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HOUSE BILL NO. 737

INTRODUCED BY G. PARRY, J. SCHILLINGER, K. WALSH, D. LOGE, R. FITZGERALD, B. USHER, D. BARTEL, G. KMETZ, C. SPRUNGER, J. ETCHART, R. MINER, J. KASSMIER, B. PHALEN, Z. WIRTH, N.

HASTINGS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A COAL-FIRED GENERATING UNIT OPERATOR TO PROVIDE PERPETUAL ACCESS TO WATER FOR AN ATTENDANT CITY OR TOWN; CLARIFYING THE FINANCIAL ASSURANCE NECESSARY TO PROVIDE WATER TO AN ATTENDANT CITY OR TOWN; AMENDING A DEFINITION; AND AMENDING SECTIONS 75-8-103 AND 75-10-721, MCA."

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

NEW SECTION. Section 1. Water rights for a city or town -- coal-fired generation -- perpetual access. (1) A city or town where a coal-fired generating unit is located shall secure appropriate water rights and necessary real and personal property in accordance with Title 7, chapter 13, part 44, and this section to ensure an adequate water supply is available if a coal-fired generating unit closes or retires, potentially jeopardizing access to a water supply.

(2) If the operator of a coal-fired generating unit owns, operates, or both owns and operates a conveyance necessary to maintain a public water supply system, as defined in 75-6-102, or owns the water rights necessary to supply a city or town with water, that operator shall provide perpetual operation of the conveyance and access to the necessary water rights. Operation and access include the cost of:

(a) electricity necessary to pump water over the lifetime of the conveyance to supply the necessary water supply; and

(b) maintenance of the conveyance to supply the necessary water supply, including replacement.

Section 2. 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

1 affected by a coal-fired generating unit, including:

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

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

7 (b) The term does not include:

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

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

11 (2) "Applicable legal obligations" means any applicable state or federal environmental laws,
12 including but not limited to the Montana Water Quality Act, rules regarding disposal of coal combustion
13 residuals from electric utilities, the Montana Major Facility Siting Act, and other applicable laws administered by
14 the department in accordance with Title 75. The term includes:

15 (a) any consent order or settlement entered into by the department and an operator or owner
16 imposing obligations to undertake remediation actions at the coal-fired generating unit or affected property; ~~and~~

17 (b) a water feasibility study completed in accordance with 75-8-110; and

18 (c) compliance with remedial actions in accordance with 75-10-721.

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

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

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

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

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

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

1 consideration:

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

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

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

12

13 **Section 3.** Section 75-10-721, MCA, is amended to read:

14 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A
15 remedial action performed under this part or a voluntary cleanup under 75-10-730 through 75-10-738 must
16 attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or
17 further release of that substance that assures protection of public health, safety, and welfare and of the
18 environment.

19 (2) In approving or carrying out remedial actions performed under this part, the department:

20 (a) except as provided in subsection (4), shall require cleanup consistent with applicable state or
21 federal environmental requirements, criteria, or limitations;

22 (b) may consider substantive state or federal environmental requirements, criteria, or limitations
23 that are relevant to the site conditions; and

24 (c) shall select remedial actions, considering present and reasonably anticipated future uses,
25 giving due consideration to institutional controls, that:

26 (i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare
27 and the environment;

28 (ii) are effective and reliable in the short term and the long term;

1 (iii) are technically practicable and implementable;

2 (iv) use treatment technologies or resource recovery technologies if practicable, giving due
3 consideration to engineering controls; ~~and~~

4 (v) in the case of remediation in accordance with Title 75, chapter 8, part 1, demonstrate the
5 financial assurance to provide lifetime operation and access costs for the conveyance of necessary water rights
6 to a local government attendant to a coal-fired generating unit. Cost effectiveness may not be considered for
7 maintenance of the conveyance to supply the necessary water supply, including replacement pursuant to
8 [section 1].

9 ~~(v)~~(vi) are cost-effective.

10 (3) In selecting remedial actions, the department shall consider the acceptability of the actions to
11 the affected community, as indicated by community members and the local government.

12 (4) The department may select a remedial action that does not meet an applicable state
13 environmental requirement, criteria, or limitation under any one of the following circumstances:

14 (a) The remedial action is an interim measure and will become part of a total remedial action that
15 will attain the applicable requirement, criteria, or limitation.

16 (b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to
17 human health and the environment than other remedial action alternatives.

18 (c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable
19 from an engineering perspective.

20 (d) The remedial action will attain a standard of performance that is equivalent to that required
21 under the otherwise applicable requirement, criteria, or limitation through use of another method or approach.

22 (e) Compliance with the requirement would not be cost-effective.

23 (5) For purposes of this section, cost-effectiveness must be determined through an analysis of
24 incremental costs and incremental risk reduction and other benefits of alternatives considered, taking into
25 account the total anticipated short-term and long-term costs of remedial action alternatives considered,
26 including the total anticipated cost of operation and maintenance activities.

27 (6) The department may exempt any portion of a remedial action that is conducted entirely on site
28 from a state or local permit that would, in the absence of the remedial action, be required if the remedial action

1 is carried out in accordance with the standards established under this section and this part.

2 (7) The department may require financial assurance from a liable person in an amount that the
3 department determines will ensure the long-term operation and maintenance of the remedial action site. The
4 liable person shall provide the financial assurance by any one method or combination of methods satisfactory to
5 the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of
6 credit, qualification as a self-insurer, or other demonstration of financial capability."

7
8 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
9 integral part of Title 75, chapter 8, part 1, and the provisions of Title 75, chapter 8, part 1, apply to [section 1].

10 - END -