SENATE BILL NO. 176
INTRODUCED BY B. MOLNAR, J. SMALL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO COAL-FIRED GENERATION; ESTABLISHING REMEDIATION AND BONDING REQUIREMENTS FOR COAL-FIRED GENERATING UNITS; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO DETERMINE BONDS; PROHIBITING THE TRANSFER OF CERTAIN PROPERTY UNTIL BONDING REQUIREMENTS ARE SATISFIED; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO CONDUCT AN ANALYSIS OF COAL TRUST FUNDING OPTIONS FOR REMEDIATION; ESTABLISHING RESPONSIBILITY AND FUNDING REQUIREMENTS FOR MAINTENANCE AND REPAIRS AT A COAL-FIRED GENERATING UNIT; PROVIDING FOR THE RATE BASING OF CERTAIN MAINTENANCE COSTS AND TRANSMISSION CAPACITY IN THE CASE OF ABANDONMENT AND UNDER SPECIFIC CIRCUMSTANCES; PROHIBITING CERTAIN RETIREMENT AND REMEDIATION COSTS FROM BEING PASSED ON TO RATEPAYERS; REQUIRING ENTITIES THAT RECEIVE COAL SEVERANCE TAX MONEY TO SIGN A STATEMENT SUPPORTING COAL; AMENDING SECTIONS 15-35-108, 17-5-703, 75-8-103, 75-8-104, 75-8-105, AND 75-8-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the coal trust fund was created to mitigate the impacts of coal development; and

WHEREAS, the coal trust fund was never intended to fund programs difficult to appropriate in the Montana Legislature; and

WHEREAS, various entities have seen fit to attack the lives of Montanans involved in low-cost and reliable energy production; and

WHEREAS, the cost of environmental remediation at Colstrip is estimated to be between $400 million and $700 million and could take decades to accomplish; and

WHEREAS, the tax loss alone from the closing of Colstrip Units 1 and 2 is over $17 million per year; and

WHEREAS, the tax loss for the premature closing of Colstrip Units 3 and 4 will be over $1.1 billion; and

WHEREAS, the premature closing of Colstrip Units 3 and 4 will reduce household income by $5.2
WHEREAS, decreases in business and other economic input would be $12.5 billion from 2027 to 2043 from premature shutdown; and
WHEREAS, 7,000 people would migrate out of the region or the state from premature shutdown; and
WHEREAS, the remaining jobs would pay an average of $79,000 less than preshutdown wages; and
WHEREAS, Montana’s coal miners funded the coal trust fund; and
WHEREAS, no one else funded the coal trust fund; and
WHEREAS, some people who oppose coal production and generation benefit from the coal trust fund; and
WHEREAS, the production of coal and energy from coal are of vital interest to Montana, the Western grid, and the United States.

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

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the major repair long-range building program account established in 17-7-221.

(3) The amount of 0.90% in fiscal year 2020 and 0.93% in fiscal year 2021 and in each fiscal year thereafter must be allocated for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking and must be deposited in the basic library services account established in 22-1-202.

(4) The amount of 3.77% in fiscal year 2020 and 3.71% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the department of natural resources and conservation for conservation districts
and deposited in the conservation district account established in 76-15-106.

(5) The amount of 0.79% in fiscal year 2020 and 0.82% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the Montana Growth Through Agriculture Act and deposited in the growth through agriculture account established in 90-9-104.

(6) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(7) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(8) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(9) The amount of 5.8% through June 30, 2023, and beginning July 1, 2023, the amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(10) After the allocations are made under subsections (2) through (9), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(11) (a) Subject to subsection (11)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on July 1 each year as follows:

(i) to the department of agriculture:

(A) $65,000 for the cooperative development center;

(B) $900,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(C) $600,000 for the Montana food and agricultural development program provided for in Title 80, chapter 11;

(ii) to the department of commerce:
67th Legislature

1. (A) $325,000 for a small business development center;

2. (B) $50,000 for a small business innovative research program;

3. (C) $625,000 for certified regional development corporations;

4. (D) $500,000 for the Montana manufacturing extension center at Montana state university-Bozeman;

and

5. (E) $300,000 for export trade enhancement.

(12) (a) An entity that receives money in accordance with subsections (1) through (10) and (11)(b) shall sign a statement in support of coal.

(b) The statement required in subsection (12)(a) must state: "I/We support the Montana coal industry and the energy generated by coal-fired generating units. Further, we support Montana’s families that dig, burn, and transport our coal reserves. We appreciate those families that provide maintenance services. Our actions show fidelity to this statement."

(c) The statement must be signed, include a position description of the signee, provide for the name of the entity represented, and include the date.

(D) STATE AGENCIES AND EMPLOYEES NEED NOT SIGN STATEMENTS. (Terminates June 30, 2027--secs. 13, 15, 18, Ch. 343, L. 2019.)

15-35-108. (Effective July 1, 2027) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

1. Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

2. The amount of 12% of coal severance tax collections is allocated to the major repair long-range building program account established in 17-7-221.

3. The amount of 0.90% in fiscal year 2020 and 0.93% in fiscal year 2021 and in each fiscal year thereafter must be allocated for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking and must be deposited in the basic library services account established in 22-1-202.

4. The amount of 3.77% in fiscal year 2020 and 3.71% in fiscal year 2021 and in each fiscal year
thereafter must be allocated to the department of natural resources and conservation for conservation districts and deposited in the conservation district account established in 76-15-106.

(5) The amount of 0.79% in fiscal year 2020 and 0.82% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the Montana Growth Through Agriculture Act and deposited in the growth through agriculture account established in 90-9-104.

(6) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(7) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(8) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(9) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(10) After the allocations are made under subsections (2) through (9), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(11) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(12) (a) An entity that receives money in accordance with subsection (1) through (10) shall sign a statement in support of coal.

(b) The statement required in subsection (12)(a) must state: "I/We support the Montana coal industry and the energy generated by coal-fired generating units. Further, we support Montana's families that dig, burn, and transport our coal reserves. We appreciate those families that provide maintenance services. Our actions show fidelity to this statement."

(c) The statement must be signed, include a position description of the signee, provide for the name
of the entity represented, and include the date.

(d) STATE AGENCIES AND EMPLOYEES NEED NOT SIGN STATEMENTS."

Section 2. Section 17-5-703, MCA, is amended to read:

"17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund;

(f) a big sky economic development fund; and

(g) a school facilities fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (4) and (5).

(3) (a) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(b) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the
treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(4) (a) Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in 20-9-380(1) 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer when the balance of the school facilities fund is $200 million. Beginning with the quarter following this certification, the state treasurer shall instead transfer to the coal severance tax permanent fund 75% of the amount in the coal severance tax bond fund that exceeds the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the school facilities fund to the account established in 20-9-525 the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in 20-9-525 must be retained in the school facilities fund.

(5) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.

(7) (a) An entity that receives money in accordance with subsections (1) through (6) shall sign a statement in support of coal.

(b) The statement required in subsection (7)(a) must state: "I/We support the Montana coal industry and the energy generated by coal-fired generating units. Further, we support Montana’s families that dig, burn,
and transport our coal reserves. We appreciate those families that provide maintenance services. Our actions show fidelity to this statement."

(c) The statement must be signed, include a position description of the signee, provide for the name of the entity represented, and include the date.

(d) State agencies and employees need not sign statements. (Terminates June 30, 2031—secs. 1 through 3, Ch. 305, L. 2015.)

17-5-703. (Effective July 1, 2031) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund;

(e) a big sky economic development fund; and

(f) a school facilities fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (4) and (5).

(3) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(4) (a) Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in 20-9-380(1) 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer...
when the balance of the school facilities fund is $200 million. Beginning with the quarter following this
certification, the state treasurer shall instead transfer to the coal severance tax permanent fund 75% of the
amount in the coal severance tax bond fund that exceeds the amount that is specified in subsection (2) to be
retained in the fund.

(b) The state treasurer shall monthly transfer from the school facilities fund to the account established
in 20-9-525 the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of
the state that are payable from the account. Earnings not transferred to the account established in 20-9-525
must be retained in the school facilities fund.

(5) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the
big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the
amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the
economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding
unrealized gains and losses, required to meet the obligations of the state that are payable from the account in
accordance with 90-1-204. Earnings not transferred to the economic development special revenue account
must be retained in the big sky economic development fund.

(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in
subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be
deposited in the coal severance tax permanent fund.

(7) (a) An entity that receives money in accordance with subsections (1) through (6) shall sign a
statement in support of coal.

(b) The statement required in subsection (7)(a) must state: “I/We support the Montana coal industry
and the energy generated by coal-fired generating units. Further, we support Montana’s families that dig, burn,
and transport our coal reserves. We appreciate those families that provide maintenance services. Our actions
show fidelity to this statement.”

(c) The statement must be signed, include a position description of the signee, provide for the name
of the entity represented, and include the date.

(D) STATE AGENCIES AND EMPLOYEES NEED NOT SIGN STATEMENTS.”
Section 3. Section 75-8-103, MCA, is amended to read:

"75-8-103. Definitions. As used in this part, the following definitions apply:

(1) (a) "Affected property" means the property owned by or under the control of an owner that is affected by a coal-fired generating unit, including:

(i) land, surface water, or ground water directly affected by the coal-fired generating unit, associated impoundments, disposal and waste operations, buildings, structures, or other improvements or operations infrastructure; and

(ii) areas affected by activities necessary to the closure and dismantling of the coal-fired generating unit.

(b) The term does not include:

(i) land, water, or air affected or potentially affected by emissions from the operation of a coal-fired generating unit; or

(ii) the mining of coal at an underground or strip mine and used at the coal-fired generating unit.

(2) "Applicable legal obligations" means any applicable state or federal environmental laws, including but not limited to the Montana Water Quality Act, rules regarding disposal of coal combustion residuals from electric utilities, the Montana Major Facility Siting Act, and other applicable laws administered by the department in accordance with Title 75. The term includes any consent order or settlement entered into by the department and an operator or owner imposing obligations to undertake remediation actions at the coal-fired generating unit or affected property.

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

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

(5) "Operator" means the person engaged in operating or undertaking remediation actions at a coal-fired generating unit. An operator may or may not be an owner.

(6) "Owner" means a person who has a legal or equitable interest in property subject to this part or the person's legal representative.

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

(8) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;
(b) historical and anticipated uses of a site where a coal-fired generating unit is located;
(c) patterns of development in the immediate area; and
(d) relevant indications of anticipated land use from an operator or owner, or both, of a coal-fired generating unit, affected property owners, and local planning officials.

(9) "Remediation" means all actions required by an applicable legal obligation and in accordance with [sections 6 and 7] directed exclusively toward achieving a degree of cleanup required in accordance with 75-8-107.

(10) "Retired" or "retire" means the complete and permanent closure of a coal-fired generating unit. Retirement occurs on the date that the coal-fired generating unit ceases combustion of fuel and permanently ceases to generate electricity."

Section 4. Section 75-8-104, MCA, is amended to read:

"75-8-104. Integration -- construction in event of conflict. (1) To avoid unnecessary duplication, the department shall integrate the provisions of this part with applicable legal obligations.

(2) If this part or any action taken by the department in accordance with this part conflicts with applicable legal obligations, the applicable legal obligations supersede the provisions of this part."

Section 5. Section 75-8-105, MCA, is amended to read:

"75-8-105. Remediation plan. (1) No later than 3 months after a coal-fired generating unit is retired and no earlier than 5 years prior to a coal-fired generating unit's planned retirement, an owner shall submit a proposed remediation plan that contains:

(a) the name of the operator of the coal-fired generating unit and the names and addresses of all owners of the coal-fired generating unit;
(b) a general overview of the site where the unit is located, the unit itself, and affected property;
(c) plans to meet the requirements of [sections 6 and 7], if applicable;

(d) the current and reasonably anticipated future uses of affected property; and

(e) remediation information, including:

(i) a list of reports, studies, or other evaluations related to remediation and specific remediation measures already completed or under way pursuant to any applicable legal obligation; and

(ii) the manner in which the remediation measures satisfy the requirements of 75-8-107 and a description of how the owner will comply.

(2) (a) If a coal-fired generating unit has more than one owner, the owners may jointly submit a remediation plan in accordance with this part.

(b) If the owners are unable to submit a joint plan, then each owner of the coal-fired generating unit that is being retired or is retired is responsible for meeting the requirements of this part. If separate plans are filed, the department shall ensure that the plans detail legal obligations. If there is a conflict in the plans, the department shall reconcile the conflict to ensure that the plans are consistent with existing law and legal obligations.

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

(4) The filing of a plan is not a commitment to retire a coal-fired generating unit on any particular date that is not otherwise required by an applicable legal obligation.”

Section 6. Section 75-8-107, MCA, is amended to read:

“75-8-107. Degree of cleanup required -- responsible parties -- labor requirements. (1) A remediation plan must demonstrate that it will meet the requirements of subsection (2) subsections (2) and (3) and attain a degree of cleanup of the affected property consistent with, but not more stringent than, applicable legal obligations, giving consideration to reasonably anticipated future uses of affected property.

(2) (a) Each owner of a coal-fired generating unit shall pay its share of remediation costs as remediation progresses. An owner may direct the department to reduce bond requirements for real-time expenditures during remediation.

(b) In determining bond requirements, the department shall estimate the total cost over the time of
remediation, including anticipated depreciation. Estimates must be updated and collected by the department biannually. Bond amounts may not include a discount rate and must account for the total cost of the estimated remediation.

(c) Subject to an owner's agreement, until the bonding obligations of this section are satisfied by the department, property rights, including transmission rights, may not be transferred to an entity other than another owner of the coal-fired generating unit. This subsection (2)(c) does not restrict an existing lease agreement or a lease agreement entered into after [the effective date of this act].

(2)(3) When contracting for the performance of construction, alteration, demolition, installation, repair, or maintenance work to implement a remediation plan, an owner shall require that its contractors and any subcontractors use a skilled and trained workforce to perform all remediation. Contracts signed must require contractors and subcontractors to:

(a) pay the standard prevailing rate of wages as defined in 18-2-401 for remediation; and

(b) pay apprentice wage rates, as applicable, in accordance with 39-6-108 for remediation completed by an apprentice employed by a contractor or subcontractor."

NEW SECTION. Section 7. Remediation -- other purposes -- bonding requirements. (1) Except as provided in subsection (2), if a coal-fired generating unit closed or is closed on or after January 1, 2020, and is not sold to another owner, the units must be demolished and removed, including the foundations. Bonding for the demolition and removal must be provided in accordance with 75-8-107(2).

(2) (a) If a coal-fired generating unit is legitimately sold for generation or experimental purposes, including but not limited to carbon sequestration, the bonding requirement is waived until the plant is closed.

(b) Remediation costs do not include removal of the generating units.

(3) (a) The energy and telecommunications interim committee shall provide recommendations, in the form of legislation, to the 2023 legislature concerning use of the coal trust fund dollars or other funding mechanisms to cover remediation costs when amortization dates are realized.

(b) Recommendations developed in accordance with subsection (3)(a) must account for and consider remediation costs and liabilities for an owner of a coal-fired generating unit generating baseload electricity for Montana ratepayers or merchant electricity at name-plate capacity on the date of the owner's original end
amortization date.

NEW SECTION. Section 8. Maintenance costs. (1) (a) EXCEPT AS PROVIDED IN SUBSECTIONS (1)(C) THROUGH (1)(E), IF an owner ceases to utilize power generated by a coal-fired generating unit and ceases to fund maintenance and repair costs for its share of a coal-fired generating unit, that owner remains liable on a pro rata basis established by the additional owners for future maintenance and repairs caused by the use of the plant during the remaining owner's tenure.

(b) Subject to subsections (2) and (3), costs must be determined through a negotiation with remaining owners and deposited in an account held by the unit's operator.

(c) SUBJECT TO SUBSECTION (1)(E), IF AN OWNER CEASES TO MAINTAIN ITS OWNERSHIP INTEREST IN A COAL-FIRED GENERATING UNIT AND ABANDONS ITS OWNERSHIP INTEREST OR CEASES TO MAINTAIN ITS OWNERSHIP INTEREST AND CEASES TO OPERATE THE COAL-FIRED GENERATING UNIT WHILE OTHER OWNERS HAVE A CONTINUED NEED TO UTILIZE POWER GENERATED BY THE COAL-FIRED GENERATING UNIT, A UTILITY REGULATED BY THE PUBLIC SERVICE COMMISSION IN ACCORDANCE WITH TITLE 69, CHAPTER 3, MAY FUND MAINTENANCE AND REPAIR COSTS FOR A SINGLE MAINTENANCE CYCLE IN ACCORDANCE WITH SUBSECTION (1)(D) TO CONTINUE OPERATION OF THE UNIT.

(d) COSTS INCURRED TO PROVIDE MAINTENANCE AND REPAIR COSTS AND FOR THE PROCUREMENT OF TRANSMISSION CAPACITY AND SERVICES FOR A SINGLE MAINTENANCE CYCLE IN THE EVENT OF AN OWNER CEASING TO MAINTAIN ITS OWNERSHIP INTEREST IN ACCORDANCE WITH SUBSECTION (1)(C) AND TRANSMISSION CAPACITY REQUIRED IN SUBSECTION (1)(E), MAY BE INCLUDED IN THE REGULATED UTILITY'S RATE BASE IN ACCORDANCE WITH A PUBLIC SERVICE COMMISSION ORDER PROVIDING FOR THE INCLUSION.

(e) A TRANSFER OF MAINTENANCE AND REPAIR COSTS IN ACCORDANCE WITH SUBSECTION (1)(D) ALSO MUST INCLUDE AN AGREEMENT TO MAINTAIN SUFFICIENT OPERATIONAL TRANSMISSION CAPACITY TO SERVE THE NEW ACQUISITION OF GENERATION. THE VALUE OF THE CAPACITY MUST BE DETERMINED BASED ON TRANSMISSION AGREEMENTS AS ORIGINALLY SIGNED BY THE OWNERS.

(2) Montana EXCEPT AS PROVIDED IN SUBSECTIONS (1)(C) THROUGH (1)(E), electricity ratepayers are not liable for maintenance and repair costs incurred as a result of owners, who do not serve Montana ratepayers, ceasing to utilize power generated by the units.

(3) THE COMMISSION MAY NOT ALLOW A FACILITY ACQUIRED IN ACCORDANCE WITH THIS SECTION TO BE RATE-
BASED AT A VALUE HIGHER THAN THAT OF NEWLY CONSTRUCTED NATURAL GAS GENERATION LOCATED WITHIN A
UTILITY'S MONTANA SERVICE TERRITORY.

(3)(4) If an owner's agreement established on or before [the effective date of this act] conflicts with the requirements of this section, the owners shall revise the agreement in order to fulfill the requirements of subsections (1) and (2).

NEW SECTION. Section 9. Stranded costs and remediation costs -- prohibition against ratepayer increases. (1) (a) If a utility regulated in accordance with this chapter ceases to maintain its ownership interest in a coal-fired generating unit as defined in 75-8-103, the utility may not seek stranded cost reimbursement from the commission. Shareholders shall cover any stranded costs.

(b) For the purposes of this section, "stranded costs" means an investment in a coal-fired generating unit that is defined as the historic financial obligations of the utility incurred that become unrecoverable.

(2) Remediation costs incurred by a utility regulated in accordance with this chapter and determined in accordance with Title 75, chapter 8, part 1, and established by other applicable legal obligations as defined in 75-8-103, may not be recovered in costs passed on to ratepayers.

NEW SECTION. Section 10. Codification instruction. (1) [Sections 7 and 8] are intended to be codified as an integral part of Title 75, chapter 8, part 1, and the provisions of Title 75, chapter 8, part 1, apply to [sections 7 and 8].

(2) [Section 9] is intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [section 9].

NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

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