

## 1 SENATE BILL NO. 266

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN  
5 THE CONDUCT OF TRADE OR COMMERCE TO INCLUDE CERTAIN ACTIONS RELATED TO THE  
6 OPERATION AND MAINTENANCE OF AN ELECTRICAL GENERATION FACILITY; PROVIDING THE  
7 DEPARTMENT OF JUSTICE WITH THE AUTHORITY TO TAKE ACTION IN RESPONSE TO CERTAIN  
8 ACTS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A  
9 RETROACTIVE APPLICABILITY DATE."

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11 WHEREAS, electrical generation facilities located in Montana have significant implications for the  
12 economy, environment, and health and welfare of Montana consumers; and

13 WHEREAS, closure of electrical generation facilities without the unanimous consent of all co-owners  
14 threatens the reliable supply of electricity for Montanans; and

15 WHEREAS, failure or refusal to fund operations of Montana electrical generation facilities by facility  
16 owners without the consent of all owners threatens the safety of workers at the facility, threatens Montana's  
17 interest in environmental remediation of the facility, and threatens the reliable supply of electricity for Montana  
18 consumers; and

19 WHEREAS, electrical generation facility owners who fail to fund their share of operating costs without  
20 the unanimous consent of all co-owners or seek closure of an electrical generation facility without the  
21 unanimous consent of all co-owners of the facility place on Montana local government units and Montana  
22 electricity consumers the burdens of disruption in facility operations or closure of the facility; and

23 WHEREAS, Montana statute prohibits unfair or deceptive acts or practices in the conduct of trade or  
24 commerce in accordance with section 30-14-103, MCA, and provides for civil action by the Department of  
25 Justice to enforce compliance with statute and for temporary, preliminary, and permanent injunctive relief and  
26 civil fine.

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

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2            **NEW SECTION. Section 1. Definitions.** As used in [section 2] and this section, unless the context  
3 clearly indicates otherwise, the following definitions apply:

4            (1) "Department" means the department of justice.

5            (2) "Electrical generation facility" has the meaning provided for in 15-24-3001.

6            (3) "Generating unit" means an individual unit of an electrical generation facility located in the state.

7            (4) (a) "Operating costs" means the costs to construct, operate, and maintain the electrical  
8 generation facility in accordance with prudent utility practices.

9            (b) The term includes, without limitation, expenditures for capital improvements or replacements,  
10 maintenance activities, operations activities, environmental remediation, and pension and other employee  
11 benefits.

12            (5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or  
13 unincorporated associations, and any other legal entity.

14            (6) (a) "Prudent utility practice" means, at any particular time, any of the practices, methods, and acts  
15 engaged in or approved by a significant portion of the electrical utility industry prior to practice or approval, or  
16 any of the practices, methods, or acts, which, in the exercise of reasonable judgement in the light of the facts  
17 known at the time the decision was made, could have been expected to accomplish the desired result at the  
18 lowest reasonable cost consistent with reliability, safety, and expedition.

19            (b) The term is not limited to the optimum practice, method, or act, to the exclusion of all others, but  
20 rather to be a spectrum of possible practices, methods, or acts.

21            (c) The term also includes those practices, methods, and acts that are required in accordance with  
22 applicable laws, final orders, or regulations by regulatory agencies with jurisdiction.

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24            **NEW SECTION. Section 2. Unfair or deceptive acts or practices -- ownership agreement.** (1) (a)  
25 The failure or refusal of an owner of a jointly owned electrical generation facility in the state to fund its share of  
26 operating costs associated with a jointly owned electrical generation facility is an unfair or deceptive act or  
27 practice in the conduct of trade or commerce in accordance with 30-14-103.

28            (b) Conduct by one or more owners of a jointly owned electrical generation facility in the state to bring

1 about permanent closure of a generating unit of a facility without seeking and obtaining the consent of all co-  
 2 owners of a generating unit is an unfair or deceptive act or practice in the conduct of trade or commerce in  
 3 accordance with 30-14-103.

4 (2) (a) As an exclusive remedy for a violation of this section, whenever the department has reason to  
 5 believe that a person is using, has used, or is about to knowingly use any method, act, or practice provided for  
 6 in subsection (1) as an unfair or deceptive act or practice in the conduct of trade or commerce within the  
 7 meaning of 30-14-103 and that proceeding would be in the public interest, the department may bring an action  
 8 in the name of the state against the person to restrain by temporary or permanent injunction or temporary  
 9 restraining order the unlawful method, act, or practice after giving appropriate notice to that person.

10 (b) In an action brought under this section, if the court finds that a person is willfully using or has  
 11 willfully used a method, act, or practice declared unlawful by this section, the department may, on petition to the  
 12 court, recover on behalf of the state a civil fine of not more than \$100,000 for each violation. Each day of a  
 13 continuing violation constitutes a separate offense.

14 (3) There is no implied private right of action for a violation of this section, either under this section or  
 15 in law.

16 (4) ALL LEGAL ACTIONS UNDER THIS SECTION MUST BE BROUGHT IN THE COUNTY IN WHICH THE ELECTRICAL  
 17 GENERATION FACILITY IS LOCATED.

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 19 NEW SECTION. Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified  
 20 as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to  
 21 [sections 1 and 2].

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 23 NEW SECTION. Section 4. {standard} Severability. If a part of [this act] is invalid, all valid parts that  
 24 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 25 applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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 27 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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