizing emissions from
12 similar operations at multiple temporary locations, which permit may include conditions necessary to ensure
13 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or
14 operator notify the department in advance of each change in location;

15 (q) requirements and procedures for allowing changes within a permitted facility without requiring a
16 permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions
17 allowable under the permit; ~~and~~

18 (r) requirements and procedures necessary to meet the requirements of [sections 1 through 3]; and

19 ~~(s)~~ other requirements necessary for the department to obtain the authorization to administer an
20 operating permit program under the provisions of Subchapter V of the federal Clean Air Act."

21

22 **Section 5.** Section 75-25-101, MCA, is amended to read:

23 **"75-25-101. Alternative energy revolving loan account.** (1) There is a special revenue account
24 called the alternative energy revolving loan account to the credit of the department of environmental quality.

25 (2) The alternative energy revolving loan account consists of money deposited into the account from
26 air quality penalties from 75-2-401 and 75-2-413, penalties in accordance with [section 2(3)], and money from
27 any other source. Any interest earned by the account and any interest that is generated from a loan repayment
28 must be deposited into the account and used to sustain the program.

1 (3) Funds from the alternative energy revolving loan account may be used to provide loans to
2 individuals, small businesses, units of local government, units of the university system, and nonprofit
3 organizations for the purpose of building alternative energy systems, as defined in 15-32-102:

4 (a) to generate energy for their own use;

5 (b) for net metering as defined in 69-8-103; and

6 (c) for capital investments by those entities for energy conservation purposes, as defined in 15-32-
7 102, when done in conjunction with an alternative energy system.

8 (4) The amount of a loan may not exceed \$40,000, and the loan must be repaid within 10 years."
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10 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 3] are intended to be
11 codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 3].
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13 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.
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